

6.3 SEX OFFENDER NOTIFICATION LAWS

Sex offender notification laws are an example of how a community attempts to provide a sense of security for its citizens against horrific crimes that often target the most vulnerable in society (Sample and Kadleck, 2008). These laws are predominantly found in the United States. Levenson and Cotter (2005, p.50) generally view U.S. notification laws as “intended to enhance community safety from sexual violence through awareness and education combined with vigilant surveillance and collaboration between law enforcement agents and citizens.” Thomas (2003, p.217) further strengthens this link between community safety strategies and notification laws by asserting that American notification laws are “a form of regulation to achieve greater community safety and public protection.” Notification laws, he asserts, are not additional punishment but rather regulation used to enhance the safety of the community. Gilling (2001) adds that risk and the management of risk are required to protect vulnerable victims, and the management of risk is a theme of community safety, which is the stated goal of American notification laws (Levenson, Brannon, Fortney, and Baker, 2007; Sample and Kadleck, 2008). Notification laws in the American context are laws that require offenders to register and make the offender’s information available to the community. In Canada, there is no such legislation; however, notification is made on a case-by-case basis, which requires a subjective analysis to determine which offenders to notify the public about.

In the United States, notification laws have evolved from the Jason Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which requires sex offenders to register with the police (Levenson et al., 2007). Commonly known as Megan Laws after murdered child Megan Kanka, offender information contained in sex offender registries is made available to the public ostensibly to enhance the safety of children and in theory to limit the risk of the offender reoffending (Anderson and Sample, 2008; Levenson et al., 2007). Megan Laws are administered at the state level where individual states are left to decide the manner in which the information will be made public (Levenson et al., 2007). However, there is inconsistency in the application of such laws as some states circulate information about all sex offenders, while other states use risk assessment tools to determine whether the offender is a risk and whether or not the public is notified (Small, 1999).

While sex offender registries seem on the surface to make sense, they may be motivated more by politics than public safety. As such, the democratic freedoms and the rehabilitative ability of offenders may be hindered. Initiated by politicians as a response to urging by the media and other interest groups, notification laws in the United States have greatly exaggerated the risk of and the inherent dangers of strangers (Zgoba, 2004). Such laws may cause more harm than good, creating with them a culture that views not only the offender as a risk, but all strangers as risks. As such, these strategies, which are heavily influenced by the media, cause moral panic in the community (Sandler, Freeman and Socia, 2008; Zgoba, 2004).

Moral panic is an increased sense of danger, which can be a result of the media, entrepreneurs, and public institutions portraying high-profile and disturbing incidents as relatively common place and a risk to the public. Such media events capture the attention of the public, and leave some people in a state of fear, afraid that this crime could easily happen to them. The reality is that random crimes are very rare in our society (Emsley, 2007).

Some entrepreneurs contribute to moral panic by suggesting it is critical to have security devices such as panic alarms installed

at home (Emsley, 2007), because without them the public is at risk of victimization. As well, police and corrections agencies may add to moral panic by making public announcements about the release of offenders or of crimes committed in the community.

Politicians exploit the moral panic climate by using emotive strategies that tap into a community's fears. Emotive strategies rely on emotions of fear that are the result of terrible crimes that frighten the public. Such strategies involve using the names of child victims for laws aimed at protecting the community, such as Megan's Law, which evoke emotion and public anger toward all offenders and a general sense of moral panic (Anderson and Sample, 2008; Petrunik, 2002). It is this anger and moral panic that heightens the perceived risk and allows the notion of risk to influence notification laws.

The risk of children being abducted or sexually assaulted by strangers is minimal compared to the threat that lies at home or among family and friends (Quinn, Forsyth, and Mullen-Quinn, 2004; Small, 1999; Zgoba, 2004). In spite of this, moral panic causes the community to exaggerate the risk from outside offenders (Petrunik, 2002; Zgoba, 2004).

Ethical considerations include weighing the rights of the offender, in spite of the heinous crimes that he or she has committed, against the safety of the community. The resulting moral panic created is perpetuated by the media in the form of non-stop news programs, which heighten the perception of risk, and thus perpetuate the demand for extreme laws to control the perceived risk (Sample, 2003, as cited in Quinn et al., 2004). While anger may well be justified for any offences against women and children, it is the manner in which such anger forces politicians to react by implementing laws that may have no empirical evidence to support them.

Although notification laws reflect strong emotions held by the public, there is little to suggest that they make communities safer. Strategies such as notification and registry laws have been shown to have little effect on the ability to prevent offences (Anderson and Sample, 2008; Levenson et al., 2007; Vess, 2008). If such strategies were effective, little could be argued against their use if they saved even one child; however, the unintended consequences of their use may lead to an even greater risk of recidivism than if they hadn't been employed at all (Levenson et al., 2007).

Crime prevention programs using such strategies as notification laws are based on utilitarian principles, in which consequences are more important than the means to achieve the end results. Such teleological programs are often unethical as they may appear to be noble because of their emotional connection to victims, but they are often not assessed with as much scientific rigour as they ought to be. It is important that such programs be objectively studied so that their true utility can be assessed, rather than assumed.

Assessing crime prevention programs, such as those using notification laws, demands scientific rigour and academic skepticism and auditing (Eck, 2005). Ekblom and Pease (2005) note that it is rarely possible for the evaluator to determine an irrefutable conclusion about whether a program is effective or not. Programs such as juvenile intervention in the United States seem, on the surface, to appear intuitively good; however, a disturbing picture emerges after an empirical review. Such U.S. programs were once thought of as valid tools for preventing at-risk youths from committing future crimes (Petrosino, Turpin-Petrosino, and Finckenauer, 2000). Through the "scared straight" program, high-risk youths were identified and required to meet with hard-core offenders in prison (Petrosino, et al., 2000). This program attempted to rehabilitate young offenders and spread rapidly through the United States after the airing of the *Scared Straight!* documentary. Despite the well-meaning intentions of the program, research by Petrosino et al. (2000) shows that it has adverse effects and may actually cause participants to reoffend more often than those in the control groups. Moreover, in spite of the significant evidence about the harm caused by this program, positive media attention and a political climate conducive to reducing risk have ensured its continuation.

In much the same way, notification laws have been subject to empirical study, which has failed to support their stated goals of notifying the public of offenders in the community. The conclusion drawn (Levenson et al., 2007) is that notification is not successful in reaching its target audience; therefore, notification laws are unsuccessful. Levenson et al. (2007) have studied residents in Florida and learned that they were not aware of notifications in their community. This study was corroborated by

Anderson and Sample (2008), who found that the majority of citizens sampled did not access the registry to gain information about offenders in their area. However, even if notification laws were successful in reaching their intended audience, it is doubtful whether this information would be taken in the spirit for which it was intended: to lessen the risk of children.

The purpose of notifying a community about offenders is to allow parents to adjust their parenting and lessen the risk to their child. Anderson and Sample (2008) found that of those who were aware of such information, only 42% of respondents with children took preventive actions. Consequently, Anderson and Sample (2008) conclude that the laws are ineffective at reducing risk, are a response to moral panic, and have little empirical evidence to support them. The negative consequences of such ineffective laws affect the offenders and may actually lead to a greater chance of reoffending because they cause difficulties in reintegrating into society (Levenson et al., 2007).

Notification laws can also cause offenders to suffer unnecessarily. Pratt suggests that strategies such as public notifications serve to “humiliate, degrade or brutalize the offender before the public at large” (2000, p.418). O’Malley (2010) further argues that the influence of risk on sentencing in the name of community safety has, in fact, a negative impact on offenders by creating difficulties that go well beyond the intent of offenders’ sentences. Such difficulties include bouts with isolationism and exposure to vigilantism, affecting not only the offender but also the offender’s family. While O’Malley (2010) acknowledges that the influence of risk theories on community safety strategies can be positive, in terms of using statistical models to predict risk factors, the use of risk-based sentences does nothing to reform the offender and, in fact, turns the community into an extension of the prison system.

Offenders’ rights must be protected regardless of the offences committed; however, “The pendulum of justice is now focused on the protection of society, rather than individual rights” (Quinn et al., 2004). While certain rights must inevitably come to an end when an offender is identified and convicted, basic human rights should never be eliminated. Ward et al. (2007) identify basic human rights as those that belong to all humans simply because they are members of the human race. The rights that must be afforded to humans include rights that are centred on the “dignity of persons and their significant interests” and ought never be extinguished (Ward, Gannon, and Birgden, 2007, p.198).

Alternatively, from a utilitarian viewpoint, there are circumstances in which basic human rights are extinguishable if other rights are overridden (Gerwith, 1981). In the case of notification laws, this would include the rights of the future victim overriding the rights of the offender. However, as pointed out earlier, empirical research has shown that notification laws in the United States are unsuccessful in their stated goals; therefore, any such removal of the basic rights of offenders is unnecessary, even from a utilitarian perspective. Ward et al. (2007) acknowledge the right of the state to punish and restrict the movement of sex offenders in the name of community safety but suggest these powers must be balanced without unnecessarily harming the offender and limiting the potential of the offender to reintegrate successfully into society.

Risk-based strategies that employ limits on basic human rights are neither rehabilitation nor treatment. Petrunik (2002, p.484) views such strategies as not only extraneously punitive but also debilitating as a result of extraordinary measures that “override conventional understandings of justice and civil rights.” As risk is determined and used as a basis for community safety, offenders’ rights are diminished. While the rights of the community, victims, and future victims are important, the rights of sex offenders must also be considered, and the two should not be competing interests (Sanders and Young, 2007). The rights of the state to protect the community from sex offenders is a right that must be tempered by justification and deliberation so that the offender is not subject to obstacles, but rather is helped to become a contributing member of society.

Basic human rights protect dignity, security of person, and the right to work, and are essential for successful assimilation into society (Ward et al., 2007). Notification laws are the antithesis of such positive characteristics because by publicizing an offender’s private information, they can unnecessarily subject the offender to physical assaults and threats from vigilantes, cause the loss of jobs and job prospects, and can promote harassment of and indignity for family, friends, and neighbours (Small, 1999; Tewksberry and Lees, 2006, Thomas, 2003; Ward et al, 2007; Zgoba, 2004). Such violations have caused offenders to be treated as “...objects, simply as means to other people’s ends rather than ends in themselves” (Ward et al, 2007,

p.199).



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