

The Effectiveness of Megan’s Law: Does It Reduce the Recidivism of a Released Sex Offender?

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Abstract

In this study, an extensive review of the existing researches on Megan’s Law is carried out. Also known as the Sexual Offender (Jacob Wetterling) Act of 1994 at the federal level, it requires the convicted sexual offenders against children to notify local law enforcement agencies of any change of address or employment after release from custody. Although the details of the information provided and how community notification is handled differ by state, the law generally provides two main services: sex offender registration and community notification. The comprehensive analysis of this study indicates that there is no supporting evidence shown by previous researches that Megan’s Law reduces the recidivism of sex offenders, and several legislative fallacies contribute to the low deterrence effect of the law. First, the law is enacted with the belief that sex offenders tend to target strangers although the majority of victims are those who are familiar with the criminals. In addition, there is little relationship between sex offenses and the offenders’ proximity to the places that are frequented by children. Furthermore, the focus of a child sex crime law should be placed upon preventing initial offenses rather than on recidivism since a recent study has revealed that the average recidivism rate of sex offenders is comparable to those of other types of criminals. Therefore, lawmakers and law enforcement agencies must take these fallacies into account and find a more effective way to enforce the law and protect children from sex offenders.

Keywords: Megan’s Law, Sex Offense, Recidivism, Legislative Fallacy, Repeat Offender

1. Introduction

Named in memory of a victim from New Jersey, Megan's Law is a part of federal laws which require law enforcement agencies to register released sex offenders and notify community members of the sex offenders' presence in the vicinity of the community. Among major purposes of Megan's Law, prevention and reduction of recidivism is considered as the most important (Terry & Cling, 2004; Clevenger, 2012). Due to its identical features, Megan's Law is also called "registration and community notification laws."

The influence of Megan's Law can be explained with the rational choice theory (Bedarf, 1995). Community notification assumes that disclosing a previous sex offender's residential information to the public will lower his recidivism by removing the opportunities to commit a sex offense and deterring a possible offender by increasing the risk arrest (Bedarf, 1995). In other words, a previous sex offender will be reluctant to commit another crime if community surveillance is enhanced its members informed about sex offenders' presence.

Today, other than the United States, only South Korea and a handful of Canadian provinces employ community notification (Logan, 2011). In South Korea, the issue of violating sex offenders' privacy guaranteed by the Constitutional Law has been the main focus, so that there is little research on the effectiveness of Megan's Law. On the other hand, in the United States, there has been rigorous research from different perspectives of the effectiveness since 1995. This literature review attempts to provide both fundamental theories and methodologies to prospective researchers on Megan's Law in South Korea.

2. Enactment of Megan's Law at federal level

In 1990, the first registration and community notification law in the United States was enacted in the state of Washington, after experiencing a series of highly publicized cases of three sex offenders such as Kane, Earl Shriner, and Wesley Dodd (Tross, 2011). A horrendous incident of eleven-year old Jacob Wetterling who was kidnapped and missing in Minnesota in 1989 initiated the first federal intervention in terms of sex offender registration. To commemorate the victim, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was passed as part of the Federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322. In the Section 170101(d) (3) of this act, it is stipulated, "any local law enforcement agency authorized by the state ... may release relevant information that is necessary to protect the public concerning a specific person required to register under this section" (Zevitz & Farkas, 2000:394).

This act required that each state should enact a law which could register sex offenders' names and addresses with law enforcement agencies after their release. However, the public did not have access to this registry because the information on the registered sex offenders was only used for the law enforcement purpose (Clevenger, 2012). Any state that did not follow the federal policy of registration and community notification law could lose ten percent of the Edward Byrne Memorial State and Local Enforcement Assistance group program arrangements, which is referred to as the Byrne Formula Grant Funding (Thomas, 2011). Despite the effort to promote sex offender registry and community notification through an increased intervention of the federal government, the murder of a seven-year old girl, Megan Kanka by Jesse Timmendequas in New Jersey State in 1994 could not be prevented (Sechman, 2011).

Grief-stricken Megan's parents led public campaigns to enhance previous laws of sex offender registration, thus attracting the rallies of New Jersey community and petitions supporting disclosure of sex offenders' presence. In 1995, a new community notification law was enacted, which could allow the disclosure of the sex offender registry (Tross, 2011). Shortly after the enactment of state laws, a subsequent federal legislation, Pub. L. No. 104-

145, amended the Section of previous federal laws and removed state discretion to implement community notification by substituting the word “shall” for “may”, which is referred to Megan’s Law (Zevitz & Farkas, 2000). This amendment required law enforcement agencies to notify community members with the presence of sex offenders in the vicinity of their communities. Also, Byrne Formula Grants Funding was used in order to encourage all the states to implement this law (Thomas, 2011). Megan’s Law, which was created to satisfy people’s demand, was considered as one of several legislative steps toward preventing potential recidivism of sex offenders (Terry & Cling, 2004).

3. Perspectives of the Studies on Megan’s Law

The community notification has various impacts not only on sex offenders, but also on community members and law enforcement agencies. Lasher & McGrath (2012) categorized these impacts into five perspectives and explained them in detail. The first is the community safety effect, which indicates how well community notification contributes to the goal of crime reduction. The public’s perspective examines whether the existence of community notification is recognized by the community members and has an influence on the precautionary measures taken by the residents. The perspective of law enforcement, corrections, and mental health professionals assesses professional involvement in and support toward community notification. Furthermore, the sex offenders perspective analyzes the collateral consequences such as the psychological effects of community notification on the offenders. Lastly, the perspective of the offenders’ families focuses on the negative experiences of the family members, including harassment and assault by neighbors and depression.

Among these five perspectives with regard to the study on community notification, community safety impact is a critical public policy component and has been a major topic of several studies (Lasher & McGrath, 2012). Also called goal-oriented research, it evaluates whether the intended goal of the law is achieved by utilizing a deterring factor (Socia & Stamatel, 2010; Welchans, 2005). Drake & Aos (2009) categorized the deterring factor into two types and showed two frameworks of the studies on the community notification law. General deterrence studies such as Prescott & Rockoff (2011) and Shao & Li (2006) compared the total crime rates before and after the implementation of community notification laws by using the aggregate level data provided by the Uniform Crime Reports (UCR) or National Incident Based Reporting System (NIBRS); and specific deterrence studies have compared the recidivism rates of the sex offenders before and after the enactment of the law. Drake & Aos (2009) introduced several rigorous studies on specific deterrence along with Schram & Milloy (1995); Duwe & Donnay (2008); Freeman (2012); Letourneau, Levenson, Bandyopadhyay, Shinha, & Armstrong (2010); Barnoski (2005).

4. Existing specific deterrence studies

Schram and Milloy (1995) conducted the first and most inclusive study on reducing reoffending of convicted sex offenders in the state of Washington, where the Community Protection Act was implemented in March 1990. The purpose of the study was to determine recidivism rates between sex offenders that are subject to community notification and the ones that are not by comparing them before and after the implementation of the law. The main methodology used in the study is a retrospective quasi-experiment and descriptive analyses. A notification group of 125 people was selected from a sample of the sex offenders who were released from the prisons between March 1, 1990 and December 31, 1993. Among the sample, those that were subject to the highest level of community notification were selected after conducting surveys with fourteen city law enforcement agencies in Washington. The comparison group of ninety individuals was selected from a sample of 350 adults convicted of felony sex offenses in Washington after July 1, 1986, who were not subject to community

notification because of their release prior to the implementation of the community notification law. This study revealed that the notification group had a 19% recidivism rate, which was lower than the 22% rate of the control group, without statistical significance. In non-sexual recidivism, the notification group had a 57% rate compared to the 47% rate of the control group, without statistical significance. However, one interesting point was that the offenders who were subject to community notification were arrested for new crimes much more quickly than the comparable offenders who were released without community notification.

In Minnesota, some studies on the positive effectiveness of registration and notification laws were conducted. Originally, this required a state-wide implementation of community notification, but left a blank to the detailed way of the implementation. This discretion created two types of notification. The more common type was to allow community members to access the information of sex offender registries, and the other one was to require law enforcement agencies to release the information to the community members, similarly to that of Washington. Minnesota was one of the ten states that employed the second type of community notification. In 1997, the Community Notification Act was implemented in Minnesota. All sex offenders began to be assigned into the three categories with respect to the risk level of sexual recidivism. The End of Confinement Review Committee (ECRC) assigned the offenders into the level 1, 2, or 3 before their release using predictive indication of the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R); for example, offenders that were assigned into the level 3 group of high public risk should be subject to a community-wide notification (Duwe and Donnay, 2008).

Duwe and Donnay (2008) compared a notification group of 155 offenders released between 1997 and 2002 with two comparison groups that were released without community notification in Minnesota between 1990 and 2002; considering ethical and legal issues, the Level 3 group could not be randomly assigned. Instead, two comparison groups were used. One was 125 offenders between 1990 and 1996 (before the implementation of the Community Notification Act) who would have been subject to intensive community notification if the law had been in effect at the time of their release (pre-notification group). The other group was 155 offenders between 1997 and 2002 that were not subject to the community notification (non-notification group). The method of this research featured the usage of non-equivalent groups and time series designs, which is called a quasi-experiment and often chosen by researchers when random assignment is not possible (Maxfield & Babbie, 2008). This research suggested that the broad communication notification in Minnesota significantly reduced the time to reoffend when comparing the notification group with the two comparison groups. Also, there was a reduction in non-sex and general re-offenses when the notification group was compared with the pre-notification group, but no difference was found when the notification group was compared with the non-notification group. In other words, community notification had no effect on the recidivism of non-sex and general offenses.

The same technique is utilized in examining the effectiveness of community notification. New York State's Sex Offender Registration Act (SORA) was implemented in the Correction Law Article 6c in 1995, so that released sex offenders were required to provide the state with their personal information after January 21, 1996. The court assesses the offenders' likelihood to repeat the same offense and decides on the offenders' risk levels, thus determining the length of registration and the extent of community notification. SORA requires that the offenders assigned to Level 2 or Level 3 should register for life and be subject to community notification, and enables local law enforcement agencies to select notification procedures. Therefore, four main forms of community notification emerge: the online public sex offender registry; community notification meetings; dissemination of flyers and other mailings; and informal communication with residents or door-to-door visits (New York State Division of Criminal Justice Service, 2011).

Sandler, Freeman, and Socia (2008) conducted research on sexual offense arrest rates by using time series analyses in order to determine whether SORA decreased re-arrest rates for convicted sex offenders and deterred non-registered offenders. The research used twenty-one years (252 months) of New York State monthly arrest data (1986-2006) ten years before and eleven years after the enactment of SORA. Autoregressive Integrated Moving Average (ARIMA) model was also employed for accurate analyses. The data included the arrest rates of rapists, child molesters, sexual recidivists, or first-time sex offenders. The findings showed that 95.9% of all arrests for any register-able sex offenses, 95.9% of rape, and 94.1% child molestation were committed by first-time sex offenders. Based on the findings, it was suggested that sex offenders had relatively low recidivism rates, and first-time offenders committed the majority of them. Furthermore, sex offenders were more likely to victimize family members, intimates, or acquaintances.

Freeman (2009) sought to empirically assess the relationship between community notification laws and rates of sexual offender re-arrest for a sample of offenders. Shortly after the enactment of SORA in New York on January 21, 1996, federal injunction was established to prohibit community notification for all sex offenders who had committed their crimes before SORA after a federal lawsuit filed on behalf of several released sex offenders challenging its constitutionality. This allowed the sample selection of this study. As of June 4, 2004, there were 17,165 registered male sex offenders in New York, who were divided into two groups: (a) those who committed their crimes prior to SORA (comparison group; n=6,573, 38.3%) and (b) those who committed their crimes at the time of or after the enactment of SORA (notification group; n=10,592, 61.7%). Follow-up period started from the date of their first release into their communities and ended on the last day of the study (June 4, 2004). Two measures of recidivism were used as dependent variables: re-arrest for registerable sexual offenses and re-arrest for any non-sexual offenses. This study revealed that the offenders subject to community notification were re-arrested twice as fast for subsequent sexual offenses and 47% quicker for non-sexual offenses than those not subject to the community notification. Several explanations were provided for the difference. First, community notification enabled community members and the police to enhance surveillance on the sex offenders who were subject to community notification and the registered offenders' activities were quickly detected. Also, the community members informed by community notification had false safety perceptions that their communities were safe, thus resulting in less prepared guardianship. This atmosphere could have instigated sex offenders' re-offending. In addition, as the collateral consequences of community notification, sex offenders' rehabilitations could have been hindered by the harassment and discrimination of the community members.

Letourneau, Levenson, Bandyopadhyay, Shinha, and Armstrong (2010) intended to measure sex offenders' recidivism and the effectiveness of sex offender registration and notification (SORN) in South Carolina. The research was conducted, casting a questions to the belief that most of sex offenders were recidivist, so that SORN enabled people to take preventive measures against the presence of sex offenders and contributed to law enforcement agencies in locating the sex offenders' re-offenses more easily. The target populations included 6,837 male offenders who were at least sixteen years old and were convicted in South Carolina for at least one sex offense between January 1, 1990 and December 31, 2004. Among them, 773 offenders were excluded because of their incarceration during the research, and final samples had 6,064 offenders. The follow-up period was defined as the time between the date of release or disposition (if incarcerated) and the date of re-offending; the mean length of follow-up was 8.4 years. Data was analyzed by using two strategies of the univariate analysis and Cox's relative risks models. The result showed that there were an 8% rate (490 offenders) of new sex crime charges and a 5% rate (299 offenders) of new sex crime

convictions across the follow-up period, indicating low sex crime recidivism rates. This result indicated that the present study found no evidence to support that South Carolina's SORN policy reduced sex offense recidivism. The policy implication was presented for an effective implementation of SORN.

It seems as though people have difficulties in accurately recognizing the recidivists that are truly harmful to community safety because the public policy requires all registered sex offenders to undergo the intensive notification, addressing them as equally dangerous. Furthermore, the public policy may require more social resources for an extensive surveillance on all sex offenders rather than concentration on the recidivists. These situations make it difficult for SORN to be effective when it comes to cost and benefit. Therefore, SORN should be required to distribute social resources in concentrating on sex offense recidivists in order to enhance public safety.

Tewksbury and Jennings (2010) examined specific deterrent effects of the state-based registration and community notification (SORN) in Iowa. The research was designed to track the trajectory in the recidivism rates of sex offenders released in five years prior to SORN (1992-1996) and five years after SORN (1997-2001) in Iowa. While the SORN policy assumed the homogeneity of the offenders, this research was conducted on a belief that some subgroups existed within the sex offender cohorts, and each demonstrated different levels of recidivism. Based on the assumption, three types of sub-groups were incorporated: (1) offenders without recidivism records, (2) low-rate sex offense recidivists, and (3) offenders with a high rate of recidivism. To confirm the accuracy of this classification, the research compared the sex offenders' observed post release behavior to the expected subgroups. The result of comparison showed that sex offenders were equally distributed into the trajectory groups, and that recidivism rate did change prior to and following the implementation of SORN.

Zgoba, Veysey, and Dalessandro (2010) conducted a study on group differences in recidivism of sex offenders subject to community notification and that of the ones not notified in New Jersey. The research was designed to randomly select fifty male sex offenders per year that were released from New Jersey Department of Corrections facilities from 1990 through 2000. This design yielded 550 cases in total during the eleven years, and assigned the cases into two groups: Before and after the implementation of community notification in New Jersey in 1995. The pre-implementation group had 250 cases and the post-implementation group included 300 cases. Prior to comparing the two groups, bivariate analyses were performed to confirm the equivalences of the samples in offenders' demographic, clinical characteristics, and criminal history; the characteristics of target offenses; and criminal justice procedural changes. On the measures of general recidivism including sex offenses, the research showed that the post-implementation group had lower rates of re-arrest, re-convictions, and re-incarcerations than the pre-implementation group. However, no significant difference was found in the length of time from the institutional release to the re-arrests between the two groups when analyzed by using *t*-test. On the measures of sex recidivism, the research showed that there was no significant difference in the rate of re-arrests between the two groups. It was suggested that the community notification had no effects on sex recidivism. Interestingly, among the post-implementation group, re-arrested sex offenders had a higher rate of convictions and incarcerations than those of non-sex offenders. It demonstrated that both prosecutors and courts took the recidivism of sex offenders seriously enough that they were more likely to be convicted and incarcerated for their sex offenses than non-sex criminals.

Vasquez, Maddan, and Walker (2008) intended to examine the impact of registration and notification legislation of ten states. The monthly rapes at the state level before and after three years of the implementation of the law were discussed. The research used monthly state-

level UCR rape data, and the rape in this research was defined as the carnal knowledge with a person by force and against his will. To overcome the shortcoming of serial correlation and negatively biased errors from a time-series experiment, the research employed ARIMA, and due to the incomplete data, final ten out of fifty states were analyzed. The results of the analyses varied; a decrease in the monthly number of rape counts was found in five states: Hawaii, Idaho, Nevada, Ohio, and West Virginia. Of these states, a statistically significant decrease was witnessed in Hawaii, Idaho, and Ohio. On the other hand, an increase in the monthly number of rape counts was found in Arkansas, California, Connecticut, Nebraska, and Oklahoma; of these states, California experienced a statistically significant increase. Furthermore, no statistically significant changes were found in six states: Arkansas, Connecticut, Nevada, Nebraska, Oklahoma, and West Virginia. In conclusion, the sex offender legislation seemed to have no uniform influence on the number of rape and had little general deterrent effects on the rapists.

5. Conclusion

To date, the majority of research have shown that Megan's Law does not tend to reduce the recidivism of sex offenders by means of offender registry and community notification. It can be agreed upon that a mere enactment of a new law may not significantly reduce the recidivism due to various factors influencing the crime. Furthermore, the assumption of Megan's Law, the rational choice theory, with regard to its deterring effects should be questioned. Specifically, it may be premature to assume that all community members will take preventive measures toward notified sex offenders. In other words, people might not be cautious about notified sex offenders if they are familiar with them as intimate friends and family members. The community members that do not take precautionary actions will have no deterring effects on the recidivism of a registered sex offender.

Socia and Stamatel (2010) pointed out three fallacies of legislative assumptions about the nature and likelihood of sexual offenses, which had their basis on the enactment of sex offender laws without statistical evidence. First assumption is that sex offenders are more likely to attack strangers rather than their acquaintances. However, this assumption is against the recent results of the research that indicates the majority of sex offenses are committed by offenders who are familiar with their victims (Catalano, 2006). It also assumes that sex offenders would search for victims where children frequently convene, such as schools and daycare centers; but a recent study shows that there is little relationship between sex offenses and offenders' closeness to the residences of potential targets (Minnesota Department of Corrections, 2007). Lastly, the legislation is focused on preventing recidivism of sex offenders rather than their initial offenses, but a recent research shows that sex offenders' recidivism rates are not higher than that of other offenders (Sandler, Freeman, & Socia, 2008). Considering these fallacies of assumptions, Megan's Law seems to be an informative law that satisfies people's feeling of security rather than a preventive one; the merit of Megan's Law is providing community members with the information the released sex offenders although the purpose of its enactment has been supporting the law enforcement. Therefore, any parents that raise young children and are particular about choosing their neighborhoods will decide to move into a community after taking various aspects into account. When these parents find potential offenders in a community, they will choose another place to live. Powerful impacts of Megan's Law can be found in this case.

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