

Fact Sheet

#16

*in a series of fact sheets
that examine questions
frequently asked about
the criminal justice
system*

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Sex Offender Registries: A costly illusion

Recent news reports have been filled with talk about sex offender registries. In April 2001, Ontario brought into force the first sex offender registration law in Canada. British Columbia tabled registry legislation in March. In May, following a sensational incident, the Alberta premier indicated his intent to establish a sex offender registry system in that province, despite all indications that such a system would not have prevented the crime in this case. The fear and the frustration brought about by the tragedy in Alberta has led to renewed calls for the federal government to establish a national sex offender registry. The government's position, stated just a few months before, that a national system is unnecessary and a waste of resources given the information systems currently available to track offenders, appears to be weakening.

It is important to examine the facts, relevant to both the roots of sex offender registration and of its impacts, to assess whether it is an effective and efficient crime control strategy. What are the commonly-held beliefs and what do we know about sexual crimes and those who commit these offences? What information systems are already available in Canada to track sexual offenders and what additional information would be provided by a

separate sex offender registry? What do we know about the costs and reliability of registration schemes? Is there any evidence that they prevent crimes or reduce re-offending?

The fear and frustration related to sexual offences and to those who commit these offences are understandable. We must be careful, however, not to let our emotional response drive us to accept, as solutions, measures which are questionable both in terms of effectiveness and justice.

Coping with crime is a two-sided problem for a just society. Crime uncoped with is unjust: to the victim, to potential victims and to all of us. Crime wrongly coped with is also unjust: criminal law - the state against the individual - is always the cutting edge of abuse of power. Between these two extremes justice must keep a balance. Balance means rationality. To get to grips with crime rationally, we have to keep our heads, not hit out blindly, and not mistake activity for action. We must avoid being misled by fears, frustration or false expectations, however natural they may be.

Law Reform Commission of Canada, 1976

The myths and realities

The drive to establish sex offender registries and the public acceptance of this measure as necessary appears to be largely based on a number of myths about the nature and extent of sex offences and about sex offenders. Notions of ever-increasing rates of sexual offences, pictures of all those who commit a sexual offence as predatory strangers and a certainty that all sexual offenders re-offend lead to demands for quick solutions. While not taking the problem seriously serves no good purpose, trying to find effective solutions in an atmosphere of fear and panic that is unwarranted serves little purpose as well.

While there is no doubt that we need to recognize the seriousness of sexual offending and must continue to work on reducing its occurrence, the evidence relating to crime rates and trends suggests that there is no need to panic. Since 1993, the rate of reported sexual offences have decreased by 35%. Ontario's rate of sexual offences is lower than the national average. The more serious categories of sexual offences involving weapons, threats or serious injury constitute a relatively small proportion (3%) of all sexual offences and the number of these

offences have been declining over the past decade.

Contrary to the generalized view of sexual offenders as predatory strangers prowling for victims in public places, relatively few sexual crimes (23%) involved a stranger to the victim. When the victim is a child or a youth, the rate of stranger victimization is even lower, at 16%. In over one-third of the incidents involving a child or youth, the accused was, in fact, a family member. Most sexual assaults, over two-thirds, occur in homes, with the remainder occurring in public areas (17%) or commercial/public institutions (16%). A sex offender registry will not protect people from victimization by a parent or other family member in their homes.

A common belief, and one that seems to have been critical to the development of sex offender registries and other notification systems, is that all sex offenders re-offend sexually. A follow-up study of sex offenders released from federal penitentiaries in Canada found that less than one in 10 were convicted of a new sexual offence during the follow-up period which averaged 3.5 years. A review of 61 studies dating from 1943 to 1995 relating to sex offender recidivism found the overall sexual recidivist rate was 13% over a five year follow-up period. One long-term follow-up study in California found that 20% of sex offenders first arrested in 1973 had been rearrested for a sex offence by 1988. This means that 4 out of 5 sex offenders did not re-offend sexually over a 15 year period.

Despite the widely-held view that "nothing works", there is growing evidence that treatment can reduce the rate of sexual re-offending. One review of studies relating to the effectiveness of treatment found that far more studies reported positive results (treated group with significantly lower recidivist rates than untreated) than inconclusive results. Further the more current studies show greater reductions in the recidivism

rates, reflecting improvements in treatment. Another more recent review found that 19% of the treated offenders re-offended during an average follow-up period of 6.85 years compared with 27% of the untreated group.

Another belief upon which sex offender registries are premised is that past criminal record will tell us who the sex offenders are. A national survey of sex offenders in federal penitentiaries in 1991 found that only one-quarter currently serving a sentence for a sexual offence had been convicted in the past for sexual offences. This suggests that a high proportion of those who commit sexual offences would not appear on any sex offender registry.

Available Information Systems

At a time when all governments are committed to cost-containment, care should be taken not to duplicate what is already available. The intent of the registration system in Ontario and those proposed in other jurisdictions in Canada is to give police access to information about convicted sex offenders to aid them in their investigation of crimes. The suggestion is that nothing is currently available.

Contrary to the impression given, there is a great deal of information available to the police through a variety

of mechanisms. The Canadian Police Information Centre (CPIC) contains: adult and juvenile conviction records of all provinces and territories, records of dispositions following a not guilty by reason of mental competence, and charges pending. In addition, CPIC contains information about probation, parole and other judicial orders. Recent enhancements mean that it also includes records of summary conviction offences for child sexual offences, including information relating to the age and sex of the victim, and access to information about pardoned sex offenders. Further, there is a national police intelligence system that provides police direct access to a database dealing with investigations. Another source of information is the special persons information system dealing with persons identified by police as being a danger to themselves, police and others.

As well, the *Corrections and Conditional Release Act* requires that the Correctional Service of Canada notify the police of all releases from federal penitentiaries, which naturally includes those serving a sentence for a sexual offence. The *Ontario Community Safety Act*, passed in 1997, permits the disclosure of information to the police by correctional officials about any person under provincial correctional

Excerpts from "Disclaimers and Reminders" page for the New York State on-line sex offender database:

Although the Division attempts to include only accurate and complete information in the subdirectory information, the Division does not independently verify registration information...

Users are cautioned that the information provided on this site is the information of record that is reported to the Division and may not reflect the current residence, status or other information regarding an offender. The Division makes no express or implied guarantee concerning the accuracy of this data...

Users are cautioned that the positive identification of an individual cannot be conclusively established by comparing name, date of birth, social security number with that provided. Comparisons based on appearance may also be misleading and cannot establish a positive identification without some possibility of error ... Anyone who uses this information to injure, harass or commit a criminal act against any person may be subject to criminal prosecution...

authority, including sexual offenders who are to be released from a provincial prison or are sentenced to a community sanction.

It is clear that there already are administrative and statutory mechanisms in place to ensure appropriate notification about releases and an effective national criminal information system.

Two studies by the federal government (1993 and 1998), concluded that a separate sex offender registry would largely be a duplication of the existing mechanisms and would be a waste of scarce resources. They recommended against the establishment of a separate sex offender registry and proposed that any additional resources that would become available be spent to effect improvements within the existing information systems.

Cost and Reliability of Registries

The only additional information that a sex offender registry provides is the individual's current address.

The reliability of the registration system depends on the degree to which individuals comply. In the U.S., some states reported that, in 1996, 45% of all sex offenders had inaccurate or missing information. Further, a registration system cannot capture all sex offenders. It will not capture those who have not been convicted of a sex offence, nor those who are not currently under the supervision of any correctional authority at the time the law is enacted.

The costs of acquiring this one additional piece of information, the reliability of which is questionable, are not insignificant. They include the cost of setting up the system in the first place and then the cost of maintaining the system which relate to police, court and correctional officials' time to administer registration, change of address, address verification and re-registration. Maintaining the system will undoubtedly put a further strain on those (police,

court and correctional officials) who declare that they are already overburdened and may, in fact, take time and attention away from more effective endeavours.

Possible Unintended Consequences

The establishment of a sex offender registry may have unintended and unanticipated outcomes that do more harm than good.

Citizens may rely too heavily on sex offender registries. A false sense of security may undermine support for measures that experience and research show can be effective. This may mean that there is less support for ensuring adequate screening and supervision measures in organizations involved with children and other vulnerable groups.

Volunteer Canada, when consulted with respect to the most recent study by the federal government, opposed the establishment of a national sex offender registry because it promotes the notion that simply doing a police check is sufficient. This organization argued instead that the resources be directed to current measures such as public campaigns that promote parental involvement and adequate screening policies and practices.

Relying too heavily on a sex offender registry may also undermine public and political support for resources geared to sex offender treatment. It suggests that surveillance is sufficient to deal with this complex social problem.

While the Ontario system defines a registry accessible only to the police and designated public officials, it is reasonable to expect demands for public access to the registry. It is inevitable that the registry will fail to prevent all further incidents of sexual offences and the public's likely response to these incidents will be to demand access. It will be politically difficult not to expand access to the registry once it is established.

Once the registry becomes accessible to the public, a different set of problems

A mentally retarded young man, Thinh Pham, 27, was attacked by four men who beat him unmercifully, chanting "child molester, child molester" as they rendered him nearly unconscious. The problem is, Pham isn't a child molester. But he did live in a small Southwest Dallas home listed as the residence of a convicted sexual predator - who had moved out more than a year ago.

Insight on the News, 1999

arise - ones that are likely to be hazardous to both the registered individual and to society at large. Such problems include:

- Citizen vigilantism. Both in the U.S. and Canada, there have been cases of threats and violence against individuals and even harassment extended to their family members;
- Victimization of others by virtue of being misidentified;
- Forcing the offender to resettle away from communities where supports are available and to relocate whenever threatened with the consequences of public identification. Further, the offender may go underground, to conceal himself and his whereabouts. This works against those factors which assist reintegration and reduce the likelihood of re-offending, such as stable accommodation and employment, contact with family and other community supports;;
- Undermining the motivation for treatment. Prisoners may not make plans for post-release treatment because they fear that, by doing so, they will simply identify their potential destination. If a person is forced to relocate, he may leave behind a treatment program that he is attending. Treatment in the community is vital and, for some, access to long term treatment is necessary.

Public protection is not served by policies and practices that can lead to

further victimization or undermine treatment in the community.

When the research relating rates of sexual re-offending are considered, it becomes clear that we run the risk of needlessly involving people in the criminal justice system. In Ontario, the maximum sanctions for not registering or providing false information are not insignificant; for a first offence, one year imprisonment or \$25,000 or both, and for a subsequent offence, two years imprisonment or \$25,000 or both.

Incarceration comes at considerable cost both to the individual and to society at large and, therefore, should never be used needlessly. To the individual, the loss of liberty can mean the loss of income and even the loss of employment, the loss of accommodation, disruptions with family and personal life and possibly being subjected to violence in prison (most notably a real threat for sex offenders). Incarceration also means substantial costs to the taxpayer. Currently, the daily cost to keep an inmate in an Ontario correctional facility is \$136. We need to use restraint in the use of incarceration, not only because of the human and economic costs but also because research has shown that incarceration is not effective in reducing re-offending.

We should also recognize registration schemes, like the one implemented in Ontario, exposes a class of people to special liabilities and punishments on the basis of predictions of future conduct. Any free and democratic society must be

mindful of the dangers of creating such legislation and legislators must be mindful of their special obligation to demonstrate with certainty both the necessity and the effectiveness of such measures.

No Research to Support Effectiveness

Despite the fact that registration systems have been in place in the U.S. for many years, virtually no research has been conducted which either supports or discounts this approach. Washington State did examine the impacts of community notification, a more extreme form of monitoring, on the re-offending rates of sex offenders. They found *no differences* between the group subject to community notification and those who were not. If community notification does not reduce re-offending, it would seem unlikely that police monitoring will do so.

The Alternative

While the facts do not seem to support sex offender registration as an effective strategy of public protection, the problems of sexual offending should not be minimized, nor should nothing be done to prevent this crime or reduce re-offending. Rather than pursuing policies and practices based on the illusion that the public is being protected and that may, in fact, do more harm than good through unintended consequences, we need to develop an alternative strategy. The elements of such a strategy - one that is based on the research findings about

what effectively reduces re-offending - are:

- Available community-based treatment and residential services which are specialized, professionally operated and adequately funded. Such services should be accessible to all, not just those currently under sentence;
- Specialized, professionally operated and adequately funded treatment services in correctional facilities. Such services should not only treat the offender while in prison but also assist in the development of a plan for relapse prevention and provide the link to a community-based services to facilitate the maintenance of the plan after release;
- A system that makes gradual release part of **every** sentence;
- The focusing of community supervision and treatment resources on those with the greatest need and who pose the greatest risk; and
- An end to those policies and practices that undermine the gradual release process, such as the practice of detention under federal legislation and the current actions of the provincial government geared to reducing the granting of provincial parole and temporary absences.

Our best promise for reducing the incidence of sexual offending exists in recognizing the value of gradual release, expanding and improving treatment opportunities for sex offenders and providing community-based support and supervision.

Effective, just and humane responses to crime and its causes

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