

Nebraska Sex Offender Registry Study



Interim Report

**UNO Consortium for Crime and Justice
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INTRODUCTION

Sexual victimization is of great concern to the public, as evidenced by the legislative attention it has received over the last twenty years (Adkins, Huff, and Stageberg 2000; Levenson 2006; Sample and Kadleck 2008; Schram and Milloy 1995; Walker et al. 2005; Zevit 2006). To help increase public safety and address public concern, corrections departments nationwide have adopted some form of risk classification and assessment instrument for offenders who have been convicted of sex crimes (Richardson and Huebner 2006). Some of the most popular risk assessment instruments include the STATIC 99, RRASOR, MnSOST, SORAG, and ASRS (Richardson and Huebner 2006; Vess and Skelton 2010). These instruments have all been empirically validated and been found to accurately predict risk of reoffending, although with varying degrees (Blasko, Jeglic, and Mercado 2010; Scoones, Will, and Grace, 2012). Many states have adjusted this policy, however, to adhere to the federal standards of the Adam Walsh Act of 2006, by which offenders are to be classified by the type of crime committed, rather than the assessed risk to reoffend.

NEBRASKA'S PRE-ADAM WALSH ACT RISK ASSESSMENT

The Nebraska Sex Offender Registry Act became effective January 1, 1997 under Article 40, Section §29-4001 through section §29-4013. Prior to the changes brought on by the Adams Walsh Act, Nebraska used a three-tiered notification system for sexual offenders. This system was informed by a psychological risk-assessment that predicted an offender's likelihood to reoffend or again participate in a sex crime. The risk assessment instrument placed convicted sex offenders into one of three tiers by classifying them across fourteen factors relevant to their risk to reoffend. These factors included considerations such as the number of past charges and convictions for sex offenses, age of arrest for first sex offense, relationship to the victim, gender of the victim, age of the victim, and mental health diagnosis.

Based on the summary score emerging from this risk assessment, offenders were placed into one of three tiers. Offenders assessed as most likely to reoffend were placed in Level 3, and their photos and addresses were listed on the Nebraska State Patrol's website. Offenders assessed as a moderate risk to reoffend were placed in Level 2. These Level 2 offenders were not listed on the public website, however, schools, daycare centers, religious organizations, youth organizations, and law enforcement agencies in the registrant's county of residence were notified. Finally, sex offenders assessed as a low risk to reoffender were placed in Level 1. These registrants were not listed on the public website, but the state notified local law enforcement agencies likely to encounter the offender for the purposes of monitoring and investigations (Sample, Evans, and Anderson 2011). In other words, the list of those sex offenders considered to be of the lowest risk was not made public and was only for the private use of law enforcement. Under this system, the majority of registrants were not on the Internet and were not on a public registry because they did not meet the criteria for being a significant danger to the public. Under this law, offenders were required to register for 10 years or for life.

NEBRASKA'S POST-ADAM WALSH ACT SEX OFFENDER REGISTRY

The current law, LB 285 passed on May 29, 2009, abandoned psychological assessments in favor of rankings based solely on the type and seriousness of which crime of which they were convicted. The change implemented a requirement that all registered sex offenders would be listed on the public, online list, regardless of. According to the Nebraska State Patrol's registry website, "the classification or 'risk levels' will no longer be used and all registered sex offenders will be categorized by registration duration." In the old system, someone was placed on the registry for either ten years or for life. The new rules set timeframes at 15 years, 25 years, or life.

Most important for the current research, *the Adams Walsh tier system does not classify offenders based on individualized assessments of risk for reoffending, but rather by the type of crime committed by the offender.* Offenders convicted of what would generally be considered a misdemeanor sex offense are required to register for 15 years. A 25-year registration is required of sex offenders convicted of non-aggravated felony offenses such as "attempt" or "conspiracy". The life-time registration is required of sex offenders convicted of aggravated felony offenses such as those that included force, a drugged victim, a disabled victim, and/or a victim under the age of 13.

The changes in Nebraska were part of a national trend resulting from a federal law known as the Adam Walsh Child Protection and Safety Act of 2006, signed by President George W. Bush (also known as the Sex Offender Registration and Notification Act, or SORNA). Congress aimed to create uniform reporting standards for states feeding information into a national sex offender registry. It also broadened the definitions of what constituted a sex crime and made it a federal offense for sex offenders to fail to update information about their whereabouts and employment to local law enforcement.

RESEARCH ON SEX OFFENDER RECIDIVISM

Nebraska Statute Article 40, Section §29-4002 states that "The Legislature finds that sex offenders present a high risk to commit repeat offenses," but recent research evidence suggests that this is not the case for most sex offenders. Research on sex offender recidivism produces mixed results, but generally finds that sex offenders are no more likely than their non-sex offending counterparts to reoffend with a sex crime over another type of crime (Caldwell 2002; Vandiver 2006; Zimring et al. 2007, 2009).

Research suggests that most sex offenders do not re-offend sexually over time. For example, a sample of 4,724 sex offenders in Canada reported overall sex crime recidivism rates of 14% after 5 years, 20% after 10 years, and 24% after 15 years (Harris and Hanson 2004). A recent study examines sexual offending in a cohort of 411 South London males followed to age 50 (Piquero et al. 2012). Sex offending in this cohort was rare. Although 41% of the males had been convicted of a crime by

age 50, only 2.5% of the men had been convicted of a sex offense. Four of the men committed sex offenses as juveniles, *and none of these boys recidivated in adulthood*. Hence, this birth cohort research suggests that there is no evidence that sex offending as a juvenile predicts sex offending as an adult. Regarding adult offending, of the 10 men convicted for a sex offense as an adult, seven were convicted of only the one offense and three were convicted of two offenses each.

A number of reviews of research on sex offender research have been conducted. For example, a meta-analysis involving 61 studies and over 29,000 sex offenders found an aggregate sexual offense recidivism rate of 13.4% over 4 to 5 years (Hanson and Bussière 1998). An update of this meta-analysis conducted seven years later included 82 studies and found a similar re-arrest rate (Hanson and Morton-Bourgon 2005). Finally, a review of eight studies of sexual offending recidivism concludes, “the totality of the evidence supports the hypothesis that juvenile sex offenders offend more frequently over the life-course than juvenile non-sex offenders; however, the offending is not specific to sexual offenses” (Reingle 2012:430). In other words, sex offenders may go on to commit crimes, but these crimes are likely to be of a variety of types. Just like any other offender, sex offenders appear to be *generalists* in their commission of crimes, *not specialists*.

RESEARCH COMPARING RISK ASSESSMENTS TO ADAM WALSH CLASSIFICATION

A recent research project funded by the National Institute of Justice undertook a four-state study to compare the nationally recommended Adam Walsh Act classification tiers to risk assessments used by states prior to the passage of the Adam Walsh Act (Zgoba et al. 2012). The researchers randomly selected formerly incarcerated sex offenders from each of four states: New Jersey, Minnesota, Florida, and South Carolina. The final sample size was 1,789 offenders.

This study confirmed that sex offenders *are not specialists in their offending*. Whereas two-thirds of the offenders had prior involvement in the criminal justice system, the majority of offenders had no prior conviction for a sexual crime. The overall recidivism rate for the sample was 5.1% over five years (ranging from a low of 3.5% in NJ and a high of 7.0% in MN) and 10.3% over ten years (ranging from a low of 7.0% in SC to a high of 13.7% in FL). The doubling between 5 and 10 years, when evidence shows that sex crime recidivism tends to drop as offenders age, is possibly due to the effects of formal supervision such as parole (Zgoba et al. 2012).

Overall, the findings of this four-state study *clearly indicate that state risk levels are more accurate than the Adam Walsh Act tiers for predicting recidivism* (Zgoba et al. 2012). The researchers examined the association between state and Adam Walsh Act tier designations and the 10-year recidivism rate of offenders. The higher the state assigned tier, the higher the recidivism rate. In other words, offenders classified as Tier 1 low-risk offenders had lower recidivism than offenders classified as Tier 2 medium-risk offenders. Similarly, the recidivism of Tier 2 offenders was lower than that of Tier 3 high-risk offenders.

In contrast, the Adam Walsh Act tiers were negatively related to recidivism.¹ The Adam Walsh Act Tier 3 (composed of offenders committing the most serious offenses) was associated with lower odds of sexual recidivism as compared to Tier 2. More specifically, higher Adam Walsh Act tier was not significantly related to recidivism in New Jersey, Minnesota, or South Carolina, and it was actually *inversely* related to recidivism in Florida. These findings are consistent with research conducted in New York, where Adam Walsh Act tiers also proved ineffective in predicting recidivism (Freeman and Sandler 2009).

Policy implications. The tiering systems already in use by New Jersey, Minnesota, South Carolina, and Florida outperformed the Adam Walsh Act tiers in predicting sexual reoffending. Consequently, the findings of this study call into question the accuracy and utility of the Adam Walsh Act classification system in detecting offenders that are at a high risk to reoffend. From a public safety standpoint, then, this research suggests that public safety has not been enhanced by the adoption of the Adam Walsh Act tiering system.

The benefit of risk assessment instruments is that they estimate the probability of sexual re-offense based on the actual recidivism rates of convicted sex offenders with similar characteristics (Epperson et al. 1999; Hanson 1997; Hanson and Thornton 1999; Quinsey et al. 1998). Although they cannot predict how an *individual* offender will behave, risk assessments allow offenders to be placed into categories that differ in their relative risk for recidivism (Barbaree et al. 2001; Hanson 1997; Hanson & Thornton 1999; Harris et al. 2003; Quinsey et al. 1998).

Whereas the majority of the risk assessment scores in the four-state study fell in the moderate-low risk range, however the majority of sex offenders in all four states fell into Tier 3 of the Adam Walsh Act classification system. This suggests that the Adam Walsh Act tiers often overestimate risk and correspondingly imply that the majority of registered sex offenders pose a high threat to public safety. The consistency of the results across the four diverse states included in the study, as well as the consistency with research from the state of New York (Freeman and Sandler 2009) suggests that these findings would generalize to other states as well (Zgoba et al. 2012).

If a state's goal is to identify the potentially most dangerous sex offenders and apply to them the greatest level of supervision, treatment, and restriction, then *the evidence indicates that validated risk assessment instruments are superior to the Adam Walsh Act tiers in achieving this goal.* A state's classification system should approximate the relative risk posed by sex offenders, and the Adam Walsh Act tier system seems ineffective in reaching this goal.

¹ Because their sample included only those offenders who had been incarcerated, less than 1% of their sample fell into the Tier 1 category, which generally includes only misdemeanor offenses that would not result in prison time. Consequently, the primary focus is on comparing recidivism of Tier 2 versus Tier 3 offenders.

LATENT AND COLLATERAL CONSEQUENCES OF SEX OFFENDER REGISTRATION

An additional consideration of the use of public sex offender registries in regard to public safety is the potential collateral consequences of one's affiliation with a public registry. To put it simply, if sex offender registration causes labeling and stigmatization that virtually precludes registrants from maintaining employment and pro-social bonds, the overall harm to society of sex offender registration might outweigh the benefit. There is no question that states must adopt strategies to protect society from the most serious offenders that are at the highest risk to reoffend. However, any study of the overall role of sex offender registration on a society must address the extent to which less serious offenders and/or those who are at low risk to reoffend should be exposed to public stigmatization.

Registrants might have difficulty finding housing and employment opportunities and suffer loss of social relationships and property damage (Levenson and Cotter 2005; Levenson, D'Amora, and Hern 2007; Mercado, Alvarez, and Levenson 2008; Sample and Streveler 2003; Tewksbury 2004, 2005; Tewksbury and Lees 2006; Zevitz and Farkas 2000; Zimring et al. 2009). Sex offenders report experiencing harassment, social isolation, and stigmatization, all of which might encourage continued deviance (Levenson and Cotter 2005; Tewksbury 2005; Tewksbury and Lees 2006). Research indicates that the families of registered offenders are profoundly impacted as well (Levenson and Tewksbury 2009). On the balance, some argue that the social consequences of sex offender registries might exacerbate the behaviors of sex offenders, rather than reduce them (Sample 2011).

ADDITIONAL CONSIDERATIONS FOR SEX OFFENDER REGISTRIES

Registry and community notification laws apply only to convicted sex offenders. Most sexual offenses go unreported and not all reported offenses result in a conviction. Consequently, offenders placed on the registry represent only a small percentage of the individuals who have committed a sex offense.

Registry and community notification laws are aimed at preventing sex offenses by strangers, although most offenders are known to the victim. For example, in cases of sexual abuse of minors, about 90% of victims have some type of relationship with the perpetrator (Terry 2011). Obviously, if public safety is the top concern, drawing attention to a small proportion of sex offenses, while ignoring the reality of the vast majority of sex offenses, seems counterintuitive. Regarding this issue, the Nebraska State Patrol registry website is to be applauded for addressing this issue in their list of Frequently Asked Questions under the question, "As a parent, how can I tell if a person is a sex offender?" However, it might be more useful to integrate this information into the primary website.

Registration is based on the location of the offender's residence, but empirical studies indicate that the location of offenders' residences is often unrelated to the location where the sex offense occurred (Terry 2011). For example, a study in Minnesota compared the proximity of sex offenders' residences with their crimes and found

that only 7% of offenders in the study lived within one mile of the location of the offense (Minnesota Department of Corrections 2007).

In nearly all cases, adoption of the Adam Walsh Act tiers results in the community being notified about more sex offenders. With the increase in cases, it becomes more difficult for citizens in the community to discern which offenders on the list are the most dangerous and the most likely to recidivate. If the purpose of registry and community notification laws is to promote public safety, this widening of the net of offenders placed on the public list is directly in conflict of the primary purpose of sex offender registries.

NEBRASKA'S SEX OFFENDERS

Demographics and offender characteristics. A summary of demographics and offender characteristics of all persons in Nebraska's sex offender registry database is found in Table 1. Overall, the sample includes nearly 6500 individuals. The amount of data available for each variable differs, however, for a number of reasons. In particular, much of the data in these tables originates from the risk assessment that is no longer administered to individuals required to register in Nebraska.

Registered offenders in Nebraska are predominantly white (85%) followed by black (11%) and Native American (3.2%). In addition to race, offenders are asked if they are of Hispanic descent, and Hispanic ethnicity is claimed by just over 10% of the registrants. The registered offenders are overwhelmingly male (96.3%). About 45% were under age 25 at the time of their arrest and about 55% were age 26 or over.

Some information is available regarding the preponderance of mental health disorders among registered sex offenders in Nebraska. However, registrants are not uniformly screened for mental illnesses, so this data on mental illness does not reflect a comprehensive mental health assessment. The data that is available indicates that a small percentage of registrants display mental disorders. The highest percentage of offenders were coded affirmative for the category "Personality Disorder Diagnosis or Traits" (8.3%). In summary, the information available to us indicates that the majority of Nebraska registrants do not suffer from mental illness.

Table 1 also includes information on registrants most recent risk-level classification for pre-Adam Walsh Act cases. Level-1 offenders were assessed as the least likely to commit a subsequent sex offense, Level-2 offenders were assessed as a moderate risk, and Level-3 offenders were assessed as a high risk to recidivate. According to the data, over half of the registrants were classified as Level-1. An additional 32% of registrants were classified as a moderate risk to re-offend (Level 2) and about 17% were assessed as a low risk to re-offend (Level 1). Under the pre-Adam Walsh Act system, only Level 3 offenders were placed on the public registry, so this data suggests that *a move to the Adam Walsh Act notification system essentially doubles the number of offenders placed on the public registry in Nebraska.*

Finally, Table 1 lists the Adam Walsh Act registration duration for 5158 registrants. Offenders convicted of what would generally be considered a misdemeanor sex offense are required to register for 15 years. A 25-year registration is required of sex offenders convicted of non-aggravated felony offense and lifetime registration is required of sex offenders convicted of aggravated felony offenses. The Nebraska data indicate that about 18% of offenders are 15-year registrants, about 30% are 25-year registrants, and over 50% are lifetime registrants.

One question is how these data compared to other states. Recent data in the literature on the distribution of registrants across Adam Walsh Act tiers includes only offenders who have been incarcerated, which effectively excludes Tier 1 offenders that committed only misdemeanors. In making interstate comparisons, then, we must examine how many felony registrants in Nebraska are classified as Tier 3 offenders versus Tier 2 offenders. Excluding the misdemeanor offenders gives us a total of 4222 registrants, of which 63% are Tier 3 registrants and 37% are Tier 2 registrants. The percentage of Tier 3 offenders in four other states is as follows: New Jersey, 98%; Minnesota, 85%, South Carolina 57%, and Florida 56% (Zgoba et al. 2012). Consequently, *the percentage of Tier 3, lifetime registrants in Nebraska falls toward the lower range in this comparison to four other states.*

Victim and offense characteristics. A summary of victim and offense characteristics is presented in Table 2. The source of the data in this table is the risk assessment instrument, so this data might not be omitted for more recent registrants under the Adam Walsh Act. The top of this table shows that over 70% of Nebraska registrants had only one count for the offense that resulted in their registration. About 19% had two counts and about 11% had three or more counts.

Victims were classified as a family member, an acquaintance, or a stranger. Because the offense might have included more than one victim, more than one category could apply (for instance, an offense involving the victimization of a niece and the niece's friend could be classified as both "family member" and "acquaintance"). *The most common victim/offender relationship was an acquaintance (56.1%).* The second most common victim was a family member (34.4%). The least likely victim was a stranger (16.8%). Consequently, *if a primary purpose of sex offender notification and registries is to protect the public from strangers who are convicted sex offenders, then the current makeup of the Nebraska sex offender registry is at odds with this goal.* That being said, an offender with a history of victimizing persons known to them might offend against strangers in the future. In this sense, a tier system based on risk to reoffend would be more useful for protecting the public as compared to a system that includes all sex offenders on a public registry.

TABLE 1. DEMOGRAPHICS AND OFFENDER CHARACTERISTICS

Race	White	Black	Asian	Native American	Other
	5474 85.0%	711 11.0%	45 1%	209 3.2%	1 ---
Ethnicity	Hispanic	Not Hispanic			
	685 10.8%	5654 89.2%			
Sex	Male	Female			
	6207 96.3%	238 3.7%			
Age at arrest	25 or under	26 or over	Unknown		
	2501 44.8%	3056 54.7%	26 0.5%		
Developmental disability	Yes	No			
	52 1.2%	4164 98.8%			
Psychotic disorder	Yes	No			
	53 1.3%	416 98.7%			
Personality disorder	Yes	No			
	351 8.3%	3898 91.7%			
Risk level (pre-Adam Walsh)	1	2	3		
	628 16.8%	1193 32.0%	1909 51.2%		
Registration duration (Adam Walsh)	15	25	Life		
	936 18.1%	1561 30.3%	2661 51.6%		

Table 2 also includes information on the age of victims. Because an offense might have included multiple victims of varied ages, more than one category could apply. Just over 38% of offenders in the Nebraska registry had victims 11 or under. The most common victim age (61.1%) was 12 to 17. Finally, 17.2% of registrants had victims that were 18 or over.

Finally, Table 2 includes descriptions of the offense. Multiple descriptions could describe a single offense (for example, an offense might have included both “fondling” and “threats”). By far, “fondling” was the most common, occurring in 89.2% of cases. Also, although violence and/or a weapon was used in 23.6% of cases, serious injury occurred in only 1.1% of cases. In this table, “vulnerable victim” refers to a victim that is vulnerable due to physical or mental abnormality.

TABLE 2. VICTIM/OFFENSE CHARACTERISTICS

Counts	One	Two	Three or more	
	3981 70.6%	1041 18.5%	614 10.9%	
Type of Victim				
Family member	Yes	No		
	1943 34.4%	3706 65.6%		
Acquaintance	Yes	No		
	3166 56.1%	2482 43.9%		
Stranger	Yes	No		
	949 16.8%	4698 83.2%		
Gender	Female	Male	Female & male	Unknown
	4782 84.7%	449 7.9%	350 6.2%	67 1.2%
Age 11 or under	Yes	No		
	2171 38.2%	3514 61.8%		
Age 12 to 17	Yes	No		
	3477 61.1%	2213 38.9%		
Age 18 or over	Yes	No		
	972 17.2%	4695 82.8%		
Type of Offense				
Explicit material	Yes	No		
	417 7.4%	5242 92.6%		
Fondling	Yes	No		
	5045 89.2%	611 10.8%		
Threats	Yes	No		
	579 10.2%	5077 89.8%		
Vulnerable victim	Yes	No		
	140 2.5%	5514 97.5%		
Substance used	Yes	No		
	260 4.6%	5393 95.4%		
Violence/weapon	Yes	No		
	1337 23.6%	4317 76.4%		
Serious injury	Yes	No		
	60 1.1%	5592 98.9%		

Data summary. To summarize this analysis, the *typical offender* in the Nebraska sex offender registry is a white male over the age of 26. The *typical victim* is a female acquaintance, age 12 to 17. By far, the most common type of offense was fondling. For both the pre-Adam Walsh Act risk-based tier system and the Adam Walsh Act tier system, the most common tier classification (just over 50% in both cases) is Tier 3, the most serious classification

Subsequent analysis. Due to the substantial number of cases in the sex offender registry data set and the volume of recidivism data received from the FBI, significant data cleaning and data management must be completed before recidivism analysis can be conducted. The future analysis will create recidivism variables representing whether or not registrants have 1) ever committed a subsequent sex offense, 2) committed a subsequent sex offense within 1-year of being placed on the registry, and 3) committed a subsequent sex offense within 2-years of being placed on the registry. The 1- and 2-year recidivism windows will account for times that the registrant was incarcerated and under parole supervision.

Once the recidivism variables have been created, we will compare the recidivism of offenders that were on the public registry under the risk assessment tier system (Tier 3 offenders) to the recidivism of offenders that are on the public registry under the Adam Walsh Act tier system (Tier 1, Tier 2, and Tier 3 offenders). Research in other states leads us to expect that the risk assessment tiers will more accurately predict recidivism as compared to the Adam Walsh Act tier system (Zgoba 2012).

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