



*Edited by*  
Karen Harrison and Bernadette Rainey

THE WILEY-BLACKWELL HANDBOOK OF  
*Legal and Ethical Aspects of  
Sex Offender Treatment and  
Management*



 WILEY-BLACKWELL

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**Professor (Dr) Peer Briken** is the Director of the Institute for Sex Research and Forensic Psychiatry. He studied medicine at the University of Hamburg, graduating in 1998, with further studies in psychiatry, psychotherapy and sexual medicine in 2006. He completed his postdoctoral thesis in 2006 and became a Professor of sex research and forensic psychiatry and Director of the institute in 2010. His main research activities include pharmacological and psychotherapeutic treatment of sexual offenders, sexual homicide, hypersexuality, juvenile sexual offenders and delinquency, and the sexual relationships of juveniles. He is a reviewer for many international

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**Stephen Hanvey** was appointed as the first CEO to Circles UK, the national organization for Circles of Support and Accountability in England and Wales, in December 2007. Stephen has a professional background in social work and charity management and worked initially in a London authority social services department, and then with various family support organizations, managing a Barnardos community development project in East London for seven years. Stephen has facilitated self-help groups for survivors of sexual abuse. He has written a number of articles on Circles of Support and Accountability and recently co-authored the first book on the subject, *A Community-Based Approach to the Reduction of Sexual Reoffending; Circles of Support and Accountability* (Jessica Kingsley, 2011).

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**Dr Xanthè Mallett** is a lecturer in criminology and practicing forensic anthropologist. Her area of expertise is human identification. She has worked on a collaborative facial recognition project with the FBI, has undertaken casework in the area of child sex abuse, and has co-authored expert witness reports. Her research relates to behavior patterns of sex offenders, and societal, legal and political responses to cases of child sexual abuse on an international scale.

**William L. Marshall, OC, FRSC, PhD, C Psych,** is Director of Rockwood Psychological Services which provides treatment for sexual offenders in various settings. He has over 380 publications including 20 books, and he has served on the editorial boards of 17 international journals. Bill has received several awards and in 2006 he was appointed an Officer of the Order of Canada, Canada's highest honor for a civilian, which was awarded for Bill's national and international contributions to making societies safer.

**Liam E. Marshall, PhD,** has been treating and conducting research on offenders for more than 15 years. He has helped design preparatory, regular, denier, low-functioning, maintenance and juvenile sexual offender programs, as well as anger management, domestic violence, gambling, self-esteem and cognitive skills programs. Liam has many publications including three books and more than 50 peer-reviewed journal articles. He has made numerous international conference presentations on sexual offending, sexual addiction, violence, aging and problem gambling issues and has delivered more than 70 trainings for therapists who work with sexual and violent offenders in 15 countries worldwide. Liam is a reviewer and board member for a number of international journals on sexually problematic behavior and gambling problems. He is currently a therapist, and training and research director for Rockwood Psychological Services; he is a consultant to the Royal Ottawa Health Care Group Secure Treatment Unit and to the St Lawrence Youth Association.

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**Terry Thomas** was Professor of Criminal Justice Studies at Leeds Metropolitan University until his retirement in 2011 and is now a Visiting Professor at the University. He is a former senior social worker in a local authority social services department and long-time observer of the registration and monitoring of sexual offenders. In 2002 Professor Thomas spent six months at the University of Minnesota looking at the management of sex offenders in the United States. He is the author of the books *The Registration and Monitoring of Sex Offenders: A Comparative Study* (Routledge, 2011), *Criminal Records: A Database for the Criminal Justice System and Beyond* (Palgrave, 2007) and *Sex Crime: Sex Offending and Society* (Willan Publishing, 2005).

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**Tony Ward**, PhD, DipClinPsyc, is Professor of Clinical Psychology at Victoria University of Wellington, New Zealand. He has authored over 315 academic publications. Professor Ward is the developer of the Good Lives Model and has published numerous books, book chapters and academic articles on this model since 2002. His most recent book, *Desistance from Sex Offending: Alternatives to Throwing away the Keys* (2011, Guilford Press) (coauthored with Richard Laws), presents an integration of the Good Lives Model with desistance theory and research.

**Professor Daniel T. Wilcox** is a Consultant Clinical and Forensic Psychologist who is Chartered with the British Psychological Society (BPS) and Registered with the Health Professions Council (HPC). Prof. Wilcox has a BA and MA in Psychology from the State University of New York and a Doctorate in Clinical Psychology (PsychD) from the University of Surrey. He is also an Associate Fellow of the BPS. Prof. Wilcox has been awarded the title of Registered EuroPsy Psychologist and is qualified to practice throughout the European Union. Further, he is a Chartered Scientist and an assessor with the BPS for the qualification in Forensic Psychology. Prof. Wilcox is an Honorary Associate Professor in the School of Community Health Sciences at the University of Nottingham and an Honorary Research Fellow with the University of Birmingham, School of Psychology. He has provided specialist consultancy to a number of National Probation Service Sex Offender Units since 1994 and contributed to the first Home Office accredited Sex Offender Treatment Programme in the United Kingdom. Prof Wilcox also initiated the first UK National Probation Service based polygraph trials with sex offenders in 1999 and 2000. He is a member of the International Advisory Board for the *Journal of Sexual Aggression* and on the editorial boards of the *Child Abuse Review* and the *European Polygraph Journal*. In addition to managing a busy independent psychology practice in Birmingham, England, Prof. Wilcox has regularly presented at national and international conferences as well as producing many publications in relation to working with sex offenders.

**Gwenda Willis**, PhD, PGDipCinPsyc, is a research fellow at Deakin University and is working with Tony Ward on a number of offender desistance and reintegration projects. She has published extensively in these areas and was awarded a Fulbright New Zealand Senior Scholars Award in 2011 to examine the degree to which Northern America Sex Offender Programs adhere to the principles of the Good Lives Model.

# Preface

Sex offenders and in particular pedophiles have become the “folk devils” of modern society. This depiction of sex offenders is promoted by the media and to a lesser extent by governments and their politicians. As argued by a number of academics, including Chaffin (2008), sex offenders are probably one of the only groups of offenders who it is acceptable to hate. Due to this loathing and also because of the dangers which some sex offenders pose to the public there has been an increased emphasis on populist punitiveness throughout the Western world. This global prominence given to public protection has therefore permeated through the vast majority of state criminal justice legislation and risk management strategies, often culminating in a system that is based on a community protection model (Kemshall and Wood, 2007).

The community protection approach to dealing with high-risk offenders arguably emerged during the early 1990s and, as explained by Vess (2009: 264), “was a response to perceived inadequacies in previous approaches to provide for public safety.” The idea behind the model is that it attempts to strike a balance between issues of public safety and the protection of an offender’s human rights. Despite the existence of such a balance, Vess argues, however, that:

in contrast to earlier approaches, the community protection model is less concerned about [the] treatment or rehabilitation of offenders to reduce recidivism or facilitate community reintegration. The primary goal of the community protection model is the incapacitation of sexual offenders for the sake of public safety. (Vess, 2009: 264)

Kemshall and Wood (2007: 204) describe the model as one where the “containment and effective management of high-risk offenders is paramount,” with the model being characterized by the use of monitoring and control, compulsory treatment, restriction, surveillance and longer than commensurate sentencing. Other punitive responses include civil commitment, residence restrictions, registration requirements, mandatory polygraph testing and “chemical castration,” or, to use its more correct and less emotive term, pharmacotherapy. It would therefore appear that less emphasis is now being placed on the needs of the offender, and the balancing act between

public protection and offender rights seems firmly weighted on the side against the offender.

Against this background of public and governmental pressures, there has been a growing engagement with the legality and morality of such practices. The significance of this has always been recognized, but it is increasingly being viewed as fundamentally important by academics, practitioners, policy makers and international advisory bodies such as the International Association for the Treatment of Sexual Offenders (IATSO). This book therefore aims to contribute to this essential debate. It attempts to do this by bringing together a number of well-known international academics and practitioners who are working and writing in this important area. To give the book a truly international flavor there are contributions from four continents, with chapters from Australia, Canada, England and Wales, Germany, Israel, Japan, the Netherlands, New Zealand, Northern Ireland, Norway and the United States. These provide important points of comparison between different state law and policy as well as underlining similarities and differing cultural approaches to offender treatment and management. As Douglas (1992) notes, concepts of risk are "value laden" and a similar argument can be put forward for rights-based approaches to law and policy. The chapters will illustrate how similar issues have triggered greater public protection measures in different states and also affected sex offender treatment and management. Common themes will emerge, such as the influence of risk, the recognition of a rights-based approach and the need for ethically based and legally acceptable responses to sexual offending.

The book is divided into three sections:

- Treating and Managing Sexual Offender Risk in Context: Legal and Ethical Concerns;
- Legal and Ethical Issues in Risk Treatment;
- Legal and Ethical Issues in Risk Management.

While no one section is exclusive, an attempt has been made to group similar chapters and topics/themes together, although cross-references are made throughout the chapters.

The first section, Treating and Managing Sexual Offender Risk in Context: Legal and Ethical Concerns, opens with a chapter by Knut Hermstad. He examines the relationship between legal regulation, moral attitudes and punishment. He questions the effectiveness of legal and moral efforts at regulating offender behavior and examines the influence of morality on attitudes, discussing alternatives to punitive strategies. Bernadette Rainey's chapter then examines the use of a rights-based approach to sex offender issues. Using the United Kingdom as an example, she argues that there is a complex relationship between rights and risk which needs further examination, and that dignity can act as a framework for legal and ethical regulation of sex offender treatment and management. Similarly, Phil Fennell also raises the question of the politics of risk in his chapter on consent to treatment. The chapter concentrates on the mental health system and the interaction between the prison and the psychiatric settings. The chapter gives an insightful analysis of the legal use of consent for

mentally disordered offenders. Following from these two chapters, Rainey's chapter on equality and sex offenders considers subgroups of the sex offender population and examines how the application of a legal duty to treat different groups differently would enhance sex offender treatment and management. Legal issues are further explored in Ward's chapter on expert evidence, which gives an account of the ethical responsibilities of experts, judges and lawyers. It stresses the importance of the duty of "transparency" and issues of confidentiality. Chapter 6 follows the discussion of the ethics of expert evidence by discussing the ethical issues in sex offender research, Tony Ward and Gwenda Willis outline some of the issues involved in ethical research and discuss some of the topics mentioned in previous chapters such as dignity and consent. Anne-Marie McAlinden's chapter discusses legal and ethical issues in the context of "reintegrative and disintegrative shaming," contrasting the treatment and management strategies of notification requirements with restorative justice techniques. The chapter again discusses risk and rights in relation to sex offender programs and highlights the legal and ethical considerations of different types of intervention mechanism. Chapter 8 focuses on the media portrayal of sex offenders and how this has helped advance the risk penology. Peter Brown discusses the ethics of media coverage of "chemical castration" by examining the UK press coverage of this treatment area.

Following on from the context chapters, the last four chapters in Part One focus on sentencing issues. The first, by Harrison, looks at sex offender sentencing policy and legislation from an international perspective. In particular it examines legislation and practices in Australia, England and Wales, Germany and South Africa. Policies such as continuing detention, imprisonment for public protection, detention for the purpose of incapacitation and mandatory minimum sentencing are considered and evaluated. It considers whether such methods are being driven by populist punitiveness and an agenda based on public protection or whether welfare goals are also considered. In short, the fundamental aim of the author is to consider first whether such policies are lawful and then, if they are, whether they are also ethically acceptable.

This is followed by Chapter 10, which assesses and evaluates sentencing and criminal justice policy for sexual crimes in Japan and notes the reaction of the state to public protection concerns with the increased use of lay judges in decision making. The penultimate chapter in Part One is by Demleitner, who focuses on Native American crime in the United States, with a special emphasis on sexual offenses. The chapter centers on the federal sentencing of Native sex offenders in light of their unique legal and economic situation and assesses the way in which such offenders are dealt with in the United States. In conclusion the author emphasizes the need for culturally appropriate treatment, on the basis that Canadian and Australian studies have indicated success, by using such techniques, both in decreasing recidivism and increasing community safety.

The final chapter in Part One and in the sentencing block is Chapter 12, which focuses on mandatory reporting requirements in Israel. As explained in the chapter, the law purports to increase child protection by counteracting the tendency for secrecy whereby growing numbers of disclosures equal greater justice for victims and a better chance for therapeutic interventions for victims and perpetrators. Unfortunately, the law in its current form actually prevents some cases from reaching

a satisfactory conclusion because (1) families who would otherwise engage actively in therapy do not have the chance to digest the trauma of disclosure before having to contend with the police and the courts; (2) some families avoid therapy altogether in order to avoid reporting; and (3) some victims feel betrayed and harmed by the system that handles the disclosure. The chapter therefore argues that a balance must be achieved between the existence of laws consistent with the seriousness of child sexual abuse and a wise application of such laws to situations characterized by secrecy, fear, horror, guilt, shame and helplessness among victims, non-abusive family members and abusers.

Part Two is entitled *Legal and Ethical Issues in Risk Treatment*. The first in this collection is by Rice and Harris who question whether or not we should reject the null hypothesis when considering treatment for adult sex offenders. They argue that after more than 50 years of effort, we know too little about whether any form of treatment has ever caused a reduction in the risk of recidivism of adult sex offenders. Throughout the chapter, the authors present examples of medical and psychological treatments for other populations where treatments thought to be beneficial on the basis of weak research evidence were subsequently found to be useless or harmful on the basis of random controlled trials (RCTs). The authors review the sex offender treatment outcome literature and challenge the claim that positive treatment effects have been demonstrated according to generally accepted scientific standards of inference. They reject fallacious arguments against strong inference research based on RCTs, and argue that the field has come as far as it can without RCTs; that RCTs are essential to advancing knowledge about sex offender treatment; and that the costs of not conducting such studies are unacceptable. By way of demonstrating ethically sound practice, the chapter concludes by presenting an example of how an ethically and scientifically acceptable RCT might be accomplished.

In Chapter 14, Marshall and Marshall examine the application of empirically-based process features of treatment delivery and suggest that ethical concerns demand that treatment programs for sexual offenders should adhere to the risk, need and responsivity principles of effective offender treatment. In particular the chapter focuses on the responsivity principle and argues that in order for sex offender treatment programs to be ethically sound, they must not only adhere to the principles of effective treatment, but must also have therapists who are sufficiently well-trained and competent to be able to deliver treatment in the most effective way. In essence the authors argue that it is the quality of the delivery of treatment that accounts for the majority of the observed benefits in programs for all types of clients, including sexual offenders.

Following on from the debate about the efficacy of sex offender treatment, Wilcox in Chapter 15 offers his experiences of working with sex offenders in his role as a psychologist. He sets out his reflections on the development of sex offender treatment during his time in this field. The chapter addresses changes in approaches to assessment, intervention and supervision. The chapter discusses new technology and more recent legislation, and reflects on ethical practice issues, including the balance between individual rights and public protection.

Part Two then turns to a more theoretical discussion, including whether sex offender treatment should be classified as punishment or rehabilitation. Written by



Ward and Rose, Chapter 16 looks at the intersection of the two frameworks of punishment and rehabilitation in the criminal justice system, arguing that it can create ethical flashpoints, which, if ignored, may result in unprofessional and harmful practice. In particular the authors discuss the challenges created by the convergence of punishment and rehabilitation practice with sex offenders and suggest ways of resolving, or at least managing, the inevitable ethical tensions. This is then followed by a discussion of the moral theories often used to justify rehabilitation programs. Specifically, the chapter written by Glaser uses the Good Lives Model (GLM) as an example of how moral and clinical decisions on offender rehabilitation programs may be difficult to distinguish. It therefore provides a brief overview of some of the moral theories commonly used as the ethical bases of human service models, although it is argued that virtue ethics seems to best fit the assumptions and practices of the GLM. The shortcomings of this framework are then described, particularly those which might impact on the decisions made by clinicians using a GLM approach, and some ways of overcoming these, using ethical rather than clinical responses, are suggested. The author concludes that, however difficult they may be to attain, the GLM's aspirations of achieving a meaningful and worthwhile life for even the most despised members of our community may result in policy and attitude changes that will benefit society enormously as a whole.

The last two chapters in Part Two are arguably more specific in nature; with Chapter 18 looking at a specific treatment method and Chapter 19 considering a specific treatment group. The first, written by Basdekis-Jozsa, Turner and Briken, considers the legal and ethical aspects of using pharmacotherapy with sex offenders. The chapter acknowledges that until now very little has been known about the effects of anti-hormonal treatment on the recidivism rates of sexual offenders, mainly because many studies on the effectiveness of such treatment have lacked equivalent control groups. The chapter therefore looks at developments in this area, examining the legal aspects of prescribing anti-androgens in the forensic setting, the ethical aspects of the regime (for example, future and/or irreversible side effects and the question of informed consent in a forensic setting), and the questionable effect of the treatment on recidivism rates. In essence, the authors question whether anti-androgen treatment should be used for sex offenders suffering from non-controllable deviant urges and, if so, what safeguards need to be put into place.

Turning to a specific offender group, the final chapter in this section considers female sex offenders and the need for a gender responsive approach for such offenders. Written by Ashfield, Brotherston, Eldridge and Elliott, the chapter comments on how the empirical information on women who sexually offend indicates that a blanket application of research knowledge based on *male* sexual offenders to understand sexual offending by females is not a viable option. In sexual offending, as in general offending, gender matters. Although women engage in similar acts to men, their pathways to offending remain uniquely female and so demand separate explanations to those of their male counterparts. The authors therefore review the developments in our understanding of female sexual offending and explore how gender responsiveness can inform our understanding of good practice in the assessment and treatment of female sex offenders.

Finally, Part Three focuses on legal and ethical issues in relation to a number of risk management strategies. The choice of strategy to be employed for any given offender is usually determined by means of risk assessment and this is the subject of Chapter 20. Singer, Boer and Rettenberger therefore look at the different models for risk assessment. They discuss actuarial methods and structured professional judgment. The chapter argues that both methods have benefits and that risk assessment can be greatly enhanced by taking a convergent approach and combining both methods.

Following on from risk assessment, the remaining chapters look at specific risk management strategies. Chapter 21, written by Thomas, examines sex offender registration in both the United States and the United Kingdom. It looks at the difficulties experienced in the United States, as states have struggled to comply with the requirements of the federal 2006 Sex Offender Registration and Notification Act and furthermore considers the successful legal challenge in 2010 to the UK register demonstrating that it is not compatible with Article 8 of the European Convention on Human Rights. The chapter also considers the position of young sex offenders who are registered and the continuing problems the police have in monitoring the behavior of adult registered sex offenders. Experienced difficulties of monitoring are evaluated, and the new police child sex offender disclosure schemes are examined.

Next is a chapter looking at the development and efficacy of Circles of Support and Accountability (COSA), with the authors Hanvey and Höing arguing that COSA are a more ethical way of working with sex offenders. The chapter briefly introduces the goals of COSA and the problems which the method is seeking to address before looking at how they operate and have been rolled out across Europe. In particular the authors look at the ethical and theoretical principles of COSA, including restorative as opposed to retributive justice and humanitarian principles. They consider the diverse treatment models used and models of behavior change such as the GLM, desistance, social capital and inclusive community-building, before considering the future potential of Circles, and the possible wider impact they can have across criminal justice provision and services.

Chapter 23, written by Wilcox, then considers the ethical use of polygraphs in working with sex offenders. The chapter begins by looking at a brief background of what the polygraph is and how it works, including a discussion of its strengths and weaknesses. It then explores the developing use of polygraphy in the criminal justice field and specifically in its employment with sex offenders. The author reviews perceptions about the accuracy, reliability and validity of polygraphy and provides a discussion focused on ethical and professional positions concerning the use of the polygraph, generally and within the specific field of sex offender work. Throughout, the chapter directs attention to ethical issues in the employment of polygraphy with sex offenders, including the balance between individual rights and public protection.

This is then followed by an examination of the legal and ethical issues involved in the civil commitment of sex offenders in the United States. Authored by Jackson and Covell, the chapter reviews the historical foundation and constitutional underpinning of sex offender civil commitment in the United States and explains how these controversial statutes, often termed Sexually Violent Predator laws, serve to detain sexual

offenders after the expiration of their criminal sentences. The legal criteria necessary for commitment and those elements separating civil commitment from punishment are also helpfully reviewed. Specifically, however, the chapter considers the legal and ethical aspects inherent in the evaluation, commitment, treatment, management and release of these individuals and discusses what can be done to make practice more ethically sound.

Chapter 25, written by Pacheco and Barnes, stays with the United States, this time considering the use of sex offender residence restrictions. Explaining how such restrictions have emerged as one of the most politically popular responses to sex offender crimes, the chapter explains what the restrictions are and how they work (or do not work) in practice. In particular it comments on how the vast majority of efficacy studies on residence restrictions conclude that such requirements are unlikely to reduce sex offender recidivism. Despite the existence of such studies there has been no sustained effort systematically to summarize their results, which is exactly what this chapter does. The authors offer a systematic review of the sex offender residence restriction literature, giving primary consideration to whether residence restrictions are a salient strategy to reducing recidivism and boosting community re-entry likelihood among sex offenders. Whether residence restrictions impact other domains of the re-entry process is also discussed.

The penultimate chapter concerns the traveling sex offender, with an evaluation of how sex offender movements are monitored across international borders. Written by Thomas, Chapter 26 looks at the problems created by sex offenders traveling internationally and considers why such offenders would wish to travel abroad. It critically examines the legal requirements in the United Kingdom and the United States on registered sex offenders to notify the police when they are traveling abroad and how these requirements have been strengthened in recent years. It also examines the orders now available that can prevent people leaving a country for determinate periods of time and the measures that can be applied to newly arrived travelers known to have committed sexual offenses in other countries or to be registered sex offenders in other countries. The chapter ends by looking at arrangements being devised to collect and use personal information on sex offenders and to exchange that information across international borders.

The final chapter written by Mallet and Karp examines the increasing use of GPS tracking as a management tool and considers the influence of risk penology on post-release management of sex offenders. A common theme throughout the collection is highlighted in the chapter: the influence of risk and the public protection agenda in the treatment and management of sex offenders and the need for a legal and ethical response that recognizes the rule of law and the individual.

To conclude, the collection encompasses a wide-ranging and comprehensive critique of ethical and legal issues that arise from sex offender treatment and management. Several themes emerge from the chapters described. First, there is considerable agreement concerning the importance of ethical good practice, even if there may be differences as to how to achieve this; there is debate about what assessment tools to use, whether treatment methods work and where the focus of treatment should be. There is also a consensus concerning the role of penal punitiveness in state policy, not only of the ramifications of these policies for ethical practice but also the legal