

United States Sentencing Commission
March 13, 2014
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A number of variables should be considered upon designating time frames of sentences regarding a sexual offender's failure to register under federal law. These variables include conflation within the term "failure to register" as different meanings exist, the aging out phenomenon that the majority of offenders experience and the research background on length of sentence and recidivism. A final reference will be made to the Adam Walsh Act (AWA) tiers and the link to recidivism.

Sex offenses are among the most serious and frightening crimes committed in the United States. Since the early 1990s, increasingly strict legislation has been enacted to track, monitor, apprehend, and punish sexual criminals. The Jacob Wetterling Act, passed by the U.S. Congress in 1994, established requirements that sex offenders must register addresses and personal information with law enforcement agencies. In 1996, Megan's Law allowed for the public disclosure of registry information, and subsequent amendments to the Wetterling Act required states to post information about convicted sex offenders on Internet websites. By 2003 all states were mandated to maintain Internet websites facilitating public access to sex offender registries. In 2006, Title 1 of the Adam Walsh Act further expanded federal sex offender registration and notification (SORN) requirements by creating a nationwide uniform offense-based tiering system, lengthening and standardizing the duration of registration periods, and increasing penalties for sex offenders who fail to register. Failure to register has been upgraded to a felony offense, with a penalty of one to ten years in prison ("Adam Walsh Sex Offender Registration and Notification Act," 2006). As of 2014, 16 states had been deemed by the Department of Justice as having substantially implemented the registration provisions of the AWA (Levenson, Ackerman, Harris, 2013).

It is estimated that over 722,000 convicted sex offenders are required to register in the United States, (National Center for Missing and Exploited Children, 2012). The AWA created a three-tier system by which states assign registration requirements. Based on AWA tiering guidelines, most registrants in the United States fall into Tier 2 or 3, which are designated for serious felony convictions and carry registration durations of 25 years and life, respectively (Harris, Lobanov-Rostovsky, & Levenson, 2010). In accordance with the AWA, some sex offenders are required to confirm their addresses and other identifying information (e.g., employer, vehicle description, photograph) with law enforcement agents four times per year, and others do so once or twice per year, depending on the crime of conviction. Only one year after the AWA passed, in 2007, it was claimed that nearly 100,000 registered sex offenders were "noncompliant, many of them literally missing" (p. 1) and a special team of U.S. Marshals captured over 7,000 sex offenders charged with registration non-compliance (U.S. Marshals Service, 2007). This claim of 100,000 "missing" sex offenders was later debunked by research and numerous states claimed they never provided statistics for the survey (Levenson & Harris, 2012). The concern over this perceived number of "missing" sex offenders is important because sex offenders who fail to register are believed to be especially dangerous because they are presumably attempting to avoid scrutiny. The former director of the U.S. Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office warned in a

USA Today story: "The people you need to be worried about most are the ones who aren't registering at all" (Koch, 2007, p. 1). Empirical data published to date, however, do not support that supposition (Duwe & Donnay, 2010; Levenson, Letourneau, Armstrong, & Zgoba, 2010; Levenson et al. 2013; Zgoba & Levenson, 2012).

Why do sex offenders fail to comply?

Failure to register (FTR) is now a felony offense carrying a penalty of up to 10 years in prison ("Adam Walsh Child Protection and Safety Act", 2006). Sex offenders who fail to register are believed to be at increased risk for sexual recidivism because they are presumably attempting to seek out new victims and escape detection. While media portrayals often conflate FTR with absconding from authorities, scholars have noted that FTR is not necessarily tantamount to absconding (Harris & Pattavina, 2009; Levenson & Harris, 2012; Zgoba & Levenson, 2012). It is difficult to specifically confirm the number of fugitive sex offenders, given that states have widely disparate methods for classifying or distinguishing absconders, registration violators, and others whose locations are uncertain. When analyzing data downloaded from public registries, however, researchers found no empirical evidence to support the notion that 100,000 of the nation's sex offenders are unaccounted for; about 3% of RSOs are labeled as noncompliant or their whereabouts are unknown, and an additional 2% of the nation's sex offenders may be transient or homeless without a specific address (Levenson & Harris, 2012). Rates of noncompliance vary widely across the states, with a median rate of 2.7%. The most inclusive estimates revealed that the addresses of approximately 22,000 to 36,000 RSOs may be unverified (Levenson & Harris, 2012; Levenson et al. 2013).

It is also doubtful that all sex offenders arrested for FTR are willful violators, as most FTR offenders are easily located and do not appear to have absconded (Duwe & Donnay, 2010; Harris et al., 2012; Levenson et al., 2010; Levenson et al., 2012; Zgoba & Levenson, 2012). Some sex offenders may appear to be "missing" due to administrative errors, inadequate or incomplete address information, data entry anomalies, lag times in updating registry information, unauthorized travel, or homelessness (Harris & Pattavina, 2009). Some offenders may carelessly disregard their duty to update registration information, but most remain in their known locations despite their lapse. Other sex offenders, however, might indeed be inclined to avoid the stigma and collateral consequences of sex offender registration and purposely abscond.

Additionally, about 10% of probationers and parolees in the United States have absconded (Bureau of Justice Statistics, 2007), but sex offenders are less likely to abscond than nonsex offenders (Grattet, Petersilia, Lin, & Beckman, 2009; Williams, McShane, & Dolny, 2000). While absconding is defined differently in each state, it typically refers to an individual under community supervision who has failed to inform his parole or probation officer of his whereabouts and cannot be located. Research on parole fugitives suggests that many flee due to a perceived inability to comply with an overwhelming, complex, and rigid set of rules (Schwaner, McGaughey, & Tewksbury, 1998). Absconders are more likely than nonabsconders to have a history of probation failure, revocation, and fleeing supervision (Schwaner, 1997). Most abscond within the 1st year and seem to fit into one of five predominant categories: socially or psychologically impaired, drug addicts or dealers, career criminals and rule violators, impulsive risk-takers who may unwittingly commit a violation or a new crime, and first time offenders

who, unaccustomed to the restrictions of parole, violate release conditions in order to preserve their families (Schwaner et al., 1998).

Parole absconders have not necessarily been found to be a high-risk criminal group and the two most common reasons for absconding were drug relapse or a technical rule violation (Schwaner et al., 1998). Williams and colleagues (2000) found that those most likely to abscond were drug offenders, previous parole violators, and those with unstable employment or housing. Prior arrests and being unmarried also predicted absconding, and, consistent with Schwaner's findings, the authors noted that "absconders tend to be less dangerous and less risky parolees" (Williams et al., p. 36). In stark contrast to the emphasis placed on tracking sex offenders, little effort is expended in many states to locate fugitive parolees (Williams et al., 2000).

It is well established that many RSOs experience unemployment, housing disruption, harassment, and social alienation as a result of SORN laws (Levenson & Cotter, 2005; Levenson et al., 2007; Mercado et al., 2008; Tewksbury, 2005; Tewksbury & Lees, 2006; Zevitz & Farkas, 2000). Likewise, many RSOs report depression and hopelessness (Jeglic, Mercado, & Levenson, 2011). The multitude of restrictions, along with lengthy durations of registration, may cause some sex offenders to desperately flee with hopes of resuming a "normal" life. There may be a variety of reasons why some sex offenders fail to comply, but the question remains whether RSO absconders are actually at increased risk for sexual recidivism.

Failure to comply and sexual recidivism

The risk of sexual reoffending by previously convicted sex offenders is a legitimate cause for public concern. SORN laws attempt to prevent recidivism by increasing scrutiny of sex offenders through enhanced law enforcement monitoring and public awareness. Although high recidivism rates are often cited as a rationale for SORN laws, sexual offense recidivism rates are lower than commonly believed. Sex crimes often go unreported, however, and therefore official arrest data underestimate actual reoffending. Sexual recidivism rates range from 5.3% over a 3-year period (Bureau of Justice Statistics, 2003) to approximately 14% over 4 to 6 years (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005) and about 24% over 15 years (Harris & Hanson, 2004). Sex offenders recommit similar crimes at lower rates than property offenders and drug offenders (Bureau of Justice Statistics, 2002; Sample & Bray, 2006). The likelihood of sexual recidivism increases with the presence of risk factors such as prior sexual and nonsexual arrests, unrelated and male victims, and younger offender age (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005).

Only a handful of published studies have specifically focused on the relationship between FTR and sexual recidivism. In general, empirical data from Minnesota, New Jersey, New York, and South Carolina *have not supported the hypothesis that sex offenders who fail to register are more sexually dangerous than their compliant counterparts* (Duwe & Donnay, 2010; Levenson, Letourneau, Armstrong, & Zgoba, 2010; Levenson, Sandler, & Freeman, 2012; Zgoba & Levenson, 2012). *Common findings across studies suggest that FTR is not significantly associated with sexual recidivism*, though it is associated with nonsexual recidivism, and that FTR occurs in combination with a history of prior crimes and versatility in criminal offending. Registration noncompliance and sexual reoffending may characterize different risk constructs,

with *FTR being related to rule breaking behavior and sexual reoffending being related to sexual deviance*. Researchers in Washington found that most new convictions were for general criminal and violent activity (38.5% and 15.8%, respectively); with each additional FTR conviction, the likelihood of sexual recidivism declined, but the likelihood of general felony recidivism increased (Washington State Institute for Public Policy, 2006).

In Minnesota an arrest for FTR did not predict sexual or general recidivism, but Duwe and Donnay (2010) found that FTR offenders were less educated, less likely to have participated in treatment, less violent, less likely to have assaulted victims of different age groups, more likely to be a racial minority, and more likely to have prior felonies and supervision violations. Researchers reported that FTR has become the most common recidivism offense for sex offenders released from Minnesota prisons. They examined recidivism outcomes of 1,561 released sex offenders who were required to register as predatory offenders in Minnesota. About 11% had been convicted of failing to register. FTR was not predictive of either sexual or general recidivism, but a FTR conviction significantly increased the risk of another FTR offense. *The authors concluded that registration noncompliance did not appear to elevate the risk of sexual reoffending* (Duwe & Donnay, 2010).

In South Carolina, FTR offenders were younger, had more prior nonsexual arrests, were more likely to be non-White, and were less likely to have a minor victim, but they were not more likely to sexually recidivate (Levenson et al., 2010). This study involved 2,970 registered sex offenders and *did not support the hypothesis that sexual offenders who fail to register are more sexually dangerous than those who cooperate with registration requirements* (Levenson et al., 2010). Specifically, 10% of the sample of sex offenders had registry violation convictions across an average follow-up period of about 6 years. There were no statistically significant differences in sexual recidivism rates between those who failed to register (11%) and compliant registrants (9%), and FTR did not predict sexual recidivism. Sex offenders with minor victims did have a higher sexual recidivism rate than offenders with adult victims, but age of the victim was unrelated to FTR. The authors concluded that FTR and sexual offending tap separate constructs, with FTR related to rule breaking behavior and sexual offending driven by sexual deviance. Though both antisocial orientation and sexual deviance are pathways to sexual reoffending (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005), failure to register did not predict sexual recidivism (Levenson et al., 2010).

A similar study in New Jersey analyzed the recidivism outcomes of 1,125 sexual offenders in two groups. The first group was comprised of 644 registered sex offenders who were convicted of a sex crime and at some point failed to register after release from prison. The comparison group contained 481 registered sex offenders released from prison during a similar timeframe who did not fail to register after their release. The groups were then tracked for both sexual and non-sexual offenses to determine whether failure to register under Megan's Law is predictive of re-offending. *Failure to register was not a significant predictor of sexual recidivism, casting doubt on the belief that sex offenders who are noncompliant with registration are especially sexually dangerous*. Few differences between groups were detected, but FTR offenders were more likely to have sexually assaulted a stranger and to have adult female victims, further challenging the stereotype of the child predator who absconds to evade detection (Zgoba & Levenson, 2012).

In New York, FTR offenders were younger, more likely to be a minority race, and they had more extensive criminal histories and more breaches of supervision (Levenson et al., 2012). Parole or probation supervision decreased the odds of a FTR charge and nonsexual recidivism, suggesting that supervision officers apparently assisted offenders to remain compliant with registration duties and also seemed to help offenders resist general criminal behavior (Levenson et al., 2012).

Most recently a study in Florida was the first to empirically investigate the characteristics of absconded sex offenders and explore how this group compares to other groups of sex offenders (Levenson et al., 2013). Utilizing data from the Florida sex offender registry (N = 23,557), this exploratory study compared the characteristics and risk factors of absconders with those of compliant and noncompliant (nonabsconding) registrants as well as with those with convictions for failure to register (FTR). Absconders, as a group, were less likely than compliant registrants to be listed as predators, and less likely than both compliants and noncompliants to have a minor victim or to be a repeat sex offender. Absconders were also least likely to have a prior FTR conviction, but those with a previous FTR conviction were more likely to abscond from registration than probation. The findings fail to support the hypothesis that fugitive sex offenders are more sexually dangerous (especially to children), and suggest a multitude of explanations for absconding.

It is commonly assumed that “sex offenders often fail to register precisely so they can evade detection and in many cases, find new victims. . . ”(Blumenthal, 2011, p. 1). Recent enhancements to penalties for registration noncompliance further imply that sex offenders who fail to register are believed to pose an increased risk for sexual (Levenson et al. 2013) reoffending. Indeed, the literature points to criminality and self-regulation deficits as robust predictors of both sexual and nonsexual recidivism (Hanson & Morton-Bourgon, 2005). It would, therefore, be reasonable to hypothesize that FTR reflects an antisocial rule-violating orientation and a resistance to authority, which could increase the threat of subsequent sexual and nonsexual criminal behavior. Alternatively, it is possible that in some cases FTR results from the complexities of the registration process itself and the reintegration obstacles posed by community notification. Duwe and Donnay (2010) found that lower education was associated with a greater likelihood of FTR, suggesting that complicated reporting requirements may be challenging for offenders with lower intellectual functioning. SORN laws have the potential to impede community reentry by disrupting employment, housing, and prosocial relationships (Levenson & Cotter, 2005; Levenson, D’Amora, & Hern, 2007; Mercado, Alvarez, & Levenson, 2008; Tewksbury, 2005), all of which may undermine criminal desistance and contribute to difficulties complying with registration mandates.

Age and Sex Recidivism

It has been well established within criminology that there is a relationship between age and crime. Specifically, an increase in age is generally associated with a decrease in criminality (e.g., Farrington, 1986; Hirschi & Gottfredson, 1983; Sampson & Laub, 2003; Wolfgang & Feracuti, 1982). Despite public perception that sex offenders are particularly heinous criminals who will eventually repeat their crimes (Levenson & Cotter, 2005), research indicates that sex offender recidivism rates for sex crimes are relatively low and that age has a mitigating effect on criminality for this specific subgroup of offenders. This “aging out phenomenon” or decrease in

sexual reoffending runs contradictory to extraordinary sentence lengths for those sexual offenders who fail to comply with registration requirements.

An oft-cited meta-analytic review completed by Hanson and Bussière (1998) of 61 recidivism studies of sexual offenders (N=23,393) found that the sexual recidivism rate for the sample was relatively low (i.e., 13.4%), and that age at release was inversely related to sexual recidivism risk. Similar results have been obtained by other researchers more recently (e.g., Barbaree, Blanchard, & Langton, 2002; Fazel, Sjostedt, & Langstrom; 2006; Packard, 2002; Prentky & Lee, 2007). The age/crime relationship has even been quantified; in an analysis of the recidivism rates of sex offenders released from prisons in England and Wales, Thornton (2006) found that the odds of a sex offender being reconvicted of a sex crime decrease by approximately 0.02 with each year of increase in age.

The results of the first study on the predictive efficacy of the Adam Walsh Act funded by the United States Department of Justice (Award Number 2008-MU-MU-000) indicated that increased age is protective of future reoffending, regardless of whether it is the age at which the commitment offense occurred, age at sentencing, or age at release from incarceration. Age at release continues to be predictive in samples containing many offenders who have served the longer sentences that are now commonly applied to sexual offenders. The data indicate that sex offenders reoffend less frequently as they get older. This finding has implications for policy related to lifetime registration and raises questions concerning the necessity and cost efficiency of lifetime registration policies (Zgoba, Miner, Knight, Letourneau, Levenson & Thornton, 2012).

When age at release and sex recidivism are studied for sex offenders by profile type, the inverse relationship remains, though differing peaks of criminality emerge. Hanson and Bussière (1998) found that rapists exhibit the earliest onset of offending and their rates of recidivism decline steadily after age 25-29. These results are similar for incest offenders. However, extrafamilial child molesters' rates generally do not begin a steady decline until age 50. Similar findings to the Hanson and Bussière (1998) meta-analysis were obtained by Packard (2002), who completed a long-term follow-up of 1,621 sex offenders in the State of Washington. Like Hanson & Bussière (1998), Packard (2002) also found that the risk of recidivism decreased with age, and that extrafamilial child molesters tend to remain at a higher level of recidivism risk later in life than rapists and incest offenders. It is also noteworthy that these patterns emerge in higher-risk sex offenders. Using a sample of civilly committed sex offenders from Massachusetts, Prentky and Lee (2007) found that age at release had a mitigating effect on recidivism for rapists, with rates dropping linearly from a high of 42.8% at age 20 to 9.5% at age 60. Among the child molesters, however, the recidivism rate increased between ages 20 and 40, and did not truly begin to decline until after age 50.

In sum, a sex offender's age at release from incarceration is directly related to their risk for recidivism; increased age at release represents a decrease in the likelihood for sexual reoffense. Although this relationship may be confounded based on the sex offender profile, generally speaking, the age/crime relationship is similar across sex and non-sex offending groups. Increased age is protective of future reoffending, regardless of whether it is the age at which the offense occurred, age at sentencing, or age at release from incarceration. In general, risk for

sexual re-offense decreases with advancing age, suggesting that longer registration durations as mandated in current federal policy may be inefficient. As the sex offender population ages, individuals pose less threat to public safety, and their lifetime presence on a registry may obscure the public's ability to distinguish those offenders who are more likely to reoffend. However, it should be noted that most analyses do not determine whether this aging effect is linear. While there appears to be an overall effect of risk decreasing with age, a threshold age at which risk substantially drops was not detected.

Sentence Length and Sex Recidivism

Countless research has been produced on the effects of incarceration on recidivism. This research has typically concluded that incarceration, and particularly lengthy periods of incarceration, have no effect on recidivism. This results have been found for offenders generally (e.g., Cullen, Jonson, & Nagin, 2011; Durlauf & Nagin, 2011; Gendreau, Goggin, & Cullen, 1999) as well as specific subgroups of offenders (e.g., property and drug offenders [Freiburger & Iannacchione, 2011]; juveniles, females, and minority groups [Smith, Goggin, & Gendreau 2002]). In fact, a meta-analysis of 50 studies, which included a sample of 336,052 offenders, concluded that incarceration produced slightly higher increases in recidivism, and that low-risk offenders were often negatively affected by imprisonment.

There is a lack of research studying the effects of incarceration, and particularly lengthy incarceration, on recidivism for sexual offenders specifically. One particular study that did address this issue was Hanson and Bussière's (1998) meta-analysis of sex offender recidivism studies, which found that sentence length was unrelated to sexual, non-sexual violent, and general recidivism in sex offenders. More recently, Nunes, Firestone, Wexler, Jensen, and Bradford (2007) found that incarceration was unrelated to sexual or violent recidivism. In addition, there was no evidence that the relationship between incarceration and recidivism was impacted by risk level, as assessed via the Rapid Risk Assessment for Sexual Offense Recidivism.

In sum, researchers have generally concluded that incarceration has little to no effect on recidivism, and that lengthier sentences of incarceration specifically have a minimal effect on reoffending. Such findings have also been concluded within the sex offending literature.

AWA Tier Classification and Sex Recidivism

In response to a perceived need for standardization across the states, Title 1 of the AWA created guidelines that each state was required to implement by 2011. SORNA created a "tier" classification system based on type and number of offender convictions for determining the duration of registration, frequency of address verifications, and extent of website disclosure. Tier 3 offenses generally encompass sexual assaults involving sexual acts regardless of victim age, sexual contact offenses against children below the age of 13, non-parental kidnapping of minors, and attempts or conspiracies to commit such offenses. Offenders classified as Tier 3 are presumably at highest risk for re-offense and are subjected to lifetime registration and notification. Tier 2 offenses include most felonious sexual abuse or sexual exploitation crimes involving victims who are minors. Offenders classified as Tier 2 are subjected to 25 years of

registration and notification. Tier 1 offenses include all sex offense convictions that do not support a higher classification, such as misdemeanor offenses. Offenders classified as Tier 1 are subjected to 15 years of registration and notification. According to the SORNA guidelines on the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking website (www.smart.gov), jurisdictions must provide a criminal penalty for failure to register that includes a maximum term of imprisonment for greater than one year. The federal penalty for failure to register includes a maximum term of ten years.

The Department of Justice, National Institute of Justice, funded a multistate study that was designed to compare the nationally recommended AWA classification tiers with actuarial risk assessment instruments (the Static 99 and Static 2022) and existing state classification schemes in their respective abilities to identify sex offenders likely to reoffend. The study also examined the distribution of risk assessment scores within and across tier categories as defined by the AWA. Data from 1,789 adult sex offenders from four states (Minnesota, New Jersey, Florida, and South Carolina) were collected to inform these analyses. On average, the sexual recidivism rate was approximately 5% at five years and 10% at ten years. *The AWA tier was unrelated to sexual reoffending, except in Florida, where it was inversely correlated with recidivism.* Actuarial measures and existing state tiering systems, in contrast, identified recidivists with enhanced accuracy. *The results indicate that use of the AWA classification scheme is likely to result in a system that is less effective in protecting the public than those currently implemented in the states studied, and that substantial revision of the AWA classification system is necessary. Additionally, the findings of the present study called into question the accuracy and utility of the AWA classification system in detecting high-risk offenders and determining concordant risk management procedures upon an offender's release into the community* (Zgoba et al, 2012).

This finding is consistent with research conducted in New York that found lower AWA tiered individuals had higher recidivism rates than those who were assigned into ostensibly higher-risk tiers. Empirically derived risk factors, in contrast, were better able to predict recidivism (Freeman & Sandler, 2010). Without a meaningful categorization scheme that truly reflects a hierarchical portrayal of risk, tiers become less useful for the public and create an inefficient distribution of resources for sex offender management purposes. Some research suggests that the offense based AWA stratification system increases the number of offenders in the highest tier by expanding eligible offenses, lengthening duration of registration, and setting criteria that move offenders from lower state risk classification levels into higher AWA tiers (Harris, Lobanov-Rostovsky, & Levenson, 2010). If public awareness is a goal of notification, then less precise and more inclusive categorical schemes may not be as helpful for the public consumer of registry information who seeks to identify the most high-risk and dangerous predators (NAESV, 2007).

Conclusion

Much research suggests that registration noncompliance should be viewed on a continuum that reflects a range of behaviors such as inadvertent noncompliance, confusion about requirements, poor self-management skills, a tendency toward rule violation, or outright rebellion against registration mandates. *There is no research that indicates that failure to register*

is linked to sexual deviance and it likely should not be linked to the original crime of conviction sentence. Policymakers might note that absconders may not be the stereotypical pedophilic predators one might expect, and that a host of explanatory factors might influence absconding behavior. Harris et al. (2012) found that few state registries clearly distinguished sex offenders confirmed to have absconded, and that reports of “missing” sex offenders often included those flagged as delinquent or technically out of compliance with registration mandates. States should consider refining their nomenclature to reduce definitional ambiguity and improve the ability to distinguish true absconders from other types of registration violators. This ambiguity, as well as sexual offender age and length of sentence, have implications for sentencing guidelines.