

# The Labeling of Sex Offenders

The Unintended Consequences of the  
Best Intentioned Public Policies

SEAN MADDAN

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Best Intentioned Public Policies*

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**Sean Maddan**


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# CHAPTER 1

## INTRODUCTION

In the mid-1990s, many U.S. jurisdictions introduced laws to implement a registration policy in an effort to monitor convicted sex offenders. These laws were passed primarily because of public pressures. An important assumption underlying these laws was that sex offenders were a greater risk of recidivism than other types of offenders such as thieves, burglars, drug offenders, and murderers. While research indicates inconclusive results on the validity of this assertion (Furby et al. 1989; Hanson and Bussiere 1998; Sample 2001), courts at all levels have acknowledged the constitutionality of these laws; law enforcement officials continue to use these laws in many communities across the U.S.

While sex offender registration laws have existed since the mid-1950s, the 90's version added a new component: community notification. Sex offender registration has existed in California since the 1950s, and habitual offender registration laws were prevalent in the late 1980s across most states. Under these past systems, however, the community was never notified of a sex offender's presence. Previous versions of sex offender registries only allowed law enforcement within a state to track sex offenders, sometimes successfully, sometimes not.

In the most recent legal developments of sex offender registration, lawmakers have created a policy that allows states greater latitude in tracking sex offenders. First, new registration policies dictate that all states keep registries and that the information is transmitted to a national database so that offenders can be more easily tracked across state lines. Second, offenders are required to verify their addresses anywhere from every six months to once a year. This simplifies a registry's job in keeping up with the current whereabouts of sex offenders. Also, sex offenders are required to notify law enforcement officials in the event that they move.

The third, and most stringent, advance of sex offender registration laws is the notification element. With the new laws, it is possible that, in addition to law enforcement, communities also can be “notified” as to the presence of sex offenders. Whom is notified of a sex offender’s presence, however, is based on a sex offender’s assessment level. Upon conviction, sex offenders are sent to an assessment committee, which assesses the risk of recidivism a sex offender poses. Many items go into this evaluation of the sex offender. After the evaluation is concluded, an offender is assigned an assessment level. In most states there are three assessment levels: 1, 2, and 3. While this coding can be reversed, a level 1 generally indicates an offender with a low probability of recidivating. A level 2 indicates a moderate chance that the offender could recidivate. A level 3 assessment implies that a sex offender poses a serious threat of recidivism. While some states have added a fourth level for sexually violent predators (offenders who committed a violent crime in the course of committing their sex offense), these offenders are more often than not included in the third level of assessment.

Once the sex offender’s recidivism/dangerousness level has been assessed, the notification process is initiated. Information on sex offenders who have a level 1 assessment can only be shared with law enforcement officials and other governmental agencies, both state and federal. Schools, community centers, and law enforcement officials can be notified if a sex offender is evaluated at a level 2. For sex offenders who receive a level 3, or level 4, assessment, all of the groups notified for level 2 offenders as well as the entire community in which the sex offender lives may be notified of the sex offender’s presence.

One of the premises of sex offender registration laws is the belief that sex offenders pose a higher risk of recidivism; however, the research is both limited and divided (Furby et al. 1989; Hanson and Bussiere 1998; Walker and Ervin-McLarty 2000; Sample 2001; Sample and Bray 2003; Langan et al. 2003). The research examining the efficacy of sex offender registration and notification laws is even more scant, and, what research is available seems to suggest that sex offender laws are not having an effect on recidivism (Hanson and Bussiere 1998; Sample 2001; Sample and Bray 2003; Langan et al. 2003). The relatively small amount of research in this field of study has failed to utilize a theoretical model in interpreting results. The current study attempts to add to the literature on sex offender registration and notification laws by examining the effect of offender registration on sex offender recidivism within the theoretical framework of the labeling perspective.

## **The Labeling Perspective**

The criminological labeling perspective has its roots in the sociological tradition of symbolic interactionism. Symbolic interactionism (Cooley 1926; Mead 1934) is a micro level theory that examines how interpretive processes result in situational deviance. According to symbolic interactionists, individuals take the “role of the other” or become the “looking-glass self” in all social situations, (i.e., individuals will act the way that they think others expect them to behave).

Symbolic interaction has been applied to criminality through the labeling perspective.

Labeling theorists, such as Kobrin (1976:245) argue that merely examining the offender, or offender characteristics, will not produce a complete picture of crime or deviance. A complete picture of crime or deviance must also include societal reactions to such incidents (see also Erickson 1966). Thus, in the view of symbolic interactionists the reaction of society, community, or a social group is an important (and at the time underdeveloped) aspect of criminality and/or deviance.

The labeling perspective was developed over many years by a number of different social scientists (Tannenbaum 1938; Lemert 1951, 1967; Cohen 1995; Kitsuse 1962; Becker, 1963). It was Becker (1963:9) who presented a more formalized labeling theoretical framework. Becker argued that social groups create deviance by agreeing on rules and laws. When these rules or laws are applied to individuals, these individuals are "labeled" as outsiders. This stance separates deviance/criminality from the act a person engages in and makes it a consequence of rule enforcement and sanction application. A deviant, or criminal, is such because of a successful application of a label. Consistent with the dynamic process outlined by symbolic interactionists, deviants tagged with a label will internalize the label and then engage in further behavior that is consistent with the label which was internalized. This process may result in secondary deviance or recidivism (Lemert 1967).

In line with the labeling perspective's fragmented past, it was not until 1989 that a set of formalized hypotheses were developed by Paternoster and Iovanni. They argued that there were four hypotheses that needed to be explored before the labeling perspective could be considered a more formalized theory. These hypotheses should address: 1) The role of political/economic power in creating delinquency statuses; 2) The influence of extralegal attributes in determining who is labeled; 3) The contribution of social and physical attributes in determining face-to-face encounters; and 4) That the experience of being labeled by social control agencies may result in an alteration of personal identity, an exclusion from the normal routines of everyday life, and greater involvement with delinquency.

The current research on sex offender registration and notification laws will be primarily concerned with Paternoster and Iovanni's fourth hypothesis. Thomas and Bishop (1984) succinctly stated the central contention of this labeling hypothesis:

The attribution of stigmatizing labels, particularly when that attribution process involves formal agents of social control, initiates a social process that results in altered self-conceptions, a reduction in the availability of conventional opportunities, a restructuring of interpersonal relationships, and an elevated likelihood of involvement in the real or imagined conduct which stimulated initial intervention efforts (1984, 1226).

Hence, if a person is labeled to be a deviant or criminal, and if the label is internalized by an individual, then secondary deviance/criminality should ensue.

In a recent discussion of the labeling perspective, the British criminologist Paul Rock singles out "Megan's Law" as an example of the increasing tendency of taking measures to "enlarge the visibility of the rule-breaker" (2002, 72). He argues: "In the United States, for instance, 'Megan's law' makes it mandatory in certain jurisdiction for the names of sex offenders to be publicly advertised, possibly reducing risk but certainly freezing the criminal as a secondary deviant" (Rock 2002, 72). Sex offenders are a unique group of offenders on which to test the labeling perspective's assertion about the secondary deviance of labeled offenders. Though most known sex offenders were stigmatized both formally and informally before the sex offender laws of the 1990s, registration and notification laws today *intensify* the labeling process. To further quote Rock (2002, 72): "Once publicly defined as a deviant, it becomes difficult for a person to slip back into the conventional world." Unaware individuals who reside in the offender's community may now potentially be informed of a sex offender's presence. While the labeling perspective has been shown to have both theoretical and empirical shortcomings, the majority of the research on this theoretical tradition indicates that labeling does play some role in influencing an offender's behavior (Farrington 1977; Link et al. 1989; Kaplan and Johnson 1991; Ward and Tittle 1993; Triplet and Jarjoura 1994; Heimer and Matsueda 1994; Kaplan and Damphousse 1997). Now that sex offenders are subject to higher scrutiny, and hence a more intensified and public label than in the past, current policies intended to *prevent* repeat sex offending could actually be helping to *increase* the incidence of sex offending. Drawing from the labeling perspective, this research will analyze the criminogenic effects of current sex offender community notification policies on convicted sex offenders in Arkansas.

## Research Design

This study examines the effect of sex offender registration policies on sex offender recidivism patterns in the State of Arkansas. Since the registration with notification component was activated in 1997, two main stages in Arkansas may be distinguished, pre-1997 and post-1997. Under the pre-1997 policy, the labeling of the convicted sex offender did not go beyond the "routine" (passive) label associated with incarceration. For purposes of the current study, we will classify the pre-1997 policy as a "passive" label. The period after 1997 will be classified as the "active" or "magnified" label, reflecting the fact that notification (of the police, community organizations, or the public at large) has now become part of the law. The first part of the study compares between levels of recidivism between the pre-1997 group (with the "passive" label), and the post-1997 group (with the "active" or "magnified" label). The second part of the study assesses the effects of different levels of "active" or "magnified" labeling on recidivism among the post-1997 group. I will expand on this later in this section.

The study uses official criminal justice data on convicted sex offenders in the State of Arkansas (N=2,920 sex offenders). Since true experimentation is not possible, the current study follows the logic of a quasi-experimental design (Campbell and Stanley 1966). Sex offender registration laws with the notification component took effect in 1997. The treatment group will be comprised of

offenders registered in the years 1997, 1998, and 1999; this group represents the “actively” or “magnified” labeled group. This group will be analyzed with respect to a comparison group of sex offenders who were convicted of sex offenses in 1987, 1988, and 1989, when offenders were not subject to registration and notification. The years are chosen so as to decrease the chances of overlap between the two groups. The comparison group is, from the labeling perspective, the passively labeled group. Consistent with the labeling perspective, we expect that the level of recidivism among the “passively” labeled group will be lower than among the “actively” labeled group.

The main dependent variable is recidivism. Consistent with the labeling perspective, which argues that subsequent offending (i.e. secondary deviance) most likely would reflect the nature of the label internalized, recidivism in this study takes a very narrow meaning, and will be limited to sex offenses. Recidivism will be measured by both re-arrest and reconviction of a sex offense. We also include an analysis of general recidivism (i.e. re-arrest or re-conviction of a non-sex offense) to further examine the relationship between labeling and recidivism. We use a five year follow up period, which is an acceptable time span in the recidivism literature (Hanson and Bussiere 1998; Sample 2001; Sample and Bray 2003; Langan et al. 2003).

Using recidivism as the primary dependent concept, two binary logistic regression models are evaluated. First is an exploration of the differences between the treatment group and comparison group. As discussed above, the key concept in this model is the application of either an “active” or a “passive” label. There are other concepts that the labeling perspective argues are important as well. Effects are thus calculated for prior exposure to general labeling (a measure of prior non-sex offense related crime) and prior exposure to specific labeling (a measure of prior sex offense related crime); both of these variables can act independently of or in conjunction with the application of a label to produce recidivism. Finally, the analysis will control for race, gender, and age and examine interaction effects between these variables and active labeling.

In the second analytic model, only the ‘treatment’ group (i.e., the post-1997 group) is used to ascertain intra-group differences in recidivism patterns. This analysis employs the same variables as were used in the first model. [It should be noted that the variable of ‘active’ and ‘passive’ label is no longer relevant here since the entire post-1997 group has been ‘actively’ labeled.] However, two concepts are added to this model: *label intensity* and *degree of informal social control*. This analysis will also explore the effect of the level of notification (1-3), or – what I call the labeling *intensity*, upon an offender’s likelihood to recidivate. The impact of informal social control is largely neglected in the study of labeling on secondary deviance. Therefore, this research also assesses the impact of informal social control on recidivism patterns among sex offenders in Arkansas. The logistic regression analyses of recidivism in the treatment group (i.e., those sex offenders who were convicted in the post- 1997 period) will include a dummy coded variable for the label intensity and an interval variable for the degree of informal social control (i.e. the size of the community where the registered sex offender resides).

These two analytic models will examine between-group differences, as well as within-group differences in recidivism patterns for convicted sex offenders in Arkansas. The analyses will allow for conclusions to be drawn about: 1) the level of recidivism for the entire group under examination (i.e. those convicted in 1987, 1988, 1989, and 1997, 1998, 1999); 2) the impact of sex offender registration on recidivism (between-group comparisons, i.e., pre-1997 and post-1997 groups); and 3) the relationship between the perceived risk of recidivism (i.e., level of active labeling indicated by assessment level) to observed recidivism (within-group comparisons for the post-1997 group). [Or, in labeling terms: the relationship between the intensity of the label and the likelihood of recidivism.]

### **Implications of the Study for Theory and Policy**

With the limited amount of research on both the efficacy of sex offender registration laws and the labeling perspective, this research will inform future research, theory and policy.

This study proposes to contribute to the study of the effectiveness of sex offender registration schemes by evaluating current sex offender laws within a larger theoretical framework. To date, very few studies (Walker and Ervin-McLarty 2000; Sample 2001; Sample and Bray 2003) have directly explored the impact of sex offender registration laws on the recidivism of sex offenders who have been subjected to registration (across registered offenders, across states, or across levels of registration) or the effect that these laws are having on the incidence of sex offending in a state. While the findings will only be generalizable to Arkansas, the methodology, as discussed in Chapter 4, employed here can easily be transferred to other states' sex offender criminal history information. As such, the current study aims to inform future research efforts in this area.

This study has implications for criminological theory as well. The labeling perspective defines two primary testable propositions: Labels are unevenly distributed through society and negative labels have negative consequences in terms of an increased likelihood to engage in future deviance or criminality (recidivism). The labeling perspective, while still studied occasionally, has been primarily relegated to the role of a relic of traditional criminological theory. This is due in large part to the difficulty in shifting from the conceptualization of a label, whether formal or informal, to being able to measure that label as a variable. It is very difficult to measure the label and, when it is measured, to separate its effects from other indicators in the model. Data on this subject are lacking as well, i.e. it is difficult to find data that measure concepts such as primary deviance, recidivism, internalization of the label, and so on, in one relatively easily accessible database. The methodological rigor of prior research on the labeling perspective has been questioned repeatedly. The present research is able to operationalize the label in two ways: 1) passive vs. active; and 2) level of intensity. This allows for a critical test of the second proposition of the labeling perspective.

Finally, this study could potentially have a great impact in the realm of public policy. Sex offender registration and notification laws are very costly, resulting in large financial expenditures. Hundreds of thousands of dollars are spent

on the maintenance of sex offender registries and the notification of communities on a yearly basis. Furthermore, these laws often represent a considerable amount of intrusion into the private lives of convicted sex offenders once they are released. They may create—perhaps unfounded—fear and anxiety in the communities. Sex offender registration policy is established on the mistaken assumption that these offenders are more likely to recidivate than other offenders (Furby et al. 1989; Hanson and Bussiere 1998; Walker and Ervin-McLarty 2000; Sample 2001; Sample and Bray 2003; Langan et al. 2003). Thus, studies are greatly needed to examine whether these laws indeed reduce recidivism. If these laws are found to be effective in curbing the recidivism of sex offenders, then this adds one argument in favor of continued funding of this policy. If these laws are found to be ineffective (i.e., they make no difference), the money that is spent on this policy may be better spent elsewhere to more effectively combat sex offending. If these laws are shown to *increase* recidivism (the expectation based on the labeling perspective), there may be grounds for seriously considering an alternative policy option.

## Study Layout

This study consists of six chapters. This first chapter has served to introduce the basic ideas underlying sex offender registration and notification laws, as well as the labeling perspective, the methodological design that will be used in this research and the implications this research has for criminology. Chapter 2 explores the history, current applications, and research studying the efficacy of sex offender laws in the U.S. Chapter 3 includes an overview of the labeling perspective, criticisms of this perspective, and the available empirical evidence on the effects of labeling on recidivism. Chapter 4 presents the research methods utilized by this study to evaluate the efficacy of sex offender registration and notification laws, framed in the labeling perspective. Chapter 5 presents the findings of the analyses conducted on the criminal history data retrieved from the State of Arkansas. Chapter 6 concludes this research by interpreting the findings, and by identifying the methodological, theoretical, and policy implications of this research. Avenues for future research on both sex offender laws and the labeling perspective are suggested.





## **CHAPTER 2**

# **REVIEW OF SEX OFFENDER REGISTRATION AND NOTIFICATION RESEARCH**

There has been a tremendous amount of activity, both political and legal, concerning sex offender registration laws since the early 1990s. While registration laws have been around for decades, Finn (1997) reported that Washington State was the first to pass such a “modern” sex offender registry law with a notification component in 1990. Twenty-seven other states followed suit by 1994. Sixteen more states added sex offender registration and notification laws by 1999. Today, all states and the District of Columbia maintain sex offender registries capable of notifying the community of the presence of sex offenders perceived to be at risk for re-offending.

In many states, sex offender registration laws, in the form of habitual offender registries, were passed prior to community notification laws. Now community notification is seen as essential to effective sex offender management. Finn (1997) argued that “community notification reflects the perception that registration alone is inadequate to protect the public against sex offenders and that notification provides the public with a better means of protecting itself.” Sex offender registration schemes in most states were prompted to add either just a notification component or both a registration and notification by federal legislation in the mid-1990s.

This chapter explores the implementations of recent sex offender registration and notification laws. In particular, this chapter describes the legal evolution of these laws, the inner-workings of registry systems, the rationale for notification, and the research surrounding sex offender recidivism patterns.