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Sex Offender Policy and Practice: Comparing the SORNA Tier Classification System and Static-99 Risk Levels

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ABSTRACT

Since the 1990s, the United States has witnessed a proliferation of laws aimed at tracking and managing sex offenders. Over time, these laws have resulted in increased restrictions on those who have committed a sex offense. In 2006, the Adam Walsh Child Protection and Safety Act was passed. Also known as the Sex Offender Registration and Notification Act (SORNA), these new guidelines standardize policies directed at sex offenders across the United States. Convicted and released sex offenders are classified into a three-tier system based on their offense at conviction. This designation is used to drive registration and notification guidelines. The State of Ohio was the first to comply. Conversely, actuarial risk assessments are now commonly used in practice to determine an offender's risk of recidivism. Offenders are classified into risk levels that determine the statistical probability that they will commit another offense. Sex offenders in Ohio are given a Static-99 risk assessment when they enter a state-run prison. The risk level designation determines supervision and treatment while an offender is incarcerated.

The current study investigated whether the SORNA system can be used to determine the potential risk a sex offender poses to commit another offense once released back into the community. Furthermore, the Static-99 was evaluated to determine if the risk levels were predictive of recidivism. Overall, those who were classified as Tier I were re-incarcerated at higher rates compared to Tier II and Tier III offenders over several of the analyses. Conversely, those who were classified as low risk under the Static-99 generally had the lowest levels of re-incarceration while those classified as high risk had higher rates of recidivism. However, these results dissipated when controls were added. The main recommendation proposed in this study is to augment the current tier system with the risk assessment tool whenever possible to address registration and notification requirements.

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CHAPER 1: INTRODUCTION

Beginning in the 1990s and continuing on into the 2000s, those convicted of sex offenses have been subjected to a proliferation of laws aimed at registration and notification (Ewing, 2011; Freeman, 2012; Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2009; Nieto & Jung, 2006; Tewksbury & Jennings, 2010; Vásquez, Madden, & Walker, 2008; Zgoba, Veysey, & Dalessandro, 2010). Sex offender registration laws require sex offenders to provide ongoing contact information and other identifying data to law enforcement. Sex offender notification requirements expand registration laws by making contact and criminal history information available to the public. This is commonly communicated by means of internet websites known as sex offender registries. These sex offender registration and notification (SORN) laws are mandated by the federal government and now exist in every state, although specific guidelines vary from state to state (Ewing, 2011; Nieto & Jung, 2006).

The State of Ohio implemented its first SORN law in 1996. Several modifications were made to these laws over the next decade. In 2007, the Ohio state legislature passed Senate Bill 10, which implemented the Adam Walsh Child Protection and Safety Act of 2006. This federal policy requires convicted and released sex offenders to be classified into one of three tiers based on their offense at conviction. Additionally, the categories of offenses that qualify for registration and notification were broadened. Other sex offender related sanctions were also expanded.

While policy has changed with respect to the registration, notification, and classification of sex offenders in the State of Ohio, practices within the criminal justice system have also evolved. When a convicted sex offender enters a state-run prison in Ohio, they are evaluated using an actuarial risk assessment tool, currently the Static-99, in order to determine their risk of

recidivism. Actuarial risk assessments are evidence-based tools derived from decades of research and incorporate known predictors of sexual recidivism (Hanson, 1997; Hanson & Harris, 2000; Hanson & Thornton, 2000; Quinsey, Lalumiere, Rice, & Harris., 1998). Levels of supervision and treatment targets are determined based on the risk assessment designation.

The current study attempts to evaluate and compare both the tier classification system and the risk assessment tool in terms of predicting recidivism. There is a small, yet growing, body of literature that has examined the impact of SORN laws on recidivism. The paucity of empirical research on this topic is partly due to the recent implementation of these laws and methodological challenges. Problems include difficulties obtaining reliable recidivism data, low base rates, and the need for long follow-up periods (Levenson & D'Amora, 2007). These were also issues in the current study and will be discussed in the last chapter. However, Ohio was the first state to implement the Adam Walsh Act. Additionally, Ohio was first to be federally certified as having substantially implemented the new guidelines; therefore, this study provides important insights despite the limitations.

This chapter provides an introduction to SORN laws and the current Adam Walsh Act. First, an overview of SORN policies is provided. Modern policies dealing with sex offenders have continued to evolve since the early 1990s. Second, SORN laws specific to the State of Ohio are discussed. Finally, specific research questions pertaining to the current study are outlined.

AN OVERVIEW OF SORN LAWS

Contemporary SORN laws are the result of legislation and court decisions that began in the 1990s; however, specific policies aimed at tracking and managing sex offenders date back to the 1930s (Ewing, 2011). Cities and towns often passed local ordinances requiring those

convicted of various offenses, including sex offenses, to register with the law enforcement. In 1947, California became the first state to enact registration laws specific to sex offenders (Riddle, 1967; Nieto & Jung, 2006). Specifically, this legislation required those convicted of habitual sex offenses to register with local police. Following the enactment of this law, several other states also passed sex registration laws including Arizona in 1951, Nevada in 1961, Ohio in 1963, and Alabama in 1967 (Ewing, 2011).

Goals of SORN

Historically, the primary purpose of requiring sex offenders to register was to provide law enforcement with additional information to help monitor these offenders. Today, various databases are used by law enforcement to aid in the investigation of new allegations. Modern public notification laws aim to inform citizens about offenders being released to the community. Furthermore, notification is thought to increase community scrutiny resulting in offenders who are less likely to re-offend (Nieto & Jung, 2006). Moreover, those who do re-offend would also be apprehended more quickly because of community involvement (Nieto & Jung, 2006). Taken together, SORN laws aim to increase the investigative powers of law enforcement, inform citizens about potentially dangerous offenders, and deter offenders from committing future crimes. Attainment of these goals is hypothesized to increase public safety (Nieto & Jung, 2006). As a result, policies have continued to be enacted so that these goals may be achieved.

Contemporary SORN Laws

The Community Protection Act of 1990 was one of the first contemporary SORN laws to be enacted throughout the United States. Under this Act, penalties for sex offenses increased and a community notification system was put into place. Additionally, civil commitment laws were

created to incapacitate offenders considered to be sexually violent predators. Washington was the nation's first jurisdiction to pass modern registration and notification laws.

In 1994, the Jacob Wetterling Act was passed by the U.S. Congress as a part of the Omnibus Crime Bill of 1994. This Act required each state to develop a registry of convicted sex offenders. Furthermore, the Act required states to verify the addresses of sex offenders annually for a period of at least ten years. Under this law, states had full discretion if and how they would distribute registration information to the public. In 1996, the Jacob Wetterling Act was amended requiring law enforcement to make the registration information available to citizens. This expansion is commonly known as Megan's Law. In 2003, the Act was modified once again requiring states to maintain websites so that the public could easily access information about registered sex offenders in the community.

These federal guidelines gave substantial leeway to the states in how to implement SORN guidelines (Levenson, 2010). For example, each state could choose which sex offenders would be listed on the sex offender registry. About half of the states limited notification to those sex offenders who they determined posed the most danger. There were numerous models to make this determination. Some states, such as New Jersey and California, based notification upon the results of actuarial risk assessment tools. Other states, such as Florida, released information about all convicted sex offense regardless of their risk for recidivism (Levenson, 2010).

In 2006, the Adam Walsh Child Protection and Safety Act was passed. This Act repealed all other previous legislation. Also known as the Sex Offender Registration and Notification Act (SORNA), these new guidelines standardize registration and notification procedures across the United States, expand notification requirements for juvenile sex offenders, and require states to list all sex offenders on state and national registry websites. Under this new system, classification

is based solely on the offense at conviction. Sex offenders are organized into one of three tiers, which vary in terms of supervision and notification requirements. Non-compliance by any state results in a 10% reduction of Byrne Justice Assistance Grants (JAG) funding. This funding provides monetary allocations to each state for the purposes of crime prevention. Currently, seventeen states are in "substantial compliance" with the law (Office of Justice Programs, 2013b). Other states have opted for alternative policies to register and classify sex offenders.

SORN Classification Types

With the emergence and continued evolution of contemporary SORN policies, states have developed a variety of methods to classify sex offenders. Additionally, states have altered these methods with some frequency to adhere to federal mandates, shifts in internal ideology, and/or to address budgetary concerns. Some states use an offense-based classification system where offenders are organized based on their offense at conviction. Other states utilize actuarial risk assessment tools to classify offenders into risk categories. A hybrid model of classification is also used. Under a hybrid model, both conviction at offense and actuarial risk assessments are used for classification purposes.

Offense-Based Classification

Offense-based systems use predetermined classifications. Legislators define the offenses that require classification. Offenders are placed into classification levels based on their perceived dangerousness, which is based primarily on the offense they were convicted. These systems utilize the nature and severity of the conviction offense and/or the number of current offenses as the main criteria for classification. Prior criminal history is not typically considered in this type of classification approach. Advantages of offense-based systems include their

simplicity and uniformity (Harris et al., 2010). In most cases, classification decisions are made through systematic processes that requires little to no personnel involvement.

The main disadvantage to using an offense-based system is that risk factors known to predict recidivism are not considered for classification. This will be further explored in the upcoming chapter. There are also some potential disadvantages moving specifically to the SORNA system. First, using an offense-based system does not necessarily mean that a state is SORNA complaint. Any state wanting to achieve compliance must convert their existing system to align with the SORNA guidelines. States would incur an additional cost to do this. Second, SORNA expands the list of offenses that fall under the guidelines. Additionally, many juveniles are now eligible for registration. This can lead to a net-widening effect by expanding the number of sex offenders that are required to register (Harris & Lobanov-Rostovsky, 2009; Harris et al., 2010). Finally, there is some concern that offenders who were assigned to lower classification levels, with lower requirements, would be reassigned to higher tiers under SORNA (Harris et al., 2010). This would increase the number of registrants required to register for a longer period of time. Additional resources would be needed to manage these additional offenders. These issues will also be further explored further in the next chapter.

Risk Assessment Classification

Actuarial risk assessments are now commonly used to determine an offender's risk of recidivism. These instruments determine the statistical probability that an offender will commit another offense. Prior to the development of actuarial risk assessments, clinical judgment was the primary source to determine the recidivism risk for offenders (Bonta, 1996). These clinical assessments usually involved subjective judgments based on intuition made during unstructured interviews with clients and consistently show predictions no greater than 50%. In other words,

these assessments predict the risk of recidivism no better than predicting by chance alone (Andrews & Bonta, 2010; Monahan, 1981).

Second generation actuarial risk assessments use static risk factors, or risk factors that do not change, to classify clients into risk levels (Andrews & Bonta, 2010). These risk assessments are improvements over clinical judgment because they are objective and use the same criteria for all clients. A main weakness of these risk assessments is that they do not consider dynamic factors, or those factors that can be changed over time (Andrews & Bonta, 2010).

Third generation actuarial risk assessments improve upon the second generation tools because they contain both static and dynamic risk factors (Andrews & Bonta, 2010). These types of instruments (e.g., the LSI-R) have been shown to be effective at properly classifying general offenders. However, supplemental assessments are needed for special populations, such as sex offenders (Gendreau, Goggin, & Paparozzi, 1996). Many sex offenders are often found to be low risk on scales designed to predict general criminal recidivism (Bonta & Hanson, 1995); therefore, there became a need to design tools to specifically concentrate on sexual deviance.

In the past 20 years, there have been considerable advances in identifying those risk factors specific to adult sex offenders. Research on sexual offending has resulted in the development of several risk assessment instruments (Hanson & Bussière, 1998; Hanson & Harris, 2000; Hanson & Morton-Bourgon, 2004; Hanson & Morton-Bourgon, 2005; Hanson & Morton-Bourgon, 2009; Mann, Hanson, & Thornton, 2010). According to Saleh and colleagues (2009), the most commonly used risk assessments for adult sex offenders include the Minnesota Sex Offender Screening Tool – Revised (MnSOST-R; Epperson, Kaul, & Hesselton, 1998); the Violence Risk Appraisal Guide (VRAG) and the Sex Offender Risk Appraisal Guide (SORAG;

Quinsey et al., 1998); the Rapid Risk Assessment for Sex Offence Recidivism (RRASOR; Hanson, 1997); and the Static -99 (Hanson & Thornton, 2000).

Actuarial risk instruments are the preferred method to discern the risk for sexual recidivism (Andrews, Bonta, & Wormith, 2006; Grove & Meehl, 1996; Janus & Prentky, 2003). Actuarial risk assessments have been shown to better predict recidivism compared to a standard clinical assessment. For example, Hanson and Bussiere (1998) found significant differences in the average effect sizes for clinical risk assessments (r = .10) versus actuarial risk assessments (r = .46) in predicting sexual recidivism. One main weakness of using an actuarial risk assessment to classify offenders is that it does generally require more involvement from criminal justice personnel over a purely offense-based approach.

Hybrid Models of Classification

Some states use a hybrid model of classification containing both an offense-based system and risk-assessment tool. For example, Colorado uses the conviction offense but also incorporates information from an actuarial risk assessment tool to identify and designate sexually violent predators (Harris et al., 2010). Under a hybrid-based system, most individuals convicted of a sex crime have their cases referred to a committee who evaluate their individual history and details of the conviction offense. Recommendations about classification are made to the court following the committee's review. Using a hybrid model requires much higher levels of involvement by personnel compared to a purely offense-based approach. Only a handful of states currently use a hybrid system to classify offenders (Harris et al., 2010).

OHIO SEX OFFENDERS

As previously stated, Ohio's first SORN law was enacted in 1996. In 1997, the Governor signed House Bill 180, the Sexual Offender Registration Bill, into law. This bill required each

Sheriff's Office throughout the State to develop and implement a registration system for convicted sexual offenders. Over the next decade, several amendments were made to Ohio's SORN law that expanded the types of offenses and offenders that were subjected to registration and notification. However, these laws were not retroactive. Meaning the guidelines only applied to those adult offenders that are incarcerated, under supervision, or convicted of an offense on or after July 1, 1997 and juveniles that committed an offense on or after January 1, 2002 and were at least 14 years of age at the time of the offense (Cordray, 2009; ODRC, 2007).

Historical Context

Ohio's SORN law has been amended several times. One of the first major revisions to the law occurred in 2002 when Senate Bill 3 extended SORN to include juvenile offenders. Specifically, this amendment meant that an adjudicated delinquent became subject to similar registration and notification requirements as adult offenders, however, there were some differences. The length of registration for Tier I and Tier II juvenile offenders was shorter than that of adults. Juveniles under the age of 14 were not subject to registration. Finally, the court maintained discretion on how to classify the juvenile into the tier system and if notification was required.

In 2003, new categories, known as child-victim oriented offenses, were added to the bill. This amendment also added classes of offenses where no registration was required, enacted statutes that prohibit registered sex offenders from living 1,000 feet from any school, and increased penalties for registration violations. The state also established a sex offender registry website, known as eSORN. In 2005, additional changes were made to address homeless offenders, extended the authority of prosecutors to evict offenders who violate the residence restrictions guidelines, and further clarified the sexually violent predator sentencing law.

In 2007, the Ohio state legislature passed Senate Bill 10 implementing SORNA (Cordray, 2009). SORNA refers to Title I of the Adam Walsh Act. With the passing of this bill, registration and notification laws were greatly expanded. For example, the number of offenses subject to registration increased, registration periods were extended, and notification guidelines expanded to include more offenders. In 2008, the Ohio Attorney General's Office submitted a substantial implementation package to the U.S. Department of Justice. In September of 2009, Ohio became the first state to be certified as having "substantially implemented" the SORNA requirements (Office of Justice Programs, 2013b).

Current Classification System in Ohio

Ohio classifies sex offenders in two ways. An offender receives an actuarial risk assessment score upon entering the state prison system. These scores are used to assign sex offenders to appropriate levels of treatment and supervision while incarcerated. Once an offender is released, the State Attorney General's office classifies offenders into the SORNA tiers based on conviction offense. This classification approach determines the supervision, notification, and registration requirements for an offender upon release.

Actuarial Risk Assessments

Upon a conviction and entrance into a state-run prison in Ohio, a sex offender is given a risk assessment so that they may be classified into a risk level. As previously stated, this information is used to designate supervision and treatment needs while the offender is incarcerated. Offenders in Ohio are initially processed through the reception center and all male inmates who are designated as sex offenders are transferred to Sex Offender Risk Reduction Center (SORRC) located in Orient, OH (ODRC, 2013). Offenders are given an orientation to the