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Applying Sex Offender Registry Laws to Juvenile Offenders: Biases Against Stigmatized Youth

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The emotion and urgency surrounding society's need to protect children from dangerous sex offenders has led to policies that require sex offenders to register with police and on public online registries. These laws were created to help parents better protect their children from sex offenders who live in their community and have recently been extended to include juvenile offenders (Sex Offender Registration and Notification Act [SORNA], 2006). The question addressed in this chapter is: Considering that these laws were designed for adult offenders, is their application to juveniles appropriate, necessary, and supported by public sentiment? Psychology has a role to play in addressing these issues. For example, research suggests that the application of registry laws to juvenile offenders might have inadvertent negative consequences for the well-being of those who are registered—including juveniles whose cases fit the letter, but not the spirit, of these laws (e.g., juveniles registered for mooning schoolmates or having sex within committed peer relationships; Trivitas & Reppucci, 2002).

As will be reviewed, research provides strong support for applying registry laws to juveniles in the abstract, but more mixed reactions for applying registry laws to specific, less severe, consensual cases. This ambiguity surrounding when registry laws should be enforced against juveniles might provide a context in which biases against stigmatized classes of offenders or victims can be expressed through support for juvenile registration policies.

This chapter reviews current sex offender registration laws and policies and discusses research addressing the psychological issues surrounding the application of these laws to juveniles, including (a) psychological research that speaks to assumptions underlying these laws, (b) public sentiment toward these laws, (c) offender and victim factors that might drive biases in public support for these laws, and (d) underlying psychological motivation for supporting these laws (i.e., punitive versus utilitarian goals). Finally, the chapter draws from the reviewed research and presents implications for juvenile sex offender policy.

Sex Offender Registration Laws

In an effort to prevent child sexual abuse and facilitate the apprehension of repeat sex offenders, the federal government passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (1994). This federal law required all sex offenders to register personal information (e.g., name, address, photograph, etc.) with the police. Two years later "Megan's Law" (1996) was passed, requiring states to establish procedures to inform community members about sex offenders living in their community. Both acts were passed in reaction to public outrage about sex crimes against children. For example, Megan's Law was passed after 7-year-old Megan Kanka was raped and murdered by a previously convicted sex offender in her neighborhood. The public was outraged that they were unaware of the dangerous offender in their community and believed that being aware of the offender would have helped Megan's parents protect her. Thus, it is easy to understand why the public supported the implementation of these laws.

Support for these laws becomes more complicated in cases in which the offenders are children as well. Sexual activity between juveniles meets the legal definition of a sex offense in many states—even when both parties are underage and the activity is consensual (James, 2009).1 Juveniles who record their technically illegal sex acts through videotaping or sexting (e.g., texting a photograph) are also particularly vulnerable to prosecution (e.g., Eraker, 2010; Lithwick, 2009). In 2006, federal legislation was expanded with the Sex Offender Registration and Notification Act (SORNA, 1996). This policy, part of the Adam Walsh Act, requires all states to participate in a federal national online registry. This federal registry includes juvenile sex offenders who are either (a) convicted in adult criminal court or (b) at least 14 years old and adjudicated delinquent in juvenile court for sex offenses involving aggravating circumstances (e.g., use of force, threat of serious violence).

1 We use the term "consensual" while acknowledging the social, moral, and psychological difficulties of defining the age at which adolescents are capable of giving consent to sexual activity; also while acknowledging that they may not be legally able to consent.
Individual states are allowed, however, to set harsher standards. In other words, states can include more offenders than the guidelines require; as long as they meet the minimum guidelines and participate in the federal registry, the state is considered compliant with the Adam Walsh Act. For example, currently registered juveniles who committed minor crimes, such as a 12-year-old who molested a classmate in a 5- to 6-year-old's classroom in Texas or a mildly mentally retarded 17-year-old who grabbed an 18-year-old's buttocks in Nebraska (Trivits & Reppucci, 2002) could be registered under these guidelines. Thus, not all juveniles on the registry fit the highly publicized dangerous and violent sex offender profile that inspired these laws (Human Rights Watch, 2007).

According to the latest review of juvenile registration laws across the United States (Salerno, Stevenson et al., 2010), a majority of states (n = 33) require juveniles to register as sex offenders under some circumstances. In fact, in many of those states (n = 26), juvenile registration is automatic and mandatory. Juveniles as young as 8 years old can be placed on sex offender registries (e.g., in Montana). Only four states explicitly prohibit the registration of juveniles under age 14 (Indiana, Ohio, Oklahoma, South Dakota). Further, in most states, registration extends long after adolescence (22 states require registration for at least 10 years, and several require registration for life), often with no opportunity for discretion, appeal, or petition. Other states’ laws reflect greater recognition of the developmental differences between juvenile and adult offenders by taking juveniles’ ages into account when deciding registration duration (e.g., limiting the duration of registration until the juvenile is 18 or 21 years old) or by allowing juveniles to petition for removal from the registry after 3 to 5 years. The type of offenses for which a juvenile is required to register also varies across states. In some states, registration is required only in cases that involve threats, the use of force, or incapacitation. In at least 19 other states, however, juveniles adjudicated guilty of nonforcible offenses can be required to register. Information about juvenile sex offenders is publicly available via online databases in many states (Salerno, Stevenson et al., 2010).

Although all states are federally mandated to comply with the Adam Walsh Act or risk losing 10% of their federal funding for law enforcement activities (42 U.S.C. §16911; Caldwell, Ziemke, & Vitacco, 2008), 35 states missed the deadline of July 2011 for implementing these guidelines into their sex offender registration programs. As of the writing of this chapter, only 15 states have substantially implemented these guidelines according to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART; US Department of Justice [DOJ], 2012). In fact, the DOJ has specifically cited resistance to public disclosure of juvenile sex offenders’ information as “one of the largest impediments to SORNA implementation” (US Department of Justice, 2010), and states, such as Nebraska, Ohio, and Vermont, have modified or passed new legislation to limit punishment for juveniles who commit less severe sex crimes (e.g., ensuring lesser punishment for teenagers who engage in sexting as compared to adults charged with child pornography).

Assumptions Underlying the Application of Sex Offender Registration Laws to Juveniles

The rationale behind registration laws is intuitive and reflects good intentions—alerting police and community members of dangerous sex offenders in order to protect children. Given that a goal of registration laws was to reduce sex offender recidivism (for review, see Welchans, 2005), extending these laws to juvenile offenders reflects two major unsupported assumptions about juvenile sex offenders: First, that juvenile and adult sex offenders are similar in their amenability to treatment and their recidivism, and, second, that sex offender registries are effective in reducing recidivism. Regarding the first assumption, research reveals that not only are juvenile sex offenders amenable to treatment (for reviews, see Chaffin, 2008; Trivits & Reppucci, 2002), but that juveniles respond to different treatments than adults. Treatments that typically work for nonviolent juvenile offenders reduce the likelihood that juvenile sex offenders will recidivate, but treatments typically used to treat adult sex offenders do not (St. Amand, Bard, & Silovsky, 2008). In other words, juvenile sex offenders appear to be more similar to juveniles who commit nonsexual crimes than they are to adult sex offenders in terms of rehabilitation potential. Further, the recidivism rate is lower for juvenile offenders compared to adult sex offenders. Only 5%–15% of juvenile sex offenders reoffend, compared to 20%–40% of adult sex offenders (for reviews, see Chaffin, 2008; Salerno, Stevenson et al., 2010; Trivits & Reppucci, 2002). Juvenile sex offenders may be no more likely to commit future sexual crimes than are juveniles who commit nonsexual offenses (Caldwell, 2007; Caldwell et al., 2008; Carpenter, Silovsky, & Chaffin, 2006; Zimring, Piquero, & Jennings, 2007). Thus, the argument that sex offender registries are equally necessary for juvenile and adult sex offenders is based on flawed assumptions that contradict a central tenet of our juvenile justice system: the idea that juveniles are a special group who can and should be rehabilitated.

Regarding the second assumption, there is little evidence that registration reduces sex offender recidivism in general (Adkins, Huff, & Stageberg, 2000; Letourneau & Armstrong, 2008; Sandler, Freeman, & Socia, 2008). Letourneau and Armstrong (2008) matched 111 registered and nonregistered juvenile sex offenders on case and demographic characteristics (e.g., crime severity, prior offenses, age, race) and found no differences in recidivism rates between the registered and nonregistered juveniles—even after more than 4 years. Further, time-series analyses do not indicate that registration implementation has had an impact on offender recidivism. For example, the enactment of sex offender registration in New York State did not appear to reduce sex offense rates among either first-time or previously convicted adult sex offenders (Sandler et al., 2008). The implementation of public sex offender registration requirements was associated with a significant decrease in rape rates in only 3 of 10 states, and a significant increase in rape rates in 1 state (Vasquez, Maddan, & Walker, 2008).
The assumption that these laws reduce sex offenses is based, at least in part, on the belief that would-be juvenile sex offenders are deterred by the risk of registration. Stevenson, Najdowski, and Wiley (2013) investigated whether registration policies deter juveniles from committing sex offenses. Nearly three out of five of their sample of young adults were unaware that juveniles can be registered as sex offenders. Further, even after participants were informed of the fact that juveniles can be registered, many still held inaccurate beliefs about the types of sex offenses that can warrant registration (e.g., consensual sex with a minor) and what registration means. For example, a majority of participants were unaware that registered juvenile sex offenders can have their information made publicly available on the Internet or can remain on the registry as adults or even for the rest of their lives. Further, the less the young adult participants knew about juvenile registration policies, the more likely they were to report having engaged in behaviors that could have warranted registration when they were younger than 18 years old. These findings suggest that recent policies do little to deter youth from sexual behavior that puts them at risk of registration. Even if juveniles are aware of the legal consequences, these policies still might not be an effective deterrent. In a study of high school students, Strassberg and colleagues (2012) found that 20% had sexted a nude photograph of themselves and, of those sexters, one-third did so despite being aware of the legal consequences.

Public registries might not only be ineffective in reducing recidivism; they might also have unintended negative consequences on offenders' lives. For example, in extreme cases, registered offenders have been targeted through the registry and killed by vigilantes, and others have committed suicide after being required to register (Human Rights Watch, 2007). Beyond these extreme cases, there are less severe, yet pervasive negative consequences resulting from registration that could theoretically affect offenders' rehabilitation potential and lead to increased recidivism. Substantial percentages of registered sex offenders also report that discovery of their registration status has led to serious consequences, such as job loss, being forced out of a place to live, harassment by neighbors, physical assault, and property damage (Levenson, Brannon, Fortney, & Baker, 2007; Levenson & Cotter, 2005; Tewksbury, 2005). The majority of registered sex offenders experience isolation, loss of close relationships, shame, embarrassment, hopelessness, and stress (Levenson et al., 2007; Levenson & Cotter, 2005; Tewksbury, 2005; Tewksbury & Lees, 2006).

Although these studies focus on adult offenders, interviews with parents of juveniles on the registry for consensual sexual activity suggest that juveniles are likely to have similar experiences (Commartin, Kernsmith, & Miles, 2010). Psychologists have argued that these factors might have the iatrogenic effect of leading to increased recidivism (Letourneau & Minis, 2005) because juvenile delinquency is more likely to occur when "individuals' bonds to society are attenuated" (Sampson & Laub, 2005, p. 15), the chance of which might be increased by registration laws. Thus, the argument that sex offender registries will reduce juvenile offender recidivism is based on a potentially flawed assumption that these registries are effective.

Public Support for Sex Offender Registration Laws

As reviewed earlier, empirical research has demonstrated that juvenile (versus adult) sex offenders recidivate less and other research has failed to demonstrate that registry laws decrease sexual offenses. Even so, the assumption that there is high public support for these laws might deter politicians and policymakers from modifying the laws. The public is, in fact, strongly in favor of policies that require adult sex offenders to register and notify community members about neighborhood adult sex offenders (Caputo & Brodky, 2004; Proctor, Badzinski, & Johnson, 2002; Redlich, 2001). For example, Levenson, Brannon, Fortney, and Baker (2007) found that 76% of community members surveyed believed that all adult sex offenders should be subject to community notification, and Phillips (1998) found that 80% of survey respondents believed that community notification laws were very important. This research suggests that a political platform built on being "tough on sex crimes" would be more popular with the public than a platform that could be perceived as prioritizing concerns about offenders over potential victims (Chaffin, 2008). The question remains, however, as to whether public support for the registry extends to juvenile sex offenders—especially juveniles who engaged in less severe, consensual sexual activity with peers. If not, policymakers might feel more free to base their decision to support juvenile registry laws on social scientific evidence about the laws' actual effectiveness (or lack thereof), rather than on the unsupported belief that the policies are effective at deterring recidivism and protecting the community.

The original philosophy of the juvenile justice system was rehabilitative (for review, see Reppucci, Michel, & Kostelnik, 2009; see also Chapter 3 of this volume), reflecting actual developmental differences that tend to render juvenile offenders less legally culpable than adult offenders (e.g., Cauffman & Steinberg, 2000). Following a shift toward increased punitiveness toward juvenile offenders in the 1990s (Levesque, 1996), public attitudes might now be shifting back toward treating juveniles more leniently than adult offenders (Scott, Reppucci, Antonishak, & DeGennaro, 2006). This might not be the case for juvenile sex offenders, however. There are few studies that have assessed public support for sex offender registration for juveniles. One such study demonstrated that 86% of respondents agreed that a juvenile under the age of 18 who forced someone to have sex should be required to register, but the juvenile was perceived as less worthy of registration than adults who sexually abused children (Kernsmith, Craun, & Foster, 2009). This study's focus on a very severe juvenile sex offense and the confounding of age and offense limits our ability to draw conclusions about how the public reacts to registration.
for juveniles who commit less severe offenses based on consensual sexual activity among peers.

Other research has assessed support for sex offender registration for juveniles more directly. For example, one study demonstrated that family law attorneys support registry laws less for juveniles than for adults, but that prosecutors and laypeople support juvenile and adult sex offender registration equally in the abstract—even though they perceive juveniles as generally less threatening than adults (Study 1; Salerno, Najdowski et al., 2010). The public's support for juvenile registration laws might be an artifact, however, of how they are typically asked about these laws and might not apply to all types of cases. Participants in this study were asked about applying sex offender registration laws to juvenile offenders in the abstract, without being given a specific case example. Laypeople are less supportive of registry laws, however, when they are asked to think of a less severe case (Salerno, Najdowski et al., 2010). Thus, community members support registration much less for juveniles who commit less severe (e.g., consensual sex between same-aged peers) as opposed to severe sex offenses (e.g., violent rape). Thus, mandatory registry laws that include all sex offenses committed by juveniles regardless of severity are not in line with public sentiment. For example, Stevenson and colleagues (2009) found that most community members did not support public online registration for a 15-year-old boy in a case involving mutually desired oral sex with an underaged girl (which can be legally defined as statutory rape).

Thus, although there is strong support for adult sex offender registration, support for juvenile registration is ambiguous. For adult offenders, the appropriateness of registration is relatively unambiguous—these are the type of cases for which the registry was designed. For juveniles who engage in less severe offenses (e.g., sexual activity with their peers), however, the basis for judgments about whether registration is appropriate is more ambiguous. For example, consider a 16-year-old juvenile sentenced to lifelong registration for having sex with a minor within a committed relationship (Human Rights Watch, 2007), or two teenagers texting each other naked photographs of themselves (A. H. v. State of Florida, 2007). They have technically committed sex offenses, but they do not represent the prototypical dangerous offenders for which registries were created. Because of the ambiguity surrounding the application of sex offender registration laws to juveniles in these types of cases, the public's support for these laws might be particularly vulnerable to biases against juveniles from stigmatized groups.

Juvenile Offender and Victim Factors

Although blatant prejudice has declined, certain situations can elicit subtle prejudice against stigmatized groups, especially in ambiguous situations (Dovidio & Gaertner, 2004). For example, people exhibit less helping behavior toward African Americans when the appropriateness of helping is more ambiguous and less obvious as compared to when it would be normatively inappropriate not to help (e.g., Frey & Gaertner, 1986). That is, people usually adhere to normative egalitarian standards when situations clearly dictate them, but when situations are more ambiguous and standards are less clear, biases tend to emerge. The ambiguity generally surrounding whether sex offender registration should be applied to juveniles might set the stage for biases to influence judgments in these cases. Specifically, juveniles might be at greater risk of being required to register when they belong to stigmatized groups compared to nonstigmatized groups, and conversely they might be at lesser risk of being required to register when their victims are from stigmatized as compared to nonstigmatized groups. In fact, research has shown that juveniles accused of nonsexual crimes are perceived differently depending on factors such as the juvenile's race or history of experiencing abuse (for review, see Stevenson, Najdowski, Bottoms, & Haegerich, 2009). This section reviews the set of recent studies which each identify a stigmatized characteristic of offenders and victims (i.e., race, socioeconomic status, abuse history, sexual orientation) that can influence public support for applying sex offender registration policies to juvenile sex offenders.

Race

Legal decision-making research has revealed evidence of a racial bias against African American offenders, such that African American adults (see Sweeney & Haney, 1992, for review) and juveniles (e.g., Bridges & Steen, 1996; Stevenson & Bottoms, 2009) are sometimes perceived more negatively and treated more harshly than their White counterparts. This seems to be true particularly when Black defendants are accused of sexual crimes against White victims (Levin & Vortemberger, 2000; Davis, & Epstein, 2004; Klein & Creech, 1982). Stevenson and colleagues (2009) tested whether race has similar effects on public support for juvenile sex offender registration. Community member participants read a vignette describing a 15-year-old boy who received "consensual" oral sex from a girl of the same age. The race of the boy and girl were manipulated by describing them as African American or Caucasian and by using race-consistent names (i.e., Tyrone or Jacob for the boy and Shaniqua or Elizabeth for the girl). Participants were marginally more supportive of registration when the defendant and victim were different races (i.e., a Black defendant with a White victim or a White defendant with a Black victim) than when they were the same race. These results suggest that public support for registration in the context of sex crimes described as consensual might be affected by racial biases directed, not just at the offender, but at interracial relationships. Specifically, the authors theorized that in the context of an ambiguously serious sex crime (i.e., described as consensual sex), some participants might perceive it as a crime, whereas other participants might view it as normative adolescent activity. Yet because interracial relationships are still perceived as more deviant and less normative than same-race relationships (e.g., Ross,
2005), it is likely that participants perceived the sex crime as more like a true crime when it was interracial than when the adolescents were the same race. In other words, these results might reflect lingering societal disapproval of interracial relationships.

Socioeconomic Status
Public perceptions of criminal offenders are also influenced by offenders' socioeconomic status (SES). For instance, participants in a study of mock jurors' perceptions of a juvenile charged with robbery and murder were more likely to convict when the juvenile was described as coming from a low- versus middle/high-SES background (Farnum & Stevenson, 2013). To test whether such a bias would also emerge in cases involving juvenile sex offenders, Sorenson Farnum, Stevenson, and Skinner (2011) presented participants with a vignette describing a 15-year-old boy convicted of forcibly raping a 15-year-old girl. The SES of both the boy offender and girl victim were varied from low SES to middle SES. Participants' support for requiring the boy to register as a sex offender was not affected by his SES, but participants were more supportive of registration as an outcome when the girl victim was described as coming from a low-SES background (i.e., her family made $19,000 annually) as compared to a middle-SES background (i.e., her family made $65,000 annually). Participants made more uncontrollable attributions for a defendant's behavior (e.g., "he couldn't help himself") and expressed less desire for retribution when he raped a middle-SES girl than a low-SES girl, and in turn, supported registration less.

History of Abuse
Because approximately one-third of juvenile sex offenders have themselves been sexually abused (for review, see Worling, 1995), researchers have examined how juvenile sex offenders' own abuse histories affect public support for registration (Stevenson et al., 2013, unpublished manuscript). In these studies, community members approximated that 65% of juvenile sex offenders have been sexually abused as children, which is nearly identical to community members' estimates for adult sex offenders (Levenson et al., 2007), but more than twice as high as actual prevalence rates (51%; Worling, 1995). Many participants also, in turn, assumed that experiencing sexual abuse is a precursor for sex offending. When asked about juvenile sex offenders in the abstract (i.e., when they are asked about juvenile offenders in general, without being given a specific case to think about), the extent to which participants believed that sexual abuse leads to sexual offending was associated with reduced support for registering juvenile sex offenders. When asked about juvenile sex offenders in specific cases, however, the effect of juveniles' own histories of abuse on participants' registration support depended on the type of sexual offense committed. Consistent with how participants responded to abstract cases, juvenile sex offenders' own abuse experiences had a mitigating effect on registration support in cases involving more severe offenses (e.g., forced rape), but an aggravating effect in cases involving less severe offenses (e.g., statutory rape). These results are consistent with prior research showing that people who are asked about sex offenders in the abstract tend to imagine offenders who commit heinous crimes (Salerno, Najdowski et al., 2010). In the context of more severe offenses, a juvenile's history of abuse might elicit sympathy and reduce registration support, but in the context of less severe offenses, a juvenile's history of abuse might make otherwise normative sexual behavior seem sexually deviant and increase registration support. This would conflict with laws mandating that a history of abuse be used as a mitigating factor in juvenile cases (e.g., Juvenile Court Act, 1987).

Sexual Orientation
The ambiguity surrounding the application of sex offender laws to juveniles might also lead to the manifestation of anti-gay biases in judgments about juveniles engaging in consensual sexual activity with their peers. Salerno, Murphy, and Bottoms (2012) tested whether people would support harsher registry punishments for gay versus straight juveniles who engaged in consensual sex with a minor (i.e., a peer) and engaged in sexting behavior with an underaged peer. For adult offenders, participants showed no sexual orientation bias, recommending similarly high rates of registration for straight as gay adults. In the more ambiguous context of juvenile offenders, however, participants were significantly more likely to support harsher registry laws when the juvenile engaged in gay versus straight consensual oral sex with a minor. Researchers conceptually replicated this finding in a second study, finding that when a boy sent a sexting message, participants were significantly more likely to support harsher registration laws when the juvenile engaged in gay versus straight consensual oral sex with a minor. This anti-gay bias did not, however, replicate for girl offenders. When a girl sent a sexting message, participants were marginally less likely to support harsher punishments when she was gay versus straight.

Summary
Research indicates that public support for juvenile sex offender registration can be influenced by characteristics of the offender, victim, or a combination of the two. This raises the question of whether registration requirements are applied fairly in actual cases. The public's subjective biases against stigmatized offenders and victims might be more likely to manifest in more ambiguous cases involving juveniles engaging in less severe, consensual sexual activity, compared to less ambiguous cases involving adult offenders. The one study that included an adult offender control group indicated that biases emerged only for juvenile sex offenders, not for less ambiguous adult offender cases (Salerno et al., 2012). It is also noteworthy that the public is not a singular entity but rather composed of individuals who vary along a multitude of
Psychological Motivations Driving Support for Juvenile Sex Offender Registration

A final question relevant to the topic at hand is: What motives drive public support for juvenile sex offender registration policies? A series of studies identified psychological mediators that explain, in part, why the public supports juvenile registration. Specifically, Salerno, Najdowski et al., (2010) found that community members who read about more severe offenses (compared to less severe offenses) perceived the offender as more of a threat and reported feeling more moral outrage toward the offender, which both in turn increased support for registering the juvenile. In other words, both utilitarian concerns for protecting society (perceived threat) as well as retributive desires to punish the offender (moral outrage) emerged as significant mechanisms explaining how the public’s reactions to juveniles influenced their support for registration.

Two additional studies uncovered evidence that biases associated with race and sexual orientation are typically driven by retributive desires for punishment (e.g., moral outrage), rather than utilitarian desires to protect society. Specifically, as described earlier, Salerno and colleagues (2012) found that participants supported registration more for a low-severity crime (i.e., consensual sex) when the two juveniles were the same gender than when they were of the opposite gender. This anti-gay bias was driven by moral outrage toward the offender, such that they were more morally outraged at a gay versus straight offender, which in turn led them to be more likely to support harsher registry laws. Similarly, Stevenson et al., (2009) found that greater registration support for interracial juvenile sex crimes (compared to same-race sex crimes) was significantly mediated by a retributive desire to punish the offender. Neither the anti-gay bias nor the bias against interracial relationships was driven by a utilitarian desire to protect society, however. Biases against gay youth and interracial sexual activity appear to be driven by a desire to punish the offender rather than protect society—a goal that is antithetical to the stated legislative purpose of registration policy.

Policy Implications

Research regarding the psychological issues surrounding the application of sex offender registration policies to juveniles whose offenses do not fit the spirit of these laws is timely and important. The media has reported countless news stories sparking debate about whether a given case involving consensual sexual activity among teenagers is an appropriate application of these laws. For example, many reports debate the appropriateness of prosecuting teenagers for sexting (e.g., Hoffman, 2011; Klepper, 2011). Despite the fact that sexting behavior is common among minors (Strassberg et al., 2012), it meets the legal criteria of child pornography and leads to prosecution and registration of juveniles as sex offenders in many states (e.g., A.H. v. State of Florida, 2007; for review, see Eraker, 2010). Although questioning the application of sex offender laws to juveniles is not a popular thing to do, it is important to do so because this issue influences many adolescents in this country—particularly those from stigmatized groups.

This review of the literature reveals several important points relevant to public policy regarding juvenile sex offender registration. First, in many states, registration for juvenile sex offenders is mandatory and judges may not exercise discretion based on offense severity (Salerno, Stevenson et al., 2010). Our data suggest that sentencing juveniles to sex offender registration for less severe offenses is not in line with public sentiment. Thus, laws that do not allow judges discretion might prevent them from delivering judgments that are in line with public sentiment (e.g., not sentencing teenagers to registration when they commit less severe offenses). Second, although it seems like a significant step in the right direction to allow judges more discretion, it is worth noting that our data suggest that support for applying sex offender registration laws to juveniles can be biased against stigmatized offenders and victims. Thus, granting judges discretion might place juveniles who belong to stigmatized groups at greater risk of being registered than other juveniles—even if they commit the same offense. Third, one of the purposes of the sex offender registry is to deter potential offenders from committing crimes for which they might be registered. Our data suggest that most young adults are either unaware of or hold incorrect beliefs about the possibility of juvenile sex offender registration and that the less aware they were, the more likely they were to have committed registration-worthy offenses when they were minors. Thus, efforts made to deter juvenile offenders through policy might be futile unless coupled with efforts to educate juveniles about these policies.

Since SORNA became a law in 2006, a number of public commentators, advocates, and academics have identified problems associated with the application of its guidelines to juvenile sex offenders. Although additional legislation has not been enacted, administrative guidelines have addressed some of these problematic provisions. For example, the Department of Justice’s Supplemental Guidelines, released in 2011, explicitly (a) provided jurisdictions with the discretion to determine whether a juvenile sex offender’s information need be publicly disclosed, (b) clarified the intent of the law to require registration only for juveniles who commit the most serious kinds of offenses, and (c) indicated that there is no requirement to register juveniles for lesser offenses wherein the criminality depends on the age of the victim.
(Supplemental Guidelines for Sex Offender Registration and Notification, 2011). As of the writing of this chapter, SORNA is being considered for reauthorization (Adam Walsh Reauthorization Act of 2012). Assuming that SORNA is reauthorized, it is important to keep in mind that, although SORNA sets minimum guidelines for states, states are free to enact harsher rules. In other words, states are free to be more inclusive of juveniles in their guidelines, as long as they meet the minimum requirements of SORNA, they are considered compliant. The history of SORNA illustrates that policy can be influenced both legislatively and administratively. For advocates who wish to influence the policy process, it will be important to observe how individual states enact this law and to be proactive in providing lawmakers with information about how to apply registration laws to juveniles in developmentally appropriate ways.

Conclusion

The need to protect children from dangerous sex offenders has led to policies that require juvenile sex offenders to register on public online registries. It is important to determine the implications of these laws for the wellbeing of child victims but also for the wellbeing of juvenile offenders on these registries. A review of current sex offender registration policies and psychological literature calls into question whether the application of these laws to juvenile offenders actually improves the wellbeing of children by protecting them from dangerous, repeat sex offenders. Specifically, research does not support the assumptions inherent in these laws: that juvenile sex offenders’ amenability to treatment and recidivism rates are similar to adult sex offenders; and that sex offender registries effectively reduce sex offenses. Furthermore, applying sex offender registration laws to juveniles who commit less severe, consensual offenses might be detrimental to the wellbeing of these juvenile offenders. Not only is registering juveniles for these types of crimes not in line with public sentiment, it leads to negative consequences that could increase juveniles’ likelihood of recidivating. Finally, the ambiguity surrounding the application of these laws to juveniles who commit less severe, consensual offenses can lead to biases against youth who belong to stigmatized groups. These issues are important for policy makers to consider when assessing the implications of juvenile registration laws for the wellbeing of children—both potential victims and offenders.

Author’s Note

The views and opinions expressed in this report are those of the authors and should not be construed to represent the views of NIDA or any of the sponsoring organizations, agencies, or the US government.

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6

Female Juvenile Offenders’ Perceptions of Gender-Specific Programs

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Throughout US history, juvenile justice system programming has focused on various methods to deal with young offenders (Frabutt, Di Luca, & Graves, 2008), including efforts to decrease crime, keep juveniles safe, and reform youth into healthy, productive members of society (Humphrey, 2004; Sherman, 2005). Programs ranged from punitive “tough on crime” approaches to nurturing, rehabilitative approaches (US Department of Justice, 2007), and in accordance with the equal protection clause of the Fourteenth Amendment, were believed to be gender neutral. In the early 1990s, however, researchers recognized that use of a primarily male juvenile population in the development of the gender-neutral programming had contributed to the creation of programs that better served males than females. For instance, programs were more likely to focus on addressing the overt, aggressive behaviors common to male juvenile offenders than the more subtle, self-destructive behaviors common to female juvenile offenders. As a result, these male-based programs failed to reduce recidivism or address the wellbeing and needs of young female offenders (Morgan & Patton, 2002). Instead, female offenders, who were predominantly arrested for status offenses relating to their own physical and sexual abuse, were revictimized by incarceration rather than helped to cope with the underlying issues (Humphrey, 2004). Researchers and advocates suggested that, if gender-specific programming was designed to meet the unique needs of females, they would be more successful than the traditional male-based model of juvenile incarceration and rehabilitation (Sherman, 2005).