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The Adam Walsh Act: Juveniles and Sex Offender Registration and Notification

Kallee Spooner

Increased public concerns of juvenile sex offenders fueled the passage of the Adam Walsh Child Protection and Safety Act in 2006. The media coverage of these adolescents and public perception were influential in the enactment of this policy. Public fear is aroused by isolated incidents of deviance or crime. Media accounts highlight extreme cases, instead of more common incidents of sexual assaults (Harris & Lurigio, 2010). The fear culminates in the forming of groups of experts and concerned citizens that demand reform. Legislators cite media and views of their constituents as their primary sources of information about sex offenses and offenders (Sample & Kadlec, 2008). The justifications for the enactment of the Adam Walsh Act were based on public perceptions, not facts.

In 1994, the Jacob Wetterling Crimes Against Children Sex Offender Registration Act was signed into law. The purpose of the Wetterling Act was to provide law enforcement officials with better tools to keep the public safe from sexual predators. With the passage of this law, all states were required to implement sex offender registries, but were not required to provide community notification (Enniss, 2008). In 1996, an amendment to the Wetterling Act, known as “Megan’s Law,” made it mandatory for states to release “relevant information” to the community (Enniss, 2008). States still had discretion in determining what information could be released to communities.

The Adam Walsh Act of 2006 set out to standardize registration and community notification. The Adam Walsh Act expanded the definition of sexual offenses originally defined in the Wetterling Act, and also increased the scope of individuals affected by registration requirements of the Wetterling Act and Megan’s Laws (Enniss, 2008). Differing from the Wetterling Act, the Adam Walsh Act required states to include juvenile sex offenders in their registries (Wright, 2008).

The Adam Walsh Act outlined a variety of expectations in the management of sex offenders both at the state and federal levels. The Adam Walsh Act created a tiered classification system with minimum registration periods for sex offenders (Wright, 2008). In addition, the Adam Walsh Act created a more standardized nationwide registration process, which now includes certain juvenile sex offenders (The Center for Sex Offender Management, 2007). The intended purpose of this legislation was to enhance public safety.
through increasing accountability and implementation of stricter regulations for sex offenders.

In response to the Adam Walsh Act, states can either not comply, substantially comply, or challenge the constitutionality of the Act to make changes (Enniss, 2008). Failure to comply will result in losing 10 percent of the state's allocated Byrne Grant money, which states generally use to support law enforcement and enforce drug laws (Justice Policy Institute, 2008). In every state, first-year implementation of Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act, would cost more than losing 10 percent of this funding (Justice Policy Institute, 2008).

In Massachusetts, implementation of sex offender registries and notification requirements of the Adam Walsh Act would cost over $10 million, whereas 10 percent of the Byrne Grant money allotted to Massachusetts in 2006 was estimated at $435,320 (Justice Policy Institute, 2008). Compliance with the Sex Offender Registration and Notification Act requires training and funding for new personnel, software including creation and maintenance, legislative costs related to adopting and making state law, court and administrative costs, and law enforcement costs (Justice Policy Institute, 2008). In addition to the loss of funding, if a state does not comply with the Adam Walsh Act, then the state may be seen as too lenient or unconcerned with the safety of its residents. There is also the fear that the state that does not comply with the Adam Walsh Act will attract sex offenders who want to avoid strict registration laws (Enniss, 2008).

Some states had already developed complex classification processes before the passage of the Adam Walsh Act. For example, in Massachusetts, sex offenders went through a classification hearing to determine their level of risk. Assessment of risk is determined by taking into account factors such as the criminal history of the offender, history of substance abuse, educational and familial history, and response to sex offender treatment (Wright, 2008). The classification system of the Adam Walsh Act is based solely on the offender's conviction and the age of the victim, disregarding any additional risk factors (Harris, Lobanov-Rostovsky, & Levenson, 2010).

Tier III sex offenders have been charged with either aggravated sexual assault, abusive sexual conduct, nonparental kidnapping, or assault committed after the offender is registered as Tier II. Individuals classified as Tier III are required to register for the rest of their lives. Tier III sex offenders can include first-time juvenile sex offenders. Requiring juveniles to register for life is contradictory to research, which shows that juvenile sex offenders are less likely to commit another sexual offense within five years of their first offense (Jones, 2008).

Tier II sex offenders have been charged with either sex trafficking, coercion and enticement of a minor for sexual purposes, transporting for sexual purposes, abusive sexual contact, child porn, use of a minor in a sexual performance, or solicitation for child prostitution. Individuals classified as Tier II are required to register for a minimum of 25 years. Tier I sex offenders have been charged with all other sex offenses not included in Tiers I or II, and are required to register for a minimum of 15 years (Wright, 2008).

The classification guidelines of the Adam Walsh Act were designed to place the greatest restrictions on those who sexually offend against children. The Office of Juvenile Justice and Delinquency Prevention (2009) observed that the majority of juvenile sex offenders victimize their peers or somewhat younger children. The report also found that offenses against young children actually decline across offender age, as offenders move from early to middle adolescence (Finkelhor, Ormrod, & Chaffin, 2009).

The Adam Walsh Act standardized the National Sex Offender Registry (NSOR), which allows law enforcement and the public to more effectively track convicted sex offenders, including juveniles 14 and older who engage in genital, anal, or oral-genital contact with children younger than 12 (Jones, 2007). States must make information on Tier III juveniles publicly accessible, and must e-mail notifications within three days to a wide range of agencies and all citizens requesting such notifications (Harris & Lobanov-Rostovsky, 2010). The registry includes the offender's home, school, and work addresses (Lobanov-Rostovsky, 2010). This part of the law has been criticized due to its potential conflict with state laws, which shield juvenile records, thus making them private (Wright, 2008).

In most states, juvenile records are sealed from the public. The juvenile justice system was originally created to provide juveniles with protection, discipline, and guidance for rehabilitation. The intention of the juvenile court was to act as a guardian in the absence or breakdown of parental care (Lobanov-Rostovsky, 2010). The juvenile justice system has focused on balancing community safety with the rehabilitative needs and potential of youthful offenders (Letourneau et al., 2009).

International laws also recognize the special protection needs of children. Article 16 of the Convention on the Rights of the Child states, “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. The child has the right to the protection of the
law against such interference or attacks” (as cited in Human Rights Watch, 2007). The reasoning behind shielding records is that rehabilitation involves reintegration into the community. Under the Adam Walsh Act, confidentiality of juvenile records is eliminated (Lobanov-Rostovsky, 2010).

The Adam Walsh Act signifies a departure from traditional policy separating juveniles from adults. Youthful perpetration of sexual violence is now equated with adult sexual predation (Letourneau et al., 2010). Registration policies were originally created to address recidivism risks of violent adult sex offenders. The inclusion of juveniles in sex offender registries and community notification suggests that juvenile sex offenders are the same as adult sex offenders, or that juvenile sex offenders are somehow more dangerous that other juvenile nonsexual offenders.

Expanding these policies to include juvenile sex offenders disregards the developmental and motivational differences between juvenile and adult offenders, and the fact that juveniles are less likely to reoffend sexually (Letourneau, Bandyopadhyay, Armstrong, & Sinha, 2009). Juvenile sex offenders differ from adult sex offenders in that juveniles tend to act impulsively in exploring their sexuality, while it is often the case that adult sex offenders methodically entice their victims (Enniss, 2008). Research has documented clear differences in neurological, cognitive, and social development of juveniles compared to adults, which limits their culpability and capacity as criminal defendants (Letourneau et al., 2009). Since juveniles are different from adults, they should be treated as such.

A recent South Dakota Supreme Court decision (2008 SD 108) upheld due process and equal protection challenges to juvenile registration, indicating that adolescent sexual offenders could not be subject to the same registration requirements as adults (as cited in Lobanov-Rostovsky, 2010). Research has shown that juveniles who are waived to adult court are more likely to serve the minimum correctional sentence, are less likely to receive treatment, and are more likely to recidivate (Lobanov-Rostovsky, 2010).

The belief that juvenile sex offenders are somehow more potentially dangerous than their nonsexual offending peers is not grounded in evidence. In 2007, Caldwell conducted a study comparing the recidivism rates of sexual and nonsexual juvenile delinquents. The results were that 7% of adjudicated juvenile sex offenders had a subsequent sex offense. However, the study also found that 6% of the adjudicated nonsexual delinquents had a subsequent sex offense (as cited in Chaffin, 2008).

In a review of the literature, Wijk et al. (2006) found that juvenile sex offenders are more likely to display internalizing problems and problems with peer relationships than are nonsexual offenders. They also found that juvenile sex offenders are less able than nonsexual offenders to establish and maintain emotional relationships (Wijk et al., 2006). It is often the case that juvenile sex offenders are ostracized by their peers and neighbors, kicked out of extracurricular activities, or physically threatened by classmates (Jones, 2007). Research has shown that stigmatization, peer rejection, and isolation from families and communities increases the risk of future criminal behavior (Lobanov-Rostovsky, 2010). For juveniles, the stigma attached to the label of sex offender hinders their transition to law-abiding adulthood by creating limitations on academic opportunities, employment, and civic engagement (Harris, Lobanov-Rostovsky, & Levenson, 2010). Another negative consequence of the Adam Walsh Act is that parents may be deterred from reporting inappropriate sexual conduct between siblings due to the fear of the consequences of registration (Enniss, 2008). Along with parents, registration and notification laws may impact juvenile justice decision makers. Letourneau et al. (2009) found that 75-92 percent of judges indicated concerns about placing juveniles on public registries.

As states and the federal government set mandatory minimum sentences, judges lose discretion in deciding the best punishment and treatment for offenders. In a response to the federally mandated requirements of the Adam Walsh Act, juvenile justice decision makers might alter their behaviors to reassert their discretion in registration decisions.

Letourneau et al.’s study found that in response to South Carolina's lifetime registry policy, prosecutors also altered their decision-making procedures in ways that seemed to protect many juveniles. As a result, the prosecution of felony-level sex offense charges decreased more than 40 percent. These findings suggest that applying a lifetime, charge-based registration policy undermines the primary aims of registration policies like increased police and community surveillance of sex offenders (Letourneau et al., 2009).
Although extending the sex offender registration and notification laws to juveniles has resulted in unintended negative effects, these policies were initially put into practice with positive intentions. Intended positive effects include reduced first-time and subsequent commission of sex crimes (Letourneau et al., 2010).

The objectives of sex offender registration are enhanced public safety and deterrence. Sex offender registries can improve public safety by facilitating the investigation of sex crimes. Registries increase visibility and scrutiny of sex offenders by making their information available to the public. However, using registration as means for monitoring sex offenders supports the erroneous belief that sex offenders will inevitably reoffend. One empirical example of this fallacy comes from Wisconsin. A birth cohort study discovered that 8.5% of males with juvenile sexual offense charges recidivated sexually as adults, while 6.2% of males with any nonsexual offense charge offended sexually as adults (Lobanov-Rostovsky, 2010).

In addition to targeting known sex offenders, registries seek to deter the individuals who have not yet committed a sexual offense, or who have gone undetected, and do not want to be placed in the registry (CSOM, 2007). In this case of general deterrence, the fear of consequences increases compliance with laws. For deterrence to be effective, sanctions must be for behaviors that are generally accepted as reprehensible or immoral.

The developmental stages between adult perpetrators and child victims are clearly distinct, whereas the developmental stages of juvenile offenders and their victims often overlap (Letourneau et al., 2010). As such, the culpability of juvenile sex offenders should come into consideration in sex offender policy. Juveniles cannot fully understand the long-term consequences of their actions for themselves and their victims. In addition, compared to adults, juveniles are influenced more by external factors such as school failure, associations with delinquent peers, and insufficient parental supervision and monitoring (Letourneau et al., 2010). If juveniles do not believe certain sexual acts are criminal, then it is less likely that they will be deterred.

The effectiveness of applying sex offender registration and notification laws to juveniles as a means of deterrence has been a topic of concern since the passage of the Adam Walsh Act in 2006. Letourneau, Bandyopadhyay, Armstrong, and Sinha (2010) conducted a study examining the registration and notification laws in South Carolina. They found that sex offender notification laws had no deterrent effect on juveniles. This included both would-be offenders and known offenders. Thus, community safety was not enhanced by reducing sexual or nonsexual recidivism rates. Since registration and notification requirements have shown no significant enhancement to public safety, it seems then that these requirements serve as a form of retribution (Letourneau et al., 2010).

The registration and community notification component of the Adam Walsh Act is also retroactive. This means that all individuals previously adjudicated with a sexual offense will be required to register as a sex offender if they come back into the criminal justice system as a result of a criminal charge that is sexual or nonsexual (Lobanov-Rostovsky, 2010). Registered juvenile sex offenders face restrictions in housing, employment, and education opportunities, along with the shame attached to the label of “sex offender” (Enniss, 2008). The consequences of the retroactive application of sex offender registration and notification laws seem to have a punitive connotation. If registration and notification were meant to be punishment-orientated, then retroactive application would violate the juveniles’ due process rights (Lobanov-Rostovsky, 2010).

In the 2003 case of Smith v. Doe, the United States Supreme Court ruled that registration and notification processes are concerned with public safety and as such are viewed as regulation, not punishment (Lobanov-Rostovsky, 2010). If the retroactive application of registration and notification was considered a punishment, then this would be a violation of ex post facto laws (Lester, 2008).

Smith, Goggin, and Gandreau conducted a meta-analysis of research studies from 1958-2002, focusing on the effects of sanctions on recidivism. They determined that punitive approaches in the absence of rehabilitation do not reduce recidivism (as cited in Lobanov-Rostovsky, 2010). This finding supports the position that the retroactive nature of the Adam Walsh Act may in fact increase an adolescent’s likelihood of reoffending.

The retroactive application of sex offender registration and community notification greatly widens the scope of those that have to register, especially considering that juvenile sex offenders who are rearrested later are more likely to have committed a nonsexual offense than a sexual offense (Lobanov-Rostovsky, 2010). In a study of 11,219 juvenile sex offenders over a mean of 59.4 months, Caldwell (2009) found that the sexual recidivism rate was 7.08 percent, while the general recidivism rate was 43.4 percent.

The public fears that juvenile sex offenders are extremely likely to reoffend. However, research has shown that rates of recidivism are between 4-20 percent for juvenile sex offenders (Lobanov-Rostovsky, 2010). The truth is that juvenile sex offender recidivism rates are much lower than most believe.
Americans today tend to believe that there is an epidemic of juvenile sexual offending, when, in fact, the overall rate of child sexual abuse in the United States has declined over the past 25 years (Lobanov-Rostovsky, 2010). The decrease in child sexual abuse cases has not been attributed to sex offender registry laws. Finkelhor and Jones reported that the period of decrease in physical and sexual abuse was marked by improved economic conditions, increased law enforcement and child protection efforts, more aggressive prosecution and incarceration policies, growing public awareness, and the dissemination of new treatment options for family and mental health issues. The passage and implementation of community notification laws mostly occurred after rates of child sexual abuse started to decline (Finkelhor & Jones, 2006).

In conclusion, it seems that the only accurate way success of the Adam Walsh Act can be measured is in addressing the public's demand for action. In evaluating the evidence, registration and notification policies give the public a false sense of security. The registration and notification components of the Adam Walsh Act have failed to meet their objectives of enhancing public safety and deterring future commission of sex crimes. In addition, including juveniles in sex offender registries undermines the rehabilitative goals of the juvenile justice system. Laws that were originally made for adults should not be applied to juveniles. Because juveniles are different from adults, they should be treated as such.

References


