



UPAN Newsletter

Volume 5 Number 6 | JUNE 2018

"Empowerment and Growth Through Knowledge and Unity"

Part 2 of Series – Problems With SO Registry

* * * NO JULY MEETING * * *

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 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
Free and open to the public.

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,

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UPAN Announcement: This UPAN Newsletter issue is #48 or four years of publication.

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

[Note: In this issue, footnotes are used to identify website references. Website links are printed on page 10.]

June 2018 UPAN Meeting with Jason Groth, ACLU of Utah's Smart Justice Coordinator

by Molly Prince

Jason Groth, Utah's ACLU Smart Justice Coordinator and former public defender in the state of Colorado joined ACLU of Utah in January. He presented at the June UPAN meeting on what the Campaign for Smart Justice (CSJ) is in Utah. **[Note:** Don't confuse the Campaign for Smart Justice (CSJ) with Utah's Criminal Justice System (CJS) with the same initials in a different order. Ed.] The major goal of CSJ is to reduce

mass incarceration by 50%. Currently the program has two major areas of focus: Prosecutorial Reform (the entry point into the criminal justice system) and Parole Reform (the transitional to exit point).

He began by giving a variety of statistics that we do not have room to publish in this article. One impressive stat is that 89% of American voters say it is important to

reduce mass incarceration. 55% of voters agree that people of color are incarcerated at a higher rate in America. In 2015 in Utah, 34% of our prison population was classified as minority, while Utah's entire minority population in 2015 was only 15%. The Justice Reinvestment Initiative (JRI) did not address race. Since JRI was implemented, Utah's prison population has decreased overall, however people of color now make up a whopping 43% of the inmate population today, up 9% from 2015.

Where to Start – with Prosecutors

Jason asked, "Where do you start transforming the criminal justice system?" Answer: "With the prosecutor, who has the most powerful position in the criminal justice system."

The County Attorney (CA) is an ELECTED position. The CA oversees all prosecution in the county. These County Attorneys (also called District Attorneys) determine criminal justice policy within the county office and also can influence policy at the state level.

The CA's office decides if a case will be prosecuted, which charges to file, if plea deals are offered and defines plea deals, and advocates or disputes bail bonds in hearings. While a defense attorney can negotiate if a plea deal will occur versus going to trial, the prosecutor is the most powerful player in a case. 90% of cases end up in plea deals. The prosecutor brings the power of the state, which includes law enforcement, against an individual and can deprive that individual of life, liberty or property.

If prosecutors support bail reform in Utah, there will be a new discussion about bail reform. This issue has gotten some media attention in recent months. We want a system that looks at evidence-based bail decisions.

Electing Prosecutors

Jason states, "Prosecutors are more powerful in the courtroom than the judge." Yet 83% of Utah's County Attorney races in the 2018 election are *uncontested*. This means that there is one person running, and no one running against them. Currently there are only 4 counties out of Utah's 29 that will have a primary election for the CA: Iron, Kane, Uintah, and Wasatch. In the general election there will be five counties that will have a contested race: Emery, Grand, Morgan, Salt Lake, and Utah.

It is important that voters educate themselves about the issues and candidates and vote accordingly. We recommend you do your own research starting with the Deseret News op-ed *Consider Wisely Your Choice for County Attorney* which contains pointers for how to determine if a CA candidate has the experience and knowledge and interest in being "smart on crime" versus "tough on crime."

ACLU's CSJ campaign's short-term goal is to educate residents in the counties about criminal justice reform and pave the way to elect prosecutors who will reduce incarcerations rates, increase rehabilitation services, and improve accountability for their own office.

To help voters make sense of county prosecutor candidates, ACLU of Utah's Campaign for Smart Justice (CSJ) has been sending questionnaires to each candidate to ascertain their positions on criminal justice reform issues. Ten candidates from Beaver, Grand, Iron, Salt Lake, Uintah, Utah, and Wasatch counties responded to this Prosecutor Candidate Questionnaire. Their thoughts on criminal justice issues are posted on the Smart Justice website¹ in the 2018 Prosecutor Candidate Tracker. You can also download all contact information of candidates for county attorney positions.

The CSJ is also organizing public forums so that candidates can speak openly with voters and clarify their positions on criminal justice reform. More information on the Smart Justice website.¹

In Salt Lake County, the two District Attorney hopefuls, Sim Gill and Nathan Evershed agree that there are needed reforms, particularly in the area of wrongful-conviction claims. See article in SL Tribune.² Also view their responses on the Candidate Tracker.

The bottom line here is that prosecutors can enact a lot of change in the front end of the CJ system. They can change the culture of prosecution. But we, the citizens and taxpayers of Utah, need to educate ourselves, talk to the candidates, and hold these elected officials in the County Attorney's offices across the state accountable. We choose them and pay their salaries – so we need to hold them accountable!

Fixing Parole

Although prosecutors represent the first stage in the criminal justice system, the last stage is just as important: the decisions made by the Board of Pardons and Parole. Utah's CSJ is involved in tackling this element of the criminal justice system as well.

ACLU's Jason Groth and Margie Nash join UPAN's Molly Prince and Mike McAinsh, Disability Law Center's Aaron Kinikini, representatives Fresh Start and the Human Justice Foundation and other organizations which include former inmates each month in meeting with the executive director and staff of the BOPP to discuss its progress in moving toward the standards prescribed by the Legislative Audit in 2016, regarding its evolving policies and transparency.

This group is currently working with Greg Johnson and Clark Harms to create a handbook that will be provided to inmates upon entry to prison to explain about the Board as well as about how to prepare for a hearing. Groth discussed how fair parole hearings and consistent decisions are essential to respect a person's

rights and create successful outcomes for re-entry into the community.

Parole Board members in Utah are NOT elected. They are appointed by the Governor. Information about the members and terms of service of the BOPP can be found on their website.³

The parole board determines when a person incarcerated in USP may have a parole hearing and whether a person will be released from prison. In Utah, the parole board uses a guideline to make these determinations and is currently working to implement a structured decision-making tool, but it may deviate from the guidelines on a case-by-case basis. This means that people with the same sentences for the same crimes can have different outcomes, including different lengths of incarceration.

Currently Dir. Marshall Thompson and the Sentencing Commission are working on the Length of Supervision

“Hope is being able to see that there is light despite all the darkness.” Desound Tutu

Problems With The Sex Offender Registry by Faye Jenkins (With editorial additions by the UPAN editor.)

NOTE: This is Part 2 of a three-part series on Utah’s Sex Offender Registry.

Hyper-Reaction And Extreme Procedures

The most common theme echoed in support of a public sex offender registry is to protect our children. Horrible accounts of child molestation, rape, and death back the battle cry to lock up all sex offenders for life. To publicly identify and brand for life all past offenders found to be safe to release from prison. All this hyper-reaction is believed to be methods to protect children from becoming future victims.

These extreme procedures are based on the common false belief that “once a sex offender, always a sex offender.” Research proves this belief is not accurate. This erroneous concept was presented in a legal brief to the 10th Circuit Court of Appeals, including support from Utah’s Attorney General, Sean Reyes. “States have a compelling interest and a moral obligation to prevent the future commission of sex crimes. Those most likely to commit sex crimes are convicted sex offenders.” Attorney General Reyes would do well to abandon the “common knowledge” about sex offenders that permeates our culture and do some accurate research before he continues this misconception.

Problem – Assuming those most likely to recommit sex crimes are convicted sex offenders

Utah’s Department of Corrections (UDC) is required by law to maintain a public sex and kidnapping offender and notification website (SONAR) to disseminate to the public specific information about past sex offenders found on the registry. It is interesting to note that part of the disclaimer that one must read and accept prior to

Guidelines and are seeking public comment. You can go to the Sentencing Commission Website⁴ and access the Sentencing and Supervision Guidelines in their 2017 revision. In response to inquiry about public comment, Thompson writes, “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. I believe the next one is August 1. Thanks!” Dir. Thompson’s email is marshallthompson@utah.gov UPAN will be sending an email with more info soon.

Jason and the ACLU, along with UPAN, see people caught up in the criminal justice system as PEOPLE. Defendants, inmates, parolees are human beings and the culture of our CJ system needs to see them as such. It is up to all citizens of Utah to become involved in supporting CSJ if we want to improve the fairness and humanness of our criminal justice system. We are all in this together. There is no “them and us.” It is all US.

The whole basis of this argument stems from studies that are misrepresented from their actual meaning. The studies actually show the extremely low recidivism rate for successfully treated sex offenders but point out that former sex offenders are more likely to commit another sex crime than are other offenders to commit a sex crime. In other words, criminals whose prior offenses were homicide, kidnapping, robbery, assault, burglary, theft, arson, fraud, or drug crimes recidivate to those crimes and not sex offenses. These misconstrued and misrepresented studies ignore the fact that the recidivism rate and potential harm to the community is minimal for sex offender re-offense. Misinformed people confuse other types of crimes and criminals’ recidivism rates with sex offenders whose recidivism rates are the lowest of all risk assessments. This is not to say that other offenders don’t commit sex crimes when reoffending, or on first offense, but they either are not caught or that offense was not charged as part of plea bargains.

We ask the question, “*Is the public sex offender registry actually an effective tool for preventing future sexual crimes and reducing recidivism of past offenders?*”

entering the registry site reads, **“The information contained on this site does not imply listed individuals will commit a specific type of crime in the future, nor does it imply that if a future crime is committed by a listed individual what the nature of**

that crime may be and the Department makes no representation as to any offender's likelihood of re-offending." Why, then, do we publicly list former sex offenders?

Contradicting that statement, the "Safety Tips" link at the top of the UDC page leads an interested person to a one-page information sheet titled, "Questions About Sex Offenders in Our Communities." The sheet goes on to answer the question, "How do I know who is a sex offender?" The answer is correct in saying there is no way to identify one by looking at them, but the remaining information in the brochure inaccurately identifies only past offenders found on the sex offender registry as possible future offenders. This is a narrow-minded approach to educating the public about sexual offenders and how to protect oneself from sexual abuse. The truth is, everyone in the community is a potential future sexual offender. And some professionals who work with sex offenders often say that the one you need to worry about the most is the one that has never been caught.

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 only 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.⁵

It is often noted that recidivism may be higher than studies show, because sex crimes have such a low report rate. The U.S. Department of Justice 2016 Criminal Victimization report estimated only 23% of sexual offenses are reported to law enforcement.⁶ Utah's Bureau of Criminal Identification (BCI) produces a report every year cataloging the crimes committed in Utah by tracking reported offenses cleared for arrest (enough evidence gathered to make an arrest). According to the 2016 crime report NRBIS data, only 20% of reported sexual offenses were cleared.⁷ According to these statistics, less than 5% of sexual offenders in the community are arrested and prosecuted. These two reports demonstrate that there are a significant number of people committing sexual crimes who are not found on Utah's public notification website because they have not yet been arrested or convicted.

Contrary to popular belief, most sex offenders are not the feared "stranger danger" predator offenders we

teach our children to avoid. Data from the Utah BCI 2016 report shows that 42% of cleared rape and sexual assault offenses (statutory rape and other sex offenses are excluded) were committed by juveniles under the age of 20 and 35% of other sexual offenses were committed by juvenile offenders under the age of 18. The U.S. Department of Justice Juvenile Justice Bulletin, December 2009, states that juveniles account for more than 1/3 of the of the sexual offenses against minors. Despite the crimes committed during their young adolescent years, 85-95 percent of sex-offending youth have no arrest reports for future sex crimes.⁸ As a community, do we recognize that a large portion of sex offenders are children? Many of these are also victims of sexual abuse.

What about adult offenders? The same BCI Crimes in Utah 2016 report used data provided by 76 reporting agencies to show that over a third of the reported forcible and non-forcible sexual offenses occurred within close familiar relationships. Other reports, like the Juvenile Justice Bulletin, show 85-90 percent of sexual offenders are family relations or acquaintances of the victim who are more likely to have never been convicted of a previous sexual offense. A majority of current sexual offenses are not caused by former offenders listed on the public notification (Sex Offender) registry, but by persons well known to the victim.

Once sexual abuse has been reported and a person is convicted of a criminal offense, they often do not return to the community for a considerable amount of time as Utah's criminal laws have become increasingly punitive toward sex offenders over the past 20 years. Violent sexual offenses, including offenses against young children, are typically classified as 1st degree felonies and carry a maximum lifetime sentence. In 2017, 96% of 1st degree felonies, 49% of 2nd degree, and 29% of 3rd degree felonies were convicted to prison. Sex offenders on average remain in prison considerably longer than other non-sexual felony offenders. On average, 1st degree felony sex offenders were incarcerated 9.1 years, 2nd degree felony sex offenders 6.1 years, and 3rd degree felony sex offenders 3.6 years. (Statistics provided by UDC.) Utah laws also protect communities from habitual violent repeat offenders. Those offenders who have a sexually violent conviction against a minor will commonly receive a lifetime sentence without parole upon the second conviction. Generally, serious repeat offenders on the registry are not located in our neighborhoods, they are in prison. The conclusion, the Sex Offender Registry is of no value in protection from these violent high risk offenders because they are not in our communities.

Along with low recidivism rates, proponents of sex offender registries rarely acknowledge the results proper sex offender treatment plays in reducing recidivism. In the recent "Brief of the States of Oklahoma, Kansas, New Mexico, Utah, and Wyoming as Amici Curiae to the 10th Circuit Court of Appeals," the word "treatment" is used only once to say a person

who does not receive treatment “will continue to present a danger to the public when released from incarceration and supervision.”⁹ Sex offender treatment has been a condition of parole for the past 35 years in Utah. In 1996, as part of indeterminate sentencing, additional sex offender treatment in prison became a mandatory requirement for sex offenders hoping to parole before expiring their sentences. This sentencing scheme is significant when offenses against young children carry a lifetime penalty (sentence) on the first offense.

Every study irrevocably concludes that sex offender treatment significantly reduces all types of recidivism for sex offenders. Utah’s Cost of Crime Sex Offender Treatment report recognized treatment in a community-based setting effectively reduced sexual recidivism for juvenile sex offenders by 70% and 48% for adults. The report also revealed community treatment programs were more effective in reducing recidivism than programs provided by the UDC due to conditions generated from lack of appropriate state funding. Despite funding problems, UDC’s treatment programs statistically reduce recidivism by 15% for those who completed the treatment program.¹⁰ A report handed out to the 2007 General Legislative Session reported first year return (to prison) rates for those who completed treatment were less than half of non-completers (19.5% vs. 42.1%). Most of the reasons were for technical parole violations rather than new charges for committing a new sexual offense. Recidivism for a new sexual crime among those who completed treatment was 0.05% within the first year of parole.¹¹

Once an offender is granted probation or parole, they are required to continue sex offender therapy while closely supervised by Adult Probation and Parole (AP&P). Probation (when someone has done some jail time, but NOT gone to prison) typically lasts 3-5 years. Parole (for offenders who did time in prison) extends through the end of the sentencing period unless terminated early by the Board of Pardons and Parole. For 1st degree felony offenders, parole is for life unless the Board determines the offender is no longer a risk to society. It is common for 1st degree felony sex offenders to spend an average of 10 years on parole after release from prison before the BOPP will consider terminating their sentence early, and only for those who have done well and not violated their parole. Sex offenders in Utah spend a considerable amount of time under strict supervision and scrutiny aside from the additional conditions imposed by the registry.

For the purposes of this article, we define recidivism as committing a *new sexual crime* versus technical violations of parole or commission of crimes unrelated to sexual matters.

Many different studies examine the rate of recidivism for sex offenders after they are released from prison. Lawrence Bench and Terry Allen from the University of Utah and Weber State University tracked, for an average of 15.7 years, 389 offenders incarcerated at the Utah State Prison for their initial sex offense. They discovered that only 8.9 percent of those offenders released from prison after their initial offense were reconvicted at some point for another misdemeanor or felony sex offense during the 26-year study period. Of the original 389 offenders, only 0.8 percent (2 persons) sexually re-offended twice after their initial offense and only 0.3 percent (1 person) reoffended a third time after their initial offense. The results showed there were virtually no offenses after the third follow up conviction because either the offender discontinued criminal activity, or they were incarcerated during the remainder of the study period. The study determined those most likely to reoffend were those who failed treatment or were commonly arrested for technical violations under AP&P supervision.¹²

In 2014, Karl Hansen published a study called “High Risk Sex Offenders May Not Be High Risk Forever.”¹³ He conducted a longitudinal study following sex offenders for 20 years. In the study, he discovered sexual recidivism was highest during the first few years after being released from prison, the same time Utah offenders are closely supervised by AP&P. The study showed the more time an offender remained in the community without re-offending, the likelihood of re-offending decreased significantly. The risk of recidivism for moderate- to high-risk offenders in his study reduced by half every five years an offender remained offense free. After a 20-year study period, Hansen noticed that even the high-risk sex offenders were not re-offending. Bench’s and Hansen’s studies both showed once a sexual offender completed the proscribed sentence (which generally would include treatment) for their offense, the risk of sexually reoffending was very low, especially if the offender did not reoffend or commit technical violations while under AP&P supervision.

The truth is, people most likely to commit future sexual offenses are the 95% of offenders who have not been reported to authorities, arrested, convicted, sentenced, incarcerated, treated, released, treated some more, and put on a public notification sex offender registry. (IOW the general public, Ed.) Past offenders who have served their time, know the consequences of their behavior, and have received extensive therapy and supervision and made the changes within themselves, are not the persons in the community whom people should fear.

Problem – The burden imposed on registrants exceeds the inherent burden necessary to accomplish the goals of the registry. (Fancy way to say, “It ain’t worth it!” Ed.)

Utah's sex offender registry law clearly defined the purpose of the law in 1987, "The department, to assist in investigating sex-related crimes and in apprehending offenders, shall..." The law was intended to be a civil statute to aid law enforcement in fulfilling their duties and responsibilities of investigating sexual abuse and arresting offenders. A decade later, the law was altered to allow the public access to the registry information to protect themselves from the possibility of future recidivism from past sex offenders. The question put before the courts over the past 20 years is whether the law imposes consequences on registrants that are excessive beyond the legislative purpose of public awareness and safety. In many cases, the courts are saying, yes.

Remedeer v. Haun (D. Utah 1999)¹⁴ Utah's District Court analyzed the public notification portion of Utah's sex offender registry law in 1999. The registry amendments enacted in 1998 required the UDC to disseminate registry information to the public, including former offenders whose sentences had terminated prior to the 1998 public notification amendment to the law. From this case, we learn that one specific reason UDC decided to implement a notification website to disseminate registry information to the public was due a request from the Boy Scouts for background checks on 100,000 adult volunteers. The Department needed an easy way to provide registry information to the public that didn't occupy all their valuable time and resources responding to public requests.

The court ruled the means used to carry out the law needs to be reasonably related to the nonpunitive purpose of preventing additional sex offenses. Because the UDC chose to disseminate registry information to a global audience by means of a notification website without any restrictions in place to limit disclosure of registrants' information to only possible victims, the court ruled "the public disclosure provisions of the 1998 statute violate the Double Jeopardy and Ex Post Facto Clauses insofar as the statute fails to limit the extent of disclosure to the degree necessary to accomplish the statute's nonpunitive goals of assisting in the investigation of sex-related crimes, apprehending offenders, and providing registry information to the possible victims of recidivist offenders."

Utah's District Court provided a constitutional test to determine how much punishment the laws can impose upon the registrants, "the burden imposed on registrants does not exceed the burden inherent in accomplishment of such act's goals."

Smith vs. Doe US 2003:¹⁵

In 2003, the Supreme Court was tasked to answer the question of whether the Alaska's sex offender registry was punishment for past crimes, thus infringing upon the Ex Post Facto Clause of the constitution. The primary question at stake was whether the intent of the

registry was to inflict punishment on past sex offenders. If the legislative intent of the law is civil, the court examined whether the law was "so punitive either in purpose or effect as to negate [the State's] intention to deem it civil." *Ibid.* (quoting *United States v. Ward*, 448 U.S.242, 248-249 (1980)).

Justice Kennedy determined Alaska's legislative intent was civil because it was written into the law the legislature's belief that "sex offenders posed a high risk of reoffending" and they identified "protecting the public from sex offenders" as the "primary government interest" of the law. They determined that releasing certain information about past offenders would assist in maintaining public safety.

In analyzing the effects of the act as either civil or punishment, the Court used five factors noted in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963) as useful guidelines. The court recognized there was one aspect of Alaska's law that may "impose affirmative disability" by imposing punishment beyond the civil limits of the law. The Court of Appeals identified the requirement of periodic in-person registration as "affirmative disability," but when it was clarified that Alaska's law did not require updates to the registry to be done in person, that concern was absolved.

In comparison, Utah's law requires in-person registration twice a year, plus in-person notification of changes to primary or secondary residences, vehicle information, employment, or educational information within 3 days of those changes. Utah's law also requires a registered person to renew their driver's license every year and pay that fee, as well as pay a yearly \$100 registration fee intended to maintain the registry. Even with regular in-person registration, a registrant cannot change their name while they remain on the registry, though the registry lists all their known aliases. For many people on the registry, these are lifetime requirements.

Is this burden of in-person registration twice a year, including renewing one's driver's license yearly even if no information has changed, that is imposed on Utah registrants, excessive? Does it exceed the burden inherent in accomplishing the act's goals of assisting in the investigation of sex-related crimes, apprehending offenders, and providing registry information to the possible victims of recidivist offenders? The law gives registrants 3 business days to update the registry with new residence information before being subject to a felony charge and imprisonment for violating the registry rules. The department is given 5 days to pass that information onto local law enforcement in the vicinity of the registrant's new residence without any consequences if the Department fails to comply within the set time limit. The burden imposed on the registrant clearly exceeds the burden placed on the office that administers the rules.

6th Circuit Court of Appeals (2016)¹⁶

Circuit Judge Alice Batchelder examined Michigan's registry laws. She agreed that the stated purpose of the law was civil but using the five "guideposts" identified in *Smith*, she determined that

- The law inflicts conditions traditionally viewed as punishment by implementing requirements and punishments similar to probation or parole, such as restricting where a person may live, work or loiter, along with reporting to register in person rather than by phone or mail. Failure to comply is enforced by mandatory imprisonment.
- As in *Smith*, in-person registration is considered an "affirmative disability," by requiring a person to register in person initially and for updates, which extends for life for Tier III registrants.
- In examining "rational relation to a non-punitive purpose," the court determined the registry did not fulfill its purpose of preventing criminal activity by keeping registrants away from children. The court referred to studies which showed evidence that public notification registry laws did not reduce recidivism but had the opposite effect of exacerbating risk factors that affect recidivism by increasing the difficulty for registered persons to finding housing, employment, and reintegrating back into their communities.
- The court recognized Michigan's laws were "excessive" by the state not being able to prove positive outcomes from registering offenders to offset the substantial punishment imposed by registry living and loitering restrictions along with in-person registration.
- The court points out that while it is important to keep some sex offenders away from schools or parks, the statute makes no room for individualized assessments of dangerousness. These blanket restrictions far exceed any positive civil outcomes.

Utah's registry laws also impose punishments similar to, and exceeding, probation or parole.

- Requires frequent in-person registration in with law enforcement. Law enforcement has the responsibility to verify registration compliance through residency checks at the registrant's home.
- Yearly \$100 fee attached to registration comparable to monthly probation/parole fees.
- Registrants with offenses against minors are subject to restrictions similar to Utah's Group A sex offender probation and parole restrictions. Registrants are prohibited from entering "protected areas" where children congregate, and some registrants are prohibited from being in the unaccompanied presence of a child under the age of 14. (Permission may be granted to be in the presence of a child with adult supervision while under AP&P supervision, unlike the registry law's blanket restrictions.)
- Turning over internet identifiers, vehicle information and other identifying information.

Michigan's punitive nature of the law outweighed the state's civil intent under the following indicators.

- The law inflicts conditions traditionally viewed as punishment by implementing requirements and
- Notifying the State when moving or traveling for an extended period of time to another state.
- Enforced by criminal charges and imprisonment for noncompliance violations.
- Specific conditions of probation and parole can be reduced or removed by good behavior. The registry provides no positive incentives to encourage compliance.
- Early termination of sentences are incentives for compliance while supervised on probation or parole. Lifetime sentences can be terminated by the Board.
- There are no options for altering or removing lifetime registry restrictions and requirements.

Does this burden of probation and parole-like supervision and restrictions imposed on registrants after they have been released from probation or parole exceed the burden inherent in accomplishing the act's goals? The 6th Circuit Court of appeals believes it does, especially since it does not reduce recidivism but has the opposite effect of exacerbating risk factors by increasing the difficulty for registered persons to find housing, employment, and reintegrate back into their communities.

Utah's District Court ruled in 1999 "that risk assessments are not constitutionally required." The 6th Circuit Court of Appeals disagreed. It faulted Michigan's law in the fact that it made no room for individualized assessments of future dangerousness when imposing blanket restrictions on all registrants. They ruled that blanket restrictions keeping offenders away from schools or parks far exceeded any positive civil outcomes.

Colorado (2017)¹⁷

Plaintiffs argued that the registry violated the eighth amendment of cruel and unusual punishment and the fourteenth amendment of procedural and substantive due process. Like in Utah, Alaska, and Michigan, the legislative purpose of the law was of civil intent, but the Court ruled the effects of the law were plainly punitive. The court based its ruling on the following points.

- There are punitive consequences to a registered offender directly related to the state publicly posting offender information. Those consequences come from public abuse of information, private and commercial websites exploiting the information, and social media influence. The State acknowledges a risk of harm to the offender by posting a warning to those who use the information to harm a person on the registry.
- The registry requirements resemble parole or probation by extending the State's supervision even after released from those provisions of their parole or probation. Registrants must disclose email

addresses, IM identities, chat room identities, changes of online address or identities, even when the offense had no relation to the internet of social media. The law imposes severe restrictions on persons who already have served their sentence

- and are no longer subject to the supervision of the criminal justice system.
- Unlike probation or parole, there are no opportunities to shorten the length of the registration period. No opportunity to reduce frequency even if provided convincing evidence of no threat to the community.
- Registry is based on past acts, not individual current level of dangerousness. The Sex Offender Registry Act (SORA) uses past crimes sweeping in significant number of people who pose no threat to the community, showing that the ultimate purpose is to revisit past crimes, not prevent future ones. (page 33 of reference)
- SORA looks like retribution for past offenses, not regulation for public safety. Justice for crime should be gradual and proportional to the offense.

The Utah District Court in 1999 found that disseminating registry information via a website without

restrictions was unconstitutional because “the statute fails to limit the extent of disclosure to the degree necessary to accomplish the statute’s nonpunitive goals.” The following the year, the 2000 legislature implemented a disclaimer restricting the use of registry information, “if the Department chooses to post registry information on the Internet.” Part of the disclaimer specifically stated, “the members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families.”

Seven years later, the 2007 legislature removed the protection placed to prevent registry information from being disseminated globally through social media, 3rd party websites, and news outlets to persons who are not at risk of victimization by those on the registry. Colorado’s District Court came to the same conclusion as Utah’s District Court that the constitution requires the law “to limit the extent of disclosure to the degree necessary to accomplish the statute’s nonpunitive goals.” Because of public abuse of information, private and commercial websites exploiting the information, social media influence, the burden imposed on registrants exceeds the burden inherent in accomplishment of such act’s (SORA) goals.

Problem - Public notification registry laws do not reduce recidivism but have the opposite effect of exacerbating (or worsening) the risk factors

Over the past 35 years, criminal justice philosophies have embraced severe punishments as the means to reduce crime and keep our communities safe. Today, we have a corrections crisis financing “warehouses” full of offenders waiting out long sentences as crime continues to increase (17.66% increase in violent crimes in Utah in 2016). [Obviously, the threat of severe punishment is NOT a deterrent to criminal behavior! Increases in criminal activity is a whole different problem that should begin with responsible parenting and proper education in the lower grades of grammar school. Ed.] Experience teaches us that 95% of all prisoners will be released some day and Utah is not faring well with an average 3-year recidivism rate of 46% for those on parole (this rate is for ALL offenders, but as shown earlier, sex offenders represent a very small portion of that rate). True protection for our communities comes by giving past offenders a hand up in support of positive changes in their lives.

Studies have focused on determining the principles of effective intervention that reduce recidivism among offenders as they reenter society. The National Institute of Corrections (NIC) identified 8 evidence-based practices (EBP) that if used will effectively lower recidivism for past offenders reintegrating back into society. These 8 evidence-based principles are interwoven into Utah’s own corrections system and are used as measurement tools to assess the quality and effectiveness of the Department’s programs.¹⁸

It is not difficult to identify how the sex offender registry and notification laws contradict these evidence-based best practices for reducing recidivism, ultimately subjecting past offenders to greater risks of reoffending than is typical for a person leaving correctional supervision.

1. **Assess actuarial (calculate statistically risk/needs)** – The first step in reducing criminal recidivism is to determine the offender’s actual risks and needs to address them appropriately. The sex offender registry laws treat all offenders as high risk in a one-size-fits-all policy. Evidence based studies consistently reaffirm that subjecting low risk offenders to higher levels of treatment needed for high risk offenders actually increases their risks of re-offending. Low risk offenders need to address family relationships, intimacy deficits, and shame rather than focusing solely on not recidivating. (March 2013 issue of Current Psychiatry Reports) This focus *will* reduce recidivism. [Accentuate the Positive, Eliminate the Negative – Johnny Mercer. Ed.]
2. **Enhance intrinsic motivation** – [Intrinsic – Reinforce the real value of a person and that person’s ambitions and goals, avoiding requirements or regulations that detour and tend to neutralize or reverse these important human factors. See Wisdom Note, p. 10. Ed.] Treatment encourages and motivates a person to take control of their previous negative behavior and start on a new

path in life. There is no intrinsic motivation for registrants to continually identify themselves as sex offenders twice a year when they register at the closest police station and pay a yearly \$100 registration fee. The only motivation for registry compliance is the avoidance of severe punishments for failure to do so. The constant reminder of past offenses, along with the inherent punishment imposed by the law squashes one's intrinsic motivation to change their past behavior and view themselves other than the status constantly forced upon them.

3. **Target intervention: risk, need, responsivity, strength-based approaches, and rewards and sanctions** When supervised by corrections, pro-social behavior leads to privileges and opportunities while anti-social behavior leads to punishment and consequences. Ideally, the level of intervention is proportional to the needs of the offender to realize successful correcting from past deviant behavior. The registry laws do not adhere to an offender's level of risk or need for continued community supervision. The registry laws and regulations do not provide opportunity to recognize a person's efforts to reform and lead successful law-abiding lives particularly after off parole. [Can I add a "how true" to that? Ed.] For most registry offenders, there are no options to limit the penalties or remove one's-self early from the registry, even if there is clear evidence that such person will never reoffend.
4. **Skill-train with directed practice** – This principle teaches correct behavior by modelling such behavior and providing ample opportunities to practice those behaviors. The direct opposite is the public notification registry that teaches (or labels) an offender that they are dangerous, they cannot be trusted in one's neighborhood without heightened community supervision, and they are a risk to everyone. Registered offenders are stigmatized as a sex offender in all areas of their lives, can't change jobs, buy a car, go on a long vacation, get an education, or participate in service opportunities without reporting these changes to the registry. Reinforcing the sex offender label forever binds past offenders to their past criminal patterns instead of reinforcing positive changes one began in prison and continued through the correction's process in beginning a new life on better foundation.
5. **Increase positive reinforcement** – Completion of risk and needs specific treatment is proven to significantly reduce recidivism. The public notification registry does not recognize completion or continuation of important recidivism reducing treatments. The registry laws do not recognize a person's successful reintegration into society or the length of time one has successfully remained offense free. There are no motivational rewards for good behavior or compliance. Only the

constant stigma and reminder of being a past sex offender and the threat of returning to prison for non-compliance. [IOW constantly stigmatized and continuously punished for life. Ed.]

6. **Engage ongoing support in natural communities** – Community support is a crucial factor in successfully transitioning back into society and not re-offending. In Canada, a program was implemented to provide high risk sex offenders reentering the community a strong network of community support. The Circle of Support and Accountability Model (COSA) found 70% reduction in recidivism for high risk offenders. Utah's legislature allocated money toward a UDC transition team to help offenders transition from prison back to the community. Unfortunately, public notification registries promote the opposite type of welcoming for registered sex offenders entering a community. Utah's registry website encourages people in the community to sign-up for email notifications for instant notification when a new offender moves into their neighborhood. The intention of those notifications is not to embrace and welcome the new neighbor, but to illicit fear and mistrust before a person can experience an unbiased greeting with their new neighbors. The stigma of being publicly recognized as a sex offender induces feelings of anger, frustration, anxiety, hopelessness, rejection, depression, and shame, ultimately reaffirming a person's identity as a sex offender despite efforts to change. Feelings of rejection by the community extends past the registered offender to their immediate family. Laws which were intended to protect children are in reality hurting the children of registered offenders. In a survey given to children of registered sex offenders, 47% were harassed by others, 59% were ridiculed, 52% were teased, 22% were in physical fights instigated by others, 65% felt left out with other children, 77% experienced feelings of depression, 73% feelings of anxiety, 64% feelings of fear, 13% suicidal tendencies, and 80% feelings of anger.¹⁹
7. **Measure relevant processes and practices** – Sex offender registry laws are generally viewed very favorably in our society when, in reality, they provide little more than an illusion of public safety. There is no empirical evidence that Utah's registry laws and restrictions are effective in preventing sexual abuse or sexual violence. There are no known reports in Utah analyzing the registry's effectiveness in reducing recidivism or addressing the actual costs to registrants, law enforcement, or to society in comparison to any measurable benefits.
8. **Provide measurement feedback** – Despite multiple studies spanning years of research demonstrating low sex offender recidivism, consequences imposed on sexual offenders after completion of their ordered sentence has consistently increased over the years through

enhanced registry laws. The legislature continuously demonstrates they are more interested generating political kudos from the public than create meaningful, practical laws associated with sex offenders.

Public notification laws, in theory, are beneficial if carefully constructed to provide public awareness of those offenders who maintain the highest risk of re-offending. Without that distinction, the effectiveness of the registry diminishes. Data shows us, you can't predict future offenses based solely on past behavior, especially since most offenders have not been identified, and other offenders are only one choice away

from a future offense. Successful treatment and community support are strong predictors of lowering risk. True public safety comes from giving former offenders the opportunity to start over with the right tools to navigate the difficulties of life, along with teaching society, including our children, how to avoid opportunities for abuse, recognize signs of abuse, and find the courage to report abuse.

As UDC's public safety flyer states, "There is no way to tell if someone is a sex offender by looking at them." I would like to add: "or by putting all past sex offenders on a public registry."

Websites for further reference that have been annotated with numbered footnotes in the previous two articles.

¹ www.smartjusticeutah.org Click on the Prosecutorial Reform tab, scroll down to 2018 Prosecutor Candidate Tracker, click on the county you are interested in, you can read their responses to the questionnaire.

² <https://www.sltrib.com/news/politics/2018/06/10/both-candidates-for-salt-lake-county-district-attorney-agree-on-need-for-review-of-wrongful-conviction-claims/>

³ www.bop.utah.gov [Note: one "p" in the website address.] ⁴ <https://justice.utah.gov/Sentencing/>

⁵ <https://bjs.gov/content/pub/pdf/SOO.PDF> ⁶ <https://www.bjs.gov/content/pub/pdf/cv16.pdf>

⁷ <https://bci.utah.gov/wp-content/uploads/sites/15/2018/05/Crime-in-Utah-2016.pdf>

⁸ <https://www.ncjrs.gov/pdffiles1/ojdp/227763.pdf>

⁹ <http://www.oag.ok.gov/Websites/oag/images/FILED%20Millard%20v%20Rankin%20Amicus%20Brief.pdf>

¹⁰ <https://justice.utah.gov/Documents/CCJJ/Cost%20of%20Crime/Utah%20Cost%20of%20Crime%202012%20-%20Sex%20Offender%20Tx.pdf>

¹¹ <https://corrections.utah.gov/images/sex%20offender%20treatment%20report%202010-1.pdf>

¹² <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.830.4901&rep=rep1&type=pdf>

¹³ https://www.researchgate.net/publication/261069441_High-Risk_Sex_Offenders_May_Not_Be_High_Risk_Forever

¹⁴ <https://law.justia.com/cases/federal/district-courts/FSupp2/35/852/2491490/>

¹⁵ <https://supreme.justia.com/cases/federal/us/538/84/case.html>

¹⁶ <http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0207p-06.pdf>

¹⁷ <http://sentencing.typepad.com/files/20170831-millard-ruling-re-sex-offender-registry-.pdf>

¹⁸ https://socialwork.utah.edu/wp-content/uploads/sites/4/2016/11/2015-CCJJ_UDC-EBP-Adherence-Summary-ReportFinal-for-Distribution-1.pdf

¹⁹ <https://www.womenagainstrestry.org/resources/pdf/Collateral-Damage-Family-Members-of-Registered-Sex-Offenders-Jill-Levenson.pdf>

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Wisdom Note (ref: p. 8 para. # 2 of 8) – How you see yourself decides your actions and self-confidence.
You cannot outperform the image you have of yourself. Dr. Mike Murdock, Wisdom Ministries.

Note on SOTP Concerns . To all inmates who have written us about the recent changes, moves, loss of therapists and delays in SOTP in USP Draper. Please know that we are following up. We cannot write all of you back individually, so there will be an update on what we continue to learn in the July newsletter. Thank you for your patience.

"It always seems impossible until it's done." Nelson Mandela

Four years of publishing articles to help keep inmates and their families informed. That's cool! Ed.

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Secretary: Unfilled
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Newsletter Editor: Warren Rosenbaum

**"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**