

Post-Release Controls for
Sex Offenders in the U.S. and UK

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Abstract

In recent years, both the United States and United Kingdom have developed numerous innovations in legal efforts to protect society from sex offenders. Each country has adopted special provisions for sex offenders. In particular, governments have focused on forms of social control after release from incarceration and probation. These policy innovations for this category of offenders have been more far reaching than those for any other offender population. The two jurisdictions have adopted policies with similar goals, but the selected strategies have important differences. Generally speaking, the U.S. has favored an ever-expanding set of policies that place sex offenders into broad categories, with few opportunities that distinguish the appropriate responses for individual offenders. The UK government observed the proliferation of Megan's Laws¹ in the U.S., and deliberately chose to establish carefully controlled releases of information, primarily relying on governmental agencies to work in multi-disciplinary groups and make case-specific decisions about individual offenders. Although the UK policy leaders expressed significant concern that the public's response to knowing about identified sex offenders living in the community would result in vigilantism, to date the results have not born out this fear. Both governments have turned to other crime control measures such as polygraphy testing, electronic monitoring, and civil protection orders as a means to prevent further sexual violence.

<1> Introduction

In recent years, both the United States and United Kingdom have developed numerous innovations in legal efforts to protect society from sex offenders (see Beauregard & Lieb, 2010

¹ Named after Megan Kanka, a young girl sexually assaulted and murdered by a known sex offender. For further information on Megan's Law, see: http://en.wikipedia.org/wiki/Megan's_Law, accessed September 21, 2010.

for a summary of U.S. provisions; for the UK, see Matravers & Hughes, 2003; and Petrunik & Deutschmann, 2008). Each county has adopted special provisions for sex offenders, particularly ones implemented after release from confinement or as alternatives to confinement, that are more far-reaching than for any other class of criminals (Lieb, 2000). The two jurisdictions have adopted policies with similar goals, but the selected strategies have important differences. Generally speaking, the U.S. has favored an expansive set of policies for large populations of sex offenders, whereas the UK has approached policy setting in a more individualized manner. In addition, the UK has relied on pilot projects to test feasibility and effectiveness before adoption of a new policy approach, whereas the U.S. has relied much more on setting policy without these measures.

This article first describes U.S. policies and then covers related policies in the UK. A summary regarding comparisons between the two jurisdictions follows.

<2> Controls After Release in the U.S.

Sex offender policy has received extensive attention in the U.S. legislative bodies in the past two decades (Cohen & Jeglic, 2007). This article reviews registration and notification laws, residency restrictions, technological controls during supervision, multi-agency collaborations, and civil protection orders.

Sex offender registries exist in all 50 states and publicly identify individuals with prior sexual offense convictions; in 2010, over 716,750 individuals were identified in online websites, an overall rate of 232 per 100,000 people (National Center for Missing & Exploited Children, 2010). First enacted in the U.S. in the 1930s, registries were initially directed toward identifying habitual violators of criminal laws, with a primary objective of incarcerating or banishing “undesirable” individuals (University of Pennsylvania Law Review, 1954, pp. 60-112). In 1947,

California enacted the first statewide law specific to sex offenders. By 1989, nine other states had passed sex offender registration statutes (Logan, 2009). These early statutes, however, were “modest in scope” and typically not open to inspection by the public (pp. 31-32).

In the early 1990s, Washington State resurrected registries as a public protection mechanism directed at sex offenders (Lieb, Quinsey, & Berliner, 1998). Initially, publicly available information about sex offenders was limited to a small group of individuals considered to pose “high risks of re-offending” and, thus, deserving extensive public review and attention (p 71). Initial law enforcement guidance directed agencies to divide the sex offender population into three categories of risk, with the lowest level (I) not subject to notification, Level II offenders subject to targeted notification, and information about Level III offenders released to the broad public (Donnelly & Lieb, 1993, p. 6).

In the middle of the 1990s, the reach of registries and notification laws was broadened by individual state legislatures (Logan, 2009). By 1996, twenty states had procedures establishing levels of notification, usually implementing a three-level classification system similar to Washington State’s model (Matson & Lieb, 1996). Questions about the constitutionality of these laws were answered early by the courts, most declaring they are a reasonable exercise of regulatory power with any potential rights infringement outweighed by the contribution to public safety (Terry & Ackerman, 2009, pp. 65-98).

In 1994, the federal government passed the Jacob Wetterling Act,² which required states to make relevant information on released sex offenders public, or face a 10 percent reduction in criminal justice block grants. Following several years of amendments, in 2006 the act was repealed and replaced by the far more prescriptive Adam Walsh Child Protection and Safety

² *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program 1994 (USA)*

Act.³ Compliance with the statute has occurred very slowly: as of 2010, only four states and two Indian reservations had achieved substantial compliance with the law (U.S. Department of Justice, 2010). Concerns about the necessary costs to implement the measures have preoccupied many states.

Once a sex offender leaves prison in the U.S., registration/notification laws direct the individual sex offender to register at the local law enforcement agency. Compliance has been a significant problem; many offenders choose not to register initially or not to supply address changes. State and local registries are frequently revealed to be inaccurate (Benjamin, 2007; “All things aren’t equal in sex offender tracking,” 2007). In 2007, the National Center for Missing & Exploited Children estimated that 100,000 offenders were not in compliance with the laws. The National Center found that two-thirds of states allow convicted sex offenders to register as homeless or provide the address of a homeless shelter as their residence, so long as they maintain contact with local law enforcement (National Center for Missing & Exploited Children, 2007). Hundreds of sex offenders are listed as homeless or without a specific address in at least 12 states’ registries (Koch, 2007). In an effort to increase compliance, numerous states are moving to systems that transfer new addresses reported to drivers’ license agencies directly to the sex offender registration agency.

<2.1> Have Registration and Notification Laws Influenced Crime Rates?

Two studies have analyzed multiple states, relying on aggregate-level data to address this question. Prescott and Rockoff (2008) analyzed National Incidence Based Reporting System data in fifteen states using variables related to the timing and scope of state laws. Their conclusions revealed the subtle interactions of legislative policy and offender responses. The authors found evidence that registration reduces the occurrence of sex offenses and concluded

³ *Adam Walsh Child Protection and Safety Act 2006 (USA)*

that this outcome is linked to law enforcement's knowledge about the location of registered offenders. For first-time sex offenders, they detected a deterrent effect from notification, but found an increase in recidivism rates for those sex offenders already on the registry. What might cause this increase? The authors suggest that the "heavy social and financial costs associated with the public release of their information" is responsible (p. 34). Because registration has a greater effect than notification, the authors determined the overall net effect as a 10 percent reduction (Prescott & Rockoff, 2008). Another set of researchers, Shao and Li (2006) examined all fifty states, using Uniform Crime Report panel data from 1970 to 2002. Their work resulted in an estimate that registration led to a 2 percent reduction in rapes reported to police (Shao & Li, 2006).

<2.2> Have Registration and Notification Laws Influenced Factors Other Than Recidivism?

Researchers have found increased labor and equipment costs to law enforcement (Zevitz & Farkas, 2000) and consequences to property values and time on market for households close to registered offenders (Linden & Rockoff, 2006; Pope, 2008; Brastow, Waller, & Wentland, 2010). At least five murders of registered sex offenders have been committed by persons who gained their knowledge of the individuals' sexual offense history through a registry (Logan, 2009). The public's strong interest in knowing about convicted sex offenders in their communities has been confirmed by several sources (Center for Sex Offender Management, 2010; Levenson, Brannon, Fortney, & Baker, 2007; Mears, Mancini, Gertz, & Bratton, 2008), but it is unclear whether this information results in protective behavior (Anderson & Sample, 2008; Lieb & Nunlist, 2008; Beck & Travis, 2006).

<2.3> Residence Restrictions

As registration and notification laws revealed the presence of convicted sex offenders in communities, policymakers in the U.S. turned to zoning laws to control where sex offenders live. To date, 30 states have enacted laws restricting where sex offenders can live (Nieto & Jung, 2006; Meloy, Miller, & Curtis, 2008). The laws are typically referenced as child protection or exclusion zones and normally prohibit sex offenders from living within a prescribed number of feet from particular locations such as schools, churches, playgrounds, or other locations where children are likely to be present. Distances vary from 300 to 2,000 feet (National District Attorneys Association, 2007).

<2.4> Have residence restrictions influenced housing choices for registered sex offenders?

Several studies have pinpointed the severe limitations on housing choices for offenders wanting to obey the law. In 2006, an examination of parcels in Orange County, Florida concluded that only 5 percent of potentially available parcels were outside the defined buffer zones (Zandbergen & Hart, 2006). A 2009 study in New Jersey concluded that if residence restrictions were in place, most sex offenders could not remain in their current homes nor could they easily find housing elsewhere (Zgoba, Levenson, & McKee, 2009).

One observed consequence of residential restrictions has been increased homelessness among sex offenders. The California Department of Corrections and Rehabilitation found that more sex offenders were reporting as homeless because of the law. Among all registered sex offenders, the number registering as transient in California increased by 60 percent from June 2007 to August 2008, from 2,050 to 3,267 (California Sex Offender Management Board, 2008).

In the United States, the issue of homeless sex offenders has been featured in numerous television and news stories (“Florida housing sex offenders under bridge,” 2007; Pickel 2009), however, there is no evidence that policymakers have reacted to this news by repealing or

changing residence restriction laws. As the section on UK policies will reveal, citizens and policymakers in those countries have demonstrated more concern about homelessness and have taken specific actions to guard against this consequence.

<2.6> Technological Controls

In recent years, supervision of sex offenders has included use of technological equipment as a means of increasing controls over offenders. These practices include electronic monitoring of offenders' movements in the community, and the use of polygraph equipment to verify an offender's location. These technologies rest on the assumption that individual sex offenders decide not to engage in potential risky behavior that may be revealed through polygraph testing or by reviewing their movements (International Association of Chiefs of Police, 2008; New York State Division of Probation and Correctional Alternatives, 2009).

In 2008, the Bureau of Justice Statistics surveyed states to determine the number of adults tracked by GPS. Approximately 13,000 were on parole and nearly 8,000 of them were sex offenders (Glaze & Bonczar, 2009, pp. 35 & 55). A 2007 survey of states by the Interstate Commission for Adult Offender Supervision indicated that 34 states were using GPS for sex offenders (Interstate Commission for Adult Offender Supervision, 2007). At least six states (California, Florida, Ohio, Missouri, Oklahoma, and Wisconsin) now require lifetime electronic monitoring for certain offenders (Dunlap, 2010). Research on the use of this technology for the general population of offenders has found that it saves taxpayers money because it is often a substitute for incarceration, but electronic monitoring itself does not reduce recidivism (Aos, Miller, & Drake, 2006). Renzema (2009) has documented several potential benefits associated with electronic monitoring: helping the public feel safer, structuring offenders' time and

involvement in productive activities, and helping investigations by pinpointing travel information

An audit of GPS monitoring of sex offenders in California in 2009 found that agency practices were insufficient to provide protection to the public and, as applied, provided “a false sense of security” (Office of the Inspector General, 2009, p. 25). The research literature on electronic monitoring for sex offenders is still in development.

<2.7> Multi-Agency Collaborations

In recent years, interdisciplinary Sex Offender Management groups have been created in twenty-six states (Lobanov-Rostovsky, 2007). The scope of these groups varies by state, but the typical roles are to review policy topics and make recommendations to the executive and legislative branches. Unlike the Multi-Agency Public Protective Arrangements (MAPPA) in the UK, these groups typically have no authority or role in decision-making regarding individual offenders. Some groups are time-limited and respond to specific issues, whereas others are ongoing (Bumby & Talbot, 2010).

The Center for Sex Offender Management, a project of the U.S. Department of Justice, has promoted an interagency, collaborative approach as a means of protecting citizens from sex offenders (2008). The Center identifies six key components for an interagency collaboration: investigation, prosecution and disposition, assessment, treatment, reentry, supervision, and registration and notification. Representatives from a wide range of agencies are encouraged to participate: law enforcement, victim advocacy groups, the judiciary, prosecution, defense, clinical professions, health, human and social services, institutional and community corrections, releasing authorities, and community supervisors (Center for Sex Offender Management, 2008). Because each jurisdiction chooses its members and operations, significant variability appears in

these arrangements (Center for Sex Offender Management, 2001). No rigorous outcome evaluations have been conducted of this approach to sex offender management in the U.S.

<2.8> Civil Protection Orders

The civil system offers a legal intervention called a protection order for individuals who have been subject to domestic violence, stalked, or otherwise threatened or abused. Intended to reduce the risk of future harm connected to a specific person, civil protection orders were started in the U.S. in the 1970s and were prevalent in every state by 1989 (U.S. Department of Justice, 2002). The laws vary in each state, but follow a general pattern of separating the orders by their duration: emergency (typically a week); temporary (a few weeks); restraining orders (up to three years); permanent orders (life of either party). The vast majority of orders are used in domestic violence situations. For violations of protection orders, criminal sanctions are commonly available (U.S. Department of Justice, 2002).

Several states have also created protective orders specifically for sexual assault victims as a means to cover individuals who are assaulted by strangers or acquaintances (Carroll, 2007). As of 2007, seventeen states had enacted sexual assault protection orders.

<3> Sex Offender Controls in the UK

The next sections will cover recent innovations in sex offender post-release controls in the UK. In most instances, policy on the “other side of the pond” has been directed at the same goals as selected by the U.S., but the implementation strategies have significant differences. This section will discuss the Multi-Agency Public Protection Arrangements (MAPPA), public registries, and civil protection orders.

Within England and Wales, multi-agency systems for risk assessment and management of offenders came into existence in the early 1990s (with later developments in Scotland), and were

typified by “case conferencing” style procedures between police and probation (e.g. West Yorkshire police and probation area were one of the first to pursue this approach; Maguire, Kemshall, Noaks, & Wincup, 2001; see also Nash & Williams, 2008, pp. 109-112 for a history).

Multi-agency procedures became more formalized in response to the 1997 Sex Offender Act, which introduced the registration requirements for sex offenders (see Nash & Williams, 2008, pp. 110-111).⁴ The act required greater cooperation between police and probation and, in effect, sowed the seeds for the emergence of the Multi-Agency Public Protection Arrangements (MAPPA; Criminal Justice Act 2003). Parallel legislation, such as the Crime and Disorder Act 1998⁵ (sections 115-117 in particular), enabled information exchange for the purpose of preventing crime and provided the backdrop against which information exchange systems between police and probation, and eventually other agencies, began to expand (Ericson & Haggerty, 1997). These developments resulted in a growing actuarialism in risk assessment, with increased attention to formalized risk assessment tools and structured decision making replacing professional judgment (see Kemshall, 2003, chapter 4 for an overview; Bonta & Wormith, 2007).

Early multi-agency panels were characterized by inconsistency of practice, lack of clarity about risk levels, differing systems and processes, and differing levels of participation from key agencies (Maguire et al., 2001; Maguire & Kemshall, 2004). The early years of MAPPA focused on information processing, combined with the monitoring and surveillance of offenders (Kemshall, Mackenzie, Wood, Bailey, & Yates, 2005; Kemshall, 2003), with limited attention to behavior change or the treatment needs of offenders. Risk management plans were highly

⁴ For a detailed account of MAPPA systems, processes, and mode of operation see: Kemshall, H. and Wood, J. (2007). High-risk offenders and public protection. In: L. Gelsthorpe and R. Morgan (eds.) *Handbook of Probation*. Cullompton, Devon, England: Willan, pp. 381-397; *Sex Offenders Act 1997* (UK).

⁵ *Crime and Disorder Act 1998* (UK)

dependent on the use of restrictive conditions and the use of both covert and overt surveillance to manage sex offenders in the community (Kemshall, 2003).

MAPPA in the 1990s and early 2000s was also subject to increasing central steer, particularly with regard to systems and processes that allowed for national consistency and the judicious use of limited resources. This increasing centralized control also reflected continued high profile cases and the reputational risks challenging the criminal justice system including MAPPA (e.g. the murder of Naomi Bryant by Anthony Rice; Her Majesty's Inspectorate of Probation (HMIP), 2006), and the use of “public protection” to justify disproportionate sentencing and interventions for sexual and violent offenders (e.g., Criminal Justice Act 2003).

More recently, the over-dependence upon restrictive conditions has been recognized, with concerns that sex offenders are left socially isolated and that re-settlement and treatment can be stymied by the overuse of negative conditions (Her Majesty's Inspectorate of Probation (HMIP) & Her Majesty's Inspectorate of Constabulary (HMIC), 2005). This paralleled findings in the U.S. by Levenson and Cotter (2005) who found that the use of exclusion zones resulted in homelessness and transience, making risk management harder. While the findings in the U.S. do not appear to have influenced public policy (Yung, 2007), in the UK, the MAPPA Guidance (Ministry of Justice, 2009a) attempted to counter these effects by focusing on the quality of the supervisory relationship, motivational techniques, and the use of behavioral contracts (pp. 178-186, a section based on Wood & Kemshall, 2007).

<3.1> Public Disclosure

This delicate balance between reintegration and public safety has also been played out in the UK's policy response to public disclosure. Despite calls for a UK Megan's Law (Sarah's Law) following the abduction and murder of Sarah Payne by Roy Whiting in 2000 (“Sign Here

for Sarah,” 2000), the UK has not adopted public disclosure or community notification laws as per the U.S. models. The UK government resisted calls for community notification on the grounds that the U.S. had not found a reduction in sexual offenses (Fitch, 2006), and because such approaches have the potential to drive offenders “underground” (Fitch, 2006; Maguire & Kemshall, 2004), a view strongly expressed by the major UK Children's Charities (“Review says no to UK Megan’s Law,” 2007).

Within the UK, “discretionary” or “limited” disclosure has been adopted, with the current arrangements allowing MAPPA to disclose to third parties if specific criteria are met. In contrast to U.S. community notification system, UK disclosures are heavily controlled, done by professionals, made to a limited number of known persons, and justified on the grounds of individual and public safety (Cann, 2007).

Discretionary or “controlled” disclosure is the preferred option in the UK, as it avoids vigilante action, and responds to concerns expressed by the Association of Chief Police Officers (ACPO) about the potential impact on public order and acts of retribution on individual offenders (Taylor, 2006). The outcome of disclosure for offenders is not always negative. As Cann (2007) notes, disclosure did not always lead to the termination of intimate relationships or employment. Cann states: “In some cases an offender's partner engaged with the MAPPA in managing risk, while remaining in the relationship” (p. 9) and “many offenders continued with work and other activities (e.g. church attendance), but disclosure allowed this to take place under supervision or when children were not present” (p. 9). The alleviation of potentially negative consequences was greatly assisted by the use of “behavioral contracts” in one MAPPA area (Wood & Kemshall, 2007). These contracts, by specifying clearly what offenders can and cannot do, and who will know about them, enabled offenders to return to college, employment, or to attend church or

work with voluntary groups. Since 2006, limited use of public disclosure has been used to find high-risk sex offenders who have “gone missing.” This effort occurs through the Child Exploitation and Online Protection Centre (CEOP) “Most Wanted” list with some announcements on TV and radio (Child Exploitation and Online Protection Centre). This has been restricted to a few cases per year and has had some success in locating missing offenders. The disclosures are justified by the risk of significant harm to the public from such offenders.

While UK politicians have resisted a U.S. style Megan’s Law, the Child Sex Offender Review (CSOR) by the Home Office in 2006-07, recommended a limited scheme to allow members of the public to make applications for disclosure (Home Office, 2007a, action 4, p. 11). Subsequently, the Home Office carried out a pilot scheme to allow parents to register a child-protection interest in a named individual with whom they have a personal relationship and who has regular unsupervised access to their child (Home Office, 2008). In these cases where the offender has a conviction for child sexual offenses and the risk justifies it, there is a presumption for disclosure to the applicant. Interestingly, the volume of applications made under the pilot was less than half of the expected volume (a total of 315 from an expected number of 600+), and due to the criteria of the scheme applications are made about persons known to the applicant. That is, the scheme is not targeted at “Stranger-Danger” fears (Kemshall, Wood, & Westwood, 2010a; Kemshall, Wood, Westwood, Stout, Wilkinson, Kelly, & Mackenzie 2010b).

Whilst this public disclosure scheme only became national in 2010 and is yet to be subjected to further evaluation, the UK scheme is important for a number of reasons. Most notably, when combined with the existing discretionary disclosure of MAPPA, this controlled approach appears to satisfy public demands, counters community fears and anxieties, and avoids unintended impacts on offender compliance. The scheme also reassures applicants about the

measures taken by professionals to deal with the sex offender in question. On a broader note, it has also demonstrated that the public does not always live up to the caricature of “irrational,” vigilantes, or “media dupes,” (Kemshall 2008, ch. 5) and that if given information in an accessible and constructive way, members of the public are often able to effectively manage the risks they are exposed to.

<3.2> Technological Controls

Like the U.S., the UK has turned to the technology of polygraphy and electronic monitoring for sex offenders in the community. Electronic monitoring is widespread in the UK with over 53,000 individuals subject to monitoring from 2004 to 2005 (Comptroller and Auditor General, 2006). Although sex offenders are included in the population of “tagged” offenders, unlike practices in many U.S. states, there is not a special focus on using this equipment with high-risk sex offenders. First tried with volunteers in 2004 and 2005, the use of polygraphy as a mandatory element of supervision is now being tested in two probation areas. Over a three-year period, it is expected that 350 to 450 sex offenders will be given polygraph tests (“Lie tests tried on sex offenders,” 2009). An evaluation is in place, and the results will determine whether to implement the practices throughout the country (Ministry of Justice, 2009b).

<3.3> Civil Measures

The UK has also employed civil measures to prevent sexual offending. Civil court orders are imposed on people to prohibit them from engaging in activities that could lead to a risk of sexual harm or to actual sexual offending. The four main orders used are the Sexual Offences Prevention Order, Risk of Sexual Harm Order, Foreign Travel Orders, and the Notification Order (The Sexual Offences Act 2003, Part Two).

The Sexual Offences Prevention Order (SOPO) is applied for by the police in a civil court; it may also be imposed by a criminal court at the time of sentencing. The aim is to protect the public from serious sexual harm and if the qualifying criteria are met, the court makes the order, which contains a set of prohibitions. Failure to comply with the order could result in criminal procedures being initiated and a fine of up to £5000 or imprisonment for up to five years.

SOPOs can be imposed on anyone convicted of an offense listed in the Sexual Offences Act 2003 Schedule 3. Police applying for a SOPO have to demonstrate that the person is a “qualifying offender” and that they have been acting in such a way that a SOPO is believed to be necessary (Home Office, 2004). The “negative prohibitions” deemed necessary for the purpose of protecting the public; the order cannot list any positive requirements. The person made subject to the SOPO is required to desist from the activities listed, activities which, in and of themselves may or may not be criminal acts. The SOPO leads to automatic inclusion on the sex offender register where the person was not already on it (i.e., their convictions pre-date the register, which is not retrospective) (Almandras, 2010).

Concern has also been expressed about what exactly constitutes a “negative prohibition.” In particular the right of police entry to the home of someone subject to a SOPO could not be made because that it would be a “positive requirement” rather than a “negative prohibition.” The police, however, could simply re-word this “right of entry” and make it a negative prohibition by saying the person concerned “must not deny access” to a police officer (Thompson [2009] EWCA Crim 3258). The Appeal Court described such police semantics as “draconian” because it effectively created a continuing search warrant lasting at least five years (Thompson [2009] EWCA Crim 3258). It also conflicted with authority police were given in 2006 to apply for a

“right of entry” warrant (Violent Crime Reduction Act 2006, s 58). Thompson [2009] EWCA Crim 3258 - where the EWCA Crim 528 currently is Terry

An evaluation of a sample of SOO’s revealed that most prohibited a person from seeing another person (35 percent) but some 29 percent contained prohibitions for offenders to enter certain locations. These locations were generally schools, play areas, and leisure centres but also included some specific schools, or streets (Knock, 2002, pp. 28-29). The UK has not considered the more universal sex offender “residence restrictions” used by many states in the U.S. (Nieto & Jung, 2006).

<3.4> Risk of Sexual Harm Order

The Risk of Sexual Harm Order (RSHO) is another civil order where criminal proceedings are initiated if there is non-compliance (The Sexual Offences Act 2003, ss 123-129). The order seeks to prevent adults from initiating contact with children to “groom” them in order to initiate and perpetuate the sexual abuse of a particular child or group of children (Craven, Brown, & Gilchrist, 2006).

Most “grooming” takes place face to face, but the new law was also enacted to reduce growing fears that adults were grooming children over the internet in “chat rooms” and similar social spaces (Craven, Brown, & Gilchrist, 2007). The RSHO was an attempt to prevent preparatory interactions between adult and child from taking place whether on-line or off-line (Almandras, 2010).

The application for this order must demonstrate that a person has, on at least two occasions, done one of the following acts:

- (a) engaged in sexual activity involving a child or in the presence of a child;

(b) caused or incited a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;

(c) given a child anything that relates to sexual activity or contains a reference to such activity;

(d) communicated with a child, where any part of the communication is sexual

(The Sexual Offences Act 2003, s 123 (3))

RSHO's have been criticized for not actually offering a meaningful level of prevention (Craven et al., 2007). The first two items on this list of required evidence—(a) and (b)—are actually offenses documented in the Sexual Offences Act 2003. The critics believe that often, acts covered by the order could have been prosecuted but there was insufficient evidence for a criminal conviction, thus the orders are used as a “softer” alternative to prosecution (Craven et al., 2007). An application for a RSHO can be sought against *anyone*; there is no necessity that the person already be “known” and convicted for earlier sexual offenses, as is the case with the SOPO. Applicants only have to demonstrate the behavior patterns listed above (Almandras, 2010). To now say that *anyone* could be a potential child sexual offender is recognition of, and a tacit widening of, the scope of who might be deemed a sex offender.

<3.5> Foreign Travel Orders

The image of the travelling sex offender who crosses international borders to offend and to “contaminate” other countries has always been powerful (Kane 1998). In the UK, concerns about travelling sex offenders have taken a number of guises over the last twenty years. Initially the focus was on men from developed countries who travelled for the purpose of child exploitation to places where poverty drives children and young people into prostitution and law enforcement is lax. This behavior gave rise to the term “sexual tourist” (Kane, 1998). The UK

initially introduced requirements for those on the sex offender register, requiring them to notify police of intended foreign travel of more than eight days (The Sex Offenders (Notice Requirements) (Foreign Travel) Regulations 2001 SI 1846). The expectation was that the police could then notify the police of the destination countries of the pending arrival of the sex offender. The Foreign Travel Order is yet another variant of the hybrid civil order; if there is a violation, criminal proceedings occur.

Recently, other manifestations of the travelling sex offender have been topics of concern, including individuals travelling to other countries for employment in schools or child care agencies where they can access and abuse children (Fitch, 2007). Other travelers could be registered sex offenders who might travel to avoid their registration obligations. The UK's Child Exploitation and On-Line Protection agency (CEOP) reported that "70% of 'missing' registered high risk and very high risk sex offenders subject to notification requirements and located by CEOP in 2007-8 had travelled abroad while missing" (Association of Chief Police Officers, 2009).

New regulations now require registered sex offenders to notify the police if they intend to travel outside the UK for more than three days (up from eight) (Sexual Offences Act 2003 s86; and The Sexual Offences Act 2003 [Travel Notification Requirements] Regulations 2004 SUI 1220). The Home Office has said that it will eventually require that registered sex offenders notify the police of *any* foreign travel including travel for less than three days (Home Office, 2007b, p. 18); to date this proposal has not been acted upon.

The police may apply for an FTO if they believe the person concerned is a "qualifying offender," which for this provision means they have committed one of the offenses listed in Schedule 3 only and that they have been acting in such a way as to give reasonable cause to

prevent them leaving the country. Home Office guidance is again available to the police (Home Office, 2004, p. 47). The court must be satisfied that “serious sexual harm” would follow to a child or children if the travel was not stopped (The Sexual Offences Act 2003, s 115). The FTO originally prevented travel for a maximum of six months but this time period has now been raised to five years. The courts have also been given powers to confiscate passports (Association of Chief Police Officers, 2009).

<3.6> The Notification Order

The Notification Order is a civil order that requires a person to be included on the UK sex offender register if they have committed sexual offenses in a foreign jurisdiction that would have been an offense if committed in the UK. The orders can be made on British or foreign nationals returning to or arriving in the UK. The police apply for the order in a magistrates’ court and failure to comply carries a fine of up to £5000 or a maximum of five years in prison (The Sexual Offences Act 2003, ss 97-103).

The application for a Notification Order is, of course, dependent on the British police having knowledge of a person’s convictions overseas. With high profile offenders like Paul Gadd (pop star “Garry Glitter”) who returned from a custodial sentence for sexual offense convictions in Vietnam (“Glitter ordered to sign,” 2008), this condition can be easily met. Otherwise, it is dependent on the police or other judicial authorities in the relevant jurisdiction sending appropriate information to the UK.

<3.7> UK Orders Combining Civil and Criminal Law

All four of these civil Orders are backed by contempt or criminal proceedings for non-compliance; this approach has proved popular in the UK, with other versions such as the Non-molestation Order (introduced 1996), Protection from Harassment Order (1997), Anti-social

Behaviour Order (1998), the Drinking Banning Order (2006), and the Violent Offender Order (The Criminal Justice and Immigration Act 2008). Their respective names indicate the behavior they seek to regulate or prevent. The Violent Offender Order (VOO), for example, is applied for by the police to enforce against people convicted of qualifying offenses including manslaughter, wounding with intent to cause grievous bodily harm, malicious wounding, etc. and who the court thinks it is necessary to protect the public from to avoid the risk of serious violent harm.

Restrictions can be placed on an individual's right to visit certain people or places and to travel, with the sanctions for non-compliance being a fine or up to five years imprisonment. Those subject to VOO's also go on their own register (The Criminal Justice and Immigration Act 2008, Part 7; Home Office, 2009).

<4> Conclusion

Both the U.S. and UK have developed numerous innovations in laws and policies with the goal of protecting citizens from sex offenders. In both countries, governmental powers unique to this class of criminals have been developed, in terms of post-release controls. The two jurisdictions have relied on similar categories of intervention, namely supervision, informing the community, and civil protection measures. As a general observation, the UK's policy approach has been to tailor its use of governmental power to individuals where there is some form of demonstrated risk, where the U.S. has relied on broad classifications of sex offenders. In addition, the UK has frequently used pilot projects as a means of testing feasibility and effectiveness. Evidence regarding the effectiveness of specialized laws and approaches concerning sex offenders is emerging over time. Policymakers in both the U.S. and UK with an interest in strengthening public protection from sex offenders will have a growing body of research to consult as they look toward future laws and policies.

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