

SEX OFFENDER RECIDIVISM IN THE UNITED STATES:  
WHY THE IMPLEMENTATION OF SORNA IS INEFFECTIVE IN REDUCING RECIDIVISM

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## THESIS ABSTRACT

### SEX OFFENDER RECIDIVISM IN THE UNITED STATES: WHY THE IMPLEMENTATION OF SORNA IS INEFFECTIVE IN REDUCING RECIDIVISM

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Convicted sex offenders encounter some of the most difficult penalties for their crime. These penalties have a significant impact on the likelihood of recidivism. There are a number of ways that an individual can become a convicted sex offender. Under the Sex Offender Registration and Notification Act (SORNA), once an individual is convicted of a sex offense, the individual must register to a public registry that informs the neighboring public that there is a convicted sex offender living near a certain area. By registering to the public sex offender registry, citizens of the area in which the convicted sex offender resides are notified. Criminological theories may help explain why a person may be pressured to recidivate after their initial conviction. Furthermore, there are certain restrictions to where a sex offender can reside and to what type of employment a sex offender is allowed to obtain. There are also many arguments claiming that public registration is unconstitutional. Research shows that the collateral damages of the public registration of sex offenders is more harmful to an individual's likelihood of successful reintegration. Research also shows that the collateral damages of the public sex offender registries cause the public registries to be ineffective. There are alternative ways to properly reintegrate convicted sex offenders while still keeping the public safe.

*Keywords:* Sex Offender, Recidivism, SORNA, Collateral Consequences, Constitutional  
Law

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## SEX OFFENDER RECIDIVISM IN THE UNITED STATES:

The primary goal of this review is to determine whether the implementation of a public sex offender registry has been proven effective in reducing recidivism rates of convicted sex offenders. This goal will be achieved by reviewing the history of sex offender laws within the United States and how an individual becomes labeled a sex offender. This review will also discuss data on current recidivism rates of sex offenders while reviewing the literature discussing why sex offenders recidivate, such as the criminological theories associated with convicted sex offenders and the collateral consequences that may occur by a criminal conviction. From the review of literature, it will be argued that since the implementation of the public sex offender registry in the United States, convicted sex offenders have a more difficult time reintegrating into society – leading to higher recidivism rates. Further literature will be provided in reviewing alternative strategies that may be more beneficial in reducing the overall recidivism rates in convicted sex offenders.

### History of the Sex Offender Registry in the United States

As mentioned above, the primary focus of this review is to distinguish if the implantation of a public registry has been proven effective in reducing recidivism in sex offenses. By achieving this goal, it is important to discuss sex offender laws put into place within the United States in an effort to reduce the initial sex crime and reduce recidivism. Table I displays a brief history of these laws.

**Table 1** *Timeline of Sex Offender Related Laws*

<b>YEAR</b>	<b>LAW</b>	<b>OUTCOME</b>
1994	Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act	US law that required states to implement a registry for sex offenders and crimes against children
1996	Megan's Law	Mandated public notice of registered sex offenders
1996	The Pam Lychner Sexual Offender Tracking AND Identification Act of 1996	Established the National Sex Offender Registry (NSOR) at the FBI
1997	Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998	Requires that individuals convicted of a sex crime that move to another state must register with the state he/she moved to
2000	Campus Sex Crimes Prevention Act	<p>Amends the Jacob Wetterling Crimes Against Children Act and the Jeanne Clery Act</p> <p>A part of the Violence Against Women Act</p> <p>Requires convicted sex offenders to notify their college, university, or any higher education institution that he/she attended about their conviction</p>
2003	Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act	Requires states to maintain a public website containing sex offender registry information

*Continued: Table I Timeline of Sex Offender Related Laws*

YEAR	LAW	OUTCOME
2006	Adam Walsh Child Protection and Safety Act	Developed SORNA which created guidelines for sex offender registration and sex offender notification. Expanded jurisdiction Created the Office of Sex Offender Sentencing, monitoring, Apprehending, Registering, and Tracking within the DOJ
2008	Keeping the Internet Devoid of Predators Act (KIDS Act)	Requires the collection of convicted sex offenders' internet identifies when registering to the registry
2015	Military Sex Offender Reporting Act	Requires the DOD to report any sex offender convicted under military
2016	International Megan's Law	Requires sex offenders to provide information to the National Sex Offender Registry and the National Sex Offender Public Website

Office of SMART. (2020). SORNA-archived: Legislative History of Federal Sex Offender Registration and Notification. Retrieved December 08, 2020, from <https://smart.ojp.gov/sorna-archived/legislative-history-federal-sex-offender-registration-and-notification>

As you can see, public officials have taken sexual crimes very seriously for a number of years. There are a few laws that have made significant impact to sex offender laws as a whole. First noted is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994. President Clinton passed this Act after to require states to implement a registry for sex offenders and crimes against children.

Coinciding with Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan's Law was enacted in New Jersey after the death of Megan Kanka. Megan Kanka was a New Jersey girl abducted, raped, and murdered by Jesse Timmendequas at just seven years old. Timmendequas was a convicted sex offender and also Kanka's neighbor. After the trial and the reconvicted, New Jersey passed Megan's Law requiring a public notice of registered sex offenders within a community. This law was widely adopted across the nation and many states put into place similar laws requiring a public notice of convicted sex offenders to nearby communities.

The Adam Walsh Child Protection and Safety Act of 2006 is another significant law that is beneficial to understand for the purposes of this review. Adam Walsh was a child who was abducted and murdered by asphyxiation. His abduction and murder became a nationwide headline in which the national public became further aware of the need to protect children. His story resulted in this Child Protection Act of 2006 to be named after him.

For the purposes of this review, the most important thing to come from the Adam Walsh Child Protection and Safety Act of 2006 is Title I – implementation of the Sex Offender Registration and Notification Act (SORNA). SORNA provides federal standards and protocols state and local governments must adhere to in cases that involve a sex crime (Office of SMART, 2020). Though there is not one, uniform definition for a sex offender that is nationally and/or internationally used, SORNA simply defines a sex offender as an individual who has been convicted of a sex crime.



According to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (Office of SMART) (2020), the goal of SORNA is to provide federal standards for local and state governments to follow when handling convicted sex offenders. In SORNA, there are outlines three different tiers in which a convicted sex offender may be labeled. The goal of the implementation of this detailed Act was to close any loopholes that may have been in existence and provide more uniformity throughout the country (Office of SMART, 2020).

The primary goal of these laws was to inform a community when a sexual offender moved into an area. Later in this review, it will be discussed that the likelihood of a convicted sex offender of committing another sexual crime after his/her initial conviction is relatively low (Cleary, 2004). It is argued that these laws were based off of public fear and not significant data reflecting (Carpenter & Beverlin, 2012). This notification coincided with the development and more widely usage of the internet, which allowed sex offender registries to be viewed publicly, online. The public notification has led to questions of SORNA's constitutionality, which will be discussed later in this review.

### Different Tiers of Sex Offenders

An individual is deemed a sex offender after committing and being convicted of one of many sexual offenses. These sexual offenses consist of, but are not limited to, public urination, statutory rape, pedophilia, possession or production of child pornography, sexual contact with minors under the age of 13, etc. (SORNA, 2020). Once convicted of a sex offense, the convicted individual will be identified as a Tier I, Tier II, or

Tier III sex offender. The seriousness of the crime is what deciphers what tier the convicted individual is placed. It is a federal mandate that the convicted sex offender must register with his or her state's public sex offender registry. The tiers and the length of registry is further explained below.

#### *Tier I*

An individual can be convicted of a Tier I sex offense by committing, attempting to commit, or conspiracy to commit the following crimes: a crime consisting of a sexual act or contact with another, specified crimes against minors, specific federal crimes and military crimes (i.e. sexual assaults on a military base), and/or attempt or conspiracy to attempt any of the aforementioned crimes (United States Sentencing Commission, 2013). Once convicted of a Tier I sex offense, the convicted individual must be listed on the public registry for 15 years and must have their photograph taken each of the fifteen years to have posted on the public registry (United States Sentencing Commission, 2013).

#### *Tier II*

An individual can be convicted of a Tier II sex offense by committing, attempts to commit, or conspires to commit one of the following crimes: sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, abusive sexual contact, soliciting a minor for prostitution, or producing or distributing child pornography (United States Sentencing Commission, 2013). If a convicted sex offender who was registered as a Tier II sex offender commits another sex offense after their first conviction,

the individual will upgrade to a Tier II sex offender. Once convicted of a Tier II sex offense, the convicted individual must register on the public registry and be rephotographed for an updated picture every six months to be posted on the public registry(United States Sentencing Commission, 2013).

### *Tier III*

An individual convicted of a Tier III when the individual is convicted of one of the following crimes: committing, attempting to commit, or conspiracy to commit the following crimes: aggravated sexual assault, sexual abuse, sexual contact with/against a minor under the age of 13, kidnapping a minor that is not the individual's child, or was previously convicted of a Tier II sex crime and has committed and has been convicted of new sex crime (United States Sentencing Commission, 2013). Unless convicted as a minor, a Tier III sex offender must be on the public registry for life and must be photographed every three months for the public registry (United States Sentencing Commission, 2013).

## **Collateral Consequences**

It can be assumed that any convicted criminal will face some degree of collateral consequence after their conviction. However, convicted sex offenders tend to face harsher collateral consequences, whether it be directly or indirectly, solely because of the crime that they have been convicted of (Carpenter & Beverlin, 2012). This section will elaborate on the different type of collateral consequences a convicted sex offender

may face. Researchers have often separated collateral consequences into two different categories: formal collateral consequences and informal collateral consequences.

Formal collateral consequences can be described as the mandates, laws, and protocols that a convicted criminal may encounter (Hoskins, 2018). Informal collateral consequences can be described as the consequences that indirectly impact the convicted criminal's life, such as societal stigma and family tensions (Hoskins, 2018). Both formal and informal collateral damages have a significant influence on the likelihood of a successful reintegration into society that a convicted criminal may encounter.

### *Formal Collateral Consequences*

As mentioned, formal collateral consequences primarily pertain to the laws, penalties, restrictions, and/or sanctions that a convicted criminal may encounter that are usually unique to the type of crime that the individual was convicted of (Hoskins, 2018). Convicted criminals are likely to face some sort of formal consequences after their conviction. These formal collateral consequences may differ depending on the type of crime that the individual is convicted of. Convicted sex offenders are likely to face similar formal collateral consequences as other convicted criminals, however, it is argued that their formal collateral consequences are "harsher" and more difficult to adhere to (Carpenter & Beverlin, 2012). It is important to note that there are particular federal laws and mandates pertaining to convicted sex offender may, and often times do, slightly differ from each individual state, municipality, and/or jurisdiction (Onderak, 2020).

For example, individual state and municipality laws may differ as to where a convicted sex offender may reside. Many states may not permit a convicted sex offender

to live within a certain proximity of a school whereas some states only enforce that rule if there is clear and convincing evidence that the convicted sex offender poses a threat on children (Collateral Consequences Resource Center, 2020). It can be assumed that this may cause difficulties finding housing especially for individuals who live in highly populated areas, such as cities.

Many researchers have agreed that the financial cost that comes with being a convicted criminal may also lead to a higher recidivism rate. The conviction of a criminal sexual offense leads to a wide range of financial costs and are argued to be more severe when compared to another type of criminal conviction (Carpenter & Beverlin, 2012). Financial costs of a conviction of a sex offense can be displayed in various ways. For one, convicted sex offenders also are to pay any debts owed, cost of registration, and notification, and may be forced to live in a more expensive residence due to residency restriction laws, as mentioned above (Onderak, 2020). Another example of a financial burden that a conviction often brings is difficulty obtaining stable employment (Carpenter & Beverlin, 2012). As most convicted criminals also struggle with finding legitimate employment, convicted sex offenders may have a more difficult time due to their conviction being a sex offense (Carpenter & Beverlin, 2012). Many jobs applications require individuals to state whether or not that were ever convicted of a crime. If the individual were to lie and deny a conviction, a background check often brings the conviction to light. If the individual were to be honest and disclose their conviction, the individual may not be asked to interview/receive a job. Being that the individual was convicted of a sex crime, stigma and other informal collateral consequences being to be noticeable (Carpenter & Beverlin, 2012).. Denying an

individual of conventional employment that would allow the convicted individual make a livable income is argued to lead to higher amounts of recidivism. Most jurisdictions also do not allow convicted sex offenders to work or volunteer with children (Collateral Consequences Resource Center, 2020).

### *Informal Collateral Consequences*

Arguably, the most detrimental collateral consequence that convicted sex offenders face are simple fact that they committed a sex offense. Society often views sex offenders as the worst type of criminals. Reasons of societal stigmas against sex offenders have a direct influence on the likelihood of a successful reintegration into society and chances of recidivism. Alongside the formal restrictions mandated by federal laws, state laws, and/or municipality laws, stigma may also informally restrict certain convicted sex offenders from certain housing and employment.

Tewksbury and Levenson (2009) explain that the stigma of being labeled a sex offender often causes the convicted individual to feel shame and embarrassment for what he/she has been convicted of. Registered sex offenders are often faced with internal struggles with their identity by feeling the need to isolate from society (Evans & Cubellis, 2015). Through isolation and distance from their old “normal” lives, Evans and Cubellis (2015) argue that it negatively affects their mental health. Struggling with a mental illness that could arise from feeling ostracized and isolated from a community may result in even more difficulties that may result in higher recidivism, such as finding and/or maintaining employment, which is an already difficult goal for convicted sex offenders to achieve (Evans & Cubellis, 2015).

The aforementioned shame and embarrassment also has significant influence in their relationships. For example, Tewksbury and Levenson (2009) argue that the loved ones of the convicted individual may also experience collateral consequences from their association, affiliation, and relationship with the sex offender. The loved ones of the convicted sex offenders are likely to experience feelings of shame, fear, and depression (Tewksbury & Levenson, 2009). The loved one may also experience physical assault, property damage, and forced relocation (Tewksbury & Levenson, 2009). This may also result in the convicted sex offender losing or hindering those relationships, resulting in more emotional distress from losing the important relationships (Tewksbury & Levenson, 2009).

### **The Current Recidivism Rates of Sex Offenders**

As stated above, there is not one, universal definition for recidivism. However, for the purposes of this paper, we will be defining recidivism “a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime” (Hunt & Dumville, 2016). Therefore, a reconviction of a sex offense and/or a conviction of any criminal offense is considered recidivism for this paper.

Recidivism rates tend to be difficult to track – an individual may have committed a criminal offense; however, the individual may have not been caught and/or not been charged with the offense. Schultz (2014) argues that society often believes that convicted sex offenders are extremely dangerous individuals and will try to attempt another criminal sex offense upon release. This perspective has been proven inaccurate and driven by media influence, enhancing a negative stigma and misconceptions of sex

offenders (King, 2016). Recidivism rates of sex offenders more reflective of nonviolent, nonsexual crimes (Langan, Schmitt & Durose, 2003).

Sexual crimes, such as sexual assault and rape, are argued to be the most underreported crimes in the United States (Tjaden & Thoennes, 2006). As victims get older, they are less likely to report their rape or sexual assault to law enforcement (Tjaden & Thoennes, 2006). Tjaden and Thoennes (2006) discovered that only about 13 percent of adult men and 19 percent of adult women report being raped to police. It is safe to assume that convicted sex offenders very likely may have reoffended a sexual offense, however, they may have simply not been reported. Measuring recidivism of sex crimes often are influenced by methods researchers used by researchers, populations that were studied, and/or length of the follow-up period used by researchers (Przyblyski, 2015).

In a research study conducted from the Bureau of Justice Statistics, researchers, Alper & Durose (2019), state that about two-thirds, or 67 percent, of convicted sex offenders that were released in 2005 were re-arrested for any general crime within nine years of their initial release from prison. When compared to other released prisoners from 2005, convicted sex offenders were more than three times as likely to be re-arrested for a sex a crime within the nine-year follow-up period (Alper & Durose, 2019).

Langan, Schmitt and Durose (2003) conducted arguably one of the most comprehensive research studies in sex offender recidivism rates. In their 1994 research study, the researchers found that sex offenders have a 43 percent recidivism rate within a three year follow up period (Langan, Schmitt & Durose, 2003). A 43 percent recidivism rate is still relatively low compared to the national average in the United States. Currently, the BJS (2014) reports that However, the United states is one of the leaders



internationally for incarceration and recidivism (Yuknenko, Sridhar, & Fazel 2019). This assists to the argument that 43 percent for an overall recidivism rate of any crime is still a high recidivism rate.

To further examine the above study, researchers, Langan, Schmitt, and Durose (2003), found that 5.3 percent of convicted sex offenders are convicted of another sexual offense after their initial sexual offense conviction. Furthermore, violent recidivism for sex offenders was found to be at 17.1 percent (Langan, Schmitt & Durose, 2003). Overall, sex offenders have higher rate of general recidivism than sexual recidivism. Sex offender recidivism is not often violent crimes or sexual acts. Many times, the general recidivism that sex offenders commit are parole violations or nonviolent crimes. This is likely due to the collateral consequences endured after a conviction of a sex offense.

### **Criminological Theories that may Influence Recidivism**

The question as to why an individual commits a criminal sexual offense has often been evaluated by researchers and scholars. Theories such as General Strain Theory, General Theory of Crime, and Labeling Theory will be evaluated. It is important to recognize that many of the research that is to be reviewed focuses heavily on male sex offenders. Furthermore, some of the theories that are to be reviewed primarily focus on why an individual commits the original sex offense. However, it will be argued that the theories reviewed also may be the reason why an individual recidivates.

#### *General Strain Theory*

Robert Agnew's (1992) General Strain Theory may be a good example to help explain how the stress of trying to adhere to the excessive protocols may result in a higher likelihood of recidivism for convicted sexual offenders. Though Agnew's General Strain Theory primarily focuses on all convicted criminals, it is arguable that his theory may be the perfect way to explain why convicted sex offenders choose to recidivate.

The collateral consequences that convicted sexual offenders are faced with, like the examples stated above, tend to lead to heightened amounts of stress and strain. Heightened levels of stress and strain may correlate to individuals committing new crimes, adding to recidivism rates (Agnew, 1992). To put this in perspective, Ackerman and Sacks (2012) argue that an individual who cannot receive suitable employment may be tempted to consider making suitable income by unconventional means. Convicted sex offender may be tempted to participate in other illegal activities just to pay bills, eat, and support loved ones (Ackerman & Sacks, 2012). The unconventional means of an income may consist of illegal activities may consist of illegal distribution of drugs, burglary, theft, etc. If caught and convicted of these crimes, the recidivism rate will rise (Ackerman & Sacks, 2012).

### *General Crime Theory*

Gottfredson and Hirschi's (1990) General Theory of Crime states that individuals commit crimes primarily in a pursuit of self-interest through a combination of criminal opportunity and a lack of self-control (Harris, Mazerolle, Knight, 2009). The General Theory of Crime has been applied to explain sexual offending in recent years. In Cleary (2004) conducted research analyzing the behaviors of convicted sex offenders. In her

research, Cleary (2004) notices that many of convicted sex offenders also engage in other activities that are argued to show that an individual has low self-control. Harris, Mazerolle, and Knight (2009) describe some of these behaviors as participation in abusing drugs and/or alcohol or unprotected sex.

Cleary (2004) argues that engagement in activities that involve low self-control and are aimed in achieving instant pleasure often are found in convicted sex offenders. Cleary's (2004) research discovered that many of the convicted sex offenders regularly engaged in smoking and alcohol abuse and were more likely to have had been ticketed for a driving violation or involved in car accidents (Harris, Mazerolle, Knight, 2009). By recognizing these factors that may influence a person to engage in an initial deviant sexual activity, one can assume that without proper treatment, these individuals may be tempted to re-engage in the activities similar to their original offense or engage in other illegal acts – leading to higher recidivism rates.

### *Labeling Theory*

Frank Tannenbaum's labeling theory may be the best way to explain why a convicted sex offender recidivates. The labeling theory has been used to examine recidivism rates for years for convicted criminals. However, most recently, the labeling theory has been used to explain why sex offenders recidivates. The labeling theory argues once an individual is labeled, the individual eventually lives up to that label and becomes what he/she is labeled (Schultz, 2014). An example of this would be a young child being labeled as a "bad student." That child is likely to live up to that label, believing that he/she is a "bad student" and ultimately fulfilling that label.

In a criminal sense, convicted sex offenders can face more damaging repercussions after being labeled a “sex offender” due to the stigma and societal perspective of sex offenders (Carpenter & Beverlin, 2012). Researcher Carla Schultz (2014) examines the relationship between convicted sex offenders and labeling and how this relationship leads to a higher likelihood of recidivism. Being labeled a sex offender dictates where a convicted criminal is able to work, where the individual is allowed to live, and who an individual is allowed to interact with. This label also sticks with an individual for a significant amount of time throughout their life – in some cases, throughout their entire life (Shultz, 2014). Schultz (2014) argues that abolishing the public registry will lower the chances of an individual feeling the effects of being labeled a sex offender and, in turn, allow that individual to successfully reintegrate into society.

### **Is SORNA Effective in Reducing Recidivism?**

It can be argued that there is a significant influence that a public registry has on convicted sex offenders. The implementation of a national sex offender public registry had a goal of instilling a sense of safety and security for communities (Yung, 2009). However, has a public registry been more detrimental in reducing recidivism rates in sex offenders than beneficial in reducing the recidivism rates? Has public registration proven to be effective in reducing the overall recidivism of convicted sex offenders?

Scholars have often suggested that the use of public sex offender registries has had more consequences than benefits. This review’s primary focus is to discover if public sex offender registries play a role in determining whether a convicted sex offender will recidivate. However, it is important to briefly reflect on if public sex offender registries

are effective in deterring the initial crime and effective in keeping the public safe, as well as, the original question in discovering if public sex offenders are effective in reducing recidivism.

### *Effectiveness in Original Sex Offense*

Rates of an initial sex offense is difficult to accurately determine. Researchers note that accurate rates are primarily reflect the rates at which individuals are caught and convicted of a sex crime – not if they are committed. Since implication of the Sex Offender Registration Notification Act (SORNA), the rates of sex offenses initially declined, proving a promising and deterrent effect to sex crimes (Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2010). However, after 1999, the rates of sex crimes had no significant decline. It is also important to note that the overall crime rate declined across the United States during this time period. However, it is important to note that rates of all crime have declined (Agan, 2011). Agan (2011) argues that there is no significant evidence to show that SORNA has a direct influence to the lower rate of sexual offense convictions.

### *Public Safety*

Knowing whether or not the community feels safer knowing that there is vital in deterring if a public registry of sex offenders is effective. Understandably, the public has great anxiety and worry over the acts that sex offender commit. The public reasonable fears sexual victimization to themselves or a loved one. This fear is what led to the offender-specific laws that have been put into place described above.

The public's perspective of sex offenders is often full of misconceptions and incorrect information (Quinn, Forsyth, & Mullen-Quinn, 2010). Society often assumes that all sex offenders are the same and have the same characteristics – i.e. gender, level of education, ethnicity, etc. (Quinn, Forsyth, & Mullen-Quinn, 2000). Quinn, Forsyth & Mullen-Quinn's (2010) research, they explain how there are many contradictory myths and misunderstandings that the general public holds regarding sex offenders. The public also fails to recognize that the majority of sex offenses are committed by someone that an individual knows – usually family (BJS, 2000). According to the Bureau of Justice Statistics (2000), 86 percent of sex offenses are committed by someone the victim knows. Unfortunately, the offender is usually a family member or a family friend (BJS, 2000). These myths and misunderstandings have influenced the current laws and there is no evidence that prove that these laws are effective in reducing sexual offenses and keeping the public safe (Quinn, Forsyth, & Mullen-Quinn, 2010).

### *Influence on Recidivism*

From discussing the collateral consequences above, it is safe to assume that a public sex offender registry can negatively influence an individual's reentry into society. The community in which a register sex offender resides is notified once the individual moves in. This tends to lead the convicted sex offender to feel ostracized and targeted by the community.

The implementation of SORNA has also led to disappointing compliance rates. In Scholle's (2004) research, researchers revealed that roughly 40-50 percent of convicted sex offenders fail to report or update their information to the state in which they reside.

Lack of compliance to rules and regulations that promised to adhere to is a crime and, therefore, adding to the recidivism rates. Cohen and Jeglic (2007) report that convicted sex offenders are often hesitant to report their information for the simple fact that their information is made public. Convicted sex offenders are often forced to live with fear that their own life may be in danger and/or that they will have a more difficult time reintegrating into society, leading to recidivism (Cohen & Jeglic, 2007).

### **Is a Public Sex Offender Registry Constitutional?**

There has been a continuous debate about the constitutionality of public sex offender registries since they have been implemented. As previously stated, there are federal protocols an individual must adhere to when convicted of a sex crime. However, as mentioned above, each state has the ability add to the federal laws and create their own mandates and protocols.

Corey Rayburn Yung (2009) has researched the constitutionality extensively and argues that though state and federal laws may differ, district court rulings on the constitutionality of sex offender laws (i.e., mandated registration) heavily rely on the Supreme Court rulings, defending the constitutionality of the sex offender related laws. There are two United States Supreme Court cases that Young refers to throughout his argument: *Smith v Doe* and *Connecticut Department of Public Safety v Doe*. In *Smith v Doe*, the United States Supreme Court ruled that Alaska's law that mandated sex offender registration did not violate the ex post facto clause (Young, 2009). An ex post facto clause prevents new laws from applying to people who committed a crime before a law was enacted (Young, 2009). Similarly, *Connecticut Department of Public Safety v Doe*,

John Doe filed on behalf of himself stating that Connecticut's sex offender laws, specifically public registration, violates the 14<sup>th</sup> Amendment of the United States Constitution (Young, 2009). Particularly, John Doe argued that public registration jeopardized his Rights of life, liberty, and property. The \ United States Supreme Court upheld the constitutionality of Connecticut's sex offender laws stating that the laws do not violate the 14<sup>th</sup> Amendment (Young, 2009).

However, Yung (2009) then argues that these rulings were "fundamentally misplaced" and that further challenges of the constitutionality to these rulings were "superficially relied upon." Throughout his review, Yung (2009) concludes that the implantation of SORNA, or public registration and public notification, is unconstitutional. Yung (2009) recognizes that the deeming the current sex offender laws as "unconstitutional" may not resonate with the general public, however, when dealing with sex offense cases, not all sex offenders are the same.

As noted above, there are a number of ways that an individual can be convicted of a sex offense and, in turn, labeled as a sex offender. Yung (2009) argues that the penalties for sex offenders seem to outweigh the offense. For example, most offenders that are subjected to SORNA's requirements have not committed a crime in years. After a conviction of a sex offense, certain liberties are already taken away from the convicted individuals, like housing in particular parts of a neighborhood or particular employment. Adding to the formal collateral consequences such as those ones, the informal collateral consequences, such as the stigma of being labeled a sex offender, leaves reasonable questions on the constitutionality of SORNA (Yung, 2009). These collateral



consequences are argued to be more reasons as to why the SORNA goes against the United States constitution (Yung, 2009).

Catherine L Carpenter and Amy E. Beverlin also review the current state of sex offender laws and discuss their constitutionality and the impact it has on recidivism. Carpenter and Beverlin (2012) state that though the initial implementation of the current sex offender laws derived from a pure concern for child safety, the harsher laws have not been proven effective in reducing the initial sex offense and recidivism and, in turn, unconstitutional. In the review, researchers also discussed the intrusive impacts that *Smith v Doe* and *Connecticut Department of Public Safety v Doe* had on current sex offender laws and how the rulings were ultimately deemed constitutional to appease a frightened society (Carpenter & Beverlin, 2012).

Both Carpenter and Beverlin (2012) recognize and understand the fear that the public may hold against sex offenders. However, they argue that the perceived risk of a publicly unknown sex offender is, in actuality, a little no risk at all and that the court rulings were based off of false perceptions (Carpenter & Beverlin, 2012). Within their review, Carpenter and Beverlin (2012) describe the dangers that public registration may cause individuals. The most notable impact that public registries have is their transition to the internet and how easily accessible the registries are to access. In their research, Carpenter and Beverlin (2012) use the following example of the dangers of public, online registries.

Two men from Maine were targeted and murdered after a person found their information, including the location of their residence, on Maine's public registry (Carpenter & Beverlin, 2006). Instances such as these are of "realistic concern" and could

be argued as another form of collateral consequences. To put the current laws and regulations into perspective, researchers state that these requirements may seem rational and may seem to have the best of public interest in mind. However, researchers argue that when combining all of the regulations and laws together, those regulations and laws tend to paint a picture of excessiveness which holds true to the argument that the current sex offender laws are unconstitutional (Carpenter & Beverlin, 2006).

People who object SORNA's rules and mandates often argue that the convicted individual has already "paid their debt" to society (Petrunik, Murphy, Fedoroff, 2008). As previously mentioned, convicted sex offender who are released from prison must already agree to adhere to certain requirements, such as, the mandates and laws mentioned when discussing collateral consequences. To add onto the already acquired collateral consequences, allowing their information to be made public goes again "fundamental human rights" (Petrunik, Murphy, Fedoroff, 2008). The aforementioned example shows clear that allowing this information to be accessed by the general public can lead to not only added mental health issues, but pose an immediate to their life (Petrunik, Murphy, Fedoroff, 2008). Scholars have often argued that there are proven alternative strategies that would be more beneficial to a convicted individual's reintegration into society.

### **Alternative Strategies**

When considering alternative strategies in reducing sex offender recidivism while still keeping the general public safe, it is important to research laws and mandates put into place by similarly developed countries. Sex offender registries are not uncommon amongst similarly developed countries. According to Vess, Day, Powell, and Graffam

(2013), the United Kingdom, Japan, Ireland, France, and Canada all have sex offender registries. However, not all of the registries are public, such as Canada. Being that Canada is in a close proximity to the United States and both countries share similar perspectives in relation to laws, Canada is a good comparison to use as an example in comparing sex offender laws and strategies for reintegration.

#### *Canada's Approach to Sex Offenders*

In a brief history, Canada implemented a sex offender registry shortly after the United States implemented theirs (Murphy, Fedoroff, & Martineau, 2009). In 2001, Ontario established their sex offender registry and by 2004, the idea of the registry was adopted nationally (Murphy, Fedoroff, Martineau, 2009). Now both the Ontario Sex Offender Registry (OSOR) and the National Sex Offender Registry (NSOR) are in use in Canada with similar information that the United States' consists of as described above.

Though both of Canada's sex offender registries are similar, they are different to the United States in one particular way – the registry is not public. Like the United States, Canada's Criminal Code, or law, states that convicted sex offenders cannot attend, work, or volunteer in places where children are likely present (Lussier & Mathesius, 2019). The registries in Canada also consist of an individual's photo, age, address, severity of offense, and victim characteristics (Murphy, Fedoroff, Martineau, 2009). The convicted offender, like in the United States, must ensure that their information on the registry is up-to-date and it is a criminal offense if the convicted sex offender fails to do so (Lussier & Mathesius, 2019).

The registry, however, is only available to law enforcement entities and is not made viewable to the general public like the United States (Murphy, Fedoroff, Martineau,

2009). Canadian officials argue that public notification goes against fundamental human rights and that convicted sex offenders already have to face several consequences for their actions (Vess, Day, Powell, & Graffam 2013). Scholars argue that the public registrations have no significant difference in reducing the initial crime, enhancing the public's sense of safety, and reducing recidivism (Lussier & Mathesius, 2019).

Canada has an overall lower recidivism rate when compared to the United States (Ruddell & Winfree, 2006). As previously mentioned, Canada has very similar practices in law enforcement and perception of crimes when compared to the United States. For example, shortly after the United States adopted the “hard on crime” mentality in the 1980s, Canada followed suit. This “hard on crime” mentality essentially steered away from a focus on due process and focuses more on crime control (Petrunik, Murphy, Fedoroff, 2008). However, unlike the United States, Canada quickly learned the downfalls that the longer and harsher sentences for convicted criminals had – increased incarceration, increased recidivism.

In turn, while the United States was focusing on crime control, Canada was focusing more on the rights of the accused persons (Petrunik, Murphy, Fedoroff, 2008). By way of focusing more rehabilitation programs and reintegration programs, Canadian officials helped reduce the stigma of convicted sex offenders. This shift in a mindset also reflected onto Canada's convicted sex offenders. It can be argued that programs, like the ones that Canada provides, that focus more on cognitive behavior and successful reintegration, are more successful and progressive when compared to the United States.

There are a few different programs that Canada has to offer: High Intensity National Sex Offender Program, Moderate Intensity National Sex Offender Program,

National Sex Offender Maintenance Program and Tupiq Program. Table III will provide a chart to help better understand the type of programs, the requirements for the program to be complete, and goals and strategies used in the program to help reduce an individual's likelihood to recidivate. You will notice that many of the goals may be similar throughout each program, however, the characteristics of each group differ and some goals are more harped on than others, depending on which program the convicted sex offender is ordered to attend. By reenforcing the coping strategies and providing a community for individuals who face with similar struggles, Canadian officials argue that the programs that they implemented and enforce have been deemed effective in reducing overall recidivism in sexual offenses (Nafekh, Allegri, Fabisiak, Batten, Stys, Li, & Jensen, 2009).

***Table II*** Canada Sex Offender Programs

<b>Program</b>	<b>Requirements</b>	<b>Goals</b>
High Intensity National Sex Offender Program	<ul style="list-style-type: none"> <li>• Deemed high risk</li> <li>• 75 group sessions</li> <li>• Up to 7 individual sessions</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding the impact of sexual violence</li> <li>• Understand their thinking related to sexual violence</li> <li>• Learn how to manage and cope with their emotions</li> </ul>

*Continued: Table II Canada Sex Offender Programs*

<b>Program</b>	<b>Requirements</b>	<b>Goals</b>
Moderate Intensity National Sex Offender Program	<ul style="list-style-type: none"> <li>• Deemed moderate risk</li> <li>• 55 group sessions</li> <li>• Up to 6 individual sessions</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding the impact of sexual violence</li> <li>• Understand their thinking related to sexual violence</li> <li>• Learn how to manage and cope with their emotions</li> </ul>
National Sex Offender Maintenance Program	<ul style="list-style-type: none"> <li>• Completed one of the two above programs</li> <li>• 12 group sessions</li> <li>• Individual session often required</li> </ul>	<ul style="list-style-type: none"> <li>• Reinforce previously learned coping strategies</li> <li>• Maintain skills taught in previous programs</li> <li>• Can be repeated if necessary</li> </ul>
Tupiq Program	<ul style="list-style-type: none"> <li>• “Inuit” individuals or members of an indigenous people of northern Canada</li> <li>• Deemed moderate or high risk</li> <li>• 129 group sessions</li> <li>• Individual sessions required</li> <li>• </li> </ul>	<ul style="list-style-type: none"> <li>• Understand the impact of sexual violence</li> <li>• Take responsibility for criminal behavior</li> <li>• Learn how to manage and cope with their emotions</li> <li>• Focuses on setting goals and preventing relapse</li> </ul>

National Sex Offender Programs. (2004, April 24). Retrieved from <https://www.csc-scc.gc.ca/correctional-process/002001-2008-eng.shtml>

Perhaps the most notable initiative that Canada has presented is their restorative criminal justice program, Circles of Support and Accountability (CoSA). CoSA is a progressive reintegration program that focuses on cognitive based therapy that is specifically aimed to help convicted sex offenders reshape their thinking, CoSA has been proven to indicate a significant reduction in recidivism rate (Petrunik, Murphy, Fedoroff, 2008). The program allows convicted sex offenders to discuss their hardships, hold each other accountable, and help each other successfully reintegrate into society (Petrunik, Murphy, Fedoroff, 2008).

By way of implementing CoSA, Canada is one of the leaders in behavioral health by acknowledging that sex offenders suffer great cognitive battles. CoSA's method of focusing on the cognitive and behavioral issues that sex offenders often face, Canada has successfully shifted focuses from their United States adopted punitive way to a more advanced, progressive way. CoSA also helped educate the general public about the mental behavioral problems that sexual offenders often face (Petrunik, Murphy, Fedoroff, 2008). This helped reduce the stigma of sexual offenders which, in turn, heightened compliance with the programs and lowered the rates of recidivism (Petrunik, Murphy, Fedoroff, 2008). The results of CoSA have been proven effective in reducing recidivism and better reintegration into society (Petrunik, Murphy, Fedoroff, 2008).

#### *Other Alternative Strategies*

It should be noted that the United States more of a punitive approach to all crimes which is reflective to their incarceration rates and recidivism rates. This approach can be argued to have affected all convicted criminals – most especially sex offenders who are

argued to have some of the harshest penalties for their crime (Carpenter & Beverlin, 2012). Though the United States also offers rehabilitative programs, research shows that due to the aforementioned lack of compliance convicted sex offenders have, their likelihood of attending the rehabilitative programs are lesser than when compared to Canada.

The United States has also begun to take note of programs that countries like Canada provides, like CoSA. CoSA has slowly began to integrate into some jurisdictions within the United States, however, the programs are not accessible throughout the entire country (Elliot & Zajac, 2015). An alternative strategy would to provide more funding for CoSA to be accessible more widely throughout the United States. Furthermore, restorative justice programs, such as CoSA should be more known to the general public. By educating the public about these programs and strategies used by CoSA officials use in assisting convicted sex offenders, it is safe to assume that the negative stigma behind sex offenders would slowly dissipate – lowering overall recidivism rates.

Though the stigma behind sex offenders is relatively the same between Canada and the United States, Canada looks to be more progressive when dealing with convicted sex offenders and criminal activity as a whole. For sex offenders specifically, it can be argued that the lack of public registry in Canada leads to a higher compliance rate in attending the rehabilitative programs, leading to lower recidivism rates.

## **Discussion**

The panic driven legislature that mandated the implantation of SORNA has been proven ineffective in both reducing the initial crime and reducing recidivism. In fact, this



review proves that the implementation of SORNA has been more problematic for an individual to achieve successful reintegration into society after a conviction of a sexual offense. There has been no clear and convincing evidence to support the argument that a public sex offender registry is beneficial to reduce crime and to reduce recidivism rates among sex offenders. With that, mandating a public sex offender registry has been shown to cost the community more money through increased taxes to pay for legal fees, law enforcement, and other aforementioned costs. In an attempt to appease the frightened general public, current sex offender laws tend to be more punitive than rehabilitative.

Perhaps the most obvious alternative strategy would be to rescind the implementation of a sex offender public registry. Through the above review, it is arguable that public access to a sex offender registry is more detrimental and cause more harm to the community and the individual attempt to successful reintegrate. By only allowing law enforcement entities access to the registry, some informal collateral consequences, such as collateral damages, is likely to reduce. As mentioned above, this is likely to result in individuals being more compliant to the sex offender registry and more compliant with the programs that a convicted sex offender is mandated to attend.

Another approach that could possibly be beneficial would be to better define the differences between sex offenders to not make the label “sex offender” as broad as it is currently. In Letourneau, Levenson, Bandyopadhyay, Sinha, and Armstrong’s (2010) research, they argue that though there are tiers to sex offenses, perhaps it would be beneficial if only having convicted sex offenders that are deemed high risk to be visible to the general public. Reallocating money from a punitive approach to a rehabilitative

approach may also prove to be beneficial (Letourneau, Levenson, Bandopadhyay, Sinha, & Armstong, 2010).

By examining the more progressive efforts made by Canada and the other aforementioned research that was conducted, it can be argued that if more efforts were made to restructure the handling of sex offender from a punitive approach into a more rehabilitative approach, the overall well-being of society would benefit. The programs like CoSA and the other rehabilitative programs that Canada implemented have proven to show that there is a higher compliance, less of a stigma behind seeking help, and lesser likelihood of recidivism after the initial conviction of a sexual offense. Though the United States has started implementation of programs, such as CoSA, these programs need to be more widely available and known throughout the entire community – not just the convicted sex offender community. By speaking of these programs regularly, there is reason to believe that the perspectives of sex offenders will change.

Policy implications may also include the elimination of the usage of SORNA. Eliminating would likely cause major initial pushback from the public. However, literature reviewed within this paper proves that there is no significant difference in effectiveness in reducing recidivism rates. In fact, this review proves that there SORNA causes more difficulties for individuals to achieve a successful reintegration. One way to ensure limited pushback from the public would be to educate the public on how SORNA actually increases a likelihood of recidivism among convicted sex offenders. As discussed above, it costs a substantial amount of funds to keep a public registry up-to-date. Therefore, money could be recollected to reintegration programs, such as CoSA, to help reduce recidivism.

The main limitation to this research is that it is difficult to collect accurate data regarding recidivism. This research has made clear that recidivism, especially recidivism for sexual offenders, can be difficult to track because of the lack of reporting and not every individual may be caught after committing another crime. Most research conducted primarily focused on male convicted sex offenders. Therefore, much of the research conducted cannot accurately represent full population of convicted sex offenders. There is also a compliance issue. Not every convicted sexual offender follows the rules and regulations that are mandated by law, which make pose difficulties in tracing possible recidivism.

This research proves that instilling fear into the general public posed more harm than good through the ineffectiveness proven after the implementation of SORNA. By restructuring the handling of convicted sex offenders from a punitive approach into a more cognitive and behavioral approach while also providing more opportunities for convicted sex offender, the recidivism rates are likely to decline.

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