
THE SEX OFFENDER
NEW INSIGHTS,
TREATMENT INNOVATIONS AND
LEGAL DEVELOPMENTS

VOLUME II

Barbara K. Schwartz
Henry R. Cellini



Civic Research Institute

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Preface

Sex offender treatment in the 1990s has been characterized by rapid growth in an atmosphere of increasingly reactionary and politically motivated public policies which, although they may be well intended, have little proven efficacy and may indeed increase the danger to the public. Most of these measures, such as public notification, are not part of a comprehensive systems approach. For example, although the public may feel comforted by the fact that they now know that their neighbor is a sex offender, few citizens realize that unless that individual is on community supervision, little can legally be done if that individual engages in high-risk behavior. Parole boards have become increasingly reluctant to release sex offenders under their jurisdiction, and yet this is clearly the safest way to return these individuals to society.

As an ultimate punishment, California recently passed mandatory physical or chemical castration for repeat child molesters. As conviction for a sex offense begins to carry more onerous implications and sanctions that punish the family as well as the offender, more sex offenders will plea bargain to other crimes and fewer intrafamilial offenders will be reported. Secrecy feeds the deviance of sex offenders and these new public policies encourage that secrecy.

While legislatures blithely enact these obviously controversial statutes — none of which have been well researched — controversy continues over the efficacy of treatment. Surely this is nothing new in the mental health community. There is very little agreement on the effectiveness of any mental health treatment other than psychopharmacological approaches. However, few voices are heard advocating for the elimination of the mental health professions. In fact, the federal government just mandated insurance companies to treat mental health care in the same way that they treat physical health care. Research in the field of mental health is difficult and often can be questioned on ethical grounds. Do you study a suicide prevention approach by denying half the patients care? How do you administer a psychological placebo?

Sex offender treatment is even more difficult to study because it is not a modality that is offered in settings which can afford or even value comprehensive research. Few corrections departments are able to devote funds necessary to carrying out the elaborate studies needed to make definitive comments about the efficacy of treatment. Furthermore, they would certainly be open to criticism if they undertook to systematically deny treatment to certain individuals who requested it while providing it to others in the name of sound research and then these individuals went out and reoffended. Most sex offender treatment is offered by private practitioners who are not in a position to conduct research and would not have access to a matched sample control group.

The issue is further complicated by the rapid growth and change in the field which seeks to refine treatment and increase its efficacy. However, good long-term follow-up research demands that a group is given treatment and then followed for a number of years. The study that is then generated will obviously be reporting on a methodology that is years behind the current treatment practices. Most other mental health research can study treatment effects which occur within a matter of weeks or months.

However, as long as recidivism within one's entire lifetime is the only criteria used to judge the effectiveness of treatment, research will be left with this quandary.

Another problem is one of double standards when it comes to judging sex offender treatment effectiveness. In a 1995 report by the National Institute of Justice, entitled " 'Boot Camp' Drug Treatment and Aftercare Intervention: An Evaluative Review," researchers reviewed studies from 11 states and found that only three programs showed lower recidivism rates for boot camp graduates. They stated, "The research just discussed leads to the conclusion that, at this point in time, there is no persuasive evidence that boot camps have a measurable or long-term impact on the recidivism of program participants" (p. 30). Yet the report goes on to support the concept using Canadian studies of effective correctional programs and making a number of constructive recommendations. Another National Institute of Justice study, "Evaluation of Drug Treatment in Local Corrections" (1996), concluded that despite the fact that two of the five programs showed no difference in recidivism, "these programs had a modest positive effect on the probability but not the timing of recidivism . . ." (xi). These studies are referenced not to question the efficacy of the methods but to point out how standards of "success" are highly subjective.

In contrast to these two reviews of research, the United States General Accounting Office published a report entitled "Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism" (1996), which reviewed reviews of research. This was an interesting though questionable approach as there was much duplication of studies in these reviews. The authors state that "only two reviews attempted to quantify the overall benefit of treatment programs" (p. 7), and both of these reported positive results. They quote the Canadian Solicitor General as reporting that treatment could reduce recidivism from 25% to 10–15%, they reference the "only known statistical aggregation" study's finding that treatment can result in 8 fewer sex offenders per 100. Given an average recidivism between 25% and 40%, which has been reported in a number of studies, this would reduce recidivism from one-third to one-fifth. In some states with the popular "one-two strikes, you're out," a reduction of eight recidivists would represent a dollar savings of \$12 million plus possibly hundreds of victims. Yet the study concluded that the data was inconclusive, which is interesting in light of the conclusions of the two previously discussed studies.

The need for well-funded and planned research with realistic goals and an established criteria for judging success is well established. However, well-designed studies do exist which continue to be minimized in the minds of the public and among many mental health professionals not familiar with the field. This volume includes a number of chapters with valuable research which has been conducted to validate theoretical constructs. It is hoped that readers will be enlightened by new insights into the management and supervision of sex offenders through the work and research of the contributing authors who represent a wide range of backgrounds and special interests in this area.

Introduction

Americans are scared! They are scared of muggers, stalkers, robbers, and murderers, but they are particularly scared of sex offenders. Despite the fact that violent crime is actually decreasing, a variety of factors have combined to make the average citizen afraid. Unfortunately, crime, and particularly sexual assault, has become a political issue. And unfortunately, when something becomes a political issue, a rational response is replaced by the “quick fix.” Currently Americans are spending \$3 billion on new prisons, and the 1995 crime bill allocated another \$9 billion. Parole boards are refusing to parole offenders who need to make a supervised transition back into the community. Fewer individuals are receiving probation or alternative sanctions. Sex offenders are being registered, identified, and involuntarily committed. However, there is no evidence that any of these measures improves public safety.

Not only do they not improve public safety, these measures are devouring the funds that this society needs to feed its hungry children, provide medical care for its elderly, and educate its youth. Representative Robert C. Scott from Virginia illustrated that fact when he pointed out that the elimination of parole in his state cost \$8.8 billion in construction and \$800 million in operating funds, which could have paid to construct a Boys and Girls Club in 2,000 precincts and run them perpetually as well as double the funds for mental health programs and drug rehabilitation, hire 200 police for each congressional district, guarantee college tuition for poor students, provide summer recreation and jobs to every poor child, double Head Start programs, quadruple school dropout prevention programs, double the funds for prison education, and eliminate every building code violation in the state while wiping out unemployment in the building trades. While usurping all these funds, parole elimination also raises the risk to the average citizen by later having to release offenders without conditions or supervision.

Perry Smith, past president of the American Correctional Association, stated in his farewell address that society is following a universal tendency to scapegoat segments of its population by exaggerating statistics or distorting facts to justify internment, segregation, or banishment. He stated:

[W]hen we believe that the primary threat to our well-being is the depredations of the convicted — and when we distort and exaggerate the extent of that danger, creating a false sense of peril to justify our treatment of these demonized few, we are scapegoating. And our immediate next instinct is to call for banishment of these demons to the fullest extent. Which today means calling for an almost unlimited use of prison — at great cost, and to little effect, since banishing scapegoats has about as much actual effect on crime as it did on flood and famine in Biblical times.

However, there is alternative way to approach the issue of crime in this society. Not by locking up more felons or announcing the presence of ex-offenders in neighborhoods, not even by adding a few programs here and there, but by totally rethinking the paradigm through which we view the whole issue of criminal justice. Currently we are locked into a retributive view of justice. Howard Zehr in *Changing Lenses*¹ summarizes retributive justice as follows:

Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systemic rules. (p. 181)

We tend to believe that the way our justice system is now is the way it has always been. However, this system only dates back to the sixteenth century, when the state rather than the victim took center stage in the drama. The model of retributive justice did not really take hold in the United States until the nineteenth century. For those deeds defined as “crimes,” the process of resolving a hurt or a wrong imposed by another became more and more mechanical and impersonal. Humans now began to take on roles—the offender, the victim, only two members of a very large and complex cast of characters. As Zehr states, the crime is “described and dealt with in symbolic and legal terms foreign to the people actually involved. The whole process [is] mystified and mythologized and thus [becomes] a useful tool in the service of the media and the political process” (p. 182).

Today, increasingly, the criminal justice system ignores the victim and his or her needs. The offender is removed from all responsibilities and isolated and exposed to an environment that aggravates his² problems. The community does not experience the healing process that occurs when wrongs are acknowledged and righted.

The alternative vision is that of restorative justice, which Zehr describes as follows: “Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance” (p. 181).

The two views contrast in a number of ways. Whereas retributive justice focuses on blame-fixing, the past, making victim’s needs secondary, and balancing harm to the victim by inflicting harm on the offender, the restorative justice model focuses on problem solving, the future, making victim’s needs primary, and balancing the harm done by the offender with making it right.

The field of sex offender treatment is an example of restorative justice. Not only does the field seek to restore the offender as a functioning member of society, but it does that by helping the offender acknowledge the pain of the victim, take responsibility for his or her actions, and in some way either materially or symbolically make reparations to that victim. By standing as an example of restorative justice in the middle of a system organized around retributive justice, the field is constantly being assailed. Critics accuse sex offender treatment programs of being “soft on crime,” although anyone who has ever attended a sex offender group knows that it is much more difficult to be confronted with the implications of one’s behavior than mopping a floor in a prison corridor. Other critics hold up the example of one relapsed offender to damn programs that may have had hundreds of success stories. However, fortunately, the field is continuing to grow. More corrections departments are realizing that “these men are going to get out and we must do something!”

A classic example of the difference between the retributive paradigm and the restorative paradigm is the question of reintegrating the sex offender back into the community after his incarceration. The recent popularity of public notification is a classic retributive justice response to the idea that a recently released sex offender might be moving into one’s neighborhood. It is curious that the outraged public rarely considers that this is probably not some stranger from out of state. It is probably someone who left that neighborhood to serve his prison sentence. He may be moving home

with his wife or his mother or returning to a home he owns. Regardless, his arrival is widely publicized, property values in the neighborhood may plummet, and even if he moves out later, the stigma may remain. His victims are often revictimized by the process as their identity may be impossible to hide, particularly if the offender has been convicted of “incest.”

The neighborhood is victimized because the people who live there are frightened but not given any way to cope with the situation. In Washington State, citizens responded first by burning down the offender’s house and the next time by burning down a neighbor’s house, as the wrong address had been announced. Citizens believe that because they are aware of the identity of the sex offender, they can legally keep him from engaging in such high-risk behaviors as hanging out around parks or talking to children. However, a parallel policy is developing: there is movement away from paroling sex offenders, thus forcing them to finish their sentences and leave prison with no supervision whatsoever. Consequently, the state cannot exercise any control over the sex offender until he actually commits another crime. This is in sharp contrast to the paroled offender who may have dozens of strict stipulations on his conduct, the violation of which can result in immediate reincarceration.

Public notification interferes with offender’s ability to readjust to the community. In all likelihood he will be shunned, but his family and relatives may become objects of derision as well. As a result, he may be unable to find housing or a job. He may have to drop out of a carefully arranged therapy program. He may try to hide his identity or hide his pain from himself by using drugs or alcohol. Perceiving rejection, isolating, withdrawing, and harboring secrets are four of the major high-risk situations for the sex offender, and public notification is a perfect setup for all of them. The sex offender’s chances of relapsing skyrocket. Has the safety of the public been served?

Contrast this to a restorative justice approach. The main focus would be on making sure that the victim’s needs have been addressed. It is hoped that the offender has either directly or indirectly contributed to that restitution. He may have placed part of his prison pay into a victim restitution fund. Furthermore, rather than having this sum mandated by the court and automatically withdrawn from his account, he has had some responsible input into the process. He is likely to have been part of a treatment program that has helped him to develop empathy and to appreciate the consequences of his actions. He may have met with victims to allow them to vent their anger and give them the chance to question an offender.

Upon his release on parole, he will hand his parole officer a carefully prepared relapse prevention plan which outlines his particular high-risk situations and what interventions he has developed and intends to use. His therapist will be fully aware of the plan as well as his support system, including his 12-step sponsor, family members, and employer. This team will work with the offender to provide assistance, support, and encouragement. However, in the event the offender fails to respond and begins to backslide, they will also be in a position to have him placed in a more structured situation up to and including prison prior to his committing another offense. Ideally, rather than a neighborhood vigilante task force, there might be a network of individuals from the neighborhood who could be part of that support team. This could be similar to the Community Sentencing Circles used in Native Canadian communities or Family Group Conferences developed by the Maori in New Zealand, both of which seek to bring reconciliation to the community as well as to the victim

and offender. Working together the community would reintegrate the offender back into itself.

Does this country really care about public safety or is it such an alluring campaign topic or quick news story that citizens are willing to hand it over to those who would turn it into a 30-second bite? Fortunately, many people, politicians and journalist among them, are willing to take the time and expend the energy to try out different approaches and to push for programs that have proven successful. Some of those individuals are represented in this Yearbook, which updates *The Sex Offender: Corrections, Treatment and Legal Issues*.

There is extensive discussion of theoretical issues, including the development of empathy, bonding issues, and the effect of alcohol and stress in rapists and child molesters. This volume addresses new treatment techniques and refinements. In another section experts describe the adaptation of treatment to special age groups, including male and female juveniles as well as the geriatric offenders. Sex offender treatment modified for different ethnic groups is the focus of another section. One group that has long been described as “untreatable” is the offender in denial. In this volume, authors describe new techniques for working with this challenging population. Finally there is an update on the ever-changing legal issues in the field.

It is hoped that by integrating the information and the philosophical approach that has developed in the field of treating sex offenders to the overall criminal justice model, a new paradigm of restorative justice will be reinforced which will make us all feel safer.

Footnotes

¹Zehr, H. (1990). *Changing Lenses: A New Focus on Crime and Justice*. Scottsdale, PA: Herald Press.

²We refer to offenders with male pronouns throughout this article. We recognize, of course, that offenders are of both sexes. However, because most reports of sexual offenses involve male perpetrators, we have chosen to simplify our writing by using male pronouns.