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## Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform

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# Grand Challenges: Social Justice and the Need for Evidence-based Sex Offender Registry Reform

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*Sex offender registries, though popular, bring with them enormous fiscal costs and unintended consequences for offenders and communities. Consistent with the Grand Challenges, social workers can play a role in advocating for sex offender management policies that are better informed by evidence and thus a better use of resources. Registry reform would also mediate the stigma resulting from the sex offender label, and reduce barriers to offender reintegration. A brief history of registration laws and the research regarding their effectiveness will be provided, followed by a rationale for needed improvements in sex offender management policy. Five evidence-based recommendations for reform will be proposed: (1) juveniles should not be subjected to sex offender registration; (2) registration durations should be guided by risk assessment research; (3) procedures for relief and removal from registries should be available; (4) discretion should be returned to judges; (5) residence restrictions should be abolished. Such changes can result in improved public safety outcomes and social justice, as well as reduced fiscal and social costs.*

*Key words: Sex offender, policy, social work grand challenge, registry, registration, social justice*

Recently, social work leaders have embraced a set of "Grand Challenges" (Barth, Gilmore, Flynn, Fraser, & Brekke,

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2014; Uehara et al., 2013) to address a range of complex and inter-related social problems that deeply impact American society. The primary aim of these grand challenges is to "galvanize social workers' collective contribution to the quality of life and promotion of an equitable society in the 21st century" by reducing poverty and inequality and by improving access to health and human services (Uehara et al., 2013, p. 167). The leaders of this movement have proposed forming a unified and cohesive approach to addressing the complex issues they have identified. In doing so, the profession will benefit from the integration of collaborative leadership, knowledge, science, and public dialogue to effect innovative and transformative solutions (Uehara et al., 2013).

Among those grand challenges for social workers is the predicament of mass incarceration and the inherent racial and economic disparities that have fueled its progression (Pettus-Davis & Epperson, 2015). Social work scholars have argued that individuals involved in the criminal justice system face numerous social injustices (Bracken, McNeill, & Clarke, 2010; Fenton, 2011; Scheyett, Pettus-Davis, McCarter, & Brigham, 2012; Zumdahl, 2011) and that disparities are rampant, with the poor and people of color disproportionately affected (Pew Charitable Trusts, 2009). Social work's commitment to challenging injustice features prominently in the NASW Code of Ethics (NASW, 2008). Therefore, our profession must address the "ways in which social institutions inhibit or liberate persons" (Young, 2011, p. 34).

Few examples are more illustrative and poignant with regard to the way social systems may inhibit the rights of individuals than the policies addressing management of those who have committed sexual offenses. This article will first give a brief history of sex offender registration and notification (SORN) laws and the research around their effectiveness. Next, a rationale for needed improvements in sex offender management policy will be provided. Finally, evidence-informed recommendations will be offered for five proposed areas of reform. We believe that this topic is one of relevance for social workers, victims, survivors, and offenders, as well as for policy analysts and legislators. Though sex offenders arouse little sympathy in our society, registry reform is

consistent with the mission of the Grand Challenges facing the social work profession. Evidence-informed changes can result in improved public safety outcomes and social justice in our communities.

## The History and Evolution of SORN Laws

There are perhaps no crimes that inspire as much fear, revulsion, and outrage as sexual offenses. Over the past several decades, in response to a series of brutal and highly publicized sexual crimes, lawmakers have responded decisively to the public's demand for protective legislation. The purpose of SORN laws is to increase public awareness about sex offenders living among us so that concerned citizens and parents can take protective actions to prevent victimization. Furthermore, sex offender registration provides a system by which law enforcement agencies can track, supervise, and monitor these offenders.

The evolution of contemporary sex offender policy began in 1989, when 11-year-old Jacob Wetterling was abducted in Minnesota while riding his bike with his brother and a friend. The Wetterlings successfully advocated for federal guidelines requiring known sex criminals to register their addresses with local law enforcement agents in order to help identify potential suspects in such cases (Jacob Wetterling Act, 1994). Since that time, states have required all adults convicted of sex crimes and some juveniles to register. In 1996, after seven-year-old Megan Kanka was sexually assaulted and murdered by a convicted sex offender in New Jersey, Megan's Law was passed allowing the release of registry data to the public. States were later required to create publicly accessible and searchable online registry websites by 2003. About half of the states classify offenders by risk levels and notify the public differentially according to the offender's threat to children and other possible victims. Other states employ broad notification policies, publicly identifying all individuals convicted of sexual crimes regardless of risk.

In 2006, federal SORN requirements were refined once again by the passage of the Adam Walsh Act (AWA)—named for a Florida child who was abducted from a shopping mall

and murdered in 1981—which standardized guidelines in an effort to create uniformity across all 50 states (Adam Walsh Act, 2006). The AWA required implementation of a pre-designed 3-tier offense-based classification system with concordant registration durations of 10 years for misdemeanors, and 25 year or lifetime registration for felony offenders. The law mandates prison sentences for sex offenders who fail to properly register. States that do not comply with AWA lose 10% of their federal criminal justice funding; currently, 19 states are compliant with AWA federal guidelines. The AWA also created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office), and designated resources for the FBI to integrate all state registries into a searchable National Sex Offender Registry (NSOR).

### Summary of Research about SORN

In 2015 over 843,000 registered sex offenders (RSO) resided in the U.S. (National Center for Missing and Exploited Children, 2015a), although at least 12% are not living in the community because they are confined, deceased, or deported (Ackerman, Harris, Levenson, & Zgoba, 2011). Approximately one-third of RSOs have been deemed by their state's assessment process to pose a low risk for future offending and therefore are not listed on public registries, and their status is known only to law enforcement (Ackerman et al., 2011). Among RSOs who appear on public registries, about 14% have been designated by states as high risk, predator, or sexually violent (Ackerman et al., 2011). Nearly 98% of RSOs are male, the average age is about 45 years old, and the majority (85 - 90%) have only one sex offense conviction (Levenson, Ackerman, & Harris, 2013; Sandler, Freeman, & Socia, 2008). Approximately 90% of registered sex offenders have had a minor victim under the age of 18, with about one-third of victims under 10 years old, and most (87 - 89%) victims (adult and minor) are female (Ackerman et al., 2011; Finkelhor et al., 2008). As is true throughout the criminal justice system, minorities are over-represented on sex offender registries: 22% of RSOs are black, compared to 12 - 13% of the U.S. population (Ackerman et al., 2011).

Public perception surveys have found strong support for

sex offender registries (Levenson, Brannon, Fortney, & Baker, 2007; Pickett, Mancini, & Mears, 2013; Sample & Kadleck, 2008), however, an analysis of sexual assault cases from a victim advocacy center reported that less than 4% of the offenders would have been found on a registry prior to the abusive incident (Craun, Simmons, & Reeves, 2011). Few people seem to utilize registries with any regularity or take preventive measures after searching a registry (Anderson & Sample, 2008; Beck & Travis, 2004; Kernsmith, Comartin, Craun, & Kernsmith, 2009). Despite the fact that registries make people feel safer, the data indicate that their actual effectiveness in preventing sexual recidivism is quite weak.

There are many methodological challenges faced by researchers when conducting sex crime policy analysis. For example, low recidivism base rates, the confound of several policies enacted within short time frames, the difficulties of prospective research designs to collect large samples of recidivism data, and the need for long follow-up periods all contribute to the complexities of measuring the impact of these laws. Moreover, though national guidelines exist, the SORN policy in each state is idiosyncratic, complicating efforts to conduct national sex offender policy research (Harris, 2011).

About two dozen studies have been conducted to evaluate the impact of SORN, and most involve one of two methodologies: group differences of sex offenders required to register compared with those who were not, and time-series or trend analyses of sex crime rates over time. Most single-state studies have not detected significant reductions in sex crime rates that can be credited to SORN policies (Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2010; Levenson & Zgoba, 2015; Sandler et al., 2008; Veysey, Zgoba, & Dalessandro, 2008; Zgoba, Veysey, & Dalessandro, 2010). Modest effects were detected in Minnesota and Washington (Duwe & Donnay, 2008; Washington State Institute for Public Policy, 2005); both states use empirically-derived risk assessment classification systems to reserve aggressive and long-term public registration for the most high-risk offenders.

Multi-state studies have also produced mixed results, but most show small or no effects on recidivism attributable to SORN laws. For instance, an investigation of the impact

of SORN laws on sexual assault rates in ten states (Vasquez, Maddan, & Walker, 2008) showed a significant increase in rape rates in California following implementation, while Hawaii, Idaho, and Ohio had significant decreases in rape rates, and the remaining six states (Arkansas, Connecticut, Nebraska, Nevada, Oklahoma, & West Virginia) showed non-significant trends.

An analysis examining data from over 300,000 sex crimes in 15 states found that, while registration appeared to decrease the rate of recidivistic sex offenses, public notification did not (Prescott & Rockoff, 2011). Using Uniform Crime Report (UCR) data from 1985-2003, Agan (2011) failed to find a significant decline in arrest rates of rape or sexual abuse after registration was implemented, or after public Internet access to registry information was instituted. Agan also examined Bureau of Justice Statistics (BJS) data tracking individual sex offenders after their release from prison in 1994, and determined that having to register as a sex offender did not lead to significant reductions in sex offense recidivism (Agan, 2011). Using UCR data for the years 1970-2002, Ackerman, Sacks and Greenberg (2012) concurred that SORN legislation did not result in dramatic declines in forcible rapes.

Other recent investigations have raised questions about the utility and validity of the federally mandated Adam Walsh Act tier system, which requires states to classify sex offenders using the characteristics of their offenses rather than risk assessments grounded in empirically-derived factors. In Florida, New Jersey, Minnesota, and South Carolina (Zgoba et al., 2015) and in New York (Freeman & Sandler, 2010), the AWA offense-based classification process did a poor job of identifying potential recidivists. The authors opined that empirically developed risk assessment procedures were better than offense categories for screening sex offenders into relative risk categories to establish monitoring requirements. The AWA classification process often over-estimates risk, contradicting evidence suggesting that the highest risk of sexual re-offense is concentrated among a small group of offenders (Harris, Lobanov-Rostovsky, & Levenson, 2010), but offense-based classification schemes also sometimes under-estimate risk because some offenders plea-bargain down to lesser crimes

that may not truly reflect their dangerousness (Letourneau, Levenson, Bandyopadhyay, Armstrong, & Sinha, 2010).

In short, the abundance of evidence does not point to the effectiveness of registration systems in reliably classifying offenders, reducing recidivism, or preventing sex crimes. The absence of an empirical link does not rule out the possibility of undetected public safety impacts and efficacy of SORN laws, and it is also feasible that individual effects might exist as a result of law enforcement monitoring and case management, or prevention efforts by citizens (Bierie, 2015). Many scholars, however, have agreed that the accumulation of empirical evidence strongly suggests that the fiscal and social costs of these laws outweigh their benefits (Ackerman, Sacks, & Greenberg, 2012; Zgoba, Witt, Dalessandro, & Veysey, 2009). Of course there are dangerous predators who should be carefully monitored, and registry information may be useful to citizens and law agents in anecdotal cases. However, the data raise questions about the widespread use of registries, the costs and benefits of them, and the social justice implications for offenders who aspire for second chances to demonstrate productive and law-abiding lives.

### Rationale for Registry Reform

Labeling theory proposes that self-identity and behavior of individuals may be determined or influenced by the words used to describe or classify them; the stigma and isolation resulting from labels attached to those who deviate from social norms can be demeaning and may become deeply entrenched in one's self-concept (Goffman, 1963; Maruna, LeBel, Mitchell, & Naples, 2004). Labeling and its resulting social rejection is also related to the concepts of stereotyping and self-fulfilling prophecy, such as when an individual internalizes assumptions about him or herself made by others and then behaves in a way that conforms to that notion (Paternoster & Iovanni, 1989). In the context of theories of crime, the exclusionary practices activated by shaming labels can isolate stigmatized groups from mainstream social life, solidifying one's deviant identity and fortifying criminal behavior (Bernburg, Krohn, & Rivera, 2006; Paternoster & Iovanni, 1989). Thus, when we



label people by the very description we don't want them to be, we actually prevent the cognitive transformation that plays a role in social conformity and reduced recidivism risk (Maruna et al., 2004; Willis, 2015). This is especially true for the sex offender designation, which defines individuals for life, sometimes by isolated events, in ways that foster unequivocal negation of other aspects of their character and behavior.

Recent cases calling attention to the need for registry reform have prompted public dialogue in prominent media outlets including the *New York Times*, NPR's *Diane Rehm Show*, the *New Yorker* magazine, CNN's *Anderson Cooper 360*, and ABC's *Nightline* (e.g., Bosman, 2015; National Public Radio, 2015; Stillman, 2016). For example, Zachery Anderson was a 19-year-old college student with no criminal history when he met a teenage girl on a dating app and had sex with her. The girl, who admitted she lied about her age, turned out to be only 14, which made their encounter a sex crime. Despite testimonials by the girl and her mother begging the judge for leniency, Zachery was sentenced to 90 days in jail, followed by five years of probation, and landed on the sex offender registry in two states for 25 years (Bosman, 2015; Levenson, 2015).

As Zachery's story illustrates, all sex offenders are not the stereotypical monsters we imagine. Of the nearly 850,000 registered sex offenders in the U.S., about 6 - 7% are age 25 or younger (Ackerman et al., 2011), and many of their crimes involve situations like Zachery's. We know from decades of neuroscience research that the executive regions of the brain continue to develop well into the mid-twenties, and that teens are often poorly equipped to fully appreciate the long-term implications of their choices. Sex offender registries were originally envisioned to help concerned citizens and parents prevent victimization by listing predatory, violent, and pedophilic offenders who pose a true threat to children and others in our communities. This goal is impeded by a system that forces people like Zachery to register, diluting the public's ability to tell who is really dangerous, creating an added workload burden for law enforcement personnel, and generating an inefficient distribution of fiscal resources. Every dollar spent monitoring someone like Zachery is a dollar not available for victim services, child protection responses, and

prevention programs for at-risk families (Levenson, 2012). All sex offenders are not the same, and the high monetary, human, and social costs of these policies are worthy of consideration.

Registries also contain many other offenders who may pose little threat to public safety, including non-contact and first-time offenders assessed to be at low risk to reoffend. An ever-growing national registry system tracking over 850,000 individuals weakens the public's ability to distinguish truly dangerous offenders. The size and scope of the registry means that impacts are felt by millions of people, including registrants and their families. Though sex offenders inspire little sympathy, evidence and logic suggest that in many ways registries contradict best practices in criminal re-entry. They may unfairly and unnecessarily deprive offenders of opportunities for success; indeed, the federal Second Chance Act, passed in 2008, specifically excluded sex offenders from its programs. As social workers, if we believe in social justice, we cannot pick and choose to whom it applies.

### Collateral Consequences of Sex Offender Management Policies

The challenges of reintegration after a criminal conviction are even more pronounced for registered sex offenders. The legacy of any felony conviction often includes employment obstacles, denial of public benefits, decreased educational opportunities, and disenfranchisement (Maruna et al., 2004; Petersilia, 2003; Pettus-Davis & Epperson, 2015; Uggen, Manza, & Behrens, 2004), but the unique label of "sex offender" can obstruct community re-entry even more profoundly. Sex offenders in many states report employment difficulties, housing disruption, relationship loss, threats and harassment, and property damage (Levenson & Cotter, 2005a; Levenson, D'Amora, & Hern, 2007; Mercado, Alvarez, & Levenson, 2008; Sample & Streveler, 2003; Tewksbury, 2004, 2005; Tewksbury & Lees, 2006; Zevitz & Farkas, 2000b). Psychosocial symptoms such as shame, stigma, isolation, anxiety, depression, and hopelessness are also commonly reported by sex offenders. These impacts extend to their family members, who report financial, practical, social, and psychological effects when a loved one

is placed on the registry (Farkas & Miller, 2007; Levenson & Tewksbury, 2009; Tewksbury & Levenson, 2009). Employment and housing problems experienced by the RSO were identified as the most pressing issues for family members, and some also described threats and harassment by community members, as well as social rejection of children of RSOs by teachers and classmates (Levenson & Tewksbury, 2009).

The deleterious consequences of registration are particularly salient for youthful sex offenders (Chaffin, 2008; Harris, Walfield, Shields, & Letourneau, 2015; Letourneau & Miner, 2005; Pittman & Parker, 2013; Stillman, 2016). The Adam Walsh Act initially mandated states to publicly register juveniles as young as 14 who were adjudicated for sexual crimes, but after significant pushback from developmental psychologists, treatment specialists, and attorneys, this provision was revised to allow for discretion in placing juveniles on public registries. More recently, legal scholars have questioned the constitutionality of juvenile registration, given the U.S. Supreme Court's decision that lifetime sentences for juvenile offenders violate the Eighth Amendment (Parker, 2014; Sterling, 2015).

In a report to the Vermont legislature, advocates argued that there was no evidence that public registration and notification requirements for juveniles, and especially younger children, are associated with positive treatment outcomes or with improved safeguarding of other children (Burford, Gallagher, Leibowitz, & Robinson, 2007). Additionally, a compelling and deeply disturbing Human Rights Watch report conducted nearly 300 interviews and documented the irreparable harm of juvenile registration on youth and their families (Pittman & Parker, 2013). The negative, iatrogenic effects of registration significantly impact mental health, physical safety, and educational opportunities for youth, who reported remarkably similar stories of stigma, isolation, despair, suicidality, hopelessness, harassment and violence against them, as well as profound shame.

A survey of juvenile sex offender treatment specialists concurred that these negative effects are seen in 85% of registered youth, and that approximately 20% had attempted suicide (Harris, Walfield et al., 2015). It is unlikely that these consequences are markedly different for young adults who have

passed their 18th birthdays, as the severe limitations placed on one's potential future are daunting. Yet, 41 states have some form of registration for juveniles adjudicated delinquent for a sex crime, 30 states permit or require website publication of the registration information, and most states require registration for juveniles waived over and convicted in adult court (SMART Office, 2015).

Sex offender residence restriction (SORR) laws prohibiting RSOs from living within close proximity to schools, parks, playgrounds, or daycare centers are tied to registration status and further exacerbate these immense barriers to offender re-entry (Levenson, 2008; Socia, Levenson, Ackerman, & Harris, 2015). Housing restrictions frequently force sex offenders to relocate, prevent them from returning to their own homes after conviction, and preclude them from living with family members (Levenson, 2008; Levenson & Cotter, 2005b; Levenson & Hern, 2007; Mercado et al., 2008). Many report that affordable housing is less available due to limits on where they can live, that landlords refuse to rent to them or to renew a lease, and that they are forced to live farther away from employment, public transportation, social services, and mental health treatment. Young adults are especially impacted by these laws when they are unable to live with family and have difficulties securing affordable housing (Levenson, 2008; Levenson & Hern, 2007). In densely populated communities, the combination of extensive buffer zones and more costly rental prices can create a "perfect storm" for sex offender homelessness and displacement, interfering with law enforcement agents' ability to track and supervise registrants (Levenson, Ackerman, Socia, & Harris, 2015, p. 20).

Ironically, housing instability is consistently associated with criminal recidivism and absconding (Petersilia, 2003; Roman & Travis, 2004; Schulenberg, 2007; Steiner, Makarios, & Travis, 2015), suggesting that housing restrictions may actually undermine the very purpose of registration laws and compromise public safety (Levenson et al., 2013). Such laws can also cause RSOs to cluster in the few locations where compliant housing is available, resulting in a disproportionate number of offenders in a small geographical area and understandably raising concerns for the safety of children living

in such neighborhoods (Broward County Commission, 2009; Socia, 2013). Legislation that thwarts sex offenders' housing stability contradicts another of social work's grand challenges: ending homelessness (Henwood et al., 2015).

### Sex Offense Recidivism

Sex offender laws have been inspired by the common belief that most sex offenders inevitably reoffend and that they therefore require special management. Research indicates, however, that sex offense recidivism rates are lower than commonly believed, averaging from 5% to 15% depending on the study (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998; Hanson, Harris, Helmus, & Thornton, 2014; Hanson & Morton-Bourgon, 2005; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012; Zgoba et al., 2015). They are less likely to be re-arrested for a new crime compared to other violent, property, and drug offenders (Durose, Cooper, & Snyder, 2014; Sample & Bray, 2006). It is often argued that low recidivism rates reflect the high number of sex crimes that go undetected, and of course, many are not reported. It is well established, however, that a small group of predatory or pedophilic offenders has a high volume of victims, and that on average the majority of sexual offenders are not arrested for repeat sex crimes (Abel et al., 1987; Harris & Hanson, 2004; Helmus et al., 2012). Rates of recidivism for juvenile sex offenders are very low (about 7% over 5 years) (Caldwell, 2010), and the collateral consequences of registration for youth and their families are devastating (Harris, Walfield et al., 2015; Pittman & Parker, 2013; Stillman, 2016).

Importantly, recent longitudinal research has found that sex offender recidivism risk declines substantially over time as individuals remain in the community offense-free. Remarkably, low risk sex offenders commit new sex crimes at rates below general criminal offenders; in other words, criminal offenders with no prior sex offense history are re-arrested for a subsequent sex crime more often than low-risk convicted sex offenders (Hanson et al., 2014; Harris & Hanson, 2012). After 16.5 years in the community without a new sex crime arrest, even high-risk sexual offenders are no more likely to be

arrested for a new sex offense than non-sexual criminals, and moderate risk sex offenders cross that threshold after about 10 years. While some sex offenders certainly pose a long-term and serious danger to community members, many do not.

### Fiscal Considerations

While the national costs of sex offender registration are difficult to estimate, law enforcement agents and others have expressed concerns about fiscal and workforce demands (Harris, Lobanov-Rostovsky, & Levenson, 2015). The expenditures of registry programs include local police surveillance and compliance verification of RSOs, costs associated with non-compliance, such as courts and incarceration, and expenses for continuous technological improvements to build and maintain online registries and to seamlessly update and connect registry systems with other databases (Harris, 2011; Harris & Lobanov-Rostovsky, 2010; Matson & Lieb, 1996; Zevitz & Farkas, 2000a; Zgoba et al., 2009). When quantifiable costs are summed, they are estimated to range from \$10 billion to \$40 billion nationally per year (Belzer, 2015). In a 2009-2010 appropriations bill, Congress substantially increased the U.S. Marshal Service budget by \$10,000,000 above their \$50,985,000 request to expand Adam Walsh Act enforcement (111th Congress, 2009). More than half of states have elected not to comply with the AWA due to the financial burden it placed on them, because the loss of federal dollars was estimated to be less than the costs of implementing new mandates (Harris & Lobanov-Rostovsky, 2010; Justice Policy Institute, 2008).

Only one known cost-benefit analysis related to SORN has been done to date (Belzer, 2015), because such an endeavor is complicated by many factors (Harris, 2016). Implementation of these laws is not uniform, and incremental costs and benefits vary significantly from state to state and over time, making it nearly impossible to tabulate the multiplicity of exact agency expenses incurred and the proportion of state budgets allocated for sex offender management. Importantly, assigning a dollar value to the primary benefit of interest—reduced victimization—presents innumerable challenges, and various SORN-related costs may each carry its own "return on

investment." The complex web of inter-related and multi-systemic fiscal costs is exceedingly difficult to deconstruct, and the human and social costs of sexual assault for victims and registration mandates for offenders are multifarious and confounding when attempting to quantify them (Harris, 2016). That said, it is indisputable that the number of individuals on state registries increases each year (National Center for Missing and Exploited Children, 2015a) and that the expenditures for sex offender management grow accordingly.

States have had to invest enormous resources in technological advancements and administrative data systems, law enforcement personnel for offender monitoring and compliance management, and expenses associated with courts and corrections for registry violators. Registration mandates pass on implementation costs to offenders and their families, homeowners (decreased real estate values), renters and landlords, businesses and employers, schools, state and municipal governments and the public at large. With individuals placed on registries for mandatory durations of 25 years or life, little attrition occurs, and fiscal burdens for states will continue to escalate. Notably, 62% of states elected not to implement the 2006 requirements of the Adam Walsh Act, citing the initial and ongoing expenditures associated with the federal guidelines as a primary obstacle (Harris & Lobanov-Rostovsky, 2010; Justice Policy Institute, 2008).

Belzer (2015) conducted a quantitative retrospective assessment of the benefits and costs of registration and notification laws as currently enacted and implemented, followed by a second qualitative prospective cost-benefit analysis of several alternative reforms, including removal of juvenile registrants, prosecutorial discretion, and better risk assessments. The study considered the benefits of potentially preventing a statistically random sexually violent event, enhancing law enforcement, and reducing inefficient expenditures. Belzer underscored that there are complex challenges associated with measuring risk and social well-being and that there are fiscal and human costs to false positives (i.e., an over inclusive registry) and false negatives (i.e., failing to identify a sexually dangerous person who then victimizes someone in the community).

Sex offender management policies are assumed to be worth

the monetary investment to reduce recidivism, but they must simultaneously ensure public protection and avoid violation of human rights. Belzer found that notification requirements do not result in net benefits, and thus recommended that policy reform efforts should be geared toward reducing fiscal and social costs (Belzer, 2015). As Belzer (2015) highlighted, "registration alone is unlikely to produce net social benefits.... public notification is almost certainly a highly cost-ineffective way to reduce future sex offenses" (p. 15). Resources spent on policies that overextend their reach while failing to enhance public safety take funding away from other rehabilitation and reintegration programs as well as from victim services and prevention initiatives. A paradigm shift toward empirically-based sex offender management systems might prove more cost-efficient than current policies in achieving the important goal of preventing repeat sexual violence.

### What Should Registry Reform Look Like?

With over 800,000 sex offenders in an ever-growing registry system, law enforcement resources become overextended and the ability of the public to differentiate high risk offenders is diluted. Certainly the diverse and sometimes countervailing goals of policy need to be carefully deliberated; social reintegration needs of offenders must be balanced with victims' rights and concerns. While community safety is paramount, sanctions should be applied in a cost-effective fashion with some discretion to fit the crime. Public registries should be reserved for high risk sex offenders so that the public can be better informed, specifically about pedophilic, predatory, repetitive or violent sex offenders likely to commit new sex crimes. At the same time, collateral consequences could be minimized for lower risk offenders reintegrating into society and desiring to become productive, law abiding citizens. These goals could be achieved by registry reform in five major areas.

#### *1. Juveniles Should Not be Subject to Sex Offender Registration*

Offenders adjudicated as juveniles should not be placed on registries. Only a handful of states allow exceptions for "Romeo" offenders (those with minor "consensual" victims who



were no more than 4-5 years younger), and children as young as 10 years old can be found on the registries of some states. Registration of youth contradicts the rehabilitative goals of the juvenile justice system and what we know about neurological, cognitive, social and psychological development of youngsters (Chaffin, 2008; Jones, 2007; Letourneau & Miner, 2005; Parker, 2014). The obstacles to academic opportunities and subsequent employment preclude meeting adolescents' needs in order for them to feel invested in their futures and motivated to conform to the rules and norms of society (Paternoster & Iovanni, 1989; Triplett, 1994).

Youth should not be labeled and defined for life by the single worst decision they might have made as a teenager. Some youth may have antisocial or sexually deviant traits, but most are amenable to rehabilitation when the proper treatment is offered (Letourneau & Borduin, 2008; Reitzel & Carbonell, 2006). Additionally, many delinquent youth have histories of early adversity and maltreatment (Baglivio et al., 2014; Burton, Duty, & Leibowitz, 2011; Topitzes, Mersky, & Reynolds, 2012), and when a child is engaging in traumatic re-enactment as a result of his or her own victimization, labeling him or her as a "sex offender" can be especially injurious.

## *2. Registration Durations should be Guided by Research*

The world's leading researchers on sex offender risk and recidivism have been conducting longitudinal research for over two decades and have developed, refined, and validated actuarial risk assessment tools (such as the Static-99-R) that demonstrate predictive ability to screen offenders into relative risk categories (Hanson & Morton-Bourgon, 2009; Hanson & Thornton, 1999; Hanson, Thornton, Helmus, & Babchishin, 2015; Helmus et al., 2012). We now have reliable data about the long-term recidivism outcomes of sex offenders who have been assessed at different levels of risk, and these data are enormously helpful in formulating policy decisions.

Compelling evidence exists to guide registry durations by looking at the longitudinal patterns of post-conviction offending (Hanson et al., 2014; Harris & Hanson, 2012). Low risk sex offenders are less likely to be arrested for subsequent sex crimes than general criminal offenders. After 10 years,

moderate risk sex offenders reach recidivism rates comparable to general criminal offenders, and after 16 years, even high risk sex offenders are no more likely to be arrested for a new sexual crime than an offender with no prior sex crime history. Thus, it is unlikely that registration periods beyond 20 years (at the longest) provide added value, even for high risk offenders.

Lifetime registration requirements contribute to an inefficient distribution of resources with perhaps little benefit to community safety, and they contradict research indicating that risk declines with age for all criminals and that sex offense recidivism is especially rare with advanced age (Hanson, 2002; Helmus, Thornton, Hanson, & Babchishin, 2011; Thornton, 2006). Over time, the sex offender population will contain a substantial proportion of elderly, infirm, and incapacitated individuals who pose virtually no risk for crimes of any sort. Furthermore, registration durations of 25 years to life contradict empirical evidence that risk declines significantly as offenders spend longer time in the community offense-free (Hanson et al., 2014; Harris & Hanson, 2012; Harris, Phenix, Hanson, & Thornton, 2003).

We know that those with prior sex crimes are already recidivists, and are thus at increased risk for new sex crime arrests. We know that child molesters of boy victims and rapists of adults are at highest risk for repeating their behavior, and that rapists are more likely to injure their victims and to use force or weapons (Hanson & Morton-Bourgon, 2005; Harris & Hanson, 2004). Non-contact offenders, such as exhibitionists, tend to be compulsive and repetitive but typically tend not to engage in contact crimes (Hanson & Thornton, 1999), and child pornography possessors are among those at lowest risk for future child molestation offenses (Eke, Seto, & Williams, 2011). We know that sexually-motivated stranger abductions—though they've fueled SORN policy development—are exceedingly rare (115 per year of children and 332 per year total) (Kessler, 2015) and that about 15% of such perpetrators were registered as sex offenders at the time of the crime (National Center for Missing and Exploited Children, 2015b).

These data provide persuasive guiding principles for registration duration policies. Classification procedures should utilize validated risk assessment tools and consider risk

factors empirically associated with recidivism. For lower and moderate risk offenders, 10 years duration provides sufficient time to demonstrate their post-conviction patterns of recidivism. Those with pre-pubescent victims or who used force or physical violence when committing their crimes should be subject to closer scrutiny. Lifetime registration carries with it an implication that individuals are beyond redemption, and therefore, if used, should be reserved for repeat offenders.

### *3. Procedures for Relief and Removal from Registries should be Available*

Few states offer any procedures for registry removal, and federal guidelines mandate registration of 25 years to life for all felony registrants. States should create a mechanism for RSOs to petition for relief from registration. Removal criteria should reflect evidence accumulated through scientific study, including that outlined above. For instance, research suggests that offenders who are not rearrested for a new sex crime within the first 5 years following their conviction are progressively less likely to sexually recidivate the longer they remain in the community offense-free (Hanson et al., 2014; Harris & Hanson, 2012; Harris et al., 2003). Therefore, after five years in the community without a new offense, lower risk offenders should be permitted to request removal. Repeat sex offenders have much higher recidivism rates than first-time offenders, and anyone with more than one sex offense conviction should not be considered for early removal from a registry. The data discussed in the recommendations for durations is useful to provide guidance for relief procedures.

Offenders age 25 or under whose statutory offenses were motivated not by sexual deviance or coercive tendencies, but by poor judgment or youthful imprudence (sometimes referred to as "Romeo" offenders), should be removed if they are deemed low risk and demonstrate no evidence of other sexual deviance or antisocial orientation. Clearly, statutory offenders are a stark contrast to the types of predatory, violent or pedophilic sexual criminals who were envisioned when registries were created. As well, sex offenders who are elderly, infirm, or otherwise incapacitated should be removed from the registry, as they are likely to pose little risk. The restrictions associated

with registration can preclude sick offenders from residing in nursing homes, assisted living facilities, or homeless shelters, denying them needed medical care and accommodations that ensure healthy living.

A final consideration is the influence of sex offender treatment. Research indicates that sex offenders who successfully complete specialized treatment are at substantially lower risk to recidivate with a future sex crime than those who have not completed treatment (Hanson, Bourgon, Helmus, & Hodgson, 2009; Hanson et al., 2002; Losel & Schmucker, 2005; Schmucker & Lösel, 2015). In most states, sex offenders residing in the community are required to attend treatment programs as part of their probation or parole conditions. Treatment addresses the risk factors and psychosocial needs unique to each individual, including self-regulation difficulties, intimacy deficits, deviant sexual interests, criminal attitudes, impaired empathy, and co-morbid symptoms such as substance abuse, anxiety, or depression (Andrews & Bonta, 2007, 2010; Yates, Prescott, & Ward, 2010). Because many criminal offenders were victims of child maltreatment and family dysfunction themselves, trauma-informed interventions are an important component of rehabilitation (Levenson, Willis, & Prescott, 2014; Miller & Najavits, 2012). When sex offenders are empowered to understand and change their maladaptive relational styles to better meet emotional needs in healthy, non-victimizing ways, re-offense risk can be mitigated. Sex offenders who complete treatment should be allowed to seek relief from registration duties.

#### *4. Discretion should be Returned to Judges*

Mandatory offense-based registration schemes have removed discretion from judges. According to the Adam Walsh Act, and SORN laws in most states, if an individual is convicted of certain statutes, registration requirements automatically apply. Few alternatives are available for judicial actors, and few (if any) remedies for relief are available for offenders once registered. It is noteworthy that several research studies have found that AWA offense-based tiers are poor indicators of risk or recidivism, and that empirically derived assessment protocols are more accurate in screening RSOs into relative risk categories and predicting recidivism (Freeman & Sandler, 2010; Zgoba et al., 2015). Furthermore, many of the

states that elected not to implement AWA (even while facing funding penalties) cited, as a rationale, that their own state systems were more evidence-based, effective, and efficient for identifying and managing risk (Harris, 2011; Harris & Lobanov-Rostovsky, 2010).

The pre-sentencing use of empirically-based risk assessments based on factors known to correlate with recidivism can assist fact-finders and advocates to identify those who pose the greatest threat to public safety, whereby individualized case-management decisions can be made according to objectively defined criteria that consider the characteristics of the offender and his criminal history. The assessment should evaluate static and dynamic risk factors associated with recidivism and determine whether the subject meets criteria for a paraphilic or personality disorder that renders him likely to act on deviant sexual impulses (Doren, 2002; Hanson & Morton-Bourgon, 2005, 2009; Seto, 2008). Risk assessment tools such as the Static-99R are designed for inter-disciplinary use with minimal training, and psychosexual assessments provided by clinicians with special expertise in this area could be very helpful in pre-sentencing decision-making. Some discretion should be afforded to judges in decisions about registration requirements, and in some cases, diversion programs would be appropriate. The U.S. D. O. J. SMART Office recommends that management strategies and treatment plans be tailored to match each sex offender's risk level and criminogenic needs, and they advise using science-based, actuarial methods for assessing risk, along with specialized supervision with a rehabilitative component (Lobanov-Rostovsky, 2015).

##### *5. Residence Restrictions should be Abolished*

Residence restrictions demonstrate no evidence of preventing recidivistic sex crimes. It is clear that they diminish housing availability and increase the likelihood of transience and homelessness (Levenson et al., 2015). Housing instability exacerbates risk factors for recidivism and therefore residence restrictions create more problems than they solve. In fact, the U.S. D.O.J. SMART Office recommends against residence restrictions (Lobanov-Rostovsky, 2015), and a grand challenge for social work is to end homelessness (Henwood et al., 2015).

Sex offenders do not abuse children because they live near schools or parks; rather, they create opportunities for sexual molestation by cultivating relationships of trust or authority with children and their families (Colombino, Mercado, Levenson, & Jeglic, 2011; Duwe, Donnay, & Tewksbury, 2008; Mogavero & Kennedy, 2015; Zandbergen, Levenson, & Hart, 2010). There is no evidence that residential proximity to a school is a risk factor for recidivism, or that housing restriction laws prevent reoffending (Duwe et al., 2008; Huebner et al., 2014; Rydberg, Grommon, Huebner, & Bynum, 2014; Socia, 2014; Zandbergen et al., 2010). Some researchers have argued that policies restricting where sex offenders live, rather than where they go and what they do, ignore empirical evidence and misdirect prevention strategies (Colombino et al., 2011). Though ostensibly logical, they regulate only where sex offenders sleep at night and do nothing to prevent sex offenders from visiting child-oriented venues during the day. Alternatives such as child safety zones, which do exist in some states and prohibit sex offenders from loitering within close proximity to child-oriented sites, are better designed to accomplish the goal of reducing sex offenders' access to children without compromising their housing needs (Broward County Commission, 2009; Colombino et al., 2011).

Homeless sex offenders are most likely to be found in metropolitan areas with higher housing costs and more extensive SORR laws, facilitating elevated levels of sex offender homelessness (Levenson et al., 2015). Treatment providers and probation officers observe that housing problems disrupt stability and exacerbate the psychosocial problems that impede successful reintegration and contribute to risk for criminal behavior and non-compliance. In the absence of evidence demonstrating effectiveness of residence restrictions in protecting children, preventing sexual violence, or reducing recidivism, such laws hinder rather than advance efforts toward child protection and community safety goals.

### Implications for Social Work and Social Justice

The social experiment of sex offender registries has not been as successful as expected. The good news is that a more

vociferous public dialogue about sexual assault is finally leading to improved responses to sex crimes, and we are now taking them more seriously. Though we still have a long way to go in changing the culture that promotes objectification, sexualization, and exploitation, children and adult victims are more apt to be believed, services have improved, and survivors have fewer obstacles when seeking justice. On the other hand, the consensus of research about SORN policies demonstrates weak (if any) effects on recidivism. The collateral consequences to offenders and their families exacerbate the very factors highlighted by criminologists as increasing risk of recidivism. And registries—which were intended to help police, concerned citizens, and parents prevent victimization by listing predatory, violent, repetitive, and pedophilic offenders who pose a true threat to our communities—now contain so many individuals that the ability to identify truly dangerous persons is significantly compromised. The NASW code of ethics (2008) requires social workers to advocate for practices and policies that are informed by empirical literature.

Sexual victimization is an egregious act, and preventing sexual violence is an important goal. Indeed, the response to sex offenders over the past 20 years sends an important message of zero tolerance for sexual assault. Sex offender management laws have been passed, however, with little anticipation of the consequences they might bring, and with little concern for those affected. Sociologist Robert Merton warned nearly a century ago that the unforeseen negative consequences of well-intended policies passed in response to a perceived threat may outweigh their benefits (Merton, 1936).

American social policies historically have been reactive to problems of child maltreatment, strongly emphasizing the role of offender punishment and child placement rather than primary prevention. There is a compelling body of research indicating that children who experience early adversity are at increased risk for poly-victimization and subsequently for complex and pervasive trauma symptoms, as well as other medical and psychosocial maladies (Cloitre et al., 2009; Felitti et al., 1998; Finkelhor, Turner, Hamby, & Ormrod, 2011; Larkin, Felitti, & Anda, 2014). Children who experience chronic maltreatment and family dysfunction are at higher risk than

non-abused youngsters to become the addicts and criminal offenders of the future (Baglivio et al., 2014; DeHart, 2009; Harlow, 1999; Mersky, Topitzes, & Reynolds, 2012; Topitzes et al., 2012; Widom & Maxfield, 2001).

There is little resistance to funding criminal justice initiatives, yet prevention programs and social services are generally among the first to be cut from American legislative budgets, even though they have demonstrated that behavioral health problems can be averted (Hawkins et al., 2015). Consistent with the social work grand challenge of prevention, investing in a comprehensive array of early intervention services for abused children and at-risk families is an important step in halting the intergenerational cycle of interpersonal violence in our communities (Anda, Butchart, Felitti, & Brown, 2010; Hawkins et al., 2015; Larkin et al., 2014).

Laws are likely to be most successful when they incorporate scientific data into their development and implementation. A more reasoned approach (Tabachnick & Klein, 2011) to sex offender management policies would utilize empirically-derived risk assessment tools to create classification systems that apply more aggressive monitoring and tighter restrictions to those RSOs who pose the greatest threat to public safety. In this way, a more cost-effective allocation of fiscal and personnel resources could be achieved. As well, by tailoring application of these laws to risks and needs, labeling effects could be minimized and sex offenders could be better enabled to engage in law-abiding and prosocial lifestyles. Most sex offenders will ultimately be returned to the community, and when they are, it behooves us to facilitate a reintegrative and rehabilitative approach that relies on research to inform community protection strategies. After all, when people have nothing to lose, they begin to behave accordingly.

The U.S. Supreme Court upheld sex offender registration laws in two cases in 2003, opining that such laws were regulatory but not punitive and therefore did not violate *ex post facto* protections, and that they did not violate rights to privacy because the information contained on registries was already publicly available in court records ("Connecticut Dept. of Public Safety," 2003; "Smith v. Doe," 2003). Much has changed in the intervening years, however, as ubiquitous access to online



registries has empowered a new scarlet letter (Levenson, 2007). Other scholars describe how “egregious misinformation” (p. 1), misrepresentation of data, and sometimes blatant inaccuracies have been extremely influential in shaping sex offender public policy (Ackerman & Burns, 2016). It may be time to revisit the constitutional and human rights injustices of SORN.

The innumerable collateral sanctions now associated with registration status include housing restrictions, employment barriers, banishment from educational facilities, exclusion from social media, and even limits on participating in holiday festivities such as trick-or-treating. The new International Megan's Law, signed by President Obama in early 2016, will require a special designation posted on the passport cover of any registered person—the first of its kind in America. Some argue that these civil sanctions have become punitive, as they severely interfere with the ability of many RSOs to build meaningful and lawful lives post-conviction, even when evidence of continued criminal intent or behavior is absent. Legal scholars (Ellman & Ellman, 2015) have opined that the Supreme Court's 2003 decision was disturbingly flawed, relying on false facts and misrepresentation of the science on which the decision was grounded, “infecting an entire field of law” (p. 1) and transforming political rhetoric into “definitive studies offered to justify law and policy, while real studies by real scientists go unnoticed” (p. 11).

If social workers believe in social justice, we cannot pick and choose to whom it applies. The racial and economic disparities rampant throughout the criminal justice system are seen in sex offender sentencing, management, and registration schemes as well. The grand challenge of social justice requires us to step forward and speak on behalf of those without a voice, especially those most marginalized in our communities—and these include criminal offenders. Pettus-Davis and Epperson (2015, p. 4) challenged social workers to find “proactive, trans-disciplinary, and empirically driven” solutions to the criminal justice system, adding that we are well positioned to address this challenge, due to our long history of advocating for social reform and our commitment to eradicating social injustices.

The goals of sex offender registries are certainly laudable, but the quest for public safety can come at a cost of human

rights and social justice. It is clear that sex offender registries are popular with the public and with politicians and that they are here to stay. But sexual violence prevention advocates must acknowledge the fiscal and social costs of a system that is overly-inclusive and over-burdened. Most sex offenders do not fit the stereotype of the monster we imagine. Some are repetitively violent or sexually deviant and likely to reoffend, but most pose low risk and show genuine remorse and a desire to rehabilitate themselves. It is time for a public dialogue that can speak honestly and directly about the simultaneous need for offender accountability and retribution for victims, while acknowledging that second chances are possible.

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