

Position Paper

Community Notification of Sex Offenders



June 2017

About the Authors

Carol Ronken worked as a researcher and Associate Lecturer at Griffith University in the School of Criminology and Criminal Justice before joining Bravehearts in May 2003. With a BA(Psych) and Masters Applied Sociology(Social Research), Carol is the Director of Research for Bravehearts and is passionate about ensuring the organisation's active involvement in research, policy and legislative development that aims to prevent, respond to, and ultimately reduce the incidence of child sexual assault in the community. In 2011 she received an award from the Queensland Police Service Child Protection and Investigation Unit for her contribution to child protection. Carol has also co-authored *The Bravehearts Toolbox for Practitioners working with Child Sexual Assault* (Australian Academic Press, 2011).

Carol is a member of the Australian and New Zealand Society of Criminology, the International Society for the Prevention of Child Abuse and Neglect, and the Child Protection Practitioners Association of Queensland. She sits on the Federal e-Safety Commissioner's Online Safety Consultative Working Group, the Queensland Victim Services Interagency Organisation Network, the Queensland Child Protection Advocates Group and Twitter's Trust and Safety Council.

In January 2017, Carol accepted a 3 year position as a Visiting Fellow in the School of Justice, Faculty of Law, at Queensland University of Technology.

Hetty Johnston AM is Founder and CEO of Bravehearts Inc., Australia's leading child protection advocate. Her most recent accolades include: being inducted into the Australian Businesswomen's 'Hall of Fame' in 2016, 2015 Queensland Australian of the Year, inducted in 2015 into Logan's Wall of Acclaim, Awarded Member of the Order of Australia (AM) in 2014.

Hetty is the author of national awareness campaign, 'White Balloon Day', 'Sexual Assault Disclosure Scheme', 'Ditto's Keep Safe Adventure' child protection CD-Rom and her autobiography, 'In the Best Interests of the Child' (2004). Hetty has been a contributing author to various books including, 'Crime on my Mind', and 'Women on Top'.

Hetty has been recognised for her outstanding contributions to child protection with numerous awards and nominations over her career since 1997. In 2013 Hetty was awarded Northern Australia's Ernst & Young Social Entrepreneur of the year. She was awarded a Paul Harris Fellowship in 2010 and is a Fellow of the Australian Institute of Community Practice and Governance (March 2010). In early 2009, Hetty was recognised as one of approximately 70 outstanding leaders throughout the world, receiving the prestigious annual Toastmasters International Communication and Leadership award. Hetty is the recipient of two Australian Lawyers Alliance Civil Justice Awards (2003, 2004).

Hetty is the Member of the International Society for the Prevention of Child Abuse and Neglect (ISPCAN); Australian Government Cyber-Safety Working Party; and the Queensland Government Child & Family Reform Stakeholder Advisory Group.

Acknowledgement:

Natalie Lehmann, a final year student in the School of Justice, Queensland University of Technology, undertook a review of this Position Paper in 2017. Bravehearts is grateful for Natalie's work in providing updated research on community notification laws.

This research paper has been prepared by:

Bravehearts

PO Box 575

Arundel BC, Qld 4214

Phone: 07 5552 3000

E-mail: research@bravehearts.org.au

Web: bravehearts.org.au

About Bravehearts Inc.



*Our **Mission** of Bravehearts is to prevent child sexual assault in our society.*

*Our **Vision** is to make Australia as the safest place in the world to raise a child.*

*Our **Guiding Principles** are to, at all times, tenaciously pursue our Mission without fear, favour or compromise and to continually ensure that the best interests, human rights and protection of the child are placed before all other considerations.*

*Our **Guiding Values** are to, at all times, do all things to serve our Mission with uncompromising integrity, respect, energy and empathy ensuring fairness, justice, and hope for all children and those who protect them.*

Bravehearts has been actively contributing to the provision of child sexual assault services throughout the nation since 1997. As the first and largest registered charity specifically and holistically dedicated to addressing this issue in Australia, Bravehearts exists to protect Australian children against sexual harm. All activities fall under 'The 3 Piers' to Prevention; Educate, Empower, Protect – Solid foundations to make Australia the safest place in the world to raise a child. Our activities include but are not limited to:

EDUCATE

- ◆ Early childhood (aged 3-8) 'Ditto's Keep Safe Adventure' primary and pre-school based personal safety programs including cyber-safety.
- ◆ Personal Safety Programs for older children & young people (CyberEcho and ProjectYou!) and specific programs aimed at protecting Indigenous children.

EMPOWER

- ◆ Community awareness raising campaigns including general media comment and specific campaigns such as our annual national White Balloon Day.
- ◆ Tiered child sexual assault awareness, support and response training and risk management policy and procedure training and services for all sectors in the community.
- ◆ Specialist advocacy support services for survivors and victims of child sexual assault and their families including a specialist supported child sexual assault 1800 crisis line.
- ◆ Specialist child sexual assault counselling is available to all children, adults and their non-offending family support.
- ◆ Specialist intervention programs for adolescents (12-17) who have or are at risk of engaging in harmful sexual behaviour.

PROTECT

- ◆ Policy and legislative reform including collaboration with State Government departments, as well as non-government sector agencies.

In 2006, Bravehearts first released a position paper on community notification laws. This paper has now been updated.

Bravehearts advocates that the first response should be the continued detention of dangerous sex offenders (see our Position Paper, *Balancing the Rights: Arguments for the continued detention of dangerous sex offenders*). It is our position that dangerous sex offenders should not be released back in to the community, until such time as they are assessed as low risk and that that risk can be managed in the community. We have continued detention legislation (such as the Queensland *Dangerous Prisoners (Sexual Offenders) Act 2003*) across the nation that can achieve this.

While Bravehearts does not support widespread community notification of sex offenders (based on the experience of ‘Megan’s Law’ in the United States), given the lack of will of the courts to continually detain dangerous offenders, we do believe that current registration legislation should be expanded to allow for restricted community notification. We advocate the duplication nationally of the Western Australian Legalisation which provides for the public disclosure of limited information relating to released, adult, dangerous, repeat child sex offenders.

This scheme provides a three tiered approach, providing:

- Information on missing sex offenders
- A local search facility that allows members of the public to search their local area (by postcode) for:
 - Dangerous sexual offenders subject to supervision orders under the *Dangerous Sexual Offenders Act 2006*;
 - Serious repeat reportable offenders;
 - Persons who have been convicted of an offence punishable by imprisonment for 5 years or more, and concern is held that this person poses a risk to the lives or sexual safety of one or more persons or persons generally.

The search results provide images of the offenders in the area, but does not provide addresses.

- Parents or guardians with the option to enquiry on whether or not a person of interest, who has regular unsupervised contact with their child, is a reportable offender.

Table of Contents

INTRODUCTION	1
COMMUNITY NOTIFICATION	2
<i>Models of Community Notification</i>	<i>2</i>
<i>Impact on Offenders.....</i>	<i>4</i>
<i>Cost of Implementation</i>	<i>8</i>
<i>Community Notification Laws in Practice</i>	<i>8</i>
<i>Sarah’s Law: Child Sex Offender Review (CSOR) Public Disclosure Pilots - UK.....</i>	<i>11</i>
<i>Community Protection – Western Australia.....</i>	<i>11</i>
<i>Impact on Public Safety and the Community</i>	<i>14</i>
BRAVEHEARTS POSITION	16
REFERENCES	19



Introduction

“We know, however, that when social problems instil great public fear, they sometimes result in a backlash of well-intentioned but poorly planned social policies. The public’s “right to know” must be balanced with the potential social and fiscal costs of Megan’s Law to communities as well as to sex offenders attempting to successfully reintegrate into society” (Levenson & Cotter, 2005)

Laws specifying that individuals, groups and communities should be notified when sex offenders are living in their areas are now widespread in the USA. Indeed, all fifty American states’ legislatures have enacted such legislation as well as laws that require released sex offenders to register with local police. There is now considerable public debate and pressure to introduce such laws into Australia.

It is our position based on overseas experience and research, that broad general notification laws do not work, however we do support limited disclosure legislation. While most Australian jurisdictions provide police with the discretion to notify, or disclose to, relevant agencies and personally effected individuals, certain details relating to released, adult, repeat child sex offenders where a legitimate risk or threat exists, we have long advocated for the release of limited information in relation to released, adult, repeat child sex offenders and were pleased to see Western Australia introduce legislation along these lines in 2011.

The rationale for Bravehearts position on this issue in Australia is outlined in this position paper.

Models of Community Notification

The public disclosure of a sex offender's information has become a popular response to the risk released offenders pose to the community, with the main objective to increase public safety (Levenson & Cotter, 2005). Community notification is a step beyond the more common official criminal registers held by enforcement bodies:

(i) Registration

Registration entails the reporting by offenders to justice agencies in order to monitor their movements (Cain, Sample & Anderson, 2017). Registration should not be confused with community notification because the records in the former generally are not made public. Registration is usually seen as unproblematic because such data are already held, and able to be retrieved by police. However, a number of commentators have suggested that registration databases do not go far enough, in the sense that their information is not broad enough, not detailed enough and not updated with sufficient regularity to be of assistance to the police.

Sex offender registration laws mandate that released sex offenders must register with their local police after release from prison and provide a range of identifying information. Each time an offender moves he or she must re-register. The aims of registration are to assist law enforcement and protect communities from sex offenders. There is often much variation in respect to the information collected and the time period for, and duration of, registration. Information collected typically includes the offender's name, address, photo, date of birth and criminal history, as well as any current employment information.

(ii) Community Notification

Community notification laws take the dissemination of this information to another level, providing details of an offender to individuals, specific community groups or the general public.

Community notification can refer to three forms of public access to information on offenders. It may entail legislation that allows *restricted access*, where particular individuals or community organisations seek to obtain information on a specific offender based on a 'need to know' basis. *Limited disclosure* means that particular individuals who are assessed as at risk from the offender, or organisations that deal with children (eg. schools, child care centres etc) are provided with information around a specific offender. Finally, *general disclosure* which is where individuals within a particular community or geographic area are informed of the identity, location and criminal history of released sex offenders.

The types of information released to the public varies. In some US States the information is specified in legislation, in other areas it is disclosed at the discretion of local law enforcement authorities. Typically, released information comprises the offender's name and address, physical description, photo, crime of conviction and age of victim. In the US, some States require information on all registered sex offenders to be posted on internet sites; other States require only certain offenders (eg. high risk offenders) to be posted (Lytle, 2015).

The arguments over a public register of convicted paedophiles compared with a police register have been well canvassed. The main arguments in favour of a public register are as follows:

- The public has a right to know that an offender is living nearby, so that they can take precautions.
- Gives parents, neighbours and work colleagues an opportunity to protect their children against known child sex offenders whom they might otherwise unsuspectingly invite into their lives.
- A public register could be a greater deterrent to new offences as the offender knows they are being monitored, which in turn would increase their likelihood of detection, apprehension and conviction (Tewksbury, 2006).
- Victims feel more secure knowing their abuser is being monitored.
- Community anger is soothed, and members of the community might *perceive* that they are safer.
- Arrests may happen more quickly.
- Heightened surveillance and supervision of offenders.
- Community members are in a better position to provide law enforcement agencies with valuable intelligence, through informal surveillance.
- Registers do not stop offenders from offending although they may impact on who the victim might be (i.e. not a neighbour's child). The ability to groom children who may live in the same area as the offender or who are the children of people the offender has befriended may be disrupted by community notification.

The main arguments against a public register are as follows:

- The register may inadvertently reveal the name of the victim.
- The register may brand innocent members of the child sex offender's family.
- There may be victimisation of innocent individuals whose name or physical appearance are confused with those of offenders.
- There may be encouragement of community anger or lawlessness.
- If there is no grading, so that lower risk offenders' names are kept off the public register, the public register may "brand" all offenders including those who have every chance of not reoffending again, reduce their privacy, and subject them to harassment by vigilantes. If offenders are hounded from place to place, the stress may influence them to re-offend. (In the UK a paedophile was hounded out of more than 10 hotels/motels and 3 homes/apartments after authorities notified his neighbours).

- Registered paedophiles are more likely to 'disappear'.
- Released paedophiles are less likely to register. A much higher percentage of paedophiles register in the UK where the registers are not made public compared to the US.
- Offenders may take more drastic steps to cover up their offence.
- Some suggest it is a double-punishment of the offender, given the further restrictions placed on an offender after they are released.
- Continued punishment of sex offenders after they have already paid for their crimes is considered punitive and cruel and unusual punishment (Griggs, 2015).
- The community is lulled into a false sense of security, whereas most paedophiles are never charged or convicted and live in every suburb and town across the country.
- Huge cost involved must be measured against actual effectiveness. The greater expense of a public register (as compared to a police register) may be otherwise spent on other methods of prevention and policing.
- There is a lack of evidence highlighting the effectiveness of community notification policies, and legislation is not based on empirical evidence in the first place (Maguire & Singer, 2011). Additionally, legislation provides little evidence of true community safety.
- Community notification negatively impacts the offenders' success for rehabilitation.
- Blind application of policies restricting sex offenders serve a political agenda, instead of providing treatment, rehabilitation and reintegration processes (Kruse, 2007).
- Community notification policies fail to address the offenders' deviant behaviour.
- Parole board members and law enforcement officials felt community notification laws in their jurisdiction were unfair (Mustaine, Tewksbury, Connor & Payne, 2015).
- Sanctions applied to sex offenders are net-widening, and are overlong in duration.
- There is no substitute for parental supervision and common sense. Most often, the perpetrator is known to the victim.
- Some offenders believe notification laws are not effective in preventing them from recidivating, instead they believe the lack of contact with potential victims is the reason they have not reoffended (Griggs, 2015).

Impact on Offenders

The threat of community notification may prevent convicted sex offenders from seeking or maintaining treatment. Fear of reprisals against the individual offender, as well as family members, may mean that the offender deliberately avoids creating new, or contacting existing support networks of family and friends. Clinical psychologists claim that the environment in which a sex offender lives is one of the crucial factors in determining risk of recidivism. Environmental factors considered relevant to lowering the risk of recidivism are low stress levels, gaining employment, overcoming denial, empathy with victims, refraining from drug and/or alcohol and

being part of a social network. These factors are most likely to be jeopardised by community notification. A study on sex offenders in Florida found a third of offenders report harassment and job loss after registering as a sex offender, whilst the majority of sex offenders report feeling hopelessness and stress when subject to community notification (Agan, 2011).

The potential loss of opportunity to prevent future sex offending via access to treatment is particularly relevant to juvenile sex offenders, who perpetrate approximately 17% to 20% of sex crimes in the US. Over the past 20 years, sanctions and strategies to reduce crime are visible in three main areas; increased concern and alarm regarding juvenile crime, an expansion of social control over sex offenders and increased punitive responses to juvenile offenders (Harris, Walfield, Shields & Letourneau, 2016). The convergence of these trends have led to a range of policies aimed at juveniles who sexually offend, however opponents of sex offender registration and notification argue these policies have collateral impacts on the youths' social, mental health and academic adjustment. Consistent negative effects of community notification policies include; difficulty securing and maintaining employment, housing disruption, physical assault, property damage, relationship-loss, verbal/physical threats and harassment (Harris, Walfield, Shields & Letourneau, 2016; Terry, 2015). Juvenile offenders who still attend school can also experience stigmatisation and differential treatment by teachers and classmates.

The fears of reprisal against the offender themselves as well as their family members is real. In 2006, a Perth radio station released the name and address of an offender who had raped and murdered an eight-year-old girl, leading to a vigilante attack on his house and demands for the offender to be put to death (Hayes, Carpenter & Dwyer, 2012). We have also seen other examples of such activity when the community becomes aware that an offender is residing in their area. In Britain, a popular newspaper, *News of the World*, began a 'name and shame' crusade after the sexual assault and murder of a young girl, publishing the names, addresses and photos of offenders (Terry, 2015). This campaign resulted in a series of vigilante attacks and at least 5 cases of wrongful victimisation. These campaigns are claimed to also have a level of responsibility for triggering 'lynch-mob' attacks, resulting in arson attacks, gang bashings and destruction of property. Following vigilante attacks, further police resources and time is spent to ensure the offenders safety, with one police officer reporting they had to move an offender three times in four days as the media found out where he would be staying (Whitting, Day & Powell, 2016b). Whilst vigilante behaviour impacts on the offender, often innocent individuals who live with the offender or individuals who associate with the offender can be targeted and vilified. Given the experience in the US, there is no evidence that this reaction would dissipate with formal notification of communities. Indeed, US States have had to enact anti-vigilantism legislation to reduce this unintended consequence of community notification.

It has also been suggested that notification may, ironically interfere with its stated goal of enhancing public safety by exacerbating the stressors (eg. isolation, disempowerment, embarrassment, hopelessness, shame, stigmatisation, depression,

anxiety, lack of social supports etc) that may trigger some sex offenders to relapse. Such dynamic factors have been associated with increased recidivism (Duwe, Donnay & Tewksbury, 2008; Harris, Walfield, Shields & Letourneau, 2016; Griggs, 2015) and although sex offenders inspire little sympathy from the public, ostracising them may inadvertently increase their risk. Notification may actively work against genuine rehabilitation and reintegration of offenders into the community. As Duwe, Donnay & Tewksbury (2008), Agan (2011), and Whitting, Day & Powell (2014) suggest, reintegration is highly effective in reducing reoffending, so an effective policy to manage sex offenders would see the stigmatisation and shame experienced by sex offenders to be reduced as much as possible. Taking into account labelling theory, the sex offender label given to these offenders can lead to internalisation to accept society's perception they are unable to change or control their behaviour. As such, consistent labelling of the individual as a 'sex offender' could result in further sexual offending (Whitting, Day & Powell, 2014).

The threat of community notification and possible vigilantism may also drive an offender 'underground' in an attempt to hide their identity. This possibility has serious implications not only for the effectiveness of community notification but also for sex offender registration. If With the impending threat of community notification, offenders reportedly changed their appearance drastically, fearing they would be targeting by vigilantes (Whitting, Day & Powell, 2016a).

There is no current evidence that community notification reduces sex offence recidivism or increases community safety (Agan, 2011; Kruse, 2007; Maguire & Singer, 2011). In an early study, of the offenders who were subject to notification, Schram and Milloy (1995) found that 42% of adult offenders re-offended (offences included sexual and non-sexual crimes) and 79% of juvenile offenders subject to notification were arrested for new offences. This study also found no statistically significant differences in recidivism rates for sex offences between offenders who were subjected to notification (19% recidivism) and those who were not (22%).

Sex offenders who were subjected to community notification were, however, arrested more quickly for new sex crimes than those not publicly identified (Schram & Milloy, 1995). This may indicate an increase in public awareness and community monitoring and a heightening of supervision and surveillance of offenders. This heightened response may certainly have positive implications for the safety of the community. Moreover, Prescott and Rockoff (cited in Agan, 2011) find jurisdictions which impose community notification actually have higher rates of recidivism. Similarly, Cain, Sample & Anderson (2017) find sex offender registries and community notification policies rarely achieve their purpose; to reduce deviant behaviour.

However, it may also suggest that offenders subject to notification may be simply re-offending sooner after release than those not publicly identified. This may be a result of the types of offenders subject to these laws rather than the impact of the laws themselves. That is the quicker re-arrest rate may have nothing to do with the intent of the laws, but rather the offenders subject to notification are more likely to re-

offend in a shorter time frame, simply because they are higher risk offenders than those not publicly identified. This factor, added to the lack of support and the exacerbation of stressors (as discussed earlier) could be related to the earlier re-offending of notified offenders.

This quicker arrest rate does indicate that further analysis into this positive repercussion of community notification is warranted.

It was found that 63% of the new sex offences occurred in the jurisdiction where notification took place, this suggests that notification did not deter offenders or motivate them to venture outside their jurisdictions (where they would be less likely identified) to commit crimes. Based on these findings, the authors concluded that community notification appeared to have little effect on deterring sex offenders (Schram & Milloy, 1995).

A 2004 paper from the US Department of Justice (Finkelhor & Jones, 2004) reports that between 1992 and 2000 there has been a 40% decrease in sexual assault cases “substantiated” by US child protection services. This paper has been put forward by some proponents as an example of the impact of community notification. However, in the paper Finkelhor and Jones explores a range of explanations for this decline. Finkelhor and Jones discuss: increasing conservatism within the US child protection system; exclusion of cases that do not involve the child’s caregiver; changes in the US child protection system data collection methods and/or definitions; less reporting by professionals due to concerns about potential liability; the diminishing category of older cases; and a potential real decline in the incidence of sexual assault. It should be noted that a more thorough analysis of US legislation development, changes on sentencing patterns, treatment models, public awareness programs and community education programs, among other potential factors needs to be completed before any informed comment can be made.

Compliance to register and keep authorities informed have been shown to be low in numerous studies. In Santa Clara County, California, for example, 3500 offenders are registered, but with the delay and lengthy time required to carry out compliance checks, it can take about 24 months to complete compliance checks on every individual registered (Griggs, 2015). This finding suggest the resources required to carry out compliance checks are not adequate enough to handle the multitude of offenders who are required to register. Nation-wide, recent estimates suggest more than 750,000 Americans are registered sex offenders (Hoppe, 2016). Although some reports claim over 100,000 sex offenders are ‘missing’ in the US, other evidence suggests this number does not reflect a true account on the number of missing sex offenders (Levenson, 2013). Statistics seem to indicate that there is a much higher compliance rate in the UK where the registers are not made public compared to the US. The difference between compliance rates may be able to be put down to whether or not the notifications are made public, with research suggesting that offenders are less likely to comply when knowing that their information will be made public. But differences between the management of these registers also needs to be considered, and studies comparing legislation and procedures of registration and

community notification lists would provide a more thorough understanding of this potential problem.

Cost of Implementation

In the United States, law enforcement officers and probation officers have reported concerns that community notification has increased labour and expenditures (Association for the Treatment of Sex Abusers, 2005). Likewise, Fitch (2006) noted that the financial costs of implementing community notification are high:

“The cost of introducing and maintaining a system of community notification is indisputably high... [m]illions of dollars are required to operate the systems in a manner likely to achieve success.”

It is noted that costs are dependent on a number of factors, including geographic size of the area covered and the population density. In California, costs of maintaining the register and implementing notification in that State costs an estimated \$15 to \$20 million dollars per year (Bonilla & Woodson, 2003 cited in Fitch, 2006). In comparison, the average cost to hold a sex offender in a facility in 2010 was \$175,000 (Hynes, 2013). These cost and resource implications for police, community corrections, and other agencies supporting the offender in the community must be taken into consideration, particularly in relation to the many questions in respect to the effectiveness of community notification to achieve its aim of public safety.

Fitch also suggests that additional costs may be incurred if legal challenges are brought against the disclosure of an offender to the community.

Community Notification Laws in Practice

These types of laws target one specific group of offender – convicted sex offenders. Understandably, public reaction to sex offenders is often intense, given their crimes are heinous and abhorrent. Thus, society often disregards their rights in search of protection from these offenders. Often, sex offenders have harmed the individuals society is most compelled to protect – women and children (Sample, 2011; Hynes, 2013). Given the common belief that sex offenders, especially individuals who have offended against children, cannot be rehabilitated and are inherently dangerous, society demands swift action against offenders, whilst not necessarily taking into account the effectiveness of policies in protecting community members or preventing recidivism (Hayes, Carpenter & Dwyer, 2012; Agan, 2011; Kruse, 2007; Sample, 2011). The community response to sex offenders is strong and emotive, understandably given the nature and impact of their offences. Lower property values near the residences of sex offenders also illustrates the response of fear and suspicion, with Hynes (2013) suggesting house prices deflate by approximately 9% if an offender lives nearby (within a tenth of a mile of the property). Moral panics and

the lack of explaining the threat of sex offenders have left individuals believing there is a real danger lurking around every corner (Kruse, 2007). Ultimately, Sample (2011, 270) argues;

“To this end, notification laws’ lack of utility or increases in public safety will not be enough to justify their demise. Their symbolic expression of the public’s disgust for sex offenders and their crimes will likely outweigh their lack of effectiveness, their financial costs, and the resources expended by the criminal justice agencies to enforce them.”

The lack of evidence highlighting the effectiveness of community notification laws and with the constitutional and human rights questions surrounding these laws have been noted by many scholars, with some suggesting community notification has little value and should be repealed (Sample, 2011; Griggs, 2015). Investigations into the public’s behaviours has found despite the existence of public registries in the community, individuals fail to adopt preventative measures for themselves or their children (Sample, 2011). Approximately one-third of citizens actively seek out registry information on websites or in newspapers (Cain, Sample & Anderson, 2017). Although individuals claim community notification will allow them to become more vigilant and thus can report suspicious behaviour to police, a study conducted in 2008 does not provide compelling support, with only 3% of respondents actually reporting suspicious behaviour in the previous 12-month period (Whitting, Day & Powell, 2014). It must also be noted that no study has been undertaken to measure the impact on which sex offender registration and notification laws have assisted law enforcement agencies to monitor offenders’ behaviours and to investigate sex crimes (Sample, 2011).

Distinctions between different ‘types’ of offenders has an impact on the utility of sex offender registers. For example, female offenders are often disregarded on registries, as are intrafamilial offenders where naming the offender may inadvertently identify a victim (Cain, Sample & Anderson, 2017). The effectiveness of sex offender registers may be questionable, especially when including all types of offenders on the same registry. For example, an individual who had consensual intercourse with an underage partner and an individual who violently raped a young child would be on the same registry in some jurisdictions. Thirteen states in the US have also defined public urination as a sexual offence, with 29 states also including consensual sex between two teenagers to be a sexual offence (Hynes, 2013). In the US, variations between the definitions of dangerousness and publication of offender information across states can renders it difficult to interpret (Lytle, 2015; Tewksbury, 2006). Moreover, Hynes (2013) explains the increasing number of sex offenders on the register renders it more difficult for both police and civilians to distinguish between dangerous sexual offenders and non-violent offenders.

In the United States most community notification or registration laws have been passed immediately following violent sex offences, especially offences against children that are committed by a stranger (Terry, 2015). Washington State’s

Community Protection Act was enacted in 1990, following the sexual mutilation of a seven-year-old boy by a man with a long history of sexual violence. In 1991 Minnesota's registration law was passed after an eleven-year-old boy was abducted in 1990. Megan's Law was passed at a State level three months after the death of Megan Kanka of New Jersey in July 1994. Seven-year-old Megan was sexually assaulted and murdered by a neighbour who had a history of sexually offending against children. Former-President Bill Clinton signed the bill, with the US Congress passing Megan's Law at a Federal level in 1996 as an amendment to the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994* (which was passed as part of the *Federal Violent Crime Control and Law Enforcement Act 1994*). While the Wetterling Act requires that States implement a sex offender and crimes against children registry, Megan's Law requires States to disclose information about sex offenders to the public.

While some US States legislate that information on all sex offenders is to be provided to the community in which they reside, other States utilise a risk assessment system that provides for information on high risk offenders or perpetrators of selected offences to be notifiable (Legislative Council, 2005). For example, in New Jersey:

"... sex offenders who reside in the community are classified by prosecutors in one of three "tiers" based on the degree of risk they pose to the public: high (Tier 3), moderate (Tier 2) or low (Tier 1). Neighbours are notified of high risk offenders. Registered community organisations involved with children or with victims of sexual abuse, schools, day care centres and summer camps are notified of moderate and high risk offenders because of the possibility that paedophiles and sexual predators will be drawn to these places. Staff members at those facilities who deal directly with children or victims are provided with information about the sex offender. Law enforcement agencies are notified of the presence of all sex offenders."

On the other end of the scale, in New Hampshire, details on all offenders who are convicted of a sexual offence against a child or who have an outstanding arrest warrant are placed on the Internet (Legislative Council 2005). As notification in the US is more widespread and intrusive, the number of offenders subjected to notification has grown exponentially. To reverse this effect, scholars recommend notification laws should only apply to high-risk offenders, which in turn, would work more efficiently and would also reduce the negative consequences experienced by some lower-risk offenders (Whitting, Day & Powell, 2016a).

In addition, the type of information about the offender that is made public also varies across the United States (Lytle, 2015).

The intended benefits of these laws can include: increased public safety, the right to know, assisting in reducing recidivism, alter the offenders' behaviour and heightened surveillance and supervision of offenders. These are all extremely worthwhile

objectives, but as will be discussed, aside from people's right to know and indications of increased surveillance, evidence from the US has not supported the capacity of community notification to attain these goals.

Sarah's Law: Child Sex Offender Review (CSOR) Public Disclosure Pilots - UK

After reviewing broad level community notification laws the UK Government resisted calls for a Megan's Law style legislation based on findings that these laws had not resulted in reduction of sexual offences in the United States and would fail to protect the community. Instead, in 2008 the UK government introduced a child sex offender disclosure scheme which enables members of the public to ask the police whether an individual (e.g. a neighbour or family friend) is a convicted sex offender.

The scheme is commonly referred to as "Sarah's law" after Sarah Payne, who was abducted and murdered by a man with a previous conviction for abducting and indecently assaulting another young girl. Although the public pressured law makers to introduce sweeping legislation after Sarah's death, the United Kingdom did not respond emotionally to this high-profile crime (Terry, 2015).

The scheme was initially piloted in four police force areas (Cambridgeshire, Cleveland, Hampshire and Warwickshire) over a twelve-month period from September 2008. During the course of the pilot a total of 585 enquiries were made. Of these, 315 were proceeded with as applications, resulting in 21 disclosures being made. A further 43 applications resulted in child safeguarding actions other than a disclosure (e.g. referral to social services). Research commissioned by the Home Office suggested that the police and other criminal justice agencies had seen benefits in the formalisation of processes, the provision of increased intelligence and the provision of a better route in for the public to make enquiries should they have concerns.

In August 2010 it was announced that the scheme would be rolled out to a further 20 police force areas by October 2010. The Home Office has since invited remaining jurisdictions to consider introducing the scheme. In 2014, this scheme was rolled out across England and Wales, and shortly thereafter, Scotland introduced a similar scheme following its own pilot (Whitting, Day & Powell, 2016b). Evaluations of the pilot scheme in both England and Scotland suggest limited and controlled disclosure of information to community members has fewer negative consequences than blanket disclosure, as typified with 'Megan's Law' in the US (Whitting, Day & Powell, 2016b).

Community Protection – Western Australia

In Australia, there has been a renewed effort, particularly through the mass media to open the debate of community notification in Australia. In 2011, Western Australia introduced legislation which provides for the public disclosure of limited information relating to released, adult, repeat child sex offenders. This law was introduced in

response to public outcry following the sexual homicide of a seven year old girl in 2006 (Whitting, Day & Powell, 2016a).

This scheme provides a three tiered approach, providing:

- Information on missing sex offenders
- A local search facility that allows members of the public to search their local area (by postcode) for:
 - Dangerous sexual offenders subject to supervision orders under the *Dangerous Sexual Offenders Act 2006*;
 - Serious repeat reportable offenders;
 - Persons who have been convicted of an offence punishable by imprisonment for 5 years or more, and concern is held that this person poses a risk to the lives or sexual safety of one or more persons or persons generally.

The search results provide images of the offenders in the area, but does not provide addresses.

- Parents or guardians with the option to enquiry on whether or not a person of interest, who has regular unsupervised contact with their child, is a reportable offender.

The registry that operates in Western Australia differs from sex offender registries implemented in the US and UK. The criteria for offenders listed on the register in Western Australia are further restricted, only showing dangerous, high-risk and recidivist offenders who reside in close proximity to the person conducting the search. Other safeguards were also implemented to lessen the risk of vigilante behaviour, including the introduction of legislation criminalising vigilantism and the creation of two different vigilante offences, stating individuals who are found guilty of misusing the information made available can be liable to up to 10 years imprisonment (The Government of Western Australia, 2012). Individuals who attempt to search the database also have to verify their identity, and any photographs that result after a search are watermarked with the full name of the citizen who performed the search, allowing the source of illegally reproduced photographs to be traced. Additionally, offenders on “tier two” have an extraction plan in place in the event of a vigilante attack (Whitting, Day & Powell, 2016a). Since the introduction of the scheme, only one person was charged with vigilantism in the first 29 months, suggesting the safeguards implemented to minimise vigilante behaviour have been successful.

The following are quotes from Whitting, Day & Powell’s 2016 evaluation of the impact of the Western Australian model:

- 39 offenders were subjected to tier one notification [missing offenders] between 15 October 2012 (when the website went live) and 27 February 2015. Of these, 6 were subjected to tier one notification on more than one occasion during this period (4 offenders were subjected to notification on two separate occasions and 2 offenders were subjected to notification on four occasions). As at 27 February 2015, 6 offenders remained on the missing offenders register (i.e., tier one).

- Within this same period, 86 offenders were deemed to meet the tier two criteria [dangerous and high risk] and thus were potentially subject to notification (as notification in this case is contingent upon a member of the public who resides in the same locality as the offender performing a local search)
- There were 1,927 offenders who were not subjected to notification
- The data provided by the police agency indicates that there were 182,475 hits on the community notification website between 15 October 2012 (when it went live) and 27 February 2015. Over this period, 36,837 tier two searches were performed¹³ and 892 enquiries or requests for assistance were received (542 via the website and 350 via email), the vast majority of which were in relation to tier two. It is not known how many telephone enquiries were received, as no record is kept of these. Unfortunately, as only the total number of hits, searches, and enquiries were provided, it is not possible to examine trends in usage over time.
- Ten tier three applications [parent of guardian making an inquiry about a reportable offender] had been received as at 27 February 2015; however, two of these were duplicates of previously submitted applications and one was withdrawn because the applicant discovered through other means that the person of interest (an associate of her ex-husband) is a convicted sex offender.
- A key theme that emerged from the analysis was that the introduction of the scheme had not resulted in many of the adverse consequences that the police had anticipated. It is probable that their expectations were founded on the evidence from the United States, where community notification is much more widespread and intrusive. A consistent finding of this body of research is that community notification adversely impacts offenders' psychological well-being
- From the perspective of the police, the scheme has had on the whole a limited long-term impact on offenders. It would appear that the distress and anxiety experienced by offenders prior to the scheme's implementation arose from misinformation and misconceptions about the nature of the scheme and largely dissipated following its implementation.
- From the perspective of the police officers interviewed, a major source of offenders' anxiety surrounding the introduction of the scheme was a fear of vigilantism, a concern shared by the police. Some offenders reportedly drastically changed their appearance around the time the scheme came into effect, presumably out of fear they would be targeted by vigilantes..... A subsequent search of the agency's internal evidence briefing system revealed that only one individual had been charged with a vigilante offence as at 27 February 2015.
- A key concern reported by Whitting et al. (2016) was that the introduction of the scheme would lead to offenders going underground. This concern does not appear to have come to fruition. On the contrary, there was a perception among those interviewed that the introduction of the scheme had improved compliance, at least among some offenders. A few offenders who had failed

- to report and whose whereabouts were unknown reportedly ‘surrendered’ themselves to police upon being published on the missing offenders register.
- One explanation that could account for the scheme’s impact being smaller than anticipated is that participants’ expectations were shaped by the experience in the United States, where notification is much more widespread and intrusive. Although the United States laws were originally intended to target high risk sex offenders, the purpose and scope of these laws has expanded over time and the number of offenders subjected to notification has grown exponentially

Impact on Public Safety and the Community

Community notification laws are based on public safety, typically referring to the belief that the public are better able to protect themselves and their children by being informed that a released sex offender resides in the neighbourhood. Supporters and advocates of community notification argue that it gives parents and the community a greater opportunity to protect their children by educating them about the dangers of specific individuals. In short, by providing for the public’s right to know about released offenders, community notification provides the public with the knowledge they need to take precautions in respect to the safety of themselves and their children.

The reality is that community notification is unlikely to have any impact on the majority of men and women who are responsible for most sexual violence. A significant number of offenders never come into contact with the criminal justice system (Freeland & Wainwright, 2005). Community notification will only ever identify a limited number of sex offenders: the laws can only apply to convicted/known sex offenders (Stucky & Ottensmann, 2016). The lack of management resources means a number of sex offenders are not closely monitored, and therefore, members of the public are lulled into the false sense of security, which could actually decrease their ability to protect themselves and their children from harm (Griggs, 2015). It is also important to note that most sex crime victims and their perpetrators know each other, but most policies surrounding registered sex offenders focus on *strangers* in a bid to protect victims from being identified (Stucky & Ottensmann, 2016; Hynes, 2013). Individuals may become fixated on those offenders they have been informed about and pay less attention to other ‘dangerous’ individuals and situations. The potential for this happening appears heightened when a child is involved. It has been argued that children may ‘get the wrong message’ and fail to be cautious except with those people specifically pointed out as someone not to go near.

It has been argued that these laws are based on the deceptively simple and popular belief that the best way to protect children is to identify all the known ‘bad’ people. Given what we know about sex offenders, the likely impact of these types of laws is minimal; statistics show us that only about 17% of reported sexual offences result in

a conviction (Crime and Misconduct Commission, 2003) and that the majority of offenders are known to the victim (research findings vary between 80-85%).

It may be that these laws provide the opportunity, motivation and impetus for the community to educate children about personal safety and protective behaviours; however to be of any benefit, this can not only be in relation to known offenders. Equipping children with the knowledge and skills they need to avoid risky situations, giving them an understanding of their rights to protect their own body and helping adults empower children to recognise early warning signs, stay safe and speak out can be much more powerful tools in protecting the community.

Notifying one community does not prevent an offender from visiting a community further away which has not been 'notified'. It has also been argued that sex offenders may gravitate towards large cities, inner city suburbs or more vulnerable towns where resources and community cohesion may be most strained.

Being notified that a convicted sex offender is about to move into your neighbourhood can have negative effects on residents. Interestingly, most results have indicated that communities subject to notification laws report increased anxiety due to notification because of the lack of strategies offered for protecting themselves from sex offenders (Whiting, Day & Powell, 2016b). Without support from the authorities, vigilante behaviour can be considered an inevitable consequence of notification... "It's as if someone shouted 'Fire' and then stood back and watched in panic" (L. Keene, Seattle Times Pacific Magazine, Sept 15th 1991).



Bravehearts Position

Community notification laws are the least best option in terms of effectively protecting the community but are attractive to the community. They have the potential to provide some parts of the community with some feelings of comfort that governments and the authorities are giving them all the information that they need to keep themselves and their children safe and they satisfy the right of the public to know if an offender is living nearby. Community notification laws are a reaction to the failure of the current systems' ability and willingness to protect the community against known child sex offenders and prevent offenders from re-offending.

Bravehearts advocates that the first response should be the continued detention of dangerous sex offenders. It is our position that dangerous sex offenders should not be released back in to the community, until such time as they are assessed as low risk and that that risk can be managed in the community. We have continued detention (such as the QLD *Dangerous Prisoners (Sexual Offenders) Act 2003*) legislation across the nation that can achieve this.

Bravehearts believes that the call for broad-scale community notification laws to be introduced into Australia is based on the understandable fear the community feels and the lack of faith and belief in the correctional and legal systems to adequately ensure that offenders who are released are low risk and will be managed and monitored effectively. If the community had confidence in the correctional system, in the rehabilitation of offenders and in the system's ability to monitor offenders in the community, community notification laws would be unnecessary.

The ability of unrestricted community notification to achieve what current laws have failed to do has shown to be limited in the United States where the laws have been enacted for a significant period of time. A comprehensive review of the effectiveness of community notification laws was conducted by the National Society for the Prevention of Cruelty to Children (Fitch, 2006). The major finding of this review was that "[t]here is no proof that such a law would be in the best interests of the child as it does not deliver tangible safety benefits to children".

One of the major positives to come out of studies into community notification is that there has been a significant effect on the speed of arrest for new offences, with those subject to notification being re-arrested more quickly than those not publicly identified. However, it could also suggest that offenders who were subject to public notification were more likely to re-offend sooner – which may account for the quicker re-arrest rates – simply because they are as a group, more often than not, a much higher risk.

It is noted that 63% of the new sex offences occurred in the jurisdiction where notification took place which indicates this may be a result of public awareness and the increased ability of the community to monitor 'known' offenders. The flip-side of this statistic is that it demonstrates the limitations in these laws to actually protect

the community – notification did not deter or stop the offender from committing new sex offences. It demonstrates the failure in the system to properly monitor and prevent re-offending. When offenders remain a risk the community has every right to be fearful.

So while there appears to be an encouraging impact on public safety in terms of increased awareness and surveillance, the other side to these findings is that the laws appear to have little impact on encouraging offenders to not re-offend. If our goal is to ensure the long-term safety of our communities then we should be focussing on responses that prevent or reduce re-offending. We should be looking for proactive legislation that focuses on ensuring public safety and the continued detention and intensive monitoring of those who are considered of high risk.

If the basis of introducing laws is public safety and the reduction of threats to our children, these laws do not appear to work.

With only an estimated 10% of sex offenders ever being identified, community notification will only ever impact on an extremely small number of perpetrators; in addition we need to consider that if community notification focuses on high risk offenders, not all identified offenders will be assessed as ‘high risk’, so only a percentage of that 10% will ever be subject to community notification. These laws give the community a false sense of security by focusing them only on offenders they have been informed about, rather than other dangerous individuals or situations.

Like the National Society for the Prevention of Cruelty to Children, Bravehearts hold that the most effective approaches to the safety and protection of children against child sex offenders are those that are holistic and involve structured and comprehensive interdisciplinary responses founded on research-based best-practice.

It is our position that a far more effective approach would include:

- **Limited disclosure legislation** that currently exists in most jurisdictions, ensuring police have the discretion to notify, or disclose to, relevant agencies and personally effected individuals, certain details relating to released, adult, repeat child sex offenders where a legitimate risk or threat exists.
- The **release of limited information to the public**. Current registration legislation should be expanded to allow for restricted community notification. We advocate the duplication nationally of the Western Australian Legalisation which provides for the public disclosure of limited information relating to released, adult, dangerous, repeat child sex offenders.

This scheme provides a three tiered approach, providing:

- Information on missing sex offenders
- A local search facility that allows members of the public to search their local area (by postcode) for:
 - Dangerous sexual offenders subject to supervision orders under the *WA Dangerous Sexual Offenders Act 2006*;
 - Serious repeat reportable offenders;

- Persons who have been convicted of an offence punishable by imprisonment for 5 years or more, and concern is held that this person poses a risk to the lives or sexual safety of one or more persons or persons generally.

The search results provide images of the offenders in the area, but does not provide addresses.

- **Increased public awareness** of safety and protective skills, specifically programs that build resiliency and empower children with the knowledge to keep safe.
- Strengthening of legislation in relation to the **continued detention of convicted offenders assessed as an unacceptable risk** at the completion of their sentence.
- Implementation of a **‘two-strikes’ legislation** for repeat sex offenders.
- **Strengthening of existing inter-jurisdictional and ‘multi-agency’ relationships** for the monitoring and treatment of sex offenders.
- **Improved access to rehabilitation programs**, both within and outside of custodial settings.
- **Access to treatment programs** for children and young people who display inappropriate sexualised behaviours.
- **Public education campaigns** on the myths and facts of child sexual assault, including offending dynamics.



References

- Association for the Treatment of Sex Abusers. (2005). *Facts about Adult Sex Offenders*. On-Line: www.atsa.com [Available: 4th September 2006]
- Agan, A. (2011). Sex offender registries: Fear without function? *Journal of Law and Economics*, 54 (1): 207-239.
- Cain, C.M., Sample, L.L. & Anderson, A.L. (2017). Public Opinion of the Application of Sex Offender Notification Laws to Female Sex Offenders: Why It Is Important to Examine. *Criminal Justice Policy Review*, 28(2): 155-175.
- Crime and Misconduct Commission (2003). *Seeking Justice: An inquiry into the handling of sexual offences by the criminal justice system*. Brisbane [Qld]: Crime and Misconduct Commission.
- Duwe, G., Donnay, W. & Tewksbury, R. (2008). Does residential proximity matter? A geographic analysis of sex offender recidivism. *Criminal Justice and Behaviour*, 35(4): 484-504.
- Finkelhor, D & Jones, L. (2004). Explanations for the decline in child sexual abuse cases. *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention, US Department of Justice).
- Fitch, K. (2006). *Megan's Law: Does it protect children? (2)*. London: National Society for the Prevention of Cruelty to Children.
- Freeland, J. & Wainwright, W. (2005). When is community protection putting the community at risk? Paper presented at the Australian Institute of Criminology *Delivering Crime Prevention Conference*, 21-22 November.
- Griggs, B. (2015). *Is Community Notification regarding released sex offenders effective at reducing rates of sexual crimes?* (Doctoral dissertation). Available from ProQuest Dissertations and Theses database. (AAT 3704181)
- Harris, A.J., Walfield, S.M, Shields, R.T. & Letourneau, E.L. (2016). Collateral Consequences of Juvenile Sex Offender Registration and Notification. *Sexual Abuse: A Journal of Research and Treatment*, 28(8): 770-790.
- Hayes, S., Carpenter, B. & Dwyer. (2012). *Sex, Crime and Morality*. Oxon, UK: Routledge
- Hoppe, T. (2016). Punishing Sex: Sex Offenders and the missing punitive turn in sexuality studies. *Law and Social Inquiry*, 41(3): 573-594.
- Hynes, Kate.(2013). The Cost of Fear: An analysis of sex offender registration, community notification, and civil commitment laws in the United States and the United Kingdom. *Penn State Journal of Law & International Affairs*, 2(2): 349-379.

- Kruse, L. (2007). *Sex offenders, sexuality and social control: A case study in the social construction of a social problem* (Doctoral dissertation) Retrieved from <http://commons.emich.edu/theses/174>
- Legislative Council (2005). *Sex Offender Supervision and Community Notification Study. Committee Report*. Montpelier [VT]: Legislative Council.
- Levenson, J. (2013, July 3). Knowing the numbers : How bad sex-offender data could cause more harm. *JURIST*.
- Levenson, J. & Cotter, L. (2005). The Effect of Megan's Law on Sex Offender Reintegration. *Journal of Contemporary Criminal Justice*, 21 (1): 49-66.
- Lytle, R. (2015). Variation in Criminal Justice Policy-Making: An Exploratory Study Using Sex Offender Registration and Community Notification Laws. *Criminal Justice Policy Review* 26(3): 211-233.
- Maguire, M., Singer, J.K. (2011). A False Sense of Security: Moral Panic Driven Sex Offender Legislation. *Critical Criminology* 19(4): 301-312.
- Mustaine, E.E., Tewksbury, R., Connor, D.P. & Payne, B.K. (2015), Criminal Justice Officials' views of sex offenders, sex offender registration, community notification, and residency restrictions. *Justice System Journal*, 36(1): 63-85.
- Sample, L. (2011). The need to debate the fate of sex offender community notification laws. *Criminology and Public Policy*, 10(2): 265-274.
- Schram, D. & Milloy, C. (1995). *Community Notification: A study of offender characteristics and recidivism*. Olympia [WA]: Washington Institute for Public Policy.
- Stucky, T.D., Ottensmann, J.R. (2016). Registered sex offenders and reported sex offenses. *Crime and Delinquency*, 62(8): 1026-1045.
- Terry, K.J. (2015). Sex offender laws in the United States: smart policy or disproportionate sanctions? *International Journal of Comparative and Applied Criminal Justice*, 39(2): 113-127.
- Tewksbury, R. (2006). Sex offender registries as a tool for public safety: Views from registered offenders. *Western Criminology Review*, 7(1): 1-8.
- The Government of Western Australia. (2012). Community Protection Western Australia. Retrieved from <https://www.communityprotection.wa.gov.au/About>
- Whitting, L., Day, A. & Powell, M. (2016a). An evaluation of the Impact of Australia's First Community Notification Scheme. *Psychiatry, Psychology and Law (In press)*:1-17.
- Whitting, L., Day, A. & Powell, M. (2016b). Police officer perspectives on the implementation of a sex offender community notification scheme. *International Journal of Police Science and Management* 18(4): 261-272.
- Whitting, L., Day, A. & Powell, M. (2014). The impact of community notification on the management of sex offenders in the community: An Australian perspective. *Australian and New Zealand Journal of Criminology* 47(2): 240-258.