

### **Evidence-based Recommendations for Florida's Sex Offender Registry System**

It is estimated that there are currently over 800,000 registered sex offenders in the United States, with nearly 60,000 on Florida's registry (Ackerman, Harris, Levenson, & Zgoba, 2011; Ackerman, Levenson, & Harris, 2012; National Center for Missing and Exploited Children, 2015a). As those numbers continue to grow and more sex offenders are publicly identified within online registries, law enforcement resources are spread thin, and the ability of the public to distinguish truly dangerous offenders is diluted. Enormous resources are needed to enforce registration compliance and track violators, reducing budgets for primary prevention and victim services.

Public registries should be reserved for higher risk offenders. In this way, the public can be better informed specifically about pedophilic, predatory, repetitive or violent sex offenders likely to commit new sex crimes. At the same time, collateral consequences could be minimized for lower risk offenders reintegrating into society and attempting to become productive, law abiding citizens. These goals could be achieved by considering registry reform in five major areas.

#### **1. Juveniles should be removed from Florida's registry**

The deleterious consequences of registration are particularly salient for juvenile sex offenders (Chaffin, 2008; Letourneau & Miner, 2005). The Adam Walsh Act initially required states to register juveniles as young as 14 who were adjudicated of sexual crimes, but later revised its mandate to allow it to be discretionary after significant pushback from developmental psychologists, treatment specialists, and attorneys. More recently, legal scholars have raised the question of the constitutionality of juvenile registration given the U.S. Supreme Court's decision that lifetime sentences for juvenile offenders violate the Eighth Amendment (Parker, 2014; Sterling, 2015). A shocking report by Human Rights Watch documented the irreparable harm of juvenile registration on youth and their families as reported in nearly three hundred interviews (Pittman & Parker, 2013). On page 5, the devastating effects are itemized:

Youth sex offenders on the registry experience severe psychological harm. They are stigmatized, isolated, often depressed. Many consider suicide, and some succeed. They and their families have experienced harassment and physical violence. They are sometimes shot at, beaten, even murdered; many are repeatedly threatened with violence. Some young people have to post signs stating "sex offender lives here" in the windows of their homes; others have to carry drivers' licenses with "sex offender" printed on them in bright orange capital letters. Youth sex offenders on the registry are sometimes denied access to education because residency restriction laws prevent them from being in or near a school. Youth sex offender registrants despair of ever finding employment.

A survey of juvenile sex offender treatment specialists concurred that these negative psychological effects are seen in 85% of registered youth, and that approximately 20% had attempted suicide (A. J. Harris, Walfield, Shields, & Letourneau, 2015). It is unlikely that these consequences are markedly different for young adults who have crossed their 18<sup>th</sup> birthday; the severe limitations placed on one's future potential are daunting.

Juvenile offenders should not be placed on registries. In the absence of evidence that registries effect a meaningful drop in recidivism, the stigmatization and impediments to healthy

social and psychological development should hold significant weight. The obstacles to academic opportunities and subsequent employment, and their long-term consequences, contradict research informing us about what youth need in order to feel invested in their futures and in conformity to the rules and norms of society (Paternoster & Iovanni, 1989; Triplett, 1994). Youth should not be labeled and defined for life by the single worst decision they might have made as a teenager. Some youth may have antisocial or sexually deviant traits, but most are also amenable to rehabilitation when the proper treatment is offered (Letourneau & Borduin, 2008; Reitzel & Carbonell, 2006). Registration, if used for juveniles, should be reserved for those charged as adults, and not applied to those adjudicated delinquent.

## **2. Durations of registration should be reduced for some offenders**

The world's leading researchers on sex offender risk and recidivism have been conducting longitudinal research for over two decades (Hanson & Bussiere, 1998; Hanson, Harris, Helmus, & Thornton, 2014; Hanson & Morton-Bourgon, 2005; A.J.R. Harris & Hanson, 2012). They have developed, refined, and validated actuarial risk assessment tools that demonstrate good predictive ability to screen offenders into relative risk categories (Hanson & Morton-Bourgon, 2009; Hanson & Thornton, 1999; Hanson, Thornton, Helmus, & Babchishin, 2015; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012). We now have reliable knowledge about the long-term outcomes of sex offenders who have been assessed with different levels of risk, and these data are enormously helpful in formulating policy decisions.

We know that those with prior sex crimes are already recidivists, and are at increased risk for new sex crime arrests. We know that child molesters of boy victims are at highest risk, (Hanson & Morton-Bourgon, 2005; A. J. R. Harris & Hanson, 2004), that non-contact offenders such as exhibitionists are among the more compulsive and repetitive (Hanson & Thornton, 1999), and that child pornography possessors are among those at lowest risk for future child molestation offenses (Eke, Seto, & Williams, 2011). We know that rapists of adults tend to be at higher risk for repeating their behavior, and are also more likely to injure their victims and to use force and weapons. We know that stereotypical sexually motivated stranger abductions— though they've fueled SORN policy development – are exceedingly rare (115 per year of children and 332 per year total; 2% of total missing child cases) (Kessler, 2015) and that about 15% of perpetrators were registered as sex offenders at the time of the crime (National Center for Missing and Exploited Children, 2015b).

Compelling evidence exists to guide registry durations by looking at the longitudinal patterns of post-conviction offending (Hanson et al., 2014; A.J.R. Harris & Hanson, 2012; Levenson & Zgoba, 2015). We know that risk declines substantially with older age, and with time spent in the community offense free. Low risk sex offenders, from the time of conviction, are less likely to be arrested for a subsequent sex crime than general criminal offenders. After 10 years, moderate risk sex offenders reach recidivism rates comparable to general criminal offenders, and after 16 years offense free, even high risk sex offenders are no more likely to be arrested for a new sexual crime than a criminal with no prior sex crime history. Thus, it is unlikely that registration periods beyond 20 years (at the longest) provide any additional value even for high risk offenders, but for lower and moderate risk offenders, 10 years duration provides sufficient time to demonstrate their post-conviction patterns of recidivism. The caveat is that there are always exceptions to rules, and certainly there will be offenses not detected or reported. Those with multiple convictions should be carefully evaluated and repeat offenders

should be subject to the closest scrutiny. However, in terms of efficient use of fiscal and human resources, these data provide persuasive guiding principles for registration duration policies.

### **3. Discretion about placement on registry at sentencing should involve risk assessment**

Mandatory offense-based registration schemes have removed discretion from judges. According to the Adam Walsh Act, and SORN laws in Florida, if an individual is convicted of certain statutes, registration requirements apply. Few alternatives are available for judicial actors, and few remedies for relief are available for offenders once registered. The lack of discretion regarding registration sometimes leads to plea bargains to non-sexual crimes.

The use of empirically derived risk assessments based on factors known to correlate with recidivism should be used to identify those who pose the greatest threat to public safety. In this way, estimations of risk can be made on a case-by-case basis, ideally before sentencing, and recommendations to judges can be made according to objectively defined evidence-based criteria. As with sex offender civil commitment procedures, review of official criminal records is necessary to make this determination, in order to clearly understand the characteristics of the offender and his criminal history.

The assessment should include an evaluation of risk factors and criminal history, and a determination whether the subject meets criteria for a paraphilic or personality disorder that renders him likely to act on deviant sexual impulses in the future (Doren, 2002; Hanson & Morton-Bourgon, 2005, 2009; Seto, 2008). Dynamic risk factors pertaining to criminogenic needs should also be considered, as well as motivations for the offense, amenability to treatment, indicators of other criminal behavior or thinking, age at offense, and other mental illness that might have contributed to the offending behavior. It is critical for assessors and treatment providers to have access to full criminal histories in order to make informed determinations of risk to reoffend, and we recommend that the legislature mandate such access to records.

### **4. A mechanism for relief from registration duties and removal from the registry should exist for some offenders**

Florida should create a meaningful mechanism for RSOs to petition for relief from registries. Removal criteria should reflect evidence accumulated through scientific study. For instance, research suggests that offenders who are not rearrested for a new sex crime within the first 5 years following their conviction are progressively less likely to sexually recidivate the longer they remain in the community offense-free (Hanson et al., 2014; A.J.R. Harris & Hanson, 2012; A. J. R. Harris, Phenix, Hanson, & Thornton, 2003). Therefore, after five years in the community without a new offense, low risk offenders should be permitted to request removal.

Repeat sex offenders have much higher recidivism rates than first-time offenders, and anyone with more than one sex offense conviction should not be given consideration for removal from a registry. The data discussed in the recommendations for durations (section 2 of this report) is also useful to provide guidance for relief procedures.

Youthful offenders age 25 or under whose statutory offenses were motivated not by sexual deviance or coercion, but by poor judgment about the age of consent, should be removed if they are deemed low risk and demonstrate no evidence of other paraphilic or antisocial behavior. Clearly statutory offenders are a stark contrast to the types of predatory, violent or pedophilic

sexual criminals who were envisioned when registries were created. As well, sex offenders who are elderly, infirm, or otherwise incapacitated should be removed from the registry, as they are likely to pose little, if any risk. The restrictions associated with registration can preclude sick offenders from residing in nursing homes, assisted living facilities, or homeless shelters, denying them of needed medical care and accommodations that ensure healthy living.

Finally, research indicates that sex offenders who complete treatment are at lower risk to reoffend. Successful completion of sex offender treatment should be considered in requests for relief from registration requirements.

## **5. Local residence restrictions ordinances should be abolished**

Sex offenders do not abuse children because they live near schools or parks; rather, they create opportunities for sexual molestation to take place by cultivating relationships with children and their families (Colombino, Mercado, Levenson, & Jeglic, 2011; Duwe, Donnay, & Tewksbury, 2008; Zandbergen, Levenson, & Hart, 2010). Some researchers have argued that policies restricting where sex offenders live, rather than where they go and what they do, ignore empirical evidence and thus misdirect prevention strategies (Colombino, et al., 2011). Though seemingly sensible, they regulate only where sex offenders sleep at night and do nothing to prevent sex offenders from frequenting child oriented venues during the day. Alternatives such as child safety zones, which do exist in Florida and prohibit sex offenders from lurking within close proximity to child oriented venues, might be better designed to accomplish the goal of reducing sex offenders' access to children without compromising their housing needs (Broward County Commission, 2009; Colombino et al., 2011).

Higher proportions of transient (homeless) sex offenders are found in counties with a larger number of local ordinances, vast territory covered by local laws, wide-distance buffer zones, bus stop restrictions, higher population density, and expensive housing costs. Together, these factors create a “perfect storm” for elevated levels of sex offender transience (Levenson, Ackerman, Socia, & Harris, 2014). Treatment providers and probation officers observe that housing problems disrupt stability and exacerbate the psychosocial problems that often contribute to risk for criminal behavior and non-compliance.

A review of registry data downloaded on 10/9/15 in the public datafile available from FDLE (<http://offender.fdle.state.fl.us/offender/publicDataFile.do>) revealed that 23% of RSOs in Broward and 21% of RSOs in Miami-Dade are listed as transient. In 2011 these percentages were 8.5% and 8.9% respectively, so homelessness among sex offenders has increased nearly three-fold in Broward and more than doubled in Miami over the past four years. About 7% of Florida RSOs are transient, and Broward and Miami-Dade Counties together contain 45% of the state's transients. Sex offenders are more likely than the general population to become homeless (3% of the general population are homeless). This is a *significant* problem in South Florida.

Sexual abuse of a child is an egregious act, and preventing the abuse of children is an important goal. However, in the absence of empirical evidence demonstrating the effectiveness of residence restrictions in protecting children, preventing sexual violence, or reducing recidivism, such laws may impede rather than advance efforts toward this goal. Residence restrictions interfere with reintegration by diminishing housing availability and increasing the potential for transience and homelessness. This, in turn, undermines the very purpose of the sex

offender registry by increasing the number of offenders who fail to register, abscond, or become more difficult to track and monitor, and by increasing, in some cases, the risk of criminal behavior. Housing instability exacerbates risk factors for recidivism and therefore residence restrictions are likely to create more problems than they solve. The U.S.D.O.J. SMART Office recommends against residence restrictions ([http://ojp.gov/smart/SOMAPI/exec\\_summ.html](http://ojp.gov/smart/SOMAPI/exec_summ.html)). There is *no* evidence indicating that larger local ordinances are any more effective than the 1,000-foot state law enacted to achieve the same goals. Local ordinances should not exceed the state law of 1,000-foot buffer zones.

### Conclusions

Lawmakers should consider reform of SORN laws based on scientific data and these laws are most likely to be successful when they incorporate research findings into their development and implementation. A more reasoned approach (Tabachnick & Klein, 2011) to sex offender policies in Florida would utilize empirically derived risk assessment tools to create classification systems that apply more aggressive monitoring and tighter restrictions to those who pose the greatest threat to public safety. In this way, a more cost-effective allocation of fiscal and personnel resources could be achieved. As well, by tailoring application of these laws to risks of offenders, collateral consequences of community protection policies could be minimized, supervision improved, and sex offenders could be better enabled to engage in a law-abiding and prosocial lifestyle. Most sex offenders will ultimately be returned to the community, and when they are, it behooves us to facilitate a reintegrative approach that relies on empirical research to inform community protection strategies.

#### Florida Chapter of the Association for the Treatment of Sexual Abusers

The Association for the Treatment of Sexual Abusers is an international, multi-disciplinary professional association dedicated to the research, treatment, and prevention of sexual assault. ATSA's members include the world's leading researchers in the study of sexual violence as well as professionals who evaluate and treat sexual offenders, sexually violent predators, and victims. Florida chapter members work closely with public and private organizations and state lawmakers in an effort to prevent sexual assault. We advocate for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.



### **FATSA Board Members**



Eric Imhof, PsyD has been a member of the FATSA Board since 2004 and served as President from 2007 to 2010 and 2013 to the present. He began treating, evaluating, and studying typologies of juvenile sexual offenders in 1993 in Virginia and after relocating to Florida, established Specialized Treatment and Assessment Resources in 2000. He has served as a forensic examiner and expert witness for the Sexually Violent Predator Program and also has a specialization in adult Internet offenders.



Richard Brimer, LCSW, has worked in a variety of mental health agencies as well as private practice for over 30 years. He started the New Start Sexual Offender Treatment program in 1992, a faith-based program that provides evaluation and treatment to adolescent and adult sexual offenders in Polk, Highlands and Hardee Counties.



Leo P. Cotter, Ph.D., is a founding board member of ATSA's Florida chapter. He has provided outpatient sexual abuse treatment in the Tampa Bay area since 1984.



George Deitchman received his doctorate from Florida State in 1987 and started working in the field in 1990. He has a practice in Jacksonville. He tries to blend psychophysiological measures with the usual methods in assessing and treating clients.



Jill S. Levenson, Ph.D., LCSW, is a founding board member of ATSA's Florida chapter. She is an Associate Professor of Social Work at Barry University and provides outpatient treatment to adult sex offenders in Broward County.



Wade Moss has been a Polygraph Examiner for over 30 years. He Received his BA from Florida International University. He has been the Vice President of the Florida Polygraph Association for the past 8 years. He been an expert witness in both Federal Court and State Court. He has administered over 10,000 examinations.



Robert Parham, is a licensed mental health counselor who has been working with adolescents and their families for approximately 21 years. He has been working with adult and adolescent sexual abusers for the past 18 years in residential and outpatient settings.



Donald Pake, Jr., PsyD, ABPP is in private practice in Panama City, Florida. His interests include sex offender management, treatment outcome measurement, and the professional development of mental health service providers.

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