



Sex Offender Registries Endanger the Live Of Those They Are Meant to Protect

By Miriam Aukerman

Our communities deserve effective public-safety measures that are based on facts and sound research, not wasteful and counterproductive measures born of fear. We all want to be safe. We have to demand our legislators pass laws that work and actually keep us safe.

That's especially true when it comes to sexual offenses.

A Michigan man we'll call John Doe met a woman in 2005 at a club open only to those ages 18 and up. He didn't know it when they slept together, but she was actually 15. Today, 12 years later, they are married with two children. But John was also arrested and placed on Michigan's sex offender registry for the rest of his life.

He has lost countless jobs when employers learned of his status. He's been periodically homeless, unable to live with his wife and kids. He can't even attend his own children's basketball games or see them graduate from high school.

John is not alone.

There are thousands of men and women across the country who have received life sentences — not to remain behind bars — but rather to suffer and endure the stigma and discrimination that follows anyone whose name appears on a sex offender registry.

But things are looking up for John. This month the U.S. Supreme Court left in place a lower court's decision that Michigan's sex offender registry law is so ineffective that it is unconstitutional. The Sixth Circuit Court of Appeals not only found that Michigan's registry treats those on it as "moral lepers," but also concluded, based on a mountain of evidence, that registries don't keep people safe.

As the court pointed out, registries may actually increase offending and have "at best, no impact on recidivism," probably because they make it so "hard for registrants to get and keep a job, find housing and reintegrate into their communities."

Michigan will now have to rewrite its unconstitutional registration law. The only moral and logical thing for Michigan — and other states — to do is to abolish the sex offender registry.

Why? Well, for starters, registries just don't work.

The scientific consensus is that registries don't actually do anything to prevent sex offenses, which means they're an enormous waste of taxpayer resources. Michigan's registry, the fourth largest in the country, is bloated, with nearly 44,000 registrants, and growing by about five people every day. There are more than 850,000 registrants nationwide.

Registries are dangerous because they push registrants to the margins of society, making it harder for them to get jobs or an education, find homes or take care of their families. Draconian restrictions mean registrants face years in prison if they do something as simple as borrow a car without immediately notifying the police. And the internet has turned these registries into modern-day scarlet letters, leading to harassment and even vigilantism.

The good news is that there are effective ways to keep our families and communities safe. We need to focus on prevention and support the critical work being done by sexual assault survivor groups. We need to recognize that the vast majority of child sex abuse cases—about 93 percent—are committed by family members or acquaintances, not strangers, and focus on where the real danger is.

We need to educate our children, not only so that they don't become victims, but also so they don't do things, like sending inappropriate texts that could land them on a registry. And we need to partner with the treatment community so that people get the help and services they need to lead productive lives.

It's possible that the Supreme Court will eventually strike down a state's sex offender registry law. But we don't need to wait for the high court to rule on sex offender registries before taking action. Congress should replace the Sex Offender Registry National Act (SORNA), a misguided law that incentivizes states to continue these failed policies, and redirect those resources to prevention, treatment and support of survivors.

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From the Editor's Desk

By Joseph Ajlouny

As promised in our last Cure-Sort News (Autumn 2017) we want to shine a little light on one of the biggest issues of the day: when does workplace sexual harassment cross the line and become criminal? It is a question that has been forced upon us all by the #MeToo phenomenon that has exploded in the wake of the allegations against movie producer Harvey Weinstein. As we now know, this movement has spread from Hollywood to corporate America, government, media, the arts, labor unions, academia and just about every other segment of our social and professional lives. And it has become an international headline story as well, as the silence that once attended sexual harassment and abuse on the job and beyond has ricocheted around the earth.

One thing seems certain: people have become very touchy and exceedingly defensive on the wider issue. On the one hand are those who take a zero-tolerance view and seek to make this watershed era an opportunity for real change. Others are more reluctant as they see the steady shout of sexual misconduct allegations cross the line of decency, causing ruination of reputations and careers without any form of due process or fundamental fairness. Even actor Matt Damon, who has forcefully spoken out against such misconduct, by one of Weinstein's accusers or "not getting it" because he suggested such conduct has to be viewed on a continuum as not all acts are the same and shouldn't be treated the same way. And actress Meryl Streep was similarly targeted for suggesting precaution in penchant to vilify the so-called perpetrators without evidence, especially since so many of the allegations against so many date back so many years, even decades.

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Every important life story has two aspects: the things a man has energy enough to do, and the things a man has stability enough to stand.
Harry Emerson Fosdick

Sex Law and Policy Center Offers New SOR Guidebook

Registering With Dignity: A Practical Guide to
Reentry and Life on the Registry

Anyone who's been recently released, is already registered, an ally, an advocate, or a family member has heard this phrase uttered and a door promptly shut in their face or a dial tone in their ear. Although, it probably wasn't registrant they heard, but "sex offender." Reentry programs frequently cite this when turning registrants away from their services. Politicians slide the phrase into their policies to further their goals. Criminal legal advocate it to push their own agendas. The only time registrants are included is when the conversation shifts to discuss the politics of punishment with the likes of Harvey Weinstein, Kevin Spacey, Charlie Rose, Matt Lauer, Dustin Hoffman, Louis C.K., Roy Moore, John Conyers, Al Franken and so many others, including our own president Donald J. Trump. Among

the important spotlights in the guidebook is a differentiation between those causing harm without creating space for repairing harm and restoring lives. To be truly effective and humane, sex offender registry laws must be tailored to prevent future harm and not further punish the registered.

It's not that challenging sexual violence isn't crucial, it's that registration and notification for sex crimes isn't effective at doing so. Not only is registration a complex tangle of rules and regulations, but registrants are systematically denied access to housing, jobs, and social support. Families of registrants feel shame, discrimination, and stigma; their children are bullied, alienated, and experience higher suicide rates. More to the point, they are not provided the tools to successfully reenter and reintegrate with their communities.

Over the past year, The Sex Law and Policy Center (SLAP) has diligently worked to draft a reentry guidebook specifically for people on the registry and the people that love and support them as they navigate the ins and outs of registration and reentry. There is a discussion about the varying pieces of federal legislation requiring registration for sex offenses. One section details constitutional protections, while another section outlines what to expect from registration. Community supervision and how to successfully complete it is covered later on, as is the reentry process and sex offender treatment. The guide explains a registrant's rights to sexual expression and what to do if they feel their rights are being violated. There is an additional section specifically for women and juveniles on the registry. The guide also helps offenders' loved ones understand what to expect from loving and supporting someone on the registry. In short, it helps registrants, and those they love, understand their rights as someone on the registry.

Generously, SLAP is making the guidebook available on its website for free. A PDF version is available for downloading and sharing is recommended. The site also includes a feedback form and suggestions for additions and updates.

David Booth, founder and executive director of the Center, is the author of the guidebook. It's the next obvious step in the Center's mission to address US policy against sex offenders and other targeted classes such as the LGBTQ community, people with HIV and youth. SLAP's website provides a wealth of information and links to resources supporting its mission to combat discrimination against registered citizens and advocate for common-sense evidence-based SOR reform. The website can be found at www.sexlawandpolicy.org.

From Registries, Page 1

Let's replace our broken registry with a comprehensive system that actually protects our communities. We owe it to our kids.

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(www.thehill.com).

Miriam Aukerman is a senior staff attorney with the ACLU of Michigan and manages the ACLU's West Michigan Regional Office. Aukerman litigates high-impact cases on a broad range of civil liberties issues, with a particular focus on immigrant rights, poverty and criminal justice. Along with the University of Michigan Law School Civil Law Clinic, she was the chief advocate that argued and won the *Doe v. Snyder* decision in both the US District Court and the Sixth Circuit Court of Appeals. More information and updates about this case can be found at www.aclumich.org/SORainfo

Newspaper Editorials Surprise, Point to Solutions

By Joseph Ajlouny

In light of the U.S. Supreme Court's decision to deny consideration of *Doe v. Snyder*, many newspaper editorial boards have weighed in in the debate. Without exception, every one of these voices have supported the proposition that SORA is a Frankenstein that needs to be slain and resurrected in some sane manner. An especially cogent view was expressed by the conservative *The Detroit News*, which admittedly has been skeptical of the breadth and depth of SORA in the past. Like its liberal rival *Detroit Free Press*, *The News* has taken a principled stance against the draconian requirements and heavy collateral consequences that registration triggers. It has noted that the crime the offender committed is less important on housing and employment opportunities, for example, than the fact of registration itself. Indeed, it is the status of registration itself that seems to be the controlling factor in such decisions. This fact is overlooked in the discussion. Another example of this form of discrimination is that most domestic cruise ship lines and AirBnB ban sex offenders from enjoying their products and services not because they have criminal records but solely because their names appear on a registry. Similarly, natural disasters like hurricanes and wildfires have seen registered citizens be excluded from emergency housing and services. Like the No Fly List managed by the Transportation Security Administration, registries are by their very nature and design easily accessible and searchable.

But despite all the debate and the recent appellate court victories, sex offender registries are here to stay. The federal Adam Walsh Act requires states, tribal nations and territories to maintain publically searchable sex offender registries and the likelihood of there being any rollback in this mandate is zero. So the task begins with making them more humane, better directed to actual public safety concerns and less inclusive. Most importantly, they must contain a reasonable mechanism to permit discontinuance of registration. It has been noted elsewhere that the states are making significant progress in lowering or removing obstacles to prisoner re-entry except in the case of sex offenders, in which obstacles continually mount. Perhaps a critical mass is building to restore some sanity, some comity to our nations' penchant to stigmatize sex offenders for life.

To that end, *The Detroit News* editorial mentioned above takes a workable approach, one that is prompted by the recent positive court decisions concerning the punitive nature of SORA laws in Michigan, Pennsylvania and Colorado. In all three cases, the courts noted that offenders are listed by their offense, not their risk of re-offending. This labeling then is not really about public safety but about further punishing the registered after they have completed their sentences. All three courts held this result, even if not intended, is a violation of Constitutional protections of due process of law and equal protection. The Ohio Supreme Court reached a similar conclusion five years ago in striking down retroactive application of that state's SORA. It concluded that the introduction of tiers did not alter the fact that risk assessment is not considered and therefore, classification of offenders into tiers solely determined the duration of their registration obligations, not the facts of their rehabilitation or dangerousness.

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The trouble with being a leader today is that you can't be sure whether people are following you or chasing you.

Anon

CURE-SORT NEWS

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Sex registry rewrite should focus on risk” is the title of editorial. It begins thus: “Michigan’s ill-advised scheme to pile on punishment for convicted sex offenders failed to get even a hearing before the U.S. Supreme Court, leaving the Legislature to craft a new law that will restore both sanity and fairness into the state’s sex offender registry.”

After noting the size of the registry (approximately 44,000) and the fact that most of those are not dangerous and were never guilty of predatory conduct, the editorial continues: “A registry this massive is expensive to maintain, and because of its size and the range of offenses covered, it’s not much use to the law enforcement agencies it was intended to serve, or to neighbors in the community. In rewriting the law, common sense should prevail and public safety should be the only goal.”

Most importantly, *The News* observed that the registry should be limited to only those who pose a genuine danger to others, and that a conviction alone does not determine risk. “Those on the registry should have a path off and the ability to present evidence as to why they are not a threat.” It did not mention a point that was recently asserted in California’s recent passage of a slow phase-in of a tiered registry system that will likely require the discontinuance of many thousands of that state’s 135,000 strong registry, almost all of whom are required to register for life. That point is this: the bigger the registry, the more difficult it is to monitor. Conceivably, dangerous sex offenders can be “camouflaged” by the sheer breadth of the registry. That is actually injurious to public safety, a point that won that state’s legislators over.

The News editorial also echoed an assertion made in all three court decisions, that overly restrictive SORA laws may actually impede the process of rehabilitation and re-entry by isolating the registered away from jobs, housing and most importantly, connections to family love and support in those instances where the laws prohibit family reunification, school access and participation in public events at places like parks, churches and the like.

At the other end of Michigan, a similar opinion was published by *The Mining Journal* based in Marquette in the Upper Peninsula. This newspaper first noted that the Sixth Circuit Court of Appeals decision, which was unanimous, found that the state of Michigan treats registered sex offenders as “moral lepers by burdening them with excessive restrictions.” It also emphasized the court’s ruling that these restrictions are “not at all” connected to public safety and noted that the state of Michigan failed to provide any evidence to the contrary.

eAdvocate Passes Away

eAdvocate, the anonymous person so well known for his research, blogs, websites and astounding legal input to researchers, therapists, attorneys, government officials and advocates, passed away recently following a lengthy illness.

After a fall over a year ago, he had considerable complications and never did get back into the flow of the tremendous output of work he had produced.

“He was one of a kind. I’m deluged with notes of commendation for the work he did from so many people. He will surely be missed. But we owe him a debt of appreciation for the material he developed that will be his legacy,” said Wayne Bowers, CURE-SORT chair and Executive Director.

A more detailed review of his life and work will be published in the Spring issue.

From the Editor’s Desk – Page 2

As individuals who have, for one reason or another, been forced to grapple with the issue of inappropriate and illegal sexual conduct, we know that “womanizing” shouldn’t be criminalized but neither should rude or creepy behavior be tolerated or excused. If you look at the cases separately and try to be objective, we need to find several factors to be true or very likely true due to the credibility of the victim(s) voices. First, there has to be an abuse of power or authority such that the perpetrator is using his or her position for ulterior purposes. Second, there has to be a transgression of boundaries that is clearly inappropriate to even the most sober bystander. Third, the victim needs to be violated in some manner, even if it is not a physical violation. Fourth and most importantly, the victim must feel fearful and helplessness and the perpetrator must make it known that disclosure of the transgression will result in retaliation.

Here you have the perfect recipe to assess whether a claim of sexual misconduct is really what it appears to be rather than some clumsy or regretted or stupid sexual encounter. The stakes are high for all involved. Women who have come forward, who *Time* magazine calls The Silence Breakers, need and deserve the benefit of the doubt. We all know that this kind of conduct is as old as life itself and that a variety of forms of “toxic masculinity” (gun violence, terrorism, drug running, human trafficking, etc.) have indeed resulted in massive and long term harm. It’s a culture that is ripe for overthrow, contends Mary Celeste Kearney, director of the Gender Studies Program, University of Notre Dame, “because it is linked to patriarchy, misogyny, sexism and homophobia.” Inappropriate and unsolicited sexual attention is never warranted and always wrong. When it occurs in the context of an abuse of power and the victimization of a vulnerable person, it is an assault. Let’s hope that the present spotlight on our collective misconduct aids the goal of prevention, of education, of respect and of change for the better.

From the Executive Director’s Desk

By Wayne Bowers

Advocates always work to promote their passion or mission. A recent startup of monthly conference calls to allow family and advocates join with civil commitment detainees has allowed good networking, ideas from various coalitions on ideas how to promote concerns and information on civil commitment. CURE’s Charlie Sullivan started this type call and it continues on.

And now Sullivan is working on some other conference calls on some other topics. If you wish to learn about what is involved and be included, contact CURE at PO Box 2310, Washington, DC 20013 or 202-789-2126 or email cure@curenational.org. Here is the call number and access code for the civil commitment call.

Civil Commitment – First Saturday (10-11:30 am EST) – 605-472-5381, Access 491204#

Recent Court Cases Explained

By Joseph Ajlouny

Due to a lack of space in our last issue (Autumn 2017), we didn't have a chance to address the three important court cases that have been recently decided that directly impact the current laws on sex offender registries and civil commitment. The first and most significant decision was made by the U.S. Supreme Court, which according to journalist Bill Dobbs are "bitter and sweet." The bitter decision is the court's refusal to hear (and thus overturn) the Eighth Circuit Court of Appeals' 2016 decision to leave the Minnesota Sex Offender Program intact. That program has come under scrutiny because those trapped within its insidious clutch (approximately 700 people) have almost no hope of being released. It is, the plaintiff "patients" claim, the equivalent of incarceration and not treatment, as it purports to be. Key to that argument is that since its inception 12 years ago, only a handful have been released from hospitalization. It's imprisonment in the guise of treatment, the plaintiffs and their supporters have argued. By refusing to hear the case, the nation's highest court has effectively resigned the program's "patients" to the purgatory of continued confinement long after their prison terms have ended. This case follows on the heels of a similar decision in Kansas which refused to address the same issue. Not good news!

The sweet news is that the U.S. Supreme Court has refused to hear a 2016 decision by the Sixth Circuit Court of Appeals that invalidates Michigan's practice (and hopefully of every other state) to heap additional restrictions on convicted sex offenders with draconian provisions enacted after their dates of conviction. To do so, the Court of Appeals held, violates the Ex Post Facto clause of the U.S. Constitution, which prohibits retroactive application of criminal penalties. To skirt that clause, states have routinely maintained that sex offender registration rules are "civil and remedial measures" and thus do not amount to punishment. Noting the harsh and pervasive scope of the rules, the court said that to call them anything other than punishment is dishonest.

As reported in our Summer 2017 issue, Pennsylvania's state Supreme Court made a similar ruling in July that held its state's sex offender registry (SOR) constitutes punishment and may not be applied retroactively. While not a complete victory because it does not address the same punitive rules that affect those convicted *after* the law's burdensome changes were made, it does offer imminent relief to several thousand registered citizens who are being forced to comply with restrictions that were not in effect at the time of their convictions. Most importantly, these apply to the establishment of tiers based on conviction and not dangerousness. That, the court said, is also a violation of the Equal Protection Clause of the state and federal constitutions.

And finally, a federal district court in Denver has made a similar ruling regarding the Colorado SOR. Except it has gone even further. Judge Richard Matsch held that it is unconstitutional because, as applied, it violates the 8th Amendment of the U. S. Constitution, which prohibits cruel and unusual punishment. The basis for this finding, the judge held, is the public shame, that follows registered citizens from the unrestricted public access to personal information the SOR requires be published on the internet.

And the court also held that the law violates the Due Process Clause because it fails to provide a mechanism to assess a registered person's dangerousness and thus consigns him or her to permanent life time registration without a statutory opportunity to discontinue registration. This ruling is the broadest of all as it implicates the federal Adam Walsh Act, which, among other things, requires states, territories and tribal governments to maintain a publically accessible sex offender database. Not surprisingly, the Colorado attorney general has announced the decision will be appealed to the Tenth Circuit Court of Appeals.

While the impact of these cases is still up in the air, the course ahead is clear, state and federal legislatures will be forced to revisit the more onerous aspects of SOR laws and they must base their legislation on research not fear. These cases offer a lasting hope that some level of sanity will replace the current miasma of stigmatizing those convicted of sex-related crimes. CURE-SORT News will continue to provide its readers with updates on these important developments. But it is good news, the first good news we have heard since this long, unfortunate battle was commenced in the mid-1990's when SOR laws became pervasive.

You can buy a man's time; You can buy his physical presence at a given place; you can even buy a measured number of his skilled muscular motions per hour. But you cannot buy enthusiasm...you cannot buy loyalty...you cannot buy the devotion of hearts, minds, or souls. You must earn these.

Clarence Francis

Resources

We are pleased to offer the following resources. Donations accepted to cover cost of postage and printing. Mail donations to the CURE-SORT address noted on Page 3.

One Breath At A Time by Ila Davis (\$17.50)

Understanding Offending Behavior by Stephen Price. (A collection of 9 of Stephens articles from previous newsletters) (\$4.00 for the set of 9 articles)

When Someone on the Registry Moves Into My Neighborhood (Member Price \$5; Non-Member Price \$10)

SUPPORT GROUP: Families & friends for those in civil confinement, contact Andrew Extein, MSW. Interested persons please e-mail: CCN@curenational.org

No More Victims – One Man's Journey Into Sexual Offending and Recovery, By S. Sands (Ed G), \$13.95 (includes shipping). Request by e-mail to: gunder788@verizon.net

Civil Commitment in New York Explained

By Joseph Ajlouny

New York's top appeals court issued a decision in late October which sheds light on the current status and prevailing attitude on civil commitment. Unfortunately, the sex offender-patient was denied his bid for freedom but the court explained the basis of its decision that offers some hope of those similarly situated. A single justice dissented and his opinion is highly informative and persuasive.

The Plaintiff, Floyd Y. (anonymous) petitioned to be set free from court ordered confinement in a state-run psychiatric hospital arguing that his confinement failed to meet the standard provided in NY's Mental Hygiene law. That law was amended in 2007 to add a provision known as Article 10 to address convicted sex offenders. The standard the legislature adopted requires a finding that a defendant cannot control his or her sexual urges due to a mental abnormality. After a jury trial on the commitment issue, a trial court ruled the state had not met the burden of establishing this standard. However, an intermediate appellate court disagreed and found that the evidence presented did in fact meet that standard, and reversed the trial court's ruling that the jury's verdict was inconsistent with the medical testimony presented.

By the time of his commitment trial, which was his second such trial because the first one was held prior to the enactment of Article 10, Floyd Y. had spent fifteen years of confinement (eight years of incarceration and seven years of civil detention). To be sure, he had a history of sex offenses and the final one was serious. He was convicted of molesting two of his stepchildren, both of whom were under the age of 12 and this led to a diagnosis of pedophilia. He also had a history of substance abuse and was diagnosed as suffering from anti-social personality disorder. It was the combination of all three disorders that convinced the appellate court that the state had indeed met its burden of proof by clear and convincing evidence. In so doing, the court noted that the state has never taken the position that a diagnosis of pedophilia alone constitutes a "mental abnormality that prevents a person from resisting sexual urges sufficient to trigger civil detention proceedings." This is actually hopeful because it opens the door to challenges that rest solely upon the facts of a defendant's crime(s).

What makes this case so telling is the discussion on the inconclusive state of medical evidence and its sufficiency. The question, the court noted is basically this: How can medical professionals be certain a person's criminal sexual conduct is volitional or irresistible? It's not an easy question to answer and the American Psychiatric Association has consistently held that medical diagnoses should not be misapplied to further political or law enforcement ends.

Dissenting Justice Rowan Wilson took great pains in questioning any conclusion based upon contested medical theories about free-will and compulsion. It's a dangerous approach when the stakes are so high. (More next issue)

Truth is not only stranger than fiction these days—it's a lot cleaner too. Anon

Sex Offender Specific Treatment 10

By Dr. JoEllen Wiggington
Pacific Professional Associates
Member of CURE-SORT Board

EDITOR'S NOTE: As our mission is to promote the importance of counseling for the recovery of those who have sexually offended, when appropriate, a discussion will be held in our issue along this topic. This is the 10th article in this series. As said, this is a program of Dr. Wiggington and is not available by correspondence.

This is part of an ongoing series dealing with outpatient sex offender specific treatment, with references and workbooks used in my treatment program at Pacific Professional Associates in Los Angeles CA.

This time the focus will be on thinking, feeling and behaving. An earlier column introduced Rational Emotive Behavior Therapy, a method of managing excessive (or inadequate) emotional reactions. This treatment target involves readings and exercises from Morin and Levenson's (2002) workbook, *The Road to Freedom* that identify and explain various "cognitive distortions" that may justify sexual offenses or prevent change and growth. Once these distortions are identified the Cognitive Restructuring process (also previously introduced) is applied.

A special focus of the treatment target is anger and anger management. In order to understand the roots of anger, clients complete a detailed anger auto-biography that deals with how they were introduced to anger in childhood and how they have handled this emotion historically.

Clients are also asked to keep an anger log for seven days, composed of the following:

1. A detailed account of the event that generated anger.
2. Which of four categories the event fell into (frustrations, irritations and annoyances, powerlessness or injustice and unfairness.)
3. Rate the anger from 1 to 3:
Low (1) Feels tense and upset
Moderate (2) Somewhat angry, verbally confronts person or actively tries to change situation
High (3) Very angry, becomes verbally or physically aggressive.
4. Explain reaction to event.
5. Write how one could behave to have a better outcome.

The next step is to identify one's anger cycle. This is composed of six phases:

1. Precipitating stress
2. Negative mood
3. Pre-assault
4. Expression of Anger
5. Consequences
6. Defense Mechanisms

Excessive anger can be managed by problem solving, or conflict resolution, that allows one to respond to situations without becoming angry to begin with. **PACE** stands for identifying the **Problem**, looking for **Alternative** solutions, picturing **Consequences** and **Evaluating** results.

Our next treatment target will discuss assertiveness.