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## The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and The Sex Offense Registry

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# The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and The Sex Offense Registry

## **Abstract**

The sex offender registry currently lists over half a million U.S. citizens as sex offenders. Modern day legislation directed toward sex offenders was born in an era of public fear and rash decision-making. Terrible consequences have since been identified as resulting from the labeling of sex offenders via the registry. These unintended consequences socially, economically, and psychologically influence the lives of sex offenders. Labeling theory states that individuals who are given a label eventually subscribe to that label; in other words, it becomes a self-fulfilling prophecy. In the case of sex offenders, this can only mean more damage to society. This paper examines how the registry reproduces labeling and how sex offenders are consequently damaged by their given label. GPS tracking and treatment through the Good Lives Model are offered as contemporary solutions to the ever-growing problem.

## **Keywords**

sex offenders, sex offender registry, labeling

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*Carla Schultz*

### **Abstract**

The sex offender registry currently lists over half a million U.S. citizens as sex offenders. Modern day legislation directed toward sex offenders was born in an era of public fear and rash decision-making. Terrible consequences have since been identified as resulting from the labeling of sex offenders via the registry. These unintended consequences socially, economically, and psychologically influence the lives of sex offenders. Labeling theory states that individuals who are given a label eventually subscribe to that label; in other words, it becomes a self-fulfilling prophecy. In the case of sex offenders, this can only mean more damage to society. This paper examines how the registry reproduces labeling and how sex offenders are consequently damaged by their given label. GPS tracking and treatment through the Good Lives Model are offered as contemporary solutions to the ever-growing problem.

### **Introduction**

As of 2008, there were 644,000 registered sex offenders in the United States. That number grows with every sex offender who is released from prison (Levenson & Tewksbury, 2009). The public has a twisted obsession with sex crimes and what should be done with those who commit such crimes. This

THEMIS

obsession is fueled by the extreme media coverage of cases such as Jaycee Dugard, Polly Klaas, and Elizabeth Smart. Their pictures are painted in the minds of the public as ideal, innocent victims. Policymakers then respond with harsh legislation, such as Megan's Law, in order to protect said victims. The death of Megan Kanka sparked a widespread panic and national debate on how to keep children safe from sexual predators. It eventually led to the implementation of a mandatory sex offender registry in 1994 (Wright, 2008). Thousands of sex offenders were required to register their information with local law enforcement agencies across the United States. The labeling of sex offenders via the sex offender registry has become so mainstream that even children are aware of what houses to avoid in their neighborhoods. Few people stop to question the actual success of the registry and the possible unintended consequences of labeling sex offenders. This paper will discuss how the labeling of sex offenders through the sex offender registry is damaging to the offenders' re-entry process and community safety as a whole.

### **Sex Offenses**

U.S. Department of Justice statistics indicate that 25% of women and approximately 16% of men will experience some form of sexual assault in their lives (Missouri State Highway Patrol [MSHP], 2012). Approximately two-thirds of those who experience sexual assault are under the age of 18. Because of the nature of the crimes and moral panic, all 50 states have implemented some form of a tracking or registration system for individuals convicted of sex offenses (MSHP, 2012).

The terms "sex offense" and "sex crime" encompass a wide variety of sexual acts. In Missouri, sex offenses include forcible rape, incest, genital mutilation of a child, or any form of

VOLUME II • 2014

unwanted sexual touching or fondling. However, it is important to note that each state's statute may vary slightly in its definition of what constitutes a sex crime. Also included are lesser known acts such as promotion of prostitution, endangering the welfare of a child, promoting obscenity, public displays of explicit sexual material, possession of child pornography, certain forms of kidnapping, restraint of a child, and sexual acts between minors (MSHP, 2012). Violent sex offenders appear less frequently, but those who are convicted of lesser offenses are trapped under the same umbrella.

As definitions vary, so do the requirements of registration from state to state. For example, those who are required to register in Missouri are individuals who have been convicted, found guilty, attempted to commit, conspired to commit, have been found not guilty due to mental disease or defect, have been required to register federally, or have pled nolo contendere to one of the sexual offenses previously listed (MSHP, 2012). Such offenders must register within three days of moving to the state, or within three days of their conviction or release. Offenders must provide their names, birth dates, social security numbers, all aliases, photographs, work and school addresses, and physical descriptions. They must also provide vehicle information, criminal records, driver's licenses, proof of residency, palm prints, and DNA samples. All information must be updated annually and is made publically available through the online registry. Failing to provide this information is considered a felony and may be punishable by incarceration (MSHP, 2012).

### **Legislation**

The Jacob Wetterling Act was passed in 1994 in memory of a young boy who had been abducted five years prior.

THEMIS

This law initiated the federalization of sex offender policy. Two years later, Megan's Law was added as an amendment, and it became the first law to require states to establish registration and notification systems for sex offenders (Wright, 2008).

Megan's Law came into existence in 1996 when Megan Kanka was abducted, raped, and killed by a convicted sex offender living in her New Jersey neighborhood. At the time, communities were not notified of sex offenders living in their area. Public outcry from Megan's parents and the community led to the creation of Megan's Law, which aims to control sexual predators and to prevent sexual violence through a system of mandatory registration and community notification. Community members are now able to look up locations and descriptions of local sex offenders. Megan's Law creates shame, exclusion, and stigmatization of sexual predators. At the same time, it has been considered the most significant advancement made in rape law reform in the past 40 years (Corrigan, 2006).

In New Jersey, two groups of sex offenders are currently required to register with Megan's Law. The first group includes all offenders who have committed serious sex offenses and have been deemed repetitive and compulsive by the court. This includes offenses that were committed before the implementation of Megan's Law. The second group includes all offenders who committed any one act in a broad range of sexual offenses after the enactment of Megan's Law. These offenders do not need to be deemed repetitive or compulsive—they simply must have committed one of the offenses. Megan's Law requires thousands of individuals to register as legally recognized sex offenders with local law enforcement agencies. The first group of offenders must register every 90 days. All other offenders

register once a year. If an offender fails to register, it is considered a criminal act (Corrigan, 2006).

In 2006, President Bush signed the Adam Walsh Child Protection and Safety Act (AWA) into law. This further expanded the federal government's involvement in sex offender policy. The AWA increased the scope and the requirements of the sex offender registry set forth by the Jacob Wetterling Act. It prompted the registration of more individuals, including some juveniles, implemented an accessible online database, and expanded notification requirements. Individuals are placed on the sex offender registry for life, and often remain registered after death (Wright, 2008). The sex offender registry continues to be the most prominent and damaging example of labeling offenders.

### **Labeling Theory**

Although the imminent danger of labeling offenders has been recognized, the criminal justice system continues to stigmatize offenders under the guise of community safety. Developed during the 1960s, labeling theory was a criminological perspective that claimed deviance as a consequence of social reaction. Symbolic labels, such as a criminal record or the sex offender registry, placed on deviant individuals, fuel negative social reactions. Such labels mark the individual as criminal, inferior, immoral, and evil. The individual is separated from society and stigmatized. Stigmatization results in the subsequent transformation of social status to one that is below the rest of society. This status change is often permanent and leads to the notion that the deviant subject is an outsider (Davis, 1972). Lemert (as cited in Davis, 1972) later differentiated between primary deviation and secondary

THEMIS

deviation as they related to labeling theory. He claimed that the initial deviant act, primary deviation, stemmed from a multitude of social, biological, and cultural factors. Secondary deviation, on the other hand, was a consequence of social reactions and degradation of status. It follows that the stigma of labeling transforms the individual's self-conception from one of a normal being to one of a deviant (Davis, 1972). The label not only convinces society that the individual is deviant, but essentially convinces the individual that he is nothing more than a criminal.

### **Stigmatization of Sex Offenders**

Nearly 650,000 offenders are released from correctional institutions each year in the United States (Levenson & Tewksbury, 2009). Re-entry can be difficult for any offender due to housing issues, unemployment, mental illness, and substance abuse problems that the prison system failed to address. Sex offenders experience similar difficulties upon release; however, their hardships are coupled with the burden of mandatory sex offender registry and the restrictions that follow.

### **Housing**

There are tremendous restrictions placed on housing opportunities for registered sex offenders. Most states ban sex offenders from living within 1,000 feet of areas populated by children, such as schools, parks, bus stops, and day care centers. Some states, such as New Jersey, have expanded the distance to 2,500 feet, making it even more difficult to find permanent housing (Robbers, 2008). In a study by Robbers, 35% of registered sex offenders reported having to leave their residences because their landlords or communities discovered their offender status. Housing restrictions prevent offenders from accessing

VOLUME II • 2014



social assistance, cause economic strain, and reduce treatment options simply because of geographical location (Robbers, 2008). It is financially and emotionally draining for an individual to have to relocate to a new area that is unfamiliar and far from their friends and family.

Finding a living space under these restrictions is much more difficult than it sounds. In Florida, 95% of residences are within 1,000 feet of a park, school, bus stop, or day care. When the range was expanded to 2,500 feet, registered sex offenders were found to be ineligible for 99.7% of residences. In South Carolina, 45% of dwellings in major counties are within 1,000 feet of a school. In Newark, New Jersey, 93% are within 2,500 feet of a school. Such requirements make it nearly impossible for registered sex offenders to find housing in metropolitan areas, forcing them to move to less populated areas—further away from the services they need (Levenson & Tewksbury, 2009).

These restrictions essentially remove convicted sex offenders from large portions of the city, which leave only certain neighborhoods available for residence. Gordon (2013) evaluated the neighborhoods made available to registered sex offenders in Phoenix, Arizona. She found a correlation between socially disorganized neighborhoods and the prevalence of sex offenders in the area. These areas had higher poverty rates, higher housing vacancies, lower rates of household income, and fewer owner-occupied housing units (Gordon, 2013). Registered sex offenders are pushed to dilapidated areas of the city, where their presence serves to further erode the social organization of the community.

Housing restrictions stem from the public's "protect the children" mentality. Society assumes that sex offenders prey on children in public areas, such as parks or schools that are near

THEMIS

their homes. Maguire and Singer (2011) conducted a study to assess where sex offenders were most likely to offend and how their victims were chosen. They found that children under the age of 17 were more likely to be victimized by a family member or by someone they were familiar with, rather than by a stranger. While some offenders met their victims in parks or schools, offenders were equally likely to have met their victims in their own homes or family members' homes. The findings revealed that 75% of sexual predators offended at or near their homes (Maguire & Singer, 2011). As previously discussed, most residences are located within roughly 1,000 feet of a park or school, especially in large cities. For this reason, it may seem that most offenses take place near parks or schools. Maguire and Singer found that most offenders do not meet their victims at parks or schools. Instead, approximately 87% of offenders who abused children under the age of 17 were either related to their victims or had close relationships with them (Maguire & Singer, 2011). These findings indicate that harsh housing restrictions may not be necessary for the regulation of registered sex offenders.

Registered sex offenders have difficulties finding employment or remaining employed after registering. In a survey of registered sex offenders, 27% reported losing their jobs because of the registry. Because of their status, they are also ineligible for welfare services and public housing (Robbers, 2008). Lack of employment and limited access to public services only add more strain to finding proper housing. Housing restrictions and the effects that follow make re-entry into society a difficult process for registered sex offenders.

VOLUME II • 2014

### **Psychological Impact**

The stigmatization that comes from being placed on the sex offender registry has been found to cause many psychological issues for sex offenders. Registered sex offenders fear society's reaction to their crimes and how those reactions will affect their lives. In a study of stigma and devaluation, it was found that most sex offenders believe they will face discrimination and devaluation by society because of their registered status. There was also a correlation between increased devaluation, likeliness to withdraw from the community, and keeping one's sex offender status a secret (Mingus & Burchfield, 2012).

Levenson, D'Amora, and Hern (2007) studied how Megan's Law psychologically affects sex offenders. Over 200 offenders attending treatment programs were surveyed, 62% of whom agreed that Megan's Law caused them stress and made it more difficult to recover. Over half of the offenders reported feeling lonely and isolated from society. Half of those surveyed claimed they lost friendships because of Megan's Law, felt ashamed and embarrassed, had less hope for the future, and felt that no one believed they could change. Approximately half also reported fearing for their safety because of Megan's Law (Levenson, D'Amora, & Hern, 2007). It is evident that the registry's stigma causes serious damage to registered offenders. These consequences, although unintended, threaten offenders' recovery processes and their likelihood of leading lives of desistence. The mental health of convicted offenders should be of importance to the justice system and to the greater society.

### **Impact on Sex Offenders' Families**

The sex offender registry does not only affect registered individuals. While offenders are experiencing shame, housing

THEMIS

struggles, lack of opportunities, and loss of social capital, so are their family members and loved ones. A survey of registered sex offenders' family members revealed some of the hardships they faced because of the registry. Many of the effects were psychosocial in nature. Approximately 85% of family members claimed they experienced stress caused by the registry. Over two-thirds of family members reported feelings of isolation, shame, and embarrassment. Most importantly, about half of the respondents feared for their safety due to the offenders' public status. Their fears were justified, as 27% reported being the victims of property crimes and 7% reported being physically assaulted because of the registry and community notification (Levenson & Tewksbury, 2009).

As a consequence of living with registered sex offenders, family members are also subjected to housing restrictions. Three-quarters of the sex offenders' family members reported being placed under the same strict housing restrictions. The registry also adversely affects the sex offenders' children. More than half of children surveyed reported differential treatment at school by their peers, and 68% reported differential treatment by adults. Many also experienced changes in their relationships, with 78% reporting negative impacts on their friendships with other children. The sex offenders' children experienced psychosocial impacts, including high amounts of anxiety, depression, anger, loneliness, and fear. Furthermore, 13% reported experiencing suicidal tendencies (Levenson & Tewksbury, 2009).

In her ethnography *Papa's House*, Comfort (2002) explains the process of secondary incarceration. When a family member is incarcerated, his or her loved ones are treated as an extension of the offender; they are subjected to body searches,

VOLUME II • 2014

prison rules, and surveillance during visitation. Outside of prison, families experience financial, emotional, and social hardships (Comfort, 2002). It could be argued through Levenson's and Tewksbury's (2009) findings that family members of registered sex offenders experience secondary registration effects such as shaming, surveillance, and restrictions. The system and society treat the family members of sex offenders as extensions of those individuals.

### **Public Perceptions**

Public perceptions and public outrage have largely shaped how the law deals with sex offenders. However, public perceptions of sex offenders are not always accurate. A survey of 193 adults in Florida revealed that most believe sex offenders will recidivate and thus, community members should be alerted when sex offenders live in their areas (Levenson et al., 2007). Another survey found that most residents felt safer knowing where registered sex offenders lived, and thought that sexual offenses could be prevented through community notification (Brannon, Levenson, Fortney, & Baker, 2007). Both of these public perceptions are based on the idea that sex offenders often reoffend. This is a perception that has been fueled by the media and by public fear. In reality, sex offenders have a relatively low rate of recidivism compared to other types of offenders. The typical recidivism rate for sex offenders is about 15% (Robbers, 2008).

In general, the public sees the sex offender registry as a protective measure. A study of public fear found that almost all of the participants reported being fearful of having a registered sex offender in their communities. They reported that they would be extremely fearful of offenders who had committed a sex act

THEMIS

with a child. Approximately 97% of participants believed that pedophiles should be forced to register. Nearly the same amount agreed that those who have committed incest should be forced to register as well (Kernsmith, Craun, & Foster, 2009). It is dangerous for the public to have such a bleak perspective on the sex offender population. It results in rash law-making decisions that may not be appropriately designed to deal with the issue at hand. The policies in place offer a false sense of security for some and increase fear in others.

### **Recidivism**

Part of the moral panic regarding sex offenders stems from the belief that the recidivism rate for sex offenders is high. As previously mentioned, the recidivism rate for sex offenders is low compared to other offenders (Robbers, 2008). The Department of Justice conducted a study of 9,691 male sex offenders after they were released from prison. The findings concluded that released sex offenders were four times more likely to be rearrested for a sex crime than non-sex offenders. However, upon closer examination, it was found that within the first three years of release, only 5.3% sex offenders were rearrested for the commission of a new sex crime (Langan, Schmitt, & Durose, 2003).

Bench and Allen (2013) conducted a longer longitudinal study that evaluated 389 convicted sex offenders for an average of 15 years. They discovered a 10% recidivism rate for sex offenders who recommit sex offenses. Four predictors of recidivism were identified as being most strongly correlated to reoffending: age at first arrest, history of technical violations, failure of treatment, and relationship between intoxication and offending (Bench & Allen, 2013). Using these indicators, Bench

VOLUME II • 2014

and Allen (2013) were able to predict sex offender recidivism with 70% accuracy.

Studies show that sex offenders typically have a recidivism rate below 15%. To put this in perspective, there is a recidivism rate of approximately 75% for convicted burglars, robbers, and thieves (Robbers, 2008). The previously mentioned restrictions placed on sex offenders through registration and notification laws create barriers to societal reintegration and could trigger recidivism (Robbers, 2008). When the experiences of registered sex offenders are taken into consideration, it may be likely that sex offender registration laws have the unintended consequence of increasing recidivism rates rather than decreasing them.

### **Policy Implications**

The way the United States criminal justice system currently handles sex offenders is impractical and ineffective. The registry system should be abolished in its entirety. The subsequent labeling and restrictions placed on offenders via the registry system produces unintended consequences that do more harm than good. As an alternative, global positioning system (GPS) monitoring could be implemented. This form of electronic monitoring has become a common tool for tracking offenders in the community. GPS monitoring allows for supervision and management of offenders on a large scale. The device is able to alert an offender's supervising officer when he or she has entered a disapproved location (Galeste, Fradella, & Vogel, 2012). While GPS monitoring does not work proactively to prevent sexual crimes, it does allow for better supervision and has the potential to work as a general crime deterrent.

THEMIS

A new model of treatment has also been introduced in the field of rehabilitation: the good lives model (GLM). The GLM is a new approach that focuses on improving personal strengths rather than simply mitigating risk factors, and can be specifically aimed at rehabilitating sex offenders. When applied to sex offenders, the GLM stresses the importance of human agency and positive psychological intervention. It follows the assumption that all humans value what the GLM classifies as primary human goods. These primary human goods include life, knowledge, excellence in play, excellence in work, excellence in agency, inner peace, relatedness, community, spirituality, happiness, and creativity (Willis, Yates, Gannon, & Ward, 2012). Primary human goods represent valued states of mind, experiences, and personal abilities or characteristics that all humans share. These primary goods are accessible through means called instrumental goods, which consist of actions or activities that aid in the pursuit of primary goods (Willis et al., 2012). The GLM can be translated into a treatment model for sexual offenders. Treatment must help individuals in attaining better lives while also remaining offense-free. The treatment will benefit offenders by helping them identify what primary goods are important to them and how they can be attained (Willis et al., 2012). It essentially involves setting goals, creating a realistic action plan, and following through. Because the GLM is founded on principles of human rights, treatment should be on a volunteer basis rather than court-mandated.

Restrictions on housing may still be necessary for some violent sex offenders, but these restrictions need not be placed on every individual trapped under the sex offender umbrella. For more serious sex offenders who have a history of preying on children, restricting them from vulnerable areas, such as parks or

VOLUME II • 2014



schools, could still prove to be beneficial. Coupled with GPS tracking devices, supervising officers would be notified if such individuals entered these “blackout” areas. It is feasible and realistic to abolish the mandatory registry system and replace it with a new, less publicly humiliating form of supervision.

### **Conclusion**

The current laws aimed at controlling sex offenders were created during a whirlwind of moral panic and public terror. The sexual abuse cases of Megan Kanka and Jacob Wetterling sparked public outcry that called for a national response. Horrific tales of the most serious sex crimes resulted in policies that were heavily influenced by emotion and were not followed up with any subsequent evaluation of their effectiveness. The sex offender registry places the same permanent label on individuals who commit a variety of sex crimes, even though some are much more violent than others. This label dictates where individuals can live and work through registry restrictions. It also causes psychological harm to the individuals and their family members. The longer the public continues to subscribe to inaccurate notions regarding sex offenders, the more engrained the sex offender label will become on registered individuals.

Against popular belief, sex offenders have a relatively low rate of recidivism. Yet, they receive some of the harshest post-prison treatment of all offenders. The process of registration and the restrictions that follow only add to the pressure, stigmatization, and humiliation felt by sex offenders. The only way to avoid the unintended consequences that stem from the labeling of sex offenders via the registry is to abolish the practice altogether. There are several alternatives based on rehabilitation and less invasive monitoring that offer more promising results.

THEMIS

The use of GPS tracking over registration would lessen the effects of stigmatization and public shaming. The Good Lives Model also offers an avenue of treatment that directs individuals toward better lives and lives of desistence from sexual aggression. Through more positive policies, the stigma placed on sex offenders can be removed and possibly reversed. The consequences that stem from labeling offenders do not benefit society in any form. It is reasonable to conclude that the modern sex offender registry is ineffective and must be reformed.

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VOLUME II • 2014

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THEMIS

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VOLUME II • 2014