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Juvenile Sex Offenders and Sex Offender Legislation: Unintended Consequences¹

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DURING THE 1990s, growing concerns from sexual offenders regarding public safety prompted legislation to be enacted throughout the United States. The two primary pieces of legislation resulted in sex offender registration and sex offender notification, both of which were designed to promote public knowledge and visibility of convicted sex offenders. Whereas crimes committed by adult sex offenders against children directly influenced the creation of this legislation (i.e., Megan Kanka and Jason Wetterling), several states have since included juvenile sex offenders in their legislation (Center for Sex Offender Management, 2005). The inclusion of juvenile sex offenders in registration and community notification has sparked a great deal of debate as academics, criminologists and lawyers have discussed a range of implications. Two primary discussions have focused on the legislation's interaction with civil rights of juvenile offenders (Turoff, 2001) and with the rehabilitative philosophy of the juvenile justice system (Hiller, 1998; Swearingen, 1997; Trivits & Reppucci, 2002). In addition to these controversial issues, a small body of empirical research on sex offender legislation has begun to emerge addressing such issues as the efficacy of the legislation on sexual recidivism (Petrosino & Petrosino, 1999; Vasquez, Maddan, & Walker, 2008), characteristics of registered juvenile and adult sex offenders (Craun & Kernsmith, 2006), and public perceptions of sex offender legislation (Phillips, 1998; Proctor, Badzinski, & Johnson, 2002; Zevitz & Farkas, 2000). Missing from the empirical research, however, is an examination of the effect of the legislation on juvenile sex offenders, and more specifically, the effect of the legislation on dispositional decision-making and subsequent treatment implications for these youth.

This article intends to begin to address this gap in the literature through an examination of the treatment implications associated with efforts to avoid juvenile sex offender registration. To accomplish this, one full year of juvenile sex offense data from initial charge to treatment outcome was analyzed in a large, urban Midwest region. The findings suggest a possible unintended consequence of sex offender legislation on juvenile sex offenders: withholding juvenile sex offender treatment for youth that have committed sex crimes as a result of reduced charges at disposition in order to avoid registration requirements.

Review of the Literature

In 1994, President Bill Clinton signed the Jacob Wetterling Crimes Against Children and Sexually Violent Registration Act (Jacob Wetterling Act). The Jacob Wetterling Act established a national registry for sex offenders who committed sexual offenses against children or adults) or violent offenses against children. Following the inception of the Wetterling Act, several other pieces of legislation were enacted, including: 1) Megan's Law, 1996 (requiring community notification); 2) the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (heightening registration requirements for certain serious and repeat offenders); 3) the Appropriations Act for the Departments of Commerce, Justice, and State, the Judiciary of 1998 (basing registration on a range of offenses specified by state law); and 4) the Jeanne Clery Disclosure of Campus Security Police and Campus Crime Act of 2000 (requiring colleges and universities to notify the campus community about registered sex offenders on campus (Michigan State Police, 2006). It should be noted that although none of this legislation required states to register juvenile sex offenders, 32 states currently require some or all juvenile sex offenders to register and six states have developed separate registration laws for juveniles and adults (National Sexual Behaviors of Youth, 2008). The most recent legislation, the Adam Walsh Child Protection and Safety Act of 2006, was signed into law in August, 2006. This Act establishes a comprehensive national system for the registration of sex offenders, including juvenile offenders 14 years of age or older whose offense (or attempted offense) was comparable to or more severe than aggravated sexual abuse. The Adam Walsh Act is by far the most comprehensive piece of sex offender legislation that specifically includes juvenile sex offenders. Briefly, the Act contains several provisions related to the type of information that can be disclosed about the offender, the duration of registration requirements, and the extent of community notification, among other issues. States have three years from the passage of the Act to comply with its requirements.

Because of the far-reaching nature of the registration and community notification laws, sex offenders have been significantly differentiated from other types of offenders. As a result, there has been a great deal of controversy since the inception of the laws. Various challenges have been made to the constitutionality of the community notification law, including accusations that the law violates the Eighth Amendment's Cruel and Unusual Punishment Clause, the Ex Post Facto Clause, and the Fifth Amendment's Double Jeopardy Clause (Bredlie, 1996; Miller, 1998). Examining the constitutionality of the legislation with regard to juvenile offenders, the Due Process and Equal Protection Clauses of the Fourteenth Amendment have been questioned, since minors do not receive the protection of the Sixth Amendment (Turoff, 2001). Namely, whereas some states may mandate jury trials for juvenile offenders, there is no state or federal constitutional protection for jury trials involving juvenile defendants, thereby creating an unjust legal situation for juvenile offenders.

In addition to challenges against the constitutionality of the sex offender registration laws, opponents have argued that the legislation is in direct conflict with the rehabilitation philosophy of the juvenile justice system (Hiller, 1998; Swearingen, 1997; Trivits & Reppucci, 2002). With the inception of the juvenile justice system in Illinois in 1899, it was determined that juvenile offenders differed from adult offenders. As a result, the juvenile justice system was conceived with a focus on rehabilitation rather than punishment. Although certain legislative changes over the last century have at times resulted in attitudinal shifts toward a more punitive juvenile justice system (i.e., extending Constitutional rights of adult offenders to juveniles), historically the rehabilitative emphasis has continued to prevail (Trivits & Reppucci, 2002). Sex offender legislation has, however, once again challenged the system's rehabilitative philosophy, because the very nature of registration and community notification is viewed as punitive. In fact, community notification may result in social ostracism, as well as physical and emotional harm (Trivits & Reppucci, 2002).

Because of the controversy surrounding juvenile sex offender legislation, sex offender legislation has prompted legal attempts to avoid registration and community notification for juvenile offenders. As a result of legal maneuvers to avoid sex offender legislation for juvenile offenders, legal proceedings may be increasingly complex and as a result, the treatment needs of juvenile offenders may not be addressed. Bremer (2003) identifies three scenarios that illustrate the results of legal efforts to avoid registration requirements for juvenile sex offenders: 1) being granted a trial during which evidence may be insufficient to produce judicial findings of facts and youth may receive no intervention at all; 2) being granted a stay of adjudication for youth to begin treatment only to have treatment disrupted when adjudication is resolved prior to completion of treatment;

and 3) accepting a reduced charge that prohibits treatment even when evaluations indicate treatment is needed.

Michigan Sex Offender Legislation

Since 1995, both juveniles and adults have been required to register as sex offenders as a result of being found guilty of specific felony sexual offenses. In addition, information is made available to the public regarding adults convicted of specific sex crimes. The community notification legislation in Michigan also differentiates between juveniles and adults in another way: the identity of juvenile offenders is not released to the public until the juvenile's eighteenth birthday, whereas information regarding an adult offender's identity is immediately made available to the public.

In the Michigan region where this study took place, there were six primary sexual offense charges related to juvenile sex offenders. These offenses included the four classifications of Criminal Sexual Conduct (CSC I-IV), Gross Indecency, and Indecent Exposure. Criminal Sexual Conduct I (CSC I) is the most serious of the sexual offenses and involves penetration and typically the use of force and/or some form of coercion. Criminal Sexual Conduct II (CSC II) consists of sexual contact that involves the use of force and/or some form of coercion. Criminal Sexual Conduct III (CSC III) involves penetration without the use of force or coercion, and Criminal Sexual Conduct IV (CSC IV) involves contact without the use of force or coercion. Of the Criminal Sexual Conduct charges, CSC I – III are felony charges while CSC IV is a misdemeanor. Gross Indecency involves gross or indecent sexual behavior and is a felony charge while Indecent Exposure involves public exposure and is a misdemeanor. Of these six charges, CSC I, CSC II, and CSC III result in sex offender registration for juvenile sex offenders whereas CSC-IV, Gross Indecency, and Indecent Exposure do not require sex offender registration.

Because of the controversy surrounding the application of sex offender legislation to juvenile offenders (Hiller, 1998; Swearingen, 1997; Trivits & Repucci, 2002; Turoff, 2001), the author was specifically interested in examining dispositional decision-making and treatment implications of juvenile sex offenders to determine what, if any, impact the legislation may have had on these interdependent areas.

Method

This study analyzed one full calendar year of juvenile sex offender data in an urban region in Michigan. In particular, the study focused on initial charges, dispositional charges, and the treatment and/or service results related to dispositional charges as determined by dispositional decision-making.

The county provided the data for the study. There were a total of 299 juvenile sex offender petitions filed in the region in 2006. Two hundred and twenty-four of these cases were adjudicated before January 1, 2007. Of the 224 cases, 49 petitions were denied while 175 were approved. The study examined the 175 approved juvenile sex offender cases.

Variables

To promote an increased understanding of the relationship between initial charge, dispositional charge and treatment and/or service outcomes for juvenile sex offenders based on dispositional decision-making, four specific areas were examined. These areas included: initial charges (charges initially pursued by the prosecutor), case resolution (legal action taken by the court to address the initial charge), dispositional charges (adjudication charge), and case outcomes (service and/or treatment provided to the offender as a result of the dispositional charge). By examining these four major components, the author hoped to increase knowledge of the relationships between these four areas and their implications to juvenile sex offender treatment.

Results

Initial Charges

The majority of the initial charges were Criminal Sexual Conduct in the First Degree (CSC I), comprising 59 percent of the total (n=103 cases). The next largest portion of initial charges was CSC II, which constituted 23 percent (n=40) of all cases. CSC-III comprised 6 percent (n = 11) of

all cases, and CSC-IV comprised 7 percent (n=12) of the initial charges. The remaining 5 percent (n=9) of initial charges were classified as "other" and consisted of Electronic Stalking, Indecent Exposure, and Gross Indecency. It should be noted that because the region has one prosecuting attorney who handles all juvenile sex offender cases, the same prosecutor determined all initial charges based on the evidence provided by local law enforcement.

Case Resolution

The next step in the analysis focused on examining the legal action taken by the Court to resolve the case. The four methods of case resolution included: 1) the defendant was found Guilty as Charged, 2) the defendant was found Guilty of a Lesser Charge, 3) the defendant pled No Contest, or 4) the case was dismissed as a result of insufficient evidence for the case to proceed. Of the 175 cases, 82 percent (n=144) of the cases were initially resolved through finding the defendant Guilty of a Lesser Charge, while 10 percent (n=17) were found Guilty as Charged, and 7 percent (n=12) of the cases were Dismissed. One percent (n=2) of the defendants pled No Contest.

Dispositional Charges

The next area that was examined consisted of Dispositional Charges. The Dispositional Charge interacts with both the Initial Charge and the manner in which the case is resolved. The Dispositional Charge refers to the charge upon which the Court subsequently adjudicates the case. The Dispositional Charge has significant meaning, as the charged offense may result in the requirement of sex offender registration. Additionally, because the dispositional offense constitutes the adjudicated offense, this offense may directly impact the service and/or treatment outcome of the case as a result of the perceived severity of the charge (e.g., CSC I vs. Gross Indecency).

There were seven dispositional charges that included: CSC I - CSC IV, Gross Indecency, Indecent Exposure, and Assault. As stated above, 82 percent of the initial charges were pled down or reduced to lesser charges.

Of the 154 cases initially charged with CSC I – CSC III (each of which require sex offender registration), 51 percent (n=79) were pled down to Gross Indecency charges (which do not require sex offender registration and community notification). To more clearly examine this portion of the initial CSC I – CSC III cases, the breakdown per initial and dispositional charges were as follows: 57 percent (n=59) of the initial charges of CSC I were pled down to a dispositional charge of Gross Indecency, 40 percent (n=16) of initial charges of CSC II were pled down to Gross Indecency, and 40 percent (n=4) of initial charges of CSC III were pled down to Gross Indecency.

In addition to Gross Indecency, charges of CSC IV and Indecent Exposure do not require sex offender registration or community notification. Four percent (n=4) of the initial charges of CSC I resulted in dispositional charges of CSC IV and 2 percent (n=1) initial charge of CSC II resulted in a dispositional charge of CSC IV. Finally, 2 percent (n=2) of the initial charges of CSC I resulted in a dispositional charge of Indecent Exposure and 10 percent (n=1) of the CSC III charges resulted in a dispositional charge of CSC IV.

Case Outcomes

The final category consisted of Case Outcomes. Case Outcomes referred to action taken by the court as a result of the dispositional charge, specifically dealing with the status of services and/or treatment provided to the offender. There were four possible case outcomes: Dismissal, Plea Under Advisement, Court Probation, or Commitment to the region's juvenile justice system.

Dismissal refers to formal dismissal of the case. When a case is dismissed, no services are provided and no continued relationship exists between the youth and family and the Court. The second Case Outcome option was Plea Under Advisement. Under a Plea Under Advisement, defendants may be encouraged to participate in the court's juvenile sex offense education program or may voluntarily pursue community-based therapy with a private practitioner; however, there is no formalized requirement that such participation must occur. In Plea Under Advisement cases, the court holds 90-day reviews at which time cases may be dismissed or further action taken. Most Plea Under Advisement cases result in dismissal in less than one year. The third possible case outcome is Court Probation, which results in youth being monitored by the court's Probation Department. These cases are regularly reviewed by the court and typically youth remain on probation from 6 months to

2 years. Some of these youth may also be required to participate in the court's sex offense education program or may be required to participate in some form of sex offense education with a private practitioner. Finally, the case may result in the youth's commitment to the region's juvenile justice system at a specific security level that restricts the youth's freedom of movement in the community. Within the region's juvenile justice system, an array of community-based and residential programming is available, that includes a small continuum of juvenile sex offender-specific treatment options. The continuum includes community-based treatment (both intensive in-home treatment and probation), residential treatment, and aftercare treatment/relapse prevention. Youth that are committed to the region's juvenile justice system for probation are also eligible for community-based treatment funded by the region. Each of the three treatment options facilitated by the region's juvenile justice system provides juvenile sex offender-specific treatment.

It should be noted that with the exception of Court Probation, in which assigned youth may be required to participate in juvenile sex offender education, all of the juvenile sex offender-specific services and treatment options available to the region's youth are only available as a result of commitment to the juvenile justice system. In examining the Case Outcomes for the population, 30 percent (n=53) of all juvenile sex offender cases were committed to the region's juvenile justice system while 31 percent (n=55) were granted Plea Under Advisement status and 8 percent (n=13) of the cases were dismissed. Twenty-six percent (n=45) were placed on Probation with the Court. Additionally, 5 percent (n=9) cases that were originally identified as committed to the region's juvenile justice system, and were therefore, unable to be accounted for.

Comparing the Case Outcome data to the Initial Charge data, of the 88 percent of all youth that were initially charged with CSC I – III, only 43.5 percent received a dispositional charge of CSC I – III. As a result, of the 175 total cases reviewed, only 30 percent were ultimately eligible for county-funded sex offender treatment through the region's sex offender treatment continuum, since placement is largely dependent upon dispositional charge. It should also be noted that although 30 percent of this population was ultimately committed to the region's juvenile justice system, not all youth were subsequently referred for sex offender treatment.

Discussion

The descriptive data presented demonstrate several key issues worthy of further discussion that include the following: 1) based on the initial charge, the majority of juvenile sex crimes committed in the region were the most serious sex crimes, 2) the majority of juvenile sex crimes were pled down to lesser charges, most of which became Gross Indecency charges, and 3) the majority of juvenile sex offenders were not eligible for county-funded sex offender treatment as a result of dispositional charges.

As noted in the data analysis, the vast majority of juvenile sex crimes initially charged in the region were the most serious sex crimes, with 59 percent comprised of Criminal Sexual Conduct I and 23 percent comprised of Criminal Sexual Conduct II charges. CSCS I is the most serious sex crime, involving both penetration and force and/or coercion, whereas CSC II is the next most serious sex crime involving sexual contact and force and/or coercion. Together, these two offenses comprise 82 percent of the initial sex charges, illustrating a region dealing with very serious juvenile sex offenses.

The initial charge has particular significance as it refers to the initial alleged actions committed by the defendant. This charge is determined by the prosecuting attorney through a comparison of the case evidence to current legal statutes. As a result, the initial charge provides the closest thing to an objective initial assessment of the alleged crime and behavioral actions. The initial charge then, has specific importance as it relates to treatment implications, since treatment should be designed to address the specific behaviors displayed by the offender rather than addressing the results of legal action (i.e., reduced charge).

The second major point of discussion involves the plea process from initial charge to dispositional charge. As described earlier, 82 percent of the initial charges were reduced to lesser charges, with the majority of cases pled down to Gross Indecency, regardless of initial charge (e.g., CSC I – III). The data clearly illustrates little differentiation between initial charge and dispositional charge, since 57 percent of the initial charges of CSC I, 40 percent of CSC II, and 40 percent of CSC III resulted in reduced dispositional charges of Gross Indecency. Examining this data from another

perspective, of the 79 dispositional charges of Gross Indecency, 75 percent had initially been CSC I, while 20 percent consisted of CSC II and 5 percent had initially been CSC III. Again, this data has clear implications for treatment, since treatment should address the actual behaviors of the offender as best as they can be determined (i.e., CSC I-III), rather than identified behaviors resulting from legal action (i.e., Indecent Exposure, Gross Indecency).

As stated earlier, CSC I-III are felony charges that require sex offender registration, whereas Gross Indecency is a misdemeanor that does not require sex offender registration. Since a sizeable portion of each of the CSC charges I-III resulted in the dispositional charge of Gross Indecency, there appeared to be little attention given in decision-making to differentiating between the seriousness of the three CSC charges. As a result, it appears that avoidance of the registration requirement was a motivating factor in dispositional decision-making.

The final point of discussion involves treatment implications as a result of dispositional charges or the case outcomes. Because dispositional charges comprise the actual charge upon which the offender is ultimately adjudicated, the type of dispositional charge may have significant influence on case outcomes. Case outcomes identify the status and type of service and/or treatment provided to an offender as a result of the dispositional charge. As stated earlier, 8 percent of the dispositional charges resulted in case dismissal and 31 percent resulted in Plea Under Advisement, neither of which mandates service and/or treatment. Additionally, 26 percent of the cases resulted in county probation that provides a limited degree of community supervision and no treatment. Of the 175 juvenile sex offender cases completed in 2006, only 31 percent resulted in commitment to the region's juvenile justice system. This has great significance in terms of treatment implications, because the county's juvenile justice system funds juvenile sex offender treatment programming. Conversely, youth that do not enter the region's juvenile justice system were not eligible for county-funded treatment. Therefore, 69 percent of the youth that committed sex offenses were not eligible for county-funded sex offender treatment.

Ultimately, as a result of dispositional decision-making largely to avoid sex offender registration, juvenile offenders were prohibited from receiving juvenile sex offender treatment. This practice is highly contrary to the overwhelming research support regarding the efficacy of early intervention/treatment of juvenile sex offenders, which has established that early juvenile sex offender-specific treatment has produced recidivism rates of 16-24 percent (Miner, Siekert, and Ackland, 1997; Rasmussen, 1999; Sipe, Jensen, and Everett, 1998). Further, this is contrary to the belief that effective public policy requires the careful balancing of criminal justice sanctions that are designed both to enhance public safety and to punish criminal acts by providing effective interventions (Association for the Treatment of Sexual Abusers, 2001).

Limitations of the Study

This study examined one full year of juvenile sex offender data from one region, and as a result, contributes to the body of knowledge regarding the impact of sex offender legislation on dispositional decision-making. However, because a multi-year, multi-region data set was not used, the degree to which the data can be generalized is limited. Future studies should provide multi-region, multi-year comparative analyses to increase generalizability and increased understanding of any regional or geographic differences.

Conclusions

The introduction of sex offender legislation has significant implications for juvenile justice. Although the interaction of this legislation with civil rights and the ideological foundations of the juvenile justice system has begun to be explored, the impact of this legislation on dispositional decision-making is still largely unknown. In particular, because of the controversy surrounding sex offender legislation and juveniles, dispositional decision-making actions to avoid registration requirements may inadvertently prohibit treatment opportunities for this population, as evidenced in this study. This is an area that will require continuous examination to ensure that the strides that have been made in juvenile sex offender treatment and management are not inadvertently lost due to challenges faced by prosecutors and jurists attempting to work within the constructs of this legislation.

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References

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