

Colorado Sex Offender Management Board

WHITE PAPER ON THE USE OF RESIDENCE RESTRICTIONS AS A SEX OFFENDER MANAGEMENT STRATEGY



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The United States has witnessed an increase in sex offender management policy beginning in the 1990's and continuing through as recently as 2006 at the Federal, State, and local level. As a result, laws have been enacted with the intention of protecting the community from sex offenders including the recent Adam Walsh Child Protection and Safety Act of 2006. Part of this movement has included the passing of zoning and residence restrictions, which prohibit convicted sex offenders from residing within a certain distance of areas where children typically congregate or from living in the same residence with another convicted sex offender. Currently, approximately 30 of the states in the U.S. have enacted statewide residence restrictions (Koch 2007). Although well intentioned and with the safety of the community in mind, these ordinances are often passed without consideration of the research and are typically ineffective for a number of reasons. Consequently, there is an emerging and escalating necessity to address these laws, which may seem appealing to the community, legislature, and policy makers despite growing concerns regarding their actual effectiveness.

A number of years ago Colorado experienced several jurisdictions contemplating such policies after a concerned citizen notified the media of a Shared Living Arrangement (SLA) in her neighborhood. (SLA's are residences where more than one convicted sex offender resides while receiving intensive correctional and treatment services). At the time there was a lack of knowledge and research regarding the use of SLA's and their effectiveness in managing high risk sex offenders. This, coupled with negative media exposure, led to the passing of several local zoning restrictions which prevented more than one sex offender per residence from being housed in the jurisdiction. When the Colorado Legislature became aware of what local jurisdictions were doing and received a request to pass a state law, they requested that the Sex Offender Management Board (SOMB) conduct a formal study on the safety issues pertinent to SLA's and residence/zoning restrictions.

The SOMB is a legislatively created board administered by the Division of Criminal Justice, Colorado Department of Public Safety. The SOMB has been mandated to develop Standards for the treatment and supervision of sex offenders. The SOMB's philosophy is to support research based community and victim safety policy development through a collaborative approach. As requested, a research study was conducted in 2004 in reference to the proximity of sex offender residences to schools and childcare centers and the related impact on community safety. This study utilized information on 130 sex offenders from the Denver metropolitan area in conjunction with plotting the subjects' residences on maps.

The findings of the research revealed that among sex offenders who reoffended, there were not a greater number of sex offenders living within proximity to schools and childcare centers than those who did not live in proximity locations. In addition, sex offenders who received positive support (i.e. family, friends, treatment, SLA's, and employers who were aware of the sex offender's issues and held the offender accountable in a supportive fashion) had significantly lower numbers of probation violations and re-offenses than those with no support or negative support (Colorado Department of Public Safety 2004). It should be noted that this finding has been supported by numerous other research studies related to residence restrictions and recidivism rates regarding the reintegration of sex offenders (Minnesota Department of Corrections 2003 & 2007; Ohio State University 2009; Levenson, Zandbergen, & Hart 2008).

Minnesota Department of Corrections conducted two important studies in 2003 and 2007 regarding the impact of residence restrictions. The first study focused on residential placement issues of high risk offenders and found that there was no evidence that residential proximity to schools or parks affected recidivism. This was replicated by Levenson, Zandbergen, & Hart in 2008. Furthermore, the Minnesota study revealed that residence restrictions were limiting most high risk sex offenders to residing in rural, suburban, or industrial areas resulting in fewer supervising agents and less available services (Minnesota Department of Corrections 2003). The latter study conducted in 2007 was about residential proximity and recidivism and revealed that none of the 224 sexual recidivists studied would have been affected by residency restrictions. It was also learned that even when offenders made direct contact with juvenile victims, the offenders were unlikely to do so close to where they lived because they were attempting to maintain anonymity. One of the most compelling factors discovered in this research was that in 16 years of discharging sex offenders from the prison, *none* of the recidivists who returned due to a new sex offense resulted from contact with a juvenile victim near a school, park, or daycare (Minnesota Department of Corrections 2007).

There has recently been a considerable amount of research focusing on the successful reintegration of sex offenders. As a result, common themes have been discovered that significantly impact recidivism, which are stable housing or living accommodations, secure employment, and positive support systems/resources. States that have enacted residence restrictions have conducted empirical studies showing that the laws have actually proven counterproductive to these factors because they often cause destabilization to sex offenders (Iowa, California, Florida, and Ohio). Consequently, there has been discussion that the ordinances may in fact inadvertently exacerbate the factors correlated with recidivism (Ohio State University 2009).

A recommendation was made by the SOMB in 2004 indicating that placing restrictions on the location of correctionally supervised sex offender residences may not deter sex offender re-offense and should not be used as a universal sex offense management strategy. Such decisions should be made on an individualized basis by the sex offender's Community Supervision Team. Furthermore, it was suggested that the imposition of residence restrictions may increase the risk of re-offense by forcing sex offenders to live in communities where positive support systems may not exist, and they may be removed from accessible resources or live in remote areas providing them with high degrees of anonymity. This has been further supported by the Association for the Treatment of Sexual Abusers (ATSA 2005).

More recently, in 2008, the Colorado SOMB conducted a statewide survey of varying law enforcement jurisdictions regarding their sex offender residency restriction policies, if any. Twenty-eight (28) jurisdictions across Colorado participated in this on-line survey. Approximately 20% of participants had sex offender residence restrictions in place. Most of the jurisdictions that had the restrictions limited housing for registered sex offenders to at least 1,000 feet from any schools or daycare settings.

This study compared data from jurisdictions that did *not* have residence restriction ordinances (n=22) to jurisdictions that did have them in place (n=6). The average population of the jurisdictions that did *not* have residence restrictions in place was twice as high as the average population in the jurisdictions that did have them in place; however, the average number of registered sex offenders was higher in the jurisdictions with residence restrictions in place. Additionally, the average number of sex crime arrests in jurisdictions with residence restrictions in place was twice as much as the average number of sex

crime arrests in jurisdictions that did *not* have them. There did not appear to be any differences in the number of offenders who failed to register, by sex offender population, in both types of jurisdictions.

Out of the six (6) jurisdictions that had residence restrictions in place, two (2) reported data regarding sex offender population, sex crimes, and failure to register information prior to when the ordinances were imposed. Of these two (2), there were no significant changes in the number of registered sex offenders or number of sex crimes after residence restrictions were enacted. However, the number of registered sex offenders who failed to register, perhaps going underground, seemed to increase after the ordinances were enacted.

On a national level, research from the U. S. Department of Justice conducted in 2000 indicated that 93% of child sexual abuse victims knew their abusers (Bureau of Justice Statistics 2000). This information has been confirmed through subsequent research and may in fact be a conservative number. Studies have also shown that most sexual offenses are committed in the offender's or the victim's home (Greenfeld 1997; Bureau of Justice Statistics 2000; Smallbone and Wortley 2000; Colombino and Mercado 2009). Research conducted in other states, including Iowa and California, indicate that homelessness, absconding from supervision, and not registering for tracking purposes all appeared to be significant byproducts of residence restrictions (Davey and Rood 2006, Thompson 2007). Additional research has revealed that residence restrictions have negatively impacted the risk for recidivism with sex offenders due to increased isolation, financial hardship, decreased stability, and lack of support (Levenson and Cotter 2005).

The national legislation that began in the 1990's in this country were purportedly enacted to better track sex offenders in an effort to increase public safety, which appears at odds with proximity restrictions as many sex offenders end up going underground and/or providing false or inaccurate address information. This renders registration databases incomplete and unreliable, making tracking ineffective. Many of the states that originally enacted residence restrictions have expressed regret due to aforementioned issues, along with enforcement difficulties and legal dilemmas regarding constitutional rights. Many constituents in Iowa have been actively working to repeal their residence restriction law and victim centered programs have begun publicly expressing disagreement with such laws due the negative impact they have on treatment and monitoring efforts of sex offenders (Iowa County Attorney's Association, California Coalition on Sexual Offending & New Hampshire Coalition Against Domestic Violence and Sexual Violence). One of the most concerning aspects of the implementation of residence restrictions, locally or nationally, is the passing of policy and law without consideration for research, best practice, and effective methodology. This often results in unintended, counterproductive consequences which negatively impact community safety.

An additional important factor to note is the false sense of security that can result from these types of ordinances. The concept of limiting where a sex offender sleeps at night versus where he/she spends time during the day if not supervised through the criminal justice system seems ineffective. Many residence restrictions are worded so that the prohibited party is able to frequent any place, but is excluded from residing near areas where children commonly gather. There are sex offenders living in all communities because nationwide the minority of convicted sex offenders are sentenced to imprisonment or incarceration. Accordingly, housing has become a near epidemic issue, especially for those labeled

high risk. Legally, these offenders have the right to secure a residence and as previously stated they are most likely to succeed in the community if they are afforded that right.

Politically speaking, a government official does not typically want a reputation of being soft on sex offenders. This is likely the perception of a political figure opposing residence or zoning restrictions if the community as a whole is not sufficiently educated, regardless of the ineffectiveness of such laws. Society often relies on sensationalized media accounts to educate them about sex offenders, policy, and laws. Thus, creating effective and responsible community safety policy and laws on a local and national level are cumbersome and complicated.

Communities are obviously concerned with their overall safety and as a result sex offenders have become a common topic of debate and controversy. This is evident in the legislature, the justice system, and in the media. Representatives of such systems have tended to focus on extreme cases and as a result, myths have been perpetuated and led to emotional reactions of sort. The Federal laws driving sex offender policy (Wetterling, Megan's Law, and the Adam Walsh Act) are all a result of tragic crimes that received media and legislative attention. Ironically, they are in fact, the rarest types of sex offenses and represent less than 1% of sexual assault convictions in the nation (Levenson and D'Amora 2007). As a result, implementation of these policies has been problematic because once a law is enacted, it becomes difficult to reverse. Furthermore, to date there is no research indicating that residence restrictions are correlated with reduced recidivism or increased community safety.

Colorado has historically been proactive with regard to the management of sex offenders. The state has a Board, standards for treatment providers, and has conducted valuable research. Thus, the following resources, alternatives, and suggestions are provided for governmental agencies and advocacy groups involved in policy-making and legislative activity. They include, but are not limited to: implementing policy based on relevant research; funding relevant research; identifying and promoting effective methods of community education; educating law enforcement, policy makers and legislators; encouraging the use of Shared Living Arrangements (SLA's) as utilized in Colorado; promoting the containment model; and multi-disciplinary collaboration among agencies in sex offender management.

In conclusion, the ethical and responsible choices with regard to the management of sex offenders are not always the most popular. This is especially true in the current socio-political environment that emphasizes accountability, and many times, has a punitive tone with regard to sex offenders. However, the long lasting impact on sex offenders, communities, and victims require thoughtful research based policies and laws. There is much to learn from the states that have enacted such laws and research conducted thereafter. It appears counterproductive to endorse and/or institute policy and law based on fear, ignorance, and politics when it causes more problems than it solves. Community safety is paramount and should be the common goal when considering any policy or law regarding sex offenders. Residence restrictions and zoning laws as a whole are clearly counterproductive to this goal.

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