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Polish project of a Sex Offenders Registry – a mental health professionals' perspective

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Summary

The paper discusses the governmental draft of the Act on counteracting threats of sexual offences. It assumes the creation of the Registry of Sex Offenders in a version with a limited access and a version available to the public. The registry is supplemented with a publically available map of sexual crime threats, which includes the places of sexual offences and the places of residence of offenders. Criticising the proposed solutions, the authors point out the lack of integration with other interventions conducted in Poland against sex offenders, noncompliance with the recommendations of the most important expert circles in the field, as well as the research results showing the lack of effectiveness of the planned measures to reduce sexual offences. A number of negative consequences of making the sex offenders' data available to the public was also highlighted in the form of a clear deterioration of social rehabilitation prognoses, additional stigmatisation, as well as social exclusion of the offenders themselves and the victims of sexual violence. The summary emphasises the need to counteract the problem of sexual offences in a systematic way and the need to diversify the interventions undertaken against the offenders, depending on the level of risk of sexual recidivism.

Key words: sexual offences, legislation, recidivism

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Introduction

The agenda[1] of the Sejm of the Republic of Poland includes a draft Act on the prevention of sexual violence (hereinafter referred to as the Act). The Parliamentary paper (7th term of office) No. 189[2] contains a draft Act together with the justification and the draft implementing acts as well as the statement of reasons for those acts and Parliamentary paper No. 330[3] contains the Justice and Human Rights Committee Report and the text of the Act as amended – it is the latest version. To achieve the objective set out in its title, the Act introduces three specific measures of protection referred to in Article 3 of the Act: 1) a Registry of Sex Offenders (hereinafter referred to as the Registry); 2) obligations of employers and other organisers of activities related to the upbringing, education, treatment, and care of minors; 3) determining particular threat areas. The measure indicated in the item 1 is of essential importance, the other two relate primarily to the specific uses of the data contained in the Registry.

Aim

The aim of this paper is to assess the effectiveness of the solutions proposed in the Act, taking into account the experience of other countries in terms of the operation of sex offenders registries. At the same time, the authors of this paper refrain from the evaluation of the solutions contained in the Act from other perspectives than the perspective of knowledge in the area of psychiatry, psychology, and sexology, including in particular the legal perspective.

Material

The effectiveness of sex offenders registries operating in the US, similar to those provided for in the Act was discussed in the first place. Subsequently, the solutions proposed in the Act with regard to the detailing provisions included in the draft implementing acts were presented. The summary contains an assessment of the solutions provided for in the Act and the postulates of the authors concerning the prevention of sexual offences.

Effectiveness of sex offenders registries operating in the US

The explanatory statement of the draft Act cites the data on the operation of similar registries in other countries. Particularly important here are the registries operating in the United States, since only this country has operating registries being of public character – similarly to both registries drafted by the Polish legislators.

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1 When this paper was submitted the Act was after second reading.

2 Available at: http://orka.sejm.gov.pl/Druki8ka.nsf/0/055744120464461FC1257F3A0050EAFB/%24File/189.pdf

3 Available at: http://orka.sejm.gov.pl/Druki8ka.nsf/0/3074A69ECE37F179C1257F78003BF506/%24File/330.pdf

Effectiveness of registries

The analysis of the effectiveness of the police and the public registry (Sex Offender Registration and Notification – hereinafter abbreviated as the SORN) from the perspective of the general level of sexual offences comes down to answering the question whether a significant change in the number of these offences has been noted since the introduction of the new regulations.

In the case when the indicator was the number of committed rapes, some authors pointed to the lack of differences that would be induced by the SORN [1, 2]. On the other hand, researchers from the teams of Vasques, Maddan and Walker [3] as well as Maurelli and Ronan [4], in their publications on the effectiveness of the SORN implementation in individual states of the US, showed both the states in which a significant decrease in the number of committed rapes was noted statistically significant, and also the states in which no statistically relevant difference was observed in terms of the number of these offences. The first team also pointed to the opposite effect observed in the state of California where a significant increase in the number of rapes was observed after the introduction of the SORN. In turn, Shao and Li demonstrated that the introduction of the SORN caused a 2% drop in the number of reported rapes in 50 states analysed by them in the years 1970–2002 [5].

In the case when the measure of the SORN effectiveness was the number of broadly understood sexual offences, Sandler, Freeman and Socia, [6] pointed to the lack of significant differences in this respect. Whereas Prescott and Rockoff [7] demonstrated a 10% reduction in the number of sex crimes committed in 15 US states analysed by them [5]. A more detailed analysis showed, however, that this effect was limited mainly to the relationship between the expansion of the police registry and the decrease of sex recidivism rate [2, 7].

In a systematic review of the SORN effectiveness, Drake and Aos [5], indicated the works of Prescott and Rockoff [7] as well as Shao and Li [cf. 5] as the best ones with respect to their methodological standards. On the basis of these works, they concluded that it was possible to talk about the existence of the SORN effectiveness within the scope of the overall reduction of sexual crime. In the light of the results of Ackerman's, Sacs' and Greenberg's studies [1], this conclusion does not seem to be adequate for the crime of rape.

The issue of whether the SORN restrains sex offenders from re-committing crimes raises a lot of doubts. A meta-analysis conducted by Drake and Aos [5], showed no differences in the rates of sex recidivists (hereinafter abbreviated as the SRs), before and after the SORN implementation. Among the six studies included in the analysis, devoted to the percentage of the SRs, two of them showed a decline [8, 9], one of them showed an increase [10], and three of them showed no difference in terms of the SRs percentage before and after the introduction of the SORN [11–13]. The studies published after 2009 cast doubt on the effectiveness of the discussed solutions. The analyses carried out by Duwe and Donnay [14] and the team of Levenson et al. [15] showed that sex offenders who evaded updating their data in the police registry did not differ in terms of the percentage of crimes committed from the offenders updating their data.

The results of the studies conducted by Tekswbury and Jennigs [16], Tekswbury et al. [17] as well as Zgoba et al. [18], showed no statistically significant difference in the percentage of the SRs before and after the SORN introduction.

The issue of the SORN efficiency was approached in a particularly interesting way by Prescott and Rockoff [7] who tried to separately estimate the impact of the police and public registry on the SRs. The results of their studies provide evidence to the positive role of the registry – a decrease in the number of sex offences committed by the SRs was noted along with a drop in the number of sex offences where the offender was known to the victim. A reverse situation occurred in the case of the impact of the public registry – the authors showed that along with its expansion, the number of sex offences committed by the SRs was increasing [7].

Unintended consequences

An important part of the SORN studies are those dedicated to the analysis of the way in which sex offenders adapt to the new conditions after the end of their isolation. These studies relate mainly to how offenders cope with the fact of being entered in a publicly accessible registry. In the literature review conducted by Lasher and McGrath [19], the problems that were most frequently experienced by the perpetrators from the part of the local community included: threats and harassment (approx. 40%), job loss (approx. 30%) and being forced to leave the place of residence (approx. 15%). A smaller percentage of the offenders reported cases of damage to their property (14%). Approximately 10% of offenders reported having fallen victim of assault and battery.

Another important element complementing the picture of the reality in which the offenders whose data are entered in the public registries function is the effect that they exert on their family members and their loved ones. In the review of the studies by Levenson and Tewksbury [20], the members of the offenders' families described the following negative effects of being entered in a public registry: the occurrence of serious financial problems connected with the fact that the offender could not find work or lost it (82% and 53% respectively), threats and harassment by neighbours (44%). Among the consequences there was also damage to property (27%), being forced by the landlord or neighbours to leave the apartment (22 and 17% respectively) and assault motivated by the kinship with the offender (7%). In the case of children of registered sex offenders, the problem most frequently reported by the respondents was showing their anger (80%) and the presence of signs of depression and anxiety (73%–77%). Other reported troubles from the environment included being omitted in the course of joint activity (65%), ridicule (59%) and harassment (47%), as well as provoking the child to fight (22%).

Summary of the data on the effects of the registry introduction

The presented results of research on the effectiveness of the SORN do not allow us to confirm their positive impact both on the total number of the committed sex offences and the number of sex offences committed by repeat offenders. Thereby, it is impossible

to ignore the results providing to the fact that among the potential consequences there is the opposite effect than expected, i.e. an increase in the number of sexual offences. However, the results of the analysed studies explicitly confirmed that the entry of sex offenders into a publicly available database is a severe punishment for them. It can result, among others, in a distinct deterioration of the broadly understood economic situation, as well as destruction of property and assaults. The mere fact of entering the offender into a public registry also affects their family and relatives. They are also the ones that often suffer from the economic difficulties and the resentment and aggression of the environment towards the offender is focused also on them. These effects can have an impact on children in a special way, leading to their rejection by the surroundings.

Solutions contained in the draft Act

In accordance with Article 4 item 1 of the Act, the registry consists of two separate databases. The first one is a registry with a limited access, which is supposed to include the data of all offenders specified in Chapter 25 of the Polish Penal Code (Offences against sexual freedom and decency) with the exclusion of several minor offences, mostly related to pornography. According to Article 6 item 1 of the Act, it applies not only to the persons convicted for such acts, but also other categories of offenders, e.g. those in relation to whom a conditional discontinuation of proceedings was applied. The second database is a Public registry which, in accordance with Article 6 item 2 of the Act, is supposed to include data of the convicts who committed rape against minor under the age of 15 or rape with particular cruelty or who committed sexual offence after they had been previously convicted for another offense belonging to this category, if any of them was committed against minor.

The detailed solutions concerning the operation of the Registry with limited access, as described in the draft regulations to the Act, make the possibility to identify the persons whose data are gathered there so extensive that, in fact, this registry can also be regarded as a public one. The first solution is the indication of the actual place of stay of the convicts on the "map of sexual offence threat" (§ 5 of the draft Regulation of the Minister of Internal Affairs and Administration on conducting a police map of sex offence threat and the mode of updating it). This address is restricted to the indication of the place and street. However, it is not hard to imagine that in many cases the inhabitants will be able to determine the identity of the person whose data are in the Registry on the basis of these data. They may also develop a false belief of being entered in the registry in relation to a person whose data is not included. The second of these solutions is the mode of acquiring information from the Registry. It allows for the acquisition of information, among others, by entities that may have a private status, referred to in Article 12 item 6 and 7 of the Act. In accordance with the procedure described in the draft Regulation of the Minister of Justice on the mode, manner, and scope of obtaining and sharing information from the Registry of sexual offenders and the manner of setting up the account for obtaining information by these entities, it involves logging in (upon prior registration) to an ICT system and filling an application allowing for the identification of a person concerned, and indicating a legal

basis of the notification. A response is provided via the ICT system on the basis of this query. The factual basis of the query (e.g. looking for a job connected with the care of minors at the entity submitting the query) is not subject to any verification, which poses a huge risk of uncontrolled access to the registry.

The Act introduces a number of solutions that may affect the prevention of sexual offences, the operation of which is based on the information contained in the Registry with limited access. They shall now be presented with a simultaneous discussion on how they actually aim to achieve the objective of the Act.

The first of them is the sole public nature of the created registries. As shown in the review of the research findings in the earlier part of this paper, there is no conclusive evidence that the public access to the data allowing for the identification of sex offenders would have an impact on reducing the level of sexual crime. Instead, it carries a number of other negative consequences for the offenders and other persons. Therefore, it can be assumed that this solution will not lead to the prevention of sexual offences. Furthermore, the public posting of data allowing for identification the offender poses a risk that the victim will also be identified, which will lead to his or her stigmatization. This risk is particularly high in the case of victims who know the offender (including those belonging to the family), i.e. in the case of most of the victims. Article 9 item 2 of the Act gives the court the possibility to decide to exclude posting the data of the offender to protect the interests of the victim or their closest relatives, however, to make the protection of the interests of the victim real, this exception should be used in most cases. Otherwise, the application of the Act will cause harm to the victims of sexual offences and their families. However, the possibility to make an exclusion concerning persons who meet the criteria to post their data in public registry is very limited. It can be done only to protect minor victim, therefore does not allow protecting other people, e.g. adult victim or offender's family members.

The second solution is the retroactivity of the Registry. It is supposed to include the data not only of the perpetrators of offences committed after the entry of the Act into force, but also all the previously convicted for rape against minor and most previously convicted for rape with particular cruelty, whose information is induced in the National Crime Registry (Article 27 item 1 of the Act).

The public aspect of the created Registry is connected with the third solution: creating and updating maps of sexual offence threat. In accordance with § 5 of the draft Regulation of the Minister of Internal Affairs and Administration on the manner of conducting a police map of sexual offence threat and the mode of updating it, the map shall include the information concerning: the places where the offence against sexual freedom and decency was committed for the period of the last 24 months, 2) the actual place of residence of convicts listed in the Registry of sex offenders – limited to street names. As described previously, this map is, in its essence, one of the forms of making the information included in the registry public.

The fourth solution is the obligation to report each change of the actual address of residence, no later than on the third day from the change, in a competent organisational unit of the Police (Article 11 item 1 of the Act) and to report any trips abroad to an organisational unit of the Police (Article 11 item 2 of the Act). Data from other

countries where this kind of obligation was applicable in connection with the registry of sex offenders clearly show that sex offenders who failed to fulfil this obligation did not commit this act more frequently than the offenders who fulfilled this obligation, [e.g. 14, 15]. This shows the inefficiency of such solutions.

The fifth solution is the obligation of the employer or an organiser of other activity connected with the upbringing, education, treatment or care of minors to obtain information from the Registry concerning the persons who are about to start an employment relationship or who are to be admitted to the aforementioned activity. This is supposed to take place before the establishment of this relationship or admission to such an activity. The objective of this obligation is to reduce the access of offenders to potential victims. In accordance with the research results, the access to potential victims is a dynamic risk factor for sexual recidivism [e.g. 21], and therefore, such solutions are justified. However, as indicated previously, the mere mode of retrieving information from the registry creates a significant risk of access by unauthorised persons.

In the explanatory statement to the Act, the authors referred to the experience of other countries within the scope of dealing with sexual offences, in particular as regards the functioning of similar registries. First of all, the authors claim that "at present" there are two dominant competing models of "strategies of dealing with sex offenders: 1) local community protection model whose essential feature is to supervise offenders who have left a penal institution (…) and 2) clinical work model emphasising the therapy of offenders, both while serving their sentence and after being remanded." The authors refer to the sources from the late 1990s. This division is not valid any more. The literature clearly recommends the application of strategies connected with the supervision over the offenders in connection with their therapy, so as not to hinder this method or any other methods of offenders' rehabilitation [22]

Conclusions

The proposed solutions are based on a false alternative contained in the title of the article cited by the authors: "To Punish or to Treat" [23]. On one hand, the Act shows focusing on the solutions constituting an additional ailment, simultaneously ignoring solutions that lead to sexual offence prevention. On the other hand, the Act does not create any relationships between the existing system and the successfully, albeit slowly, developed system of penitentiary effects on sex offenders.

The Polish legal regulations concerning the generally understood sexual offences do not constitute a coherent, compact, and thought out model. They are chaotic and filled with a difficult-to-understand terminological mess. The authors of the regulations which were created in a hurry often refer to the medical concepts and terms, give them a statutory character, indicate the method and direction of the therapy in the provisions of the penal laws, and make the therapy dependent on the legal criteria, e.g. legal classification of an offence. Other, quite frequent legislative changes were introduced without any empirical basis and did not include the interdisciplinary character of the problem of sexual offences to a sufficient degree. They were often dictated by emotions and political needs, leading in effect to the implementation of the penal populism

principles. It is also possible to note the domination of ad hoc, populist, and political actions over long-term, thoughtful, and scientifically valid activities.

The new legislative proposals perfectly fit into the model of conduct presented above. Still current is the postulate for a consistent, comprehensive model that would more extensively take into account the possibilities of taking therapeutic action, implemented at various stages of the proceedings, and incorporating the individual needs and capabilities of the offenders. Such a model cannot be created without the interdisciplinary cooperation of specialists from different fields of science. The aforementioned cooperation should also apply to the rules and procedures of creating new legal regulations. It is known, on the other hand, that the idea of the sex offenders registry has not been consulted with psychologists, psychiatrists, and criminologists, which is a pity, because maybe then it would be possible to notice the problems and threats that the said regulation can bring. They relate to the significant stigmatization and social exclusion from which both the persons entered in the registry as well as their victims will suffer. The possibility of subjecting the offenders to therapy implemented within the framework of the therapeutic and protective measures causes as many problems. Placing a person undergoing therapy on a public list will interfere with the conditions and procedures of therapeutic intervention. It will rather discourage than motivate the offenders to a committed participation in the treatment. In general, it is an idea which cannot be accepted by the psychiatric, psychological, and sexological circles, both due to the lack of scientific evidence of its effectiveness, and due to the violation of the fundamental principles of medical and psychotherapeutic ethics.

The emphasis should be placed not just on the creation of the registry but also on the creation of an entire system of interactions including three levels of interactions [24]. The first level includes actions aimed at the whole society, involving education and promotion of attitudes not supporting sexual violence. The second level includes interactions aimed at potential offenders who have not yet been convicted, such as the Prevention Project Dunkelfeld [25]. The third level includes interventions undertaken within the framework of the criminal justice system against sex offenders. These include the treatment conducted while serving the sentence, the therapy after the sentence, post-penitentiary supervision, and active assistance in the reintegration into the society, conducted in the form of the so-called support circles [26]. The registries of sex offenders are also a measure within this level. However, they should be of secondary importance, and due to the repeatedly demonstrated negative consequences, they should be non-public. In addition, in view of the principle of binding the intensity of interactions with the level of the risk of recidivism [27], it is postulated that the entry to the registry should exclude offenders characterised by a low level of risk [e.g. 28]. Prior to the effective application of the risk principle in Poland, it is necessary to adapt the tools of assessing the risk of sexual recidivism to the Polish conditions.

References

1. Ackerman AR, Sacks M, Greenberg DF. *Legislation targeting sex offenders: are recent policies effective in reducing rape?* Justice Quart. 2012; 8825: 1–30.
2. Agan AY. *Sex offender registries: fear without function?* J. Law Econ. 2011; 54(1): 207–239.
3. Vasquez BE, Maddan S, Walker JT. *The influence of sex offender registration and notification laws in the United States: a time-series analysis*. Crime Delinq. 2007; 54(2): 175–192.
4. Maurelli K, Ronan G. *A time-series analysis of the effectiveness of sex*. J. Forens. Psychiatry Psychol. 2013; 24(1): 128–143.
5. Drake EK, Aos S. *Does sex offender registration and notification reduce crime? A systematic review of the research literature*. Washington State Institute for Public Policy; 2009. http://www.wsipp.wa.gov/rptfiles/09-06-1101.pdf [retrieved: 19.03.2016].
6. Sandler JC, Freeman NJ, Socia KM. *Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law*. Psychol. Public Policy Law 2008; 14(4): 284–302.
7. Prescott JJ, Rockoff J. *Do sex offender registration and notification laws affect criminal behavior?* J. Law Econ. 2008; 54: 161–206.
8. Barnoski R. *Sex offender sentencing in Washington State. Has community notification reduced recidivism?* Washington State Institute for Public Policy; 2005. http://www.wsipp.wa.gov/ReportFile/919 [retrieved: 19.03.2016].
9. Duwe G, Donnay W. *The impact of Megan's Law on sex offender recidivism: The Minnesota experience*. Criminology 2008; 46(2): 411–446.
10. Freeman NJ. *The public safety impact of community notification laws: Rearrest of convicted sex offenders*. Crime Delinq. 2012; 58(4): 539–564.
11. Agan A. *Sex offender registries: Fear without function?* Unpublished manuscript, University of Chicago, 2007.
12. Letourneau EJ, Levenson JS, Bandyopadhyay D, Sinha D, Armstrong KS. *Effects of South Carolina's sex offender registration and notification policy on adult recidivism*. Crim. Justice Policy Rev. 2010; 21(4): 435–458.
13. Schram, DD, Milloy C. *Community notification: A study of offender characteristics and recidivism*. Washington State Institute for Public Policy; 1995. http://www.wsipp.wa.gov/ ReportFile/1208 [retrieved: 19.03.2016].
14. Duwe G, Donnay W. *The effects of failure to register on sex offender recidivism*. Crim. Justice Behav. 2010; 37(5): 520–536.
15. Levenson J, Letourneau E, Armstrong K, Zgoba KM. *Failure to register as a sex offender: Is it associated with recidivism?* Justice Q. 2010; 27(3): 305–331.
16. Tewksbury R, Jennings WG. *Assessing the impact of sex offender registration and community notification on sex-offending trajectories*. Crim. Justice Behav. 2010; 37(5): 570–582.
17. Tewksbury R, Jennings WG, Zgoba K. *A longitudinal examination of sex offender recidivism prior to and following the implementation of SORN*. Behav. Sci. Law 2012; 30: 308–328.
18. Zgoba K, Veysey BM, Dalessandro M. *An analysis of the effectiveness of community notification and registration: Do the best intentions predict the best practices?* Justice Q. 2010; 27(5): 667–691.
19. Lasher MP, McGrath RJ. *The impact of community notification on sex offender reintegration: A quantitative review of the research literature*. Int. J. Offender Ther. Comp. Criminol. 2012; 56 (1): 6–28.

20. Levenson J, Tewksbury R. *Collateral damage: Family members of registered sex offenders*. Am. J. Crim. Justice 2009; 34(1–2): 54–68.
21. Hanson RK, Harris A. *Dynamic predictors of sexual recidivism*. Ottawa, ON: Solicitor General of Canada; 1998. http://www.static99.org/pdfdocs/hansonandharris1998.pdf [retrieved: 18.01.2016].
22. Association for the Treatment of Sexual Abusers. *The registration and community notification of adult sexual offenders*. http://www.atsa.com/registration-and-community-notification-adultsexual-offenders [retrieved: 19.03.2016].
23. Lewandowska K. *Karać czy leczyć? Strategie postępowania ze sprawcami przestępstw seksualnych wobec dzieci na przykładzie wybranych krajów*. Dziecko Krzywdzone 2007; 6(1): 6–19.
24. Laws DR. *The public health approach: A way forward?* In: Laws DR, O'Donohue WT. ed. *Sexual deviance*. 2nd edition. New York: The Guilford Press; 2008. p. 611–628.
25. Beier KM, Grundmann D, Kuhle LF, Scherner G, Konrad A, Amelung T. *The German Dunkelfeld project: A pilot study to prevent child sexual abuse and the use of child abusive images*. J. Sex. Med. 2015; 12(2): 529–542.
26. Elliott IA, Zajac G. *The implementation of Circles of Support and Accountability in the United States*. Aggress. Violent Behav. 2015; 25: 113–123.
27. Andrews DA, Dowden C. *Risk principle of case classification in correctional treatment: A metaanalytic investigation*. Int. J. Offender Ther. Comp. Criminol. 2006; 50: 88–100.
28. Durling C. *Comment never going home: Does it make us safer? Does it make sense? Sex offenders, residency restrictions, and reforming risk*. J. Crim. Law Criminol. 2006; 97(1): 317–364.

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