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Key Questions:

- What does the evidence tell us about whether sex offender registries reduce recidivism? Are public registries effective?

- What <u>features</u> does social science tell us would be most likely to make a sex offender registry effective at reducing recidivism?

- My focus: **<u>Public-safety effects</u>** (particularly recidivism reduction) of sex offender registration and community notification laws

Refining the "Safety" Question:

- First, sex offender recidivism rates are very low by any traditional measure (and they are variable):
  - *Especially low after crime-free period (< 10 years)*
  - *Especially low as individuals age*
  - *Risk varies by specifics of individual – i.e., risk factors*

- But, second, focusing on recidivism rates is a mistake when thinking about the design of SORN laws:

  - *Only question is: do SORN laws make us <u>safer... or not</u>?*
  - *This is what matters, <u>whatever</u> the recidivism rates are...*

SORN Effects on Recidivism

"The body of research on the consequences of SORN laws strongly suggests that typical SORN laws have essentially no effect on registrant sex offense recidivism. While empirical work necessarily produces results that retain some margin of error, there is enough peer-reviewed research behind this conclusion to be confident that any reduction in recidivism has been, at best, very small. <u>If anything, there is stronger evidence that SORN laws—particularly community notification laws—counterproductively increase rather than decrease the likelihood that registrants will commit future sex crimes.</u> While this possibility may seem counterintuitive, it emerges intuitively from a comprehensive model of offending behavior. SORN burdens can themselves be criminogenic in their effects, and unless the monitoring and precautionary-behavior benefits of information-sharing more than offset these negative consequences, we should expect to observe no change or perhaps even increases in reoffending."

– *Agan and Prescott (2020)*

Evidence on SORN-Recidivism Effects

- **Many Types of Studies (range of methods and data sources)**
  - *Single-state studies*
  - *Multi-state studies (including all 50 states)*
  - *Studies that use criminal history records*
  - *Studies that use reported sex offenses*

- **Every one finds _either_ no effect or an increase in recidivism**
  - *One exception: Duwe and Donnay (2008)*
  - *Criticisms of paper include extremely narrow and targeted notification law in Minnesota, other single-state study issues, and just chance...*

Understanding SORN Recidivism Effects

- This conclusion is not immediately intuitive – "registration at least cannot make things worse than they already are…"

- But this knee-jerk intuition turns out to be incorrect:
  - *In theory, SORN laws have features that might*
    - Increase recidivism risk
    - Reduce recidivism risk

  - *These may offset each other, so the overall effect is an empirical question that must be informed by data…*
    - But with a little thought, it becomes hardly surprising that SORN laws are more likely to increase recidivism

SORN: Requirements to Reduce Recidivism

■ For public registration to disrupt recidivism, **many** things must all be true at the same time (necessary conditions):

1) *The registrant must otherwise be at risk of reoffending (rare)*

2) *The potential victim must be <u>newly</u> informed by information on the registry, but this occurs rarely:*
   ■ Most sex-crime victims are family members (already know, when it counts)
   ■ Only 1/3 are neighbors and acquaintances (10% stranger)

3) *The potential victim must take additional precautions or effectively monitor registrants (i.e., use the information)*
   ■ Evidence indicates this is very uncommon
   ■ Instead: people access registry, but only gossip (tell other people)

4) *Finally, the registrant cannot locate <u>any</u> similarly situated victim that does not do either 2) or 3) above (displacement)*

Why SORN Increases Recidivism

- Public sex offender registries exacerbate well-validated recidivism risk factors for registrants:

  - *Homelessness or poor housing, unemployment, depression, social isolation, and public stigma – all from being publicly registered*

  - *No end of status in many cases – "life sentence" – no hope*

  - *One-size-fits-all regardless of realistic risk – procedural injustice*

- One additional important thought:

  - *SORN restrictions apply automatically even to those who might never have otherwise reoffended – which means SORN laws are potentially pushing people who would have never reoffended into reoffending*

The Balance

- The chances that public registration might prevent reoffense by a registrant seem very small, but everyone listed on the public registry must endure burdens that we *know* from extensive social science research are generally criminogenic in their effects

- Thus, SORN laws traditionally operate (especially when broadly applied for a lifetime and when they are conviction-based) as the opposite of the reentry policies that we use in other contexts:

  - *To reduce recidivism, we traditionally:*

    - Encourage a desire to reform and improve
    - Facilitate opportunities for self-support and investing oneself in society
    - Make "going back" to prison an intolerable proposition

Other Things We Know

- The possibility of SORN laws reducing <u>overall sex-offense frequency</u> seems especially unlikely for additional reasons:

  1) *Almost all (>90%) sex offenses are committed by nonregistrants, so the potential upside is very small – "a small fraction of a small fraction of a small fraction" (e.g., 10% of 10% v. 10% of 90%)*

  2) *But enforcing burdensome SORN laws on so many registrants is costly, which reduces law enforcement's ability to focus on "first-time" offenses (a much larger threat)*

  3) *A registrant's registration status is often leveraged by cities and counties in ways that make compliance complex and more costly, adding more risk factor-enhancing burdens*

Other Post-Release Laws

- This same analysis applies to residency and work restrictions, and it generates very similar conclusions:

  1) *Very unlikely to prevent any recidivism*

     - Too many things must go exactly right to disrupt crime
     - Much more likely to simply displace crime to other locations

  2) *Burdensome on most registrants: exacerbates risk factors*

  3) *Costly to enforce: poor use of resources*

- Not surprisingly, there is no evidence that residency or work restrictions make any difference in reducing sex offense recidivism

A More Effective Registry?

- Minimize or eliminate features of SORN laws that exacerbate recidivism risk factors:
  - *Lower process costs (e.g., remote registration)*
  - *Improve targeting of requirements (only what's essential, risk-based registration) and information dissemination*
  - *Limited duration (reintegration on horizon)*
    - Tag to risk or seriousness (e.g., length of sentence, max 10 years)

- Improve chances of SORN preventing recidivism:
  - *Publicly register only high-risk, recently sentenced/released individuals*
    - I.e., do not dilute registries with low-risk individuals
  - *Replace public with law enforcement monitoring of high-risk registrants*
  - *Desistence incentives (include track off the registry and limit duration)*
    - Lifetime or decades of registration is counterproductive

- Redirect law enforcement resources to first-time sex offense prevention (end poor existing allocation of funds)

References

Agan, Amanda Y., and J.J. Prescott, "Offenders and SORN Laws," in *Sex Offender Registration and Notification Laws: An Empirical Assessment* (forthcoming 2021)

Prescott, J.J., and Jonah E. Rockoff, "Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?" *Journal of Law and Economics*, 53 (2011), 161–206.

Prescott, J.J., "Do Sex Offender Registries Make Us Less Safe?" *Regulation*, 35:2 (2012), 48–55.

Agan, Amanda Y., and J.J. Prescott, "Sex Offender Law and the Geography of Victimization," *Journal of Empirical Legal Studies*, 11 (2014), 786–828.

Agan, Amanda Y., and J.J. Prescott, "Sexual Offenses," in *Encyclopedia of Law and Economics* (2019), vol. 3 (O-Z) (Alain Marciano and Giovanni Battista Ramello, eds.) (New York: Springer) (first published online in 2015), 1871–84.

Prescott, J.J., "Portmanteau Ascendant: Post-Release Regulations and Sex Offender Recidivism," *Connecticut Law Review*, 47 (2016), 1035–78

Logan, Wayne A., and J.J. Prescott, eds., *Sex Offender Registration and Notification Laws: An Empirical Assessment* (Cambridge Univ. Press) (forthcoming 2021)