



UPAN Newsletter

Volume 5 Number 7 | JULY 2018

"Empowerment and Growth Through Knowledge and Unity"

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Parole Length? Risk/Needs Assmt – S O Registry Pt 3

NEXT UPAN MEETING: MONDAY, AUGUST 13, 2018 6:30 – 8:30 p.m.

Kafeneio Coffee House 258 West 3300 South, Salt Lake City

TOPIC: Faye Jenkins & Wendy Parmley will present on Utah's Sex Offender Registry and the work they are doing with Utah's Legislature. Also invited to speak from the national level are Jeff Miller from NARSOL and Pamela Sorensen from WAR

September UPAN Meeting, Monday, September 10, 2018 6:30 – 8:30 p.m.

Kafeneio Coffee House 258 West 3300 South, Salt Lake City

TOPIC: Utah's Parole Re-Entry Program with Directors Eric Barker and Bart Mortensen

FOCUS MEETING: Cancelled Until Further Notice

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Disclaimer: Formulate your own opinions about the information presented.
This information is presented for the reader's enlightenment and evaluation.

"We may have all come on different ships, but we're in the same boat now." Martin Luther King Jr.

HB 291 SENTENCING COMMISSION LENGTH OF PAROLE SUPERVISION GUIDELINES * **A call for citizen public comment, by A. Cramer**

LONG TITLE General Description:

This bill amends provisions of the Utah Code relating to probation and parole. Highlighted Provisions of this bill:

- requires the Utah Sentencing Commission to develop guidelines relating to the length of supervision of adult offenders on probation or parole and to make recommendations to the Legislature, courts, and governor;
- provides that the length of an offender's probation or parole term may not exceed the length of an offender's

maximum sentence, unless the maximum sentence is one year or less;

- removes certain lifetime parole requirements;
- modifies the circumstances under which an individual may be discharged following a parole revocation;
- removes the requirement that an offender found guilty with a mental illness and placed on probation or parole must be supervised for at least five years;

- removes the prohibition on termination of probation or parole resulting from a driving under the influence conviction;
- requires the Utah Board of Pardons and Parole and courts to terminate probation or parole in accordance with the supervision length guidelines developed by the Utah Sentencing Commission; and
- makes technical changes.

63M-7-404 (Effective 07/01/18). Purpose -- Duties.

207(1) The purpose of the commission is to develop guidelines and propose: 208 recommendations to the Legislature, the governor, and the Judicial Council regarding: 209(a) the sentencing and release of juvenile and adult offenders in order to:

- (i) respond to public comment;
- (ii) relate sentencing practices and correctional resources;
- (iii) increase equity in criminal sentencing;
- (iv) better define responsibility in criminal sentencing; &
- (v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority[.]; and
- (b) the length of supervision of adult offenders on probation or parole in order to:
- (i) increase equity in criminal supervision lengths;
- (ii) respond to public comment;
- (iii) relate the length of supervision to an offender's progress;
- (iv) consider an offender's risk of offending again;
- (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and
- (vi) enhance the discretion of the sentencing judges while preserving the role of the BOPP.

For the above reasons, **now** is the time to reach out to the Sentencing Commission, legislators and others to create "Public Comment" that these changes, in part, must be based on. Consider the following opinions and sources, then let your informed opinion be heard.

Utah's Recidivism Problem

From *Utah's Recidivism Rates in Light of National Trends* we learn Utah has had a real issue with Recidivism. This presentation can be downloaded at ¹ We also see that by three years on parole it is unlikely a parolee is going to return to prison. The highest reason for recidivism, as shown in this report, was technical violations. If a person no longer needs supervision there will be no technical violations. If a person commits a new crime, returning to prison is an option. In my opinion, one of the reasons for high recidivism rates in the past was inconsistency, as shown in the audits of AP & P (see Report No. 2013-08 A Performance Audit of the Division of Adult Probation and Parole) ² the Board of Pardons,³ and the Utah Attorney General's Office.⁴ Inconsistency, lack of accountability and often lack of transparency add to the

emotional abuse of inconsistency in the Utah criminal justice system.

Prosecutorial Misconduct

In doing my research to give feedback to the commission on this, I read *Sentence Reduction as a Remedy for Prosecutorial Misconduct*. I learned that a set of guidelines for a parolee to get off supervision is a safety valve to overcome the problems caused by States attorney's misconduct.⁵

When I looked up prosecutorial misconduct in Utah, I was surprised at all the links I found. We have a real problem. Prosecutors claim they don't have to prove intent, when the law says they do for 1st degree felonies. Assistant Utah Attorney General's fight against the Constitutional Rights of Utah Citizens and the legal defense system in Utah creates some real problems.

Emily A. Lee, an investigator from the Utah State Bar has written, "The Office of Professional Conduct (OPC) does not ordinarily intercede in prosecutorial misconduct claims" (March 20, 2018). Who addresses the issue of prosecutorial misconduct? We also have issues of misrepresentation in sentencing from the Sentencing Solutions Newsletter.⁶

I also found PROFILES IN PAROLE RELEASE AND REVOCATION: Examining the Legal Framework in the United States⁷ interesting, including this website.⁸

Low Recidivism in Sex Offenders

From the article *Problems With The Sex Offender Registry* (UPAN June Newsletter) by Faye Jenkins, we read "Advocates of sex offender registries rarely concede that most sexual offenses are committed by persons who do not have a prior sex offense criminal record. A 1997 U.S. Department of Justice report acknowledged that sex offenders were less likely to have a prior conviction history than any other violent incarcerated offender. Data from 1994 showed 61% of violent sex offenders in prisons across the nation had a prior conviction, though only 26% were for violent crimes. Only 12% of violent sex offenders were previously convicted for rape or sexual assault. The report also showed all the prisoners released in 1983 (not limited to sex offenders) accounted for 3.8% of all rape arrests in 1983, 2.4% of rape arrests in 1984, and 1% of rape arrests in 1985 and 1986. Sexual recidivism is very low for all types of violent offenders and the risk of re-offense reduces each year a sex offender remains offense free."

Proposing a Three Year Guideline

I find nothing in my reading that would suggest (except in rare cases) anyone needs to be on supervision more than 3 years. If a parolee has done all the Board of Pardons has required of them they ought to be able to be off supervision before the three-year time frame. Having a three-year guideline would be a relief from the emotional abuse of the unknown time line for the victims, the parolee and their families. If a person has been granted parole by the Board of Pardons, it is assumed the BOP believes that person is not an extreme risk to the public. Statistics show after three

years on parole the likelihood of re-offending is limited. The guidelines should not be based on the length of conviction nor the crime because the BOP has already granted parole.

In terms of probation, I have found no data to justify the extended years on probation that some probationers now serve.

Time for Utah Citizens – Particularly UPAN Families – to Share their Views

As you consider the creation of this vital and long overdue set of guidelines, consider not only the potential cost savings to the Utah state coffers but the relief to individuals and their families as parolees (some even falsely convicted) try to move forward and out of a difficult time in their lives. Now is a time for potential

improvements in the Utah Criminal Justice System. Do we, as citizens, truly care more about people than prisons and policy? Let your voice be heard!

From Marshall Thompson marshallthompson@utah.gov
"The best way to give feed-back or input is to email me⁹ directly at this address. When we have a draft, we will make it public and ask for feedback again. You can also come and speak at the Sentencing Commission meeting. The next one is August 1. Thanks!"

The office hours are 8am-5pm, Monday-Friday.¹⁰
State Capitol Complex, Senate Building Suite 330 PO
Box 142330 SLC UT 84114-2330
Office: 801-538-1031 Fax: 801-538-1024

*HB 291 passed in 2018 Utah General Session, Chief Sponsor: Eric K. Hutchings Senate Sponsor: Daniel W. Thatcher
H.B. 291 Sentencing Commission Length of Supervision Guidelines (Hutchings, E.). The full text can be found at <https://le.utah.gov/~2018/bills/static/HB0291.html> with access to debate under "Hearings/Debate."

¹ <https://le.utah.gov/lrgc/briefings/bagelsbriefings.inmaterecidivism.pdf>

² https://le.utah.gov/audit/13_08rpt.pdf ³ https://le.utah.gov/audit/16_01rpt.pdf ⁴ https://le.utah.gov/audit/15_05rpt.pdf

⁵ <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2188&context=articles>

⁶ <http://utahsentencingalternatives.com> ⁷ Google: 701159 new Utah parole profile2.pdf

⁸ <https://robinainstitute.umn.edu/publications/profiles-parole-release-and-revocation-utah-0#disqus>

⁹ marshallthompson@utah.gov ¹⁰ <https://justice.utah.gov/Sentencing/>

"When we speak we are afraid our words will not be heard or welcomed. But when we are silent, we are still afraid. So it is better to speak." Audre Lorde

BRIEF EXPLANATION OF CRIMINOGENIC RISK / NEEDS ASSESSMENTS

by Molly Prince, LCSW

The Jargon - Definition of "Criminogenic"

A system, situation, or place causing or likely to cause criminal behavior. Any factor that produces or contributes to the cause of crime or criminality.

What Are Criminogenic Risk Factors?

The following information is extracted from an article originally published in March 2016 UPAN Newsletter, which was based on the article *Criminogenic Risk Assessments* by Jeanette Kinard and Jessica Johnson, published October 2, 2014 in Voice for the Defense Online, website address:

www.voiceforthedefenseonline.com

Both internal and external factors contribute to criminal behavior and recidivism. These factors, known as risk factors, are split into two categories: dynamic and static. **Static factors** are those that cannot be changed, like gender, like criminal history, family criminality, age at first admission to a correctional facility, number of prior incarcerations, and the commitment offense. These are related to crime and recidivism, however they cannot be changed through education, treatment, punishment, etc.

Dynamic risk factors are factors that can change or be changed through education or treatment. They may fluctuate over the course of one's life. Examples of

dynamic factors can be where one lives, how one makes a living (environment); friends and associations; one's belief system, attitudes, and core values; substance use; process addictions such as gambling, pornography; inadequate social skills; and employment status.

Dynamic risk factors are also known as criminogenic risk factors or criminogenic needs. They are directly associated with the choice to commit crime. The term criminogenic takes into account that "Offenders have many needs deserving of treatment but not all of these needs are associated with their criminal behavior."

Criminogenic risk factors are those that can and should be identified and then addressed through the delivery of services. Various scholars, researchers, and other sources have compiled extensive lists of criminogenic risk factors, many of which overlap. These factors include: antisocial peers; antisocial beliefs, values, and attitudes; substance abuse, dependency, or addiction; anger or hostility; poor self-management skills; inadequate social skills; poor attitude toward work or school; and poor family dynamics.

Why Are Criminogenic Needs Important?

The Risk-Needs-Responsivity (RNR) model, provides a means to assess and treat offenders in order to reduce

recidivism. The RNR model is made of three core principles: the risk principle, the needs principle, and the responsivity principle. All are based on criminogenic risk factors and needs.

The risk principle contends that “supervision and treatment levels should match the offender’s level of risk,” meaning that “low-risk offenders should receive less supervision and services, and higher-risk offenders should receive more intensive supervision and services.” It should be noted that research has also found that putting low risk offenders into more intensive supervision and services has the potential to backfire and cause them to become more high risk. So matching risk level to the level of supervision, intervention, and treatment is vital.

The needs principle states that the effective use of intervention services focuses on targeting an offender’s criminogenic needs. This principle acknowledges that although some static risk factors, such as criminal history, play a role in the likelihood of recidivism, they cannot be altered; therefore, those involved in sentencing decisions should target an offender’s criminogenic needs because they can potentially be altered through the delivery of services.

The responsivity principle is based on the idea that the key to reducing recidivism is targeting the offender’s criminogenic needs by placing them in cognitive-behavioral programs and other forms of treatment that are the most likely to help the offender change thinking processes and behavior. To simplify, the idea is to place offenders in programs that address their criminogenic needs using strategies that have proven to be the most effective regardless of the type of offender. These should also include prosocial modeling (learning by example) while also focusing on the offender’s strengths, personality, motivation, learning ability and style, gender, race, and cultural characteristics.

Risk/Needs Assessments (RNA)

An RNA can be compared to a uniform report card that measures offenders’ criminal risk factors and specific needs, which if addressed and changed, will reduce the likelihood of involvement in future criminal activity. These assessments are most often questionnaires that are used by an interviewer (anyone from a correctional officer to a case manager, to a trained therapist, depending upon the specific assessment used). The questionnaire explores the offenders’ behaviors and

attitudes that research shows are related to criminal reoffending. These instruments usually include questions about both static and dynamic risk factors.

Over the past few years, parole boards have begun using these assessments in a movement nationally to improve parole decisions. Utah’s BOPP uses these.

Supervising agencies (such as Adult Probation and Parole) use RNA to determine the level of supervision an offender needs, to determine the need for specialized treatment programs, and to develop an offender’s supervision plan. They are also used to help make decisions about sanctions and revocations when someone violates parole. These instruments also have a use within correctional institutions for programming and education.

Research over the past 20 years suggests that the use of RNA can significantly assist in reducing recidivism. Further, there are studies that found that in some cases, conditions of probation or parole that do not appropriately target the offender’s most critical dynamic risk factors are counter-productive and can waste time and resources on requiring both the parole officer and offender to participate in activities that are “unlikely to reduce risk and distract both from focusing on the critical risk factors that do affect the likelihood of recidivism.”

Utah Uses the LS/RNR

The Level of Services Inventory/Risk Needs Responsivity assessment tool is used on all offenders in the Utah prison system, not just sex offenders. It was developed for public safety organizations who want to use the most current research when conducting their level of service risk assessment. It assesses the rehabilitation needs of offenders, their risk of recidivism, and the most relevant factors related to supervision and programming. It can be used effectively on both men and women. It focuses on offender strengths while capturing the risks, needs, and responsivity of the offender.

The key areas measured in the LS/RNR include: criminal history; education; employment; family/marital; leisure/recreation; companions; alcohol/drug problems; pro-criminal attitude/orientation; antisocial patterns. This assessment is conducted by a face-to-face interview as well. More information can be found at:

<https://www.mhs.com/MHS-Publicsafety?prodname=lsirn>

UPDATE ON SEX OFFENDER TREATMENT

by Molly Prince

UPAN has been receiving a large number of letters from inmates and emails and calls from families about the problems and challenges prisoners continue to face related to sex offender treatment programming in Draper. We cannot personally answer all letters and respond in detail to all emails, texts or phone calls, so

we try to use the newsletter to answer the most common concerns and questions.

Getting the Names Straight

For years, sex offender treatment was a one-size-fits all program called SOTP. Over the past 16 months, under

the direction of Victor Kersey, SOTP has evolved into a variety of programs and treatment tracks that are evidence-based and responsive to the risk levels and needs of the offenders involved. There is an added complexity in the approach to assessment and appropriate placement in treatment. This is in response to the Legislative Audit of the SOTP which was released in April, 2017.

Today, the overall program that treats sex offenders, which used to be called SOTP (and still is by many), is known as Resolve. Within Resolve are Pre-treatment plus the 8 Core programs that have their own names: Pre-Treatment; Paradigm; CBI-SO; NAVCONBRIG; Footprints; Firewall; Paso A Paso; Venture; and Maintenance (aftercare in the institution).

SOTP Pre-Treatment Program

The Sex Offender Pre-Treatment program's curriculum is called "Preparing to Change." It is a 26-week psychoeducation program using Interactive Journaling from the Change Companies. This program was designed in collaboration with the Department of Justice and was created as a preparatory treatment program for convicted sex offenders. It serves as a gateway to other sex offender management and treatment programming. The goals of the Pre-Treatment program include, but are not limited to: motivational enhancement, engagement in the program values and norms, improved self-disclosure and increased openness to new kinds of self-knowledge.

If someone completes the Pre-Treatment Program, it will NOT reduce the time they will be in one of the Core Treatment Tracks. The Pre-Treatment program is available in Lone Peak and Wasatch at Draper; in Ironwood at CUCF; as well as Washington, Kane, Uintah and Sanpete County jails.

Pre-treatment is required for all individuals prior to admission into all sex offender program tracks.

Paradigm Treatment Program

The Paradigm program is a Low Risk Program. The 26-week Pre-Treatment Program is required before admission into Paradigm. The core content of Paradigm varies based on the individual needs of the participant, but typically would be about six months. It is a program designed to address six criminogenic domains identified in the Level of Service Inventory Risk Needs Responsivity (LS/RNR). These domains have been written about elsewhere in this newsletter. Director Kersey made final approval for the established classes for Paradigm in June. Once the offender successfully completes both Pre-Treatment and Paradigm, the prison treatment providers would make recommendations for continued care in the community for problems that are not necessarily sex offense specific.

Changes in Risk Level Assessed

Based on some recent changes in the Static99R risk assessment, inmates have been re-assessed by the

psychologists and some inmates were no longer categorized as "low risk" and no longer qualified for the Paradigm program. They were moved back to Promontory to wait to get into either the NAVCONBRIG Core program or the Cognitive Behavioral Interventions for Sex Offenders (CBI-SO) program that are offered in Promontory housing unit. The programming administration acknowledges that these moves are challenging to inmates and Dir. Kersey shared in an email to me that while the move back to Promontory may not always be favorable for the inmate, but further reminds us that "it is the ethical thing to do by placing offenders in the appropriate program." An article elsewhere in this newsletter explains criminogenic needs and risk assessments.

CBI-SO Program

The CBI-SO Program is a program which provides cognitive behavioral treatment programming to address the criminogenic needs of sex offenders. This program is the Core Program for Moderate to High Risk sex offenders. Prison treatment staff finished their training on this program throughout the last week of June and full implementation is expected for CBI-SO by mid-July.

NAVCONBRIG Program

The NAVCON program will be for very high/intensive risk offenders that is slated to begin in July as well.

A New Program Called Firewall

USP has instituted a new sex offender program track called Firewall. It is for those offenders that have committed a "hands-off" or internet-specific offense. This is the newest Core program. It is 61 weeks long. SO Pre-Treatment is required before an inmate can be admitted into the Firewall program. So anyone doing sex offender treatment with a non-contact offense will do about 87 weeks of treatment, or 1.67 years (approximately 20 months).

Footprints

Footprints is the special needs program for individuals with developmental or intellectual delay that in the past were not able to successfully complete the regular SOTP curriculum. I have heard feedback from individuals in that program that report they are able to do the program, grasp the concepts, internalize and understand what is being taught and apply it to themselves. The therapist facilitating that program has years of experience. She has been praised by the program participants as offering patience, understanding and is willing to explain things. This program has offered several inmates who otherwise would remain in prison, unable to complete treatment, the opportunity to work on themselves in a manner they are capable of doing. It provides hope for a future and I have not received one complaint about it.

Venture and Paso A Paso

Venture is the program for inmates who communicate in Spanish. Paso A Paso is the program for develop-

entally or intellectually delayed persons who speak Spanish.

Maintenance

There is an aftercare program that is also offered within the institution. Note: this does not replace continued care / aftercare in the community once the offender is paroled.

Moves to and from Lone Peak

Quite a few calls, emails and letters have been related to unexpected moves to and from Lone Peak. According to Dir. Kersey, Lone Peak's treatment currently includes the Pre-Treatment and Paradigm programs.

One situation that triggers these moves, as explained by Kersey, is that the SOTP program does not have enough offenders that have been to their original hearings coming soon, or they simply have too much time between now and their re-hearings to place them in treatment. "As a result, the burden has been placed on the SOTP to find something for them to do. This is an ongoing challenge with the lack of resources to accommodate every offender." The SO program does not control work assignments. Finally, Lone Peak's space is also divided up between Resolve inmates and the Focused Re-Entry program, as well as outside workers.

The Division of Prison Operations (DPO) has been pushing to fill the beds at Promontory and Lone Peak. This is not something that Programming has control over, it is a bed space issue the prison deals with all the time. Therefore sex offenders have been moved in advance of their window of treatment for the sake of filling beds. However, Kersey states that they have tried to not move inmates prematurely from their UCI jobs or other programming that could not also be offered at Lone Peak. Programs in Lone Peak have increased to include two InsideOut Dad groups, and Kersey indicated that the education sergeant and psych techs are providing increased services to those in and out of the Paradigm program.

UPAN has been told that if a prisoner was moved to Lone Peak that had a job, and won't be in treatment for several months, they can to request to be returned to their former housing and try to get their job back. No guarantees.

The 6 Months Consideration

In response to a question about inmates being moved when they have a re-hearing coming up Kersey wrote in an email that after consulting with other experts at the University of Cincinnati, programming has decided that any offender that is within six months of completion of their current program will not start a new program, rather they will remain and complete the one for which they are enrolled. Also, if they are within six months to an upcoming rehearing, they should not be moved to a new program, but will complete the program they are in.

Growing Pains

When Victor Kersey was brought in to assume the position of Director of Programming for the UDC in the summer of 2016, he began looking at the problems SOTP was experiencing. Then the Legislative Audit of SOTP was conducted and in April of 2017 he had already begun researching various programs to improve it.

As with any major change in a prison, it is not unrealistic that the major overhaul that SOTP has been undergoing over the past year has had challenges and setbacks. Prison administration knew that with all the changes in these programs, introducing new program tracks, and instituting new practices, there would be adjustments required for therapists, participants, and housing staff in addition to the offenders. Kersey once referred to it as "trying to turn a battleship around in a bathtub." It is not simply about finding appropriate, evidence-based risk assessments and treatment programs to address the diverse levels of needs for all sex offenders in the prison system. It is also about acquiring those programs, training staff in how the new programs are to be administered, and overseeing the therapists and program directors over the various programs.

Due to the change process over this past year, some inmates have had Board hearings rescheduled. That appears to be more rare than it is common if one looks at all the participants in all sex offender treatment tracks throughout the state. And it should be remembered that the BOPP is a completely different entity than the prison, so sometimes parole hearings are rescheduled for the Board's purposes and not necessarily always due to treatment recommendations.

Loss of Therapists

UPAN has received questions about the loss of S.O. therapists recently. Staffing SOTP is a bit complicated. Intermountain Specialized Abuse Treatment (ISAT) is the community agency that currently holds the contract with UDC to provide providers over and above the staff sex offender therapists employed by the prison. Over the past couple of months, the ISAT Clinical Director over the prison program, Jeremy Etherington, LCSW, resigned. Ruth Williams (also of ISAT) was promoted which left a therapist vacancy in the program. There was another ISAT therapist that is no longer able to work at the prison due to licensure issues. According to Dir. Kersey, ISAT has been aggressive in recruiting and interviewing to find appropriate candidates to fill those two therapist vacancies by an August deadline in order to remain compliant with their contract.

In terms of lack of S O treatment staff employed by the UDC, there is one psychologist vacancy since the beginning of June, and that vacancy should be filled in August as well.

Promontory continues to have two fully licensed therapists and two psych techs. There will be three

Master's level interns and one pre-doctoral intern arriving in August to fill other therapist positions. Kersey indicated that the three Master's level interns will be assigned to Promontory, then treatment hours will increase so additional inmates will begin treatment.

Director Kersey's Perspective

When asked what he wants people to know from the perspective of the person implementing major change in a complex system, Kersey shared, "I realize there is a lot of attention and interest on the SOTP. Over the course of 16 months I believe we have made amazing strides in improving communication, developing a sound assessment process which included the purchase of over \$10,000 in testing kits specific for SOTP, fine tuning our processes by which we suspend, expel, readmit and admit offenders, etc. This should not be overlooked as we have done this with the same operating budget from 22 years ago while the SO population has increased from 246 to over 2500 in those years. We spent all of last week being trained on the new Core SO Program and are developing our implementation plan as we speak."

Closing Thoughts

I hope that everyone will continue to be patient as the transformation of SOTP to Resolve and its various

programs continues and matures. Changes in SOTP are what inmates, families and citizens asked for and the legislative audit requires. It takes time to change entire systems, particularly within an institution as large and complicated as the Utah State Prison System. During a time when I was lobbying for changes with the Board of Pardons and Parole I was reminded to "be careful what you ask for." I think that is playing out in this situation as well. Inmates, families, legislators all asked for SOTP to be revamped and brought into the 21st century with evidence-based programs. That is happening, step by step. Change is never smooth, is generally always littered with set-backs and challenges – that is what the Resolve program is experiencing now.

To those inmates and families affected by these changes, I say thank you for being part of an historical shift in how Utah addresses the need for treatment to its sex offender population. Thank you for doing what you can to be part of the solution and thank you for being patient.

And a special thank you to those who have written UPAN reporting what is going right with the new programs. It is heartening to have the positive progress in some areas to balance the delays in other aspects.

"The fact that we are here and that I speak these words is an attempt to break that silence and bridge some of the differences between us, for it is not difference which immobilizes us, but silence. And there are so many silences to be broken." Audrey Lourde

Recommended Changes to the Sex Offender Registry

By Faye Jenkins

NOTE: This is Part 3 of a three-part series on Utah's Sex Offender Registry

There are currently 8,167 registered offenders listed on SONAR, Utah's sex and kidnapping public notification website. Past offenders who have completed the terms of their sentences and are required to continually make their old convictions known to the community for public safety. However, an important piece of information missing from the offenders' bios is their assessed risk of committing future offenses along with what they have accomplished in the way of treatment and rehabilitation. The structure of the registry laws leads a person to believe that all registered offenders pose a high-risk of reoffending although the risk of recidivism is low for many registered offenders. Effective registry laws should aid former offenders in continuing the trajectory of healing and change which they began under UDC supervision. Lasting community safety is the result of past offenders not offending by choice, rather than by force or coercion.

Most national and state registry laws were passed out of fear for our children's safety, citing extreme, tragic cases of abuse and death, such as Jacob Wetterling (abducted by a suspected sex offender), Megan Kanka (rape and death by sexually violent neighbor), and Adam Walsh (abducted and killed by a serial killer).

Similarly, extreme laws were passed in Utah from efforts to protect vulnerable children from predators in the community. Audio from the Senate Judiciary, Law Enforcement, and Criminal Justice Committee in 2009, reveals Utah statute 77-27-21.8, sex offender in the presence of a child, is the product of 2 incidents in the Sanpete County where a registered offender approached children on the side of the road trying to entice them into his car. The children were smart enough to not get in the car and instead went home and told their parents. Because the sheriff could not find a law that prohibited predators from soliciting children to get into their car, the legislature opted to create a new statute that prohibits all registrants who have an offense against a child under of the age of 14 from being alone with children under 14 without verbal or written consent from their parents. Perhaps it was easier to create a new statute in the Utah Code to further restrict and punish registered sex offenders than to amend current child kidnapping statute to include "attempted" offenses.

Another example of an extreme law aimed at registered sex offenders is statute 77-27-21.7, sex offender restrictions. All registered sex offenders with an offense against a minor under the age of 18 cannot enter

protected areas that consist of community parks, playgrounds, pools, schools or day cares. This effectively bars thousands of people from these community gathering spots. The reason behind this law, as presented on the house floor in 2007, is because sex offenders against minors who enter a park are “like alcoholics entering a liquor store.” The children should have a safe place free from registered offenders because there is an assumption that there will be a desire by every past sex offender to sexually abuse a child in a public area, and that desire is too great to control. If this same reasoning applied to alcoholics, by law they would not be allowed to enter liquor stores, bars, restaurants, grocery stores, and especially sporting events, because the risk of getting drunk resulting in a DUI or abusing their children at home is too great for them to be in the vicinity of alcoholic beverages.

I don't mean to treat child sexual abuse lightly, as it is a very serious crime with far reaching and lasting effects. However, if the state is not careful in passing laws aimed directly at a specific group, unintentional consequences will follow. As with the restrictions mentioned above, past offenders become more ostracized than the common person with a criminal history, the road to recovery becomes more challenging without social support which increases the risk of recidivism. These laws do not consider the collateral impact on children who are prevented from recreating in community areas with a family member who committed a sexual offense in the distant past.

These laws have merit if applied to high-risk offenders, but as most offenders released to the community are not high-risk, the cost born by the offenders and their families seems to outweigh the small risk offenders may pose to children in such areas. The truth is, if an offender cannot access a child in one of these protected areas, they will go elsewhere if they intend to abuse. Relying on restrictive laws does not stop sexual abuse.

The scenarios I shared acknowledge the need for our state to create a registry task force, composed of professionals who work directly with the rehabilitation of former sex offenders, to review our registry laws to assure they are driven by facts and adhere to truths about the registered offenders in our community, not based on phobias and misinformation. Responsibilities for this task force may include:

- Define an ongoing process to determine a registered offender's recidivism risk level (risk to re-offend)
- Create policies that tailor restrictions to risks
- Identify and implement methods to help registered sex offenders succeed in their recovery and reintegration into society
- Integrate rewards or sanctions related to compliance with the registry, not merely zero tolerance punishment

- Remain current on research and best practices in reducing offender recidivism
- Continually evaluate current practices and procedures while implementing needed improvements to registry laws
- Provide oversight and consultation in creating or amending laws
- Educate the public on the full scope of sexual violence in our society and outlining precautions families should take to protect themselves from unexpected sexual abuse
- Change the false narrative about past offenders by providing the truth about successful treatment and recidivism risks

I suggest a good place to start evaluating changes to the registry is by going back to the beginning of Utah and federal registry laws. These original laws may be all low-risk offenders need for law enforcement to track their current residence as they complete their time on the registry. The conditions below come directly from the Jacob Wetterling Federal Registry Act in 1994. I propose these conditions be applied to Utah's registration law for low risk offenders. Each suggestion lists other states whose current laws adhere to similar conditions.

(Other states registry information is based on my own interpretation of those states' registration laws as published on the internet. The information I present is not necessarily known for every state, so the follow lists may be incomplete.) Please refer to Parts 1 and 2 of this series for Utah's law.

- Low risk offenders are required to register for 10 years after release from incarceration
 - CA, CT, DC, IL, IN, IA, ME, MN, NH, WA, WV
- High risk offenders register for life or when it is clear they no longer pose a risk to reoffend
 - Registrants may petition relief from lifetime registration – AR, DE, FL, GA, HI, IA, LA, MI, NV, NJ, ND, OR, PA, TX, VA, WV, WY
- Notify changes of address in writing within 10 days
 - Allow notification of changes in writing – AZ, HI, MA, ME, NM WA
 - 10-day period to notify of changes – AR, MA, NY, OR, WV
- State mails non-forwardable address verification form to the last reported address in place of in-person verification
 - AK, CT, HI, ID, IL, KS, KY, ME, MA, MN, MT, NH, NM, NY, OH, OK, PA, RI, SD, TX, VT, WA
- Person returns signed form within 10 days of receipt
 - States which allow registration by mail – AK, CT, ME, MA, MT, NY, PA, TX, VT, WA
- Information for low-risk offenders remains restricted from the public, used for law enforcement or background checks
 - Restrict public disclosure of low risk offenders – AZ, CA, DE, DC, MA, MN, NV, NJ, NY, ND, OR, PA, RI, VT, WA

When creating registry laws, we must consider the fact that sex offenders are not a difficult group to monitor or control. Seventy-eight percent of sex offenders in prison did not have a previous criminal record prior to their conviction (Pew data), sex offenders as a group are easier to supervise in prison than other groups of offenders, they have lower rates of probation or parole violations despite extra conditions imposed upon them, and the rate past offenders commit a new sexual crime is low. Even with strict registry requirements, Utah's registrants demonstrate a high level of compliance (96%). If compliance were connected to the length of time a person remained on the registry, in place of being sent to jail or prison, it is likely the rate of compliance for low risk offenders would remain high. Compliance by force is not always effective in convincing people to obey as evidenced by the 365 non-compliant registrants in Utah.

- Less punitive measures should be used to enforce compliance of registration laws.
 - Time on the registry is extended for non-compliance
 - Non-compliance subjects registrants to public notification
 - Habitual non-compliance triggers punitive measures
- Use rewards and incentives to encourage compliance
 - States which allow low-risk registrants to petition for early removal from registry – 25 states allow early removal from the registry
 - States which allow low-risk offenders to petition for removal after 5 years. AZ, CO, OR, SD, WA (IA allows low-risk registrants to petition removal after 2 years.)
 - States which allow a registrant to petition modification of risk level – AR, DE, IA, MA, MN, MT, ND, NY, OR
 - States which allow registrants to petition removal from public notification website – CA, CO, HI, NH, VT, WA
 - States which allow removal of some registry required community restrictions – AL, ID, SD

The Megan's Law (1996) and the Adam Walsh Act (2006) amended the federal registry law to include public notification of sex offenders. The Adam Walsh Act recommended different forms of public notification be used based on offender levels. The act allowed states to decide if Tier I offenders be included on public notification websites or if their information remain restricted to law enforcement's use. Limiting public notification to high-risk offenders provides the public better awareness of those offenders who pose the greatest risks to the community. For example, Minnesota only posts 384 registered offenders on their public notification website out of the 8,200 registered sex offenders.

- Utah's public notification website should be limited to high-risk and non-compliant offenders.

- States that limit website notification to only high-risk and non-compliant offenders - CA, CO, DC, MA, MN, NV, ND, OR, PA, VT

Amendments to the Utah registration laws between 1995 and 2009 continually added more restrictions and requirements for registered offenders, increasing the punitive nature of the registry laws as they were applied to all registered offenders equally, though they were intended to protect the public from primarily high-risk offenders. The Utah registry requirements listed below need be assessed carefully as to their usefulness and cost in applying to all offenders regardless of risk. If the burden imposed on the registrant is not necessary to increase public safety, it should be removed. Utah's rules are as follow:

- Registrants are prohibited from changing their name
 - Only other states that restrict name changes are AL and WI.
- The time on the registry increased to lifetime based on offense
 - These states impose lifetime registration based on risk, not offense – AZ, AR, CA, CO, DE, GA, MA, MN, MT, NH, NJ, NY, ND, OK, OR, PA, RI, TX, VT, WV, WI
- Increase in the amount of information required for the registry
- Registrants required to pay \$100 annual registration fee
 - These states only charge an initial fee – AZ, CA, NC
 - These states charge both an initial fee and an annual fee – CO, IA, MO, OH, TN
 - The annual fee is less than Utah's fee – AL, CO, DE, ID, IN, IA, LA, MA, MO, MT, NH, OH, OR
 - The annual fee equal to or greater than Utah's fee – GA, IL, TN, WI
 - Majority of states do not required registrants to pay a registration fee.
- Requires registrant's driver's license be renewed annually
 - Only other states that require an annotation or yearly renewal of driver's license or ID card – AL, HI, KS, MS, TN, TX
- Requires semi-annual in person registration for all registrants
 - These states require less frequent registration for low risk offenders (High-risk may be more frequent) – AK, AZ, CA, CO, CT, GA, HI, ID, IL, IN, KY, MA, MN, NJ, NY, OR, RI, TN, TX, VA, VT, WA, WV, WY
- Allows 3-days to update changes to the registry
 - These states allow 5 or more days to update the registry – AR, CA, CO, IA, MA, MN, NH, NM, NY, OR, TX, WV, WI
- Imposes protected / restricted areas by statute
 - These are the other states which impose public area restrictions – AL, HI, ID, IL, IA, KY, MD, MI, MS, NE, NC, ND (high-risk only), OH, OK, SC, SD, TN, TX

- Majority of states do not impose restricted areas on registrants
- Restriction around young children
 - Very few states restrict registrants by law from being around children. Here are the few states I found with restrictions.
 - TN is the only other state that restricts offenders from being alone with a minor
 - KY – Cannot access a social media site with minors
 - MO – Cannot give candy to children on Halloween
 - NY – Cannot operate an ice cream truck
 - NC – Cannot work around children
 - OK – Cannot work around children or live with children that are not their own

When addressing sexual abuse in Utah, policy makers must ask themselves, what is the endgame when addressing a problem that effects 20% of children, 33% women, and only the tip of the iceberg has been disclosed to law enforcement? Is the correct approach swift, harsh, and lengthy punishments branding forever the offenders who have been identified regardless of their risk to reoffend? If so, such measures dole out a heavy unsustainable cost to society as more offenders are identified in a legal net of sexual offenses which continues to widen. According to the CCJJ's Cost of Sexual Violence in Utah report, the state paid over \$92 million in investigation, prosecution, and supervision of identified sex offenders in 2011 alone.

Or do we recognize sexual abuse as a symptom of a disease permeating deep within society and put more emphasis into helping and healing both the victim and

Addendum: This SL Trib article gives current (Sep 15, 2014) data for Utah 1st time offenders. "Of all types of criminals sent to prison, sex offenders are the most likely to be first-time offenders, meaning they have no criminal record. According to Pew data, 78 percent of sex offenders locked up in Utah's prisons had no prior convictions." Faye <http://archive.sltrib.com/article.php?id=58406311&ittype=CMSID>

A special thank-you to Faye J. ("Faye Jay" – has a nice ring to it) for her extensive research, huge time investment, and extraordinary efforts in writing this three-part series (May, June, July) on the largest group of offenders in Utah prisons. Ed.

"Our lives begin to end the day we become silent about things that matter." ~ Martin Luther King Jr.

"In the truest sense, freedom cannot be bestowed; it must be achieved." ~ Franklin D. Roosevelt

The Utah criminal justice system is now seeing long awaited programs, progress and parole -- that's very cool. Ed.

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Past-President & Treasurer: Molly Prince
Vice-president: Unfilled
Secretary: Unfilled
Director of Communications: Shane Severson
Newsletter Editor: Warren Rosenbaum

offender? For a large portion of offenders, the abuse they inflict on another is the completion of cycle the offender was thrown into enduring abuse as a child him/herself. What is the ultimate fate waiting for child victims who do not heal and learn correct boundaries or limits before finding themselves on the opposite side of the abuse line? Must they endure a lifetime of restrictions living on the fringes of society?

I present that the ultimate endgame our society should work toward is allowing a person who crossed the line of sexual abuse find redemption, self-mastery, and control over the deviant desires or tendencies that led them to sexually abuse another. For many offenders, the sentence and punishment they received for their crimes provided all the correction they needed to choose to never offend again. Others receive the help they need through focused therapy throughout their sentence. Others take much longer to change and require higher levels of treatment and supervision in the community.

Utah's registry laws must distinguish between these different levels of risk and allow past offenders who choose to not offend again, the freedom to move forward in their lives. Ultimately, this will provide safety to our children and the healing needed for victims, offenders, and their families.

I and others are working with the state legislature to make changes to Utah's registry laws. If you would like to help change the narrative about past offenders in our community, please email your personal stories to UtahRegistries@gmail.com or mail to Faye Jenkins PO Box 50881 Provo, UT 84605.

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has." Margaret Mead