When Evidence Is Ignored: Residential Restrictions For Sex Offenders

By Richard Tewksbury and Jill Levenson

The use of evidence-based practices in corrections and public policy is now considered the gold standard for policy and program development. Numerous examples (as discussed throughout this edition of *Corrections Today*) are available to show the importance and benefits of such an approach. In the practice of both institutional and community corrections, scientific evidence is important in formulating foundations for the operation of policies and programs. It identifies which are most likely to yield the desired results and where decisions can be guided to facilitate the achievement of safe, secure and humane institutions as well as enhanced community safety. Some observers criticize correctional policies and programs for contributing to high rates of recidivism, institutional violence, and the general failure of offenders to transform into productive and law-abiding citizens. It is therefore critical for correctional policies and practices to adhere to an evidence-based approach.

However, many of the ways that correctional facilities and programs operate are determined not by informed correctional administrators but instead by decision-makers outside the correctional enterprise. There are several obvious downfalls to this procedure. First, when decisions are made outside the correctional realm, these policies either may impose restrictions on corrections officials in being able to do what they know is in the best interests of offenders and society, or the policies may compel them to implement practices that differ from recognized best practices. Second, sizeable costs may not always achieve the most efficient distribution of resources. If increased resources do not accompany new public policies, corrections officials may be forced to reallocate funding away from well-informed and beneficial programs and practices. Third, when those outside the correctional industry develop policies, corrections officials can end up (inappropriately) bearing the brunt of public disparagement for ill-advised decisions.

The value of an evidence-based approach to policy development and program implementation is best realized when decisions are made by individuals who are educated in the extensive research literature and experienced in translating scientific data into correctional practices and programs. The focus of this article is on the effect of the misguided and detrimental development of a community corrections practice that ignores existing research evidence. Residential restrictions for registered sex offenders is a clear example of how criminal re-integration, and potentially public safety, are negatively impacted by the failure of policymakers to draw on research evidence in establishing crime prevention policy.

Sex Offender Registration And Residential Restrictions

The registration of sex offenders has been a prominent part of the American criminal justice landscape since 1994 when Congress enacted the Jacob Wetterling Act that required convicted sex offenders to record their addresses with local law enforcement agencies. Megan's Law amended the Wetterling Act in 1996 by allowing the dissemination of registry information directly to the public. In 2006, the Adam Walsh Sex Offender Registration and Notification Act facilitated the creation of a national, Internet-based searchable sex offender database; increased registration and notification requirements; and enhanced penalties for crimes against children and for failure to register.

As a result of increased awareness of sex offenders living in the nation's communities, approximately one-half of the states and hundreds of local municipalities have also enacted laws that impose restrictions on where registered sex offenders may reside. Explicitly intended to enhance the safety of children, these laws prohibit registered sex offenders from living within specified distances (usually one-quarter to one-half mile) of places where children are likely to congregate. Various state laws and local ordinances identify protected zones around entities such as schools, daycare centers, public playgrounds and swimming pools, libraries, and school bus stops. On the surface, such laws are both politically and socially attractive, as they appear to be intuitively logical and well-intentioned public policies.

However, although residence restrictions appear to be rational and valid social policy, there are numerous problems with both their design and implementation. Making communities safer for children is a laudable goal, but these laws do not achieve that goal because they are fundamentally flawed for several important reasons. First, these laws are based upon the widespread beliefs that sex offenders have extremely high recidivism rates, sex-crime rates are on the rise and sex offenders often kill their victims. Second, there is an assumption that sex offenders are a homogeneous group and that all pose equal risk. Residence laws usually apply to all registered sex offenders, regardless of whether an individual is a predatory pedophile or whether his (or her) victims of choice are adults, the elderly or family members. Finally, the myth of stranger danger assumes that sex offenders frequently make contact with potential child victims in public locations and that they entice or abduct unsupervised children from such places.

Flaw No. 1. Media attention of sex crimes, especially random and lethal acts of sexual violence against children, gives the impression that sex-crime rates are higher than ever. In actuality, sexual assaults, like most crimes, have been on the decline for 15 years. According to the U.S. Department of Health and Human Services, rates of substantiated sexual abuse of children have dropped by 51 percent since 1991. These declines are consistently seen in data from child protective services, law enforcement and victim surveys. Media coverage tends to portray sexually motivated child abductions as a real threat to children, but the Center for Missing and Exploited Children estimates that only approximately 100 such cases occur in the United States each year. Sex offenders also are reputed to have exceedingly high recidivism rates, inciting fear of inevitable re-offending. Large sophisticated studies following nearly 30,000 sex offenders from North America and Europe have found that, on average, only about 14 percent of convicted sex offenders are rearrested for new sex crimes within four to six years after release.[1]

Flaw No. 2. Recidivism rates differ based on the offense type and risk factors such as offender age, pattern of sexual deviance, criminal history and victim preferences. Pedophiles who molest boys have the highest probability of re-offense (but fewer than 40 percent of sex offenders are diagnosed with pedophilia), while rapists of adults have the next highest probability of re-offending. Though often thought of as the most relentless and dangerous of offenders, sex offenders are in fact among the least likely offenders to re-offend or to murder their victims.[2]

Flaw No. 3. Laws restricting where sex offenders may live have been inspired by crimes committed by perpetrators who were strangers to their victims. However, a well-established body of research has clearly demonstrated that such cases are the rare exception, not the typical way children come to be sexually victimized. Children are much more likely to be molested by trusted caretakers and relatives. The Bureau of Justice Statistics reported that 34 percent of sexually abused minors were assaulted by family members and 59 percent by acquaintances.[3] In addition, about 49 percent of victims under the age of six are abused by people related to them, and it is estimated that less than 7 percent of sex crimes against juveniles are committed by

strangers. Similarly, about three-fourths of sex crimes against adults are perpetrated by known assailants, BJS reports.

Furthermore, children are not in schools and daycare centers by themselves, but instead are under the constant supervision of teachers, care providers and other adults. Even if one presumes that children at times play outside unsupervised, they are statistically unlikely to be approached or harmed by a registered sex offender. Such laws fail to acknowledge that the vast majority of child-victimizing sex offenders are not strangers who make contact with youngsters in public settings. One of the most conspicuous ironies of residence laws is that they control where sex offenders sleep, but do little to prevent a motivated predator from visiting places where he or she can cultivate relationships with children and groom them for sexual abuse.

The problems with residence laws extend to the authorities that are charged with enforcing them. As many communities have already experienced, when restrictions are imposed, many registered sex offenders "disappear" and go underground. Some offenders may be attempting to avoid overly harsh residential restriction laws, but others, who are having difficulty securing housing, may simply not have an address to register. This imposes serious (and costly) problems for law enforcement officials who have to allocate additional resources to track down missing sex offenders, and it also damages the validity of sex offender registries. As a result, communities may actually be less safe rather than more safe.

What the Evidence Says

No empirical data exist to support the belief that residence restrictions reduce sex offense recidivism. A 2004 Colorado study found that sex offense re-offenders were randomly located and did not live closer to schools and parks than those who did not re-offend.[4] In Minnesota, a 2003 study failed to find a relationship between proximity to schools and re-offending.[5] A subsequent Minnesota study concluded that "there is very little support for the notion that residency restriction laws would lower the incidence of sexual recidivism, particularly among child molesters," and that "rather than lowering sexual recidivism, housing restrictions may work against this goal by fostering conditions that exacerbate [problems with] sex offenders' reintegration."[6] Reinforcing this view, a California Research Bureau report, prepared for the Assembly Public Safety Committee, determined that "there is little research regarding the effectiveness of restricting the housing locations available to sex offenders, but the few studies available find they have no impact on re-offense rates."[7]

An emerging body of research is uncovering many unintended consequences of residential restrictions. Florida researchers found that the state's requirement that child molesters on probation live 1,000 feet from a school, park, playground, daycare center or other place where children congregate led to displacement and transience for many sex offenders.[8] About one-half were unable to live with family and found affordable housing less accessible. Many also described increased isolation and stress. These data were collected in 2004, prior to the explosion of municipal ordinances throughout Florida in 2005. Since that time, 24 of the 30 cities in Broward County (the Fort Lauderdale metropolitan area) have passed sex offender zoning laws requiring a buffer zone of 2,500 feet. A more recent study of 109 sex offenders in Broward County found that 39 percent reported a period of homelessness, and 22 percent said they were forced to relocate two or more times.[9] Almost one-half experienced a landlord refusing to rent to them, and 13 percent had been jailed for a residence violation.

In Indiana, one-fourth of sex offenders reported being unable to return to their homes after release from prison; more than one-third could not live with family members; and almost one-third said that a landlord refused to rent to them or to renew a lease.[10] As a result, offenders were forced to live farther away from employment opportunities, social services and mental health treatment programs. Young adults were especially affected, and age was significantly inversely correlated with being unable to live with family and with difficulties obtaining and maintaining affordable housing.

Geographical information system research, using mapping technology, has confirmed that residence restrictions gravely diminish housing availability. In Orange County (Orlando), Fla., researchers found that 64 percent of the resdential properties are located within 2,500 feet of schools, and 99 percent are within 2,500 feet of bus stops.[11] When considering the locations of dwellings located within 2,500 feet of a variety of types of restricted locales (schools, parks, daycare centers and bus stops), only 37 residential properties remained available where sex offenders could live. Likewise, in Miami, sex offenders are living under bridges because the county's 2,500-foot restrictions leave virtually nowhere for them to live. Still, lawmakers are hesitant to repeal these law.

Residence restrictions, which lead to instability, transience and hopelessness, contradict decades of criminological research identifying factors associated with successful offender re-integration. Sex offenders and other offenders with positive support systems are less likely to re-offend and violate probation than those who lack support. Stable employment and relationships make it less likely that offenders reentering the community will resume a life of crime.[12] Conversely, lifestyle instability and negative moods are associated with increased sexual recidivism. Social stigma and economic hardships resulting from conviction can preclude involvement in pro-social roles and activities, including employment, education, parenting and property ownership.[13] Social and economic marginalization is especially pronounced for registered sex offenders who are publicly identified.[14] Desistance from crime, however, is facilitated by reinforcing the offender's identity as a conforming and invested citizen, not by preventing the ability to meet basic needs.

It is important to note that corrections professionals, law enforcement agents, prosecutors and victim advocates generally believe that laws and policies restricting where registered sex offenders may live are ill-advised and ineffective. This can perhaps most clearly be seen in the fact that at the American Correctional Association's 2007 Winter Conference in Tampa, Fla., the association's Delegate

Assembly passed the Resolution on Neighborhood Exclusion of Predatory Sex Offenders. This resolution calls for "all legislative bodies to take into consideration the unintended consequences of statutes intended to exclude these offenders from neighborhoods or locations." It goes on to state that ACA "supports legislation which is reasonably related to the ability of community corrections agencies to afford proper supervision and oversight to predatory sex offenders and which is practical, enforceable and likely to result in the protection of children and others in the community from sexual predators."

It is the responsibility of corrections professionals — through both rigorous empirical evaluation and the sharing of experiential knowledge — to identify correctional practices and policies that work to achieve goals of public safety and those that impede such goals. When well-intentioned but flawed policies create administrative and programmatic problems, it behooves those who are directly affected to communicate these deficiencies to lawmakers. In doing so, correctional administrators, practitioners and researchers need to collaborate with policymakers and support their arguments with scientific evidence. Using existing research to demonstrate the unintended adverse consequences of policies such as sex offender residential restrictions is one means to construct the argument. However, corrections officials need not rely solely on the evidence gathered by others. Rather, corrections officials need to apply their existing resources to assess externally imposed policies and practices — such as residential restrictions for sex offenders — and thereby accumulate evidence for what does work. Evaluation research, using state-of-the-art methodologies and conducted by credible and disinterested parties, is the key to collecting evidence designed to inform the development and modification of crime prevention policy, while facilitating desired outcomes of improved community safety as well as successful offender reentry.

ENDNOTES

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