

# Encyclopedia of Law & Society: American and Global Perspectives

## Sex Offenders

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In the United States prior to the 1930s, governments considered sex offenders criminals and punished them for their crimes. Then, many states enacted sexual psychopath laws, a special type of *civil* commitment for mentally disordered and dangerous sex offenders. Since then, most states have repealed these laws because policy makers decided sex offenders were not sick and treatment was ineffective.

## Legal Regime

By the early 1990s, at least sixteen states returned to the illness model, adopting sexually violent predator (SVP) laws that civilly commit and treat dangerous sex offenders indefinitely *after* they have served their prison terms. Every state has adopted a sex-offender registration law, designed to deter sex crimes and help in their investigation, which require most sex offenders to register with the police. Every state has also enacted a community notification law that authorizes the police to warn the public about dangerous sex offenders. These laws assume that sex offenders are more likely than other criminals to commit another crime. They also assume that experts can identify who will reoffend, that treatment reduces sexual recidivism, and that strangers commit most sex crimes.

## Social Reality and Assessment

Many of these assumptions are inaccurate. As a group, sex offenders reoffend at a lower rate than do many other violent criminals. A meta-analysis of sex offender recidivism studies showed that about 13 percent of sex offenders committed a new crime within a four to five-year period. Many other offender categories have higher recidivism rates. However, sex offenders are four times more likely to commit another sex crime than non-sex offenders. A small group of sex offenders is very dangerous. Individuals who know their victims commit most sex crimes; strangers were involved in only 20 percent of sex offenses.

Experts have become more accurate in assessing the risk for sexual reoffending. They use recently developed actuarial risk-assessment instruments, based on identifying

characteristics common to sex offenders known to have committed many sex crimes. They consider sex offenders with these characteristics as at high risk of reoffending. Because it is more objective and accurate, actuarial risk assessment has generally replaced clinical risk assessment, which is [p. 1366 ↓ ] subjective and based on the clinical judgment of each evaluator. Actuarial instruments have limits. They can identify a range of risk based only on group characteristics, not which individuals will actually reoffend. Actuarial methods will produce false-positive predictions of sexual recidivism in 20 to 50 percent of cases.

## Confinement and Treatment

Although policy makers were skeptical of older treatments based primarily on psychotherapy, newer treatments include cognitive restructuring, social skills development, empathy training, relapse prevention, and pharmacological agents that reduce testosterone. Although these approaches hold great promise, there is insufficient high-quality research to establish that treatment reduces sex offending.

Researchers know less about when officials may safely release sex offenders. As a result, they free few SVPs unconditionally. Consequently, the number of people committed as SVPs continues to increase, greatly exceeding initial estimates. SVP commitment is extremely expensive, costing about \$100,000 per year for each SVP, excluding capital construction and legal costs. Although SVP laws protect the community, they confine many offenders whose risk of reoffending is low and at the same time fail to confine many who are very dangerous.

By labeling individuals as SVPs, these laws can create self-attributional and other psychological effects that may undermine treatment. This label reinforces a self-image that offenders are ill and therefore unable to control their conduct, thereby diminishing the potential that treatment can succeed in teaching offenders effective strategies for controlling their behavior. SVP laws discourage prisoners from pleading guilty to sex crimes and from accepting treatment in prison. The laws may perpetuate the denial and cognitive distortions that often contribute to sexual reoffending. By subjecting discharged offenders to a form of perpetual community ostracism, registration and

community notification laws can deny them occupational, educational, and social opportunities essential to their safe reintegration into society.

## Legal and Psychological Assessment

Although the U.S. Supreme Court has upheld the constitutionality of both predator civil commitment laws and registration or notification laws, their wisdom is questionable. By focusing public attention and resources exclusively on sex crimes committed by strangers after they have occurred, these laws neglect the important problem of how sex crimes can be prevented. Early intervention approaches that target sexually abused children may be more cost-effective than incarcerating adult offenders indefinitely. Moreover, these new legal approaches are largely inappropriate for dealing with sex offenses committed by family members or friends; they may actually discourage the reporting and prosecution of these crimes, thereby facilitating their continuation.

Mandatory minimum sentencing laws and SVP laws are costly and insufficiently protect the public. Rather than fostering rehabilitation, they often produce psychological pressures that are antitherapeutic. They fail adequately to plan for the reentry of sex offenders into the community, even though officials will inevitably release most offenders from prison. No research has demonstrated that registration or notification laws reduce sex crimes.

Modern legal approaches do not make effective use of emerging technologies of risk assessment and management and offender rehabilitation. The most promising rehabilitative techniques are behavioral and psychological. To succeed, they require high offender motivation. Yet, modern legal approaches often undermine such motivation.

New strategies show much greater promise in protecting victims. Community containment uses a team of experienced parole officers, qualified treatment providers, and polygraph operators, who identify individual patterns of offending. Through intensive treatment and aggressive surveillance, they deny offenders access to new victims. A new proposal for sex-offender reentry courts could enhance existing legal models. These specialized courts would safely return to the community sex offenders

who present a reduced risk. A judge, using the community containment team approach, would manage the risk that sex offenders will reoffend and motivate them to participate meaningfully [p. 1367 ↓ ] in rehabilitation programs. This approach provides incentives for offenders to change their attitudes and behavior, permitting them more freedom if their risk of reoffending has decreased. It uses developing riskassessment technologies to monitor compliance and manage risk more effectively.

Politics and community fear make it difficult to rethink existing legal approaches for coping with sex offenders. Yet, recently enacted legal strategies are unduly expensive, do not adequately protect the community, and are often antitherapeutic. More preventative approaches would reduce sex offending, commit added resources to develop promising treatment approaches, and experiment with innovative riskmanagement approaches such as community containment and sex-offender reentry courts to more effectively and efficiently safeguard society.

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#### Further Readings

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