SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION LAWS: AN EMPIRICAL EVALUATION

Despite being in existence for over a quarter of a century, costing multiple millions of dollars, and affecting the lives of hundreds of thousands of individuals, sex offender registration and notification (SORN) laws have yet to be subject to a book-length assessment of their empirical dimensions, examining their premises, coverage, and impact on public safety. This volume, edited by Professors Wayne A. Logan and J.J. Prescott, assembles the leading researchers in the field to provide an in-depth look at what have come to be known as "Megan's Laws," offering a social science-based analysis of one of the most important and controversial criminal justice system initiatives undertaken in modern times.

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Sex Offender Registration and Community Notification Laws

AN EMPIRICAL EVALUATION

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CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

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www.cambridge.org
Information on this title: www.cambridge.org/9781108420020
DOI: 10.1017/9781108328425

First published 2021

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data
NAMES: Logan, Wayne A., 1960- author. | Prescott, J.J., author.
TITLE: Sex offender registration and community notification laws : an empirical evaluation / edited by Professor Wayne A. Logan, Florida State University School of Law; J.J. Prescott, University of Michigan Law School.
DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2021. | Includes bibliographical references and index.
IDENTIFIERS: LCCN 2020047022 (print) | LCCN 2020047023 (ebook) | ISBN 9781108420020 (hardback) | ISBN 9781108328425 (epub)
SUBJECTS: LCSH: Sex offenders – United States – Registers. | Sex offenders – Legal status, laws, etc. – United States. | Publicity (Law) – United States. | Recording and registration – United States.
CLASSIFICATION: LCC KF9751 .L647 2021 (print) | LCC KF9751 (ebook) | DDC 345.73/0253–dc23
LC record available at https://lccn.loc.gov/2020047022
LC ebook record available at https://lccn.loc.gov/2020047023

ISBN 978-1-108-42002-0 Hardback

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Preface

In the early 1990s, a handful of US jurisdictions embarked on what would soon become an unprecedented nationwide experiment in social control. The idea was straightforward: require convicted sex offenders to provide identifying information to law enforcement, so that they could be monitored and more readily apprehended if they committed a sexual offense in their community. Imposing this "registration" requirement might, moreover, instill in targeted individuals the sense that they were being monitored, reducing the likelihood that they would re-offend.

The idea of requiring individuals convicted of crimes to apprise police of their whereabouts was not in itself an innovation, as several states and many localities had done so in various ways since the early 1930s. In the 1990s, however, registration was combined with a new strategy: "community notification," which shared identifying information of registrants with the public at large. No longer was registry information monopolized by police. It was now made available to individual community members, in the name of allowing them to both assist police in monitoring registrants and take safety measures to guard themselves or their family members against sexual victimization.

Initially, registrant information was provided to the public by police at community meetings, by flyers and newspaper postings, by making records available for inspection at police stations, and the like. Early on, police focused on a select group of registrants, those thought to pose a particularly serious risk of sexual recidivism. Over time, however, the number and intensity of notification methods grew, including use of the internet to disseminate the information via websites. At the same time, the scope of registration laws grew, covering new offenses, and notification evolved in many places to target all registrants, not a select few, often for their lifetimes.

Today, over twenty-five years after their modest origin, sex offender registration and notification (SORN) laws are in effect in all fifty states, the District of Columbia, Indian tribes, and US territories. SORN directly affects the lives of hundreds of thousands of registrants (closing in on, if not past, one million as of this writing), and indirectly impacts untold millions of individuals with whom they associate,

especially family members. Meanwhile, governments – at the federal, state, and local level – have spent and continue to spend many millions of dollars to create and sustain the vast legal and technological apparatus SORN requires, often contracting out work to private companies (which now have a business stake in the status quo).

SORN laws represent a remarkable political episode in our nation's history. Very often enacted in rapid-fire fashion by enormous legislative majorities, the laws have mushroomed over time, with political leaders fearful of being labeled "soft" on crime or "pro-sex offender," or being condemned for opposing or limiting a law named after a particular child victim (e.g., "Megan's Law," "Zachary's Law"). Rounding out the political dynamic, the federal government since 1994 has required that jurisdictions adopt SORN laws and amend them in accord with increasingly demanding federal policy preferences, threatening the loss of criminal justice funds if they do not comply. Moreover, SORN has figured in other social control measures targeting sex offenders, such as state and local laws prohibiting registrants from living near (e.g., within 2,000 feet of) places where children might congregate, such as community centers or schools. Emblematic of its appeal and adaptability as a social control strategy, governments have now applied registration and notification to other subpopulations (e.g., convicted drug offenders, individuals convicted of animal abuse).

The foregoing history, while interesting and important in its own right, ignores an important part of the story: the assumptions that advocates and politicians have used – for decades – to support the enactment and growth of SORN laws. From the outset, SORN has been predicated on several key empirical beliefs: (1) that convicted sex offenders recidivate at alarmingly higher rates compared to other criminal subpopulations, justifying the need for SORN; (2) that communities need identifying and locational information on registered sex offenders because most child and adult sexual victimization is by strangers; and (3) that SORN laws "work" – that is, they reduce sexual offending and promote public safety.

Research has shown, however, that the first two empirical premises are incorrect: Sex offenders, as a group, do not recidivate at significantly higher rates than other offender populations (Hanson et al., 2018) and most sex offenses are committed by first-time offenders (Sandler et al., 2008) (who, by definition, are not registrants). Furthermore, the vast majority of sex offenses targeting adults and children alike are committed not by strangers but rather by individuals familiar to victims (Bureau of Justice Statistics, 2010). The third premise – that SORN "works" in achieving its public safety goals – has always been accepted as an article of faith by proponents. As several of the chapters here attest, however, a growing body of research casts doubt on whether SORN actually does promote public safety; worse yet, concern exists that the negative life impacts of SORN significantly hinder the challenging reentry prospects of an already reviled subpopulation.

Viewed in a broader context, the sustained willingness of law and policy makers to blithely assume the effectiveness of SORN, or to not care, is striking. One would be

hard-pressed to identify a governmental policy having similar human and fiscal costs and consequences that has, for such a long time, rested on untested foundational empirical assumptions. Year after year since the early 1990s, SORN laws have eluded critical scrutiny in legislative chambers and governors' offices, not only enduring but flourishing in scope. And they have done so despite widely reported system failures, such as the discovery of California registrant Philip Garrido, who, while compliant with SORN, kidnapped and sexually abused a young woman for almost two decades (Farrell, 2009).

This volume seeks to remedy the basic knowledge deficit that for too long has marked SORN, assembling in one place the research and insights of the nation's leading SORN researchers.

The first chapters of the book provide important background on how SORN laws came about and their current nature and coverage. Chapter 1 provides a brief history of SORN laws, which, as noted earlier, have their origins in registration laws enacted in the 1930s, complemented in the early 1990s by the important innovation of community notification. Chapter 2 describes modern SORN laws in the United States, identifying their shared features and variations, especially vis-à-vis federal SORN requirements, recognizing as well the far less ambitious SORN-like laws adopted in a handful of other countries. Chapter 3 provides an in-depth examination and analysis of the populations on the nation's registries, painting a demographic picture (age, race, sex) of registries and the criminal histories of the individuals on registries, and discusses the research challenges regarding the collection of reliable data.

Focus then shifts to the measurable consequences of SORN laws. Chapter 4 examines the effects of SORN laws and their enforcement on the beliefs and behavior of law enforcement–critically important participants in SORN systems–as well as the fiscal consequences of SORN enforcement. Chapter 5 assesses the impact of SORN on the beliefs and behaviors of community members, the intended beneficiaries of notification in particular. Chapter 6 evaluates the many ancillary consequences of SORN, including its impact on the ability of registrants to secure and maintain work and housing, the negative reactions of community members (such as harassment), the spatial ghettoization of registrants, and the influence of SORN on sex offense reporting rates and the charging and judicial processing of sex offenders.

Chapter 7 sits at the center of the empirical policy debate on SORN; it explores existing research on the effects of SORN laws on registrant criminal behavior, especially with regard to the key policy question of whether SORN reduces sexual offending recidivism, as well as its potential for deterring first-time offenders. Chapter 8 focuses on research regarding the etiology of sexual offending and examines whether this knowledge base aligns with the assumptions underlying SORN, addressing as well whether SORN laws may, as some evidence suggests, contribute to sex offense recidivism. The chapter also includes recommendations for SORN policy and management practices based on what we know about offender

risks, needs, and patterns. Chapter 9 addresses the controversial but quite common practice of subjecting juveniles to SORN, examining the impact of SORN on juveniles and surveying research on whether SORN actually reduces juvenile sexual offending.

The volume concludes with a call for evidence-based action with regard to SORN. With sex offender policy in particular, one often hears that a policy or practice is justified if "even one child is saved," regardless of broader public safety efficacy. Even less constructive, there is the view that, if nothing else, public shaming of convicted sex offenders is valuable in itself. Of late, however, there appears to be emerging a willingness to critically examine SORN and an openness to testing its basic suppositions and public safety impact.

For instance, courts, which typically have rejected constitutional challenges to SORN out of deference to legislative assumptions concerning the need for and efficacy of SORN, are now exhibiting a greater degree of critical scrutiny (see, e.g., *Does* #1–5 v. *Snyder*, 2016; *In re* J. B., 2014). Also, governmental bodies have recently urged changes to SORN (see, e.g., Connecticut Sentencing Commission, 2017; Washington State Sex Offender Policy Board, 2016), as have entities such as the Council of State Governments (2010) and the highly respected American Law Institute (ALI, 2019). The State of California, faced with criticism of its lifetime, one-size-fits-all SORN system (Calif. Sex Offender Mgmt. Bd., 2014), recently adopted a slate of major reforms, shifting from a one-tiered, purely offense-based scheme, requiring lifetime registration, to a three-tiered scheme of lesser durations based in part on individual risk assessments (Calif. Dept. of Justice, 2020).

Together, these developments, and others still likely to come, highlight a modest yet important shift, providing a potential window of opportunity for evidence-based reevaluation of SORN laws. Given the popularity of SORN among political leaders and the public alike, it is unlikely that these laws will disappear in their entirety anytime soon. We hope, however, that the insights provided in this volume, a single-source compilation of the latest empirical understandings of SORN, will advance the cause of evidence-based policy and guide the way toward adoption of SORN laws and policies that best promote public safety.

REFERENCES

American Law Institute, *Model Penal Code: Sexual Assault and Related Offenses* § 213.11A et seq. (Prelim. Draft No. 11, October 16, 2020), https://www.ali.org/smedia/filer_private/31/38/3138e339-a68f-4bac-9616-5e308904c827/mpc_sa_pd_11_-_online.pdf

Bureau of Justice Statistics, National Crime Victimization Survey 2010, Washington, www.bjs.gov/content/pub/pdf/cv10.pdf

Calif. Dept. of Justice, *Frequently Asked Questions-California Tiered Sex Offender Registration* (Last Updated January 1, 2020), https://oag.ca.gov/sites/all/files/agweb/pdfs/csor/registrant-faqs.pdf

Calif. Sex Offender Mgmt. Bd., *A Better Path to Community Safety: Sex Offender Registration in California* 5 (2014), www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf

Connecticut Sentencing Commission, *A Study of the Sex Offender Sentencing, Registration, and Management System* (December 2017), http://ctsentencingcommission.org/wp-content/uploads/2018/05/Sex_Offender_Report_December_2017.pdf

Council of State Governments, *Sex Offender Management Policy in the States: Strengthening Policy & Practice*, *Final Report* 6 (2010), www.csg.org/policy/documents/SOMFinalReport-FINAL.pdf

Does #1–5 v. *Snyder*, 834 F.3d 696, 706 (6th Cir. 2016), *cert denied*, 138 S. Ct. 55 (2017)

Farrell, M. B. (November 6, 2009), *Report: GPS Parole Monitoring of Phillip Garrido Failed*, Christian Science Monitor, www.csmonitor.com/USA/2009/1106/p02s04-usgn.html

In re J. B., 107 A.3d 1, 20 (Pa. 2014)

Hanson, R. K., Harris, A. J., Letourneau, E., Helmus, L. M., & Thornton, D. (2018). Reductions in Risk Based on Time Offense-free in the Community: Once a Sexual Offender, Not Always a Sexual Offender, *Psychology, Public Policy, & Law*, 24(1), 48–63

Sandler, J., Freeman, N., & Socia, K. (2008). Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law, *Psychology, Public Policy & Law*, 14, 284–302

Washington State Sex Offender Policy Board, *General Recommendations for Sex Offender Management* 10 (2016), https://sgc.wa.gov/sites/default/files/public/sopb/documents/general_recommendations.pdf

Acknowledgments

The editors wish to express their gratitude to their fellow contributing authors, who generously dedicated their time and effort, and without whom this volume would not have been possible. Also, thanks to research assistants Alex Lenk (FSU Law, 2020), Genevieve Lemley (FSU Law, 2021), and German Marquez Alcala (UM, Empirical Legal Studies); administrative assistants Derinda Kirkland and Kathleen Meell; research librarians at FSU Law and Michigan Law; and Michigan Law for hosting the volume's authors one beautiful fall weekend in Ann Arbor to meet, discuss, and critique draft versions of chapters.