

## Public Protection: What Works in the Safe Management of Sexual Offenders?

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**Summary:** Breakdown and failures in the community management of high-risk sexual offenders always raise questions about the conduct of the agencies tasked with their safe management, and cast doubt on the effectiveness of current responses to sexual offending. This brief paper reviews effective strategies for the safe community management of high-risk offenders and also considers the benefits and limits of adopting the scheme for sex offender public disclosure: ‘Sarah’s Law’, as it is colloquially known.

**Keywords:** Risk management, high-risk offenders, sex offenders, community supervision, probation, multi-agency working, disclosure, public protection, Northern Ireland.

### Introduction

High-profile failures in the community management of high-risk sexual offenders always raise questions about the conduct of the agencies tasked with their safe management, and cast doubt on the effectiveness of current responses to sexual offending. ‘Can we manage sexual offenders safely in the community?’ is asked by public, politicians and media alike. The answer to that question is a resounding ‘yes’ if the right things are done. This short paper derives from a presentation made to Members of the Northern Ireland Assembly at Stormont in April 2012 as part of the ‘Justice Series’ of seminars organised by NIACRO (Northern Ireland Association for the Care and Resettlement of Offenders). It reviews some of the effective strategies for the safe community management of

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high-risk offenders, and considers the benefits and limits of adopting the scheme for sex offender public disclosure, or ‘Sarah’s Law’ as it is colloquially known.

### **Multi-agency management of high-risk sex offenders**

In Northern Ireland, multi-agency information sharing and management of high-risk sex offenders is done by the Public Protection Arrangements Northern Ireland (PPANI). In brief, such multi-agency working provides shared risk assessment, creates a 360 degree view of the offender’s risk and behaviours, and provides a mechanism to jointly plan and jointly deliver a risk management strategy. A typical risk management plan might comprise:

- electronic tagging
- supervised accommodation in a probation hostel or other approved premises
- restriction from school locations and monitoring of compliance via the electronic tag
- intensive one-to-one work on criminal attitudes, motivations and behaviours
- use of police surveillance
- victim empathy work.

Currently in England and Wales, the pioneer of such multi-agency work, evaluations of effectiveness have been positive. Some facts and figures from the Multi-Agency Public Protection Arrangements Annual Report 2011/12 (Ministry of Justice, 2012) provide important contextual information.

- On 31 March 2012 there were 55,002 MAPPA eligible offenders. The majority of cases (96%) were managed at Level 1.
- The number of registered sex offenders per 100,000 of the population has increased from 76 to 81.
- There were 6,939 offenders managed at Level 2 and 664 offenders managed at Level 3 throughout 2011/12.
- The courts imposed 2,658 Sexual Offences Prevention Orders (SOPOs) in 2011/12.

- 145 MAPPA eligible offenders were charged with a 'serious further offence' (SFO) in 2011/12. Of these, 116 were managed at Level 1, 22 at Level 2 and 7 at Level 3.

In addition, a Ministry of Justice evaluation in England of a cohort before the multi-agency supervision arrangements and a cohort after these arrangements found that:

Offenders released from custody between 2001 and 2004 (i.e. after the implementation of MAPPA) had a lower one-year reconviction rate than those released between 1998 and 2000. This remained true at the two-year follow-up for those cohorts where this had been calculated.

The one-year reconviction rate had been declining before 2001, but fell more steeply after MAPPA was implemented.

Immediately either side of MAPPA implementation, the one-year reconviction rate fell 2.7 percentage points for MAPPA-eligible offenders. Pre- to post-MAPPA implementation there was a comparatively large fall in the proportion of violent offenders reconvicted after one year, and among those calculated to pose a high risk of reoffending. These findings should be considered in the context of an increase in the national one-year reconviction rate for adult offenders released from custody from 2000 to 2002 and then a fall thereafter.

The results of this study show a reduction in reconviction rates among sexual and violent offenders released between 2001 and 2004 compared to 1998–2000, which coincided with the introduction of MAPPA in 2001. Though the methodology used cannot evaluate the specific impact of MAPPA on reconvictions, this reduction may be associated in part with MAPPA. As many offenders managed under MAPPA represent the most serious offenders released into the community from custody, this is an encouraging finding for those involved in their management. (Peck, 2010, pp. ii–iii)

These effectiveness findings justify the use of such arrangements in Northern Ireland, and also help to contextualise the often traumatic, deeply tragic individual cases that can easily bring such systems into disrepute if not considered within the broader context of general effectiveness.

## **Programmes of intervention, resettlement and monitoring**

The safe community management of sex offenders must also draw on the most effective intervention programmes, focus on resettlement into communities and provide adequate monitoring of the offender. In an international review of programmes that work, the English National Offender Management Service (NOMS) concluded that 'Large scale research indicates that sex offenders who receive treatment, in both prisons and community settings have a lower sexual reconviction rate than those who do not receive treatment' (NOMS, 2010). Such programmes can provide up to 27% reduction in reconviction, and well-targeted programmes such as the Sex Offender Treatment Programme can be effective, with treated offenders having statistically lower reconviction rates at two years than untreated ones – 4.6% compared to 8.1% (NOMS, 2010).

In addition, safe reintegration through approved premises can be critical, as many sexual offenders are social isolates. Such safe reintegration can provide not only support, but added vigilance. Similarly, safe employment can have rehabilitative impact and NGOs such as NIACRO are often in a position to provide safe and supported employment within appropriate safeguards and checks. Stable long-term accommodation is also critical to success, supported by regimes of frequent visiting by either police or probation. The key to supervision is an appropriate balance of support and vigilance about the offender's lifestyle and risk factors.

## **The use of disclosure**

It is important to recognise that the law already allows for disclosure to third parties on a 'need to know' basis. The general rule is that this is justified by the level of risk and what is required to prevent further offending and carry out the effective and safe management of the offender.

This can and does include members of the public, and is done through the PPANI arrangements by either police or probation. In 2007, Jenny Cann carried out an evaluation of third-party disclosure via the multi-agency arrangements in England and Wales, and found that disclosure was well and appropriately used, did contribute to effective and safe management, and added to the safety of children.

The recommendation in Cann's report was that third-party disclosure should always be a key consideration of multi-agency meetings, and that it should be used to its fullest extent (Cann, 2007).

### **Do we need public disclosure?**

In 2009–10 a limited 'Sarah's Law' was piloted in England and Wales and evaluated by researchers at De Montfort University, Leicester (Kemshall *et al.*, 2010). Both the pilot and the current English and Welsh scheme operate quite differently from many of the schemes in the USA. They rely on a parent, carer, guardian or concerned adult making an enquiry of local police about a specific person and in relation to a specific child. There are no public meetings, and the identities and whereabouts of sexual offenders are not generally disclosed or displayed. Members of the public – initially parents, guardians and carers but later, in March 2009, extended to include anyone who had a concern about an individual – could make an enquiry under the scheme by phone, by walking into a police station or by contacting the police to register a concern about an individual.

On completion of initial questions and risk assessment checks, enquiries meeting the criteria proceed to an application stage. Here, further checks are undertaken and a face-to-face interview with the applicant is used to confirm identity, seek consent for information sharing and clarify the boundaries of confidentiality. Following a final risk assessment, a decision is made whether or not to make a disclosure to the applicant or to take further action where necessary. A number of enquiries do not proceed to this stage as they are not about a known sex offender against children, the risk level is not met, or the enquiry is either mistaken or not genuine.

The outcomes of the pilot were mixed, with lower than anticipated take-up of the scheme being the main finding. Only 585 enquiries were made in total across the four pilot areas, against a Home Office expectation of around 600 per pilot area (i.e. 2,400). Formal applications actually dealt with in total across the four pilots were 315.

Of these, only 21 disclosures in total across the four pilot areas were made, 7% of all the applications actually processed. A Home Office claim that 60 children had been protected by these disclosures is rather difficult to prove, and is simply extrapolated from the potential number of children those 21 offenders may have potentially come into contact with.

It is also difficult to establish how many of these offenders would have been disclosed via the multi-agency arrangements and how many families and children would have been informed via the multi-agency third-party disclosure route anyway. The scheme did go national in 2010, but has continued to have low take-up, with recent figures indicating that a total of 160 disclosures have been made.

While there is some argument that the role and responsibilities for public disclosure carried out by police have been absorbed into local functioning and costs, it is important to recognise that the pilot cost £482,000 to run, and that every area has initial set-up costs and ongoing costs to sustain the scheme no matter how many or few enquiries are made, and no matter how many applications are processed or disclosures are actually made.

Interestingly there was no discernible impact on sex offender compliance with supervision, and this was attributable to the preparation and support of their offender managers again taking time and resources (Kemshall *et al.*, 2012a).

Equally there were no severe breaches of confidentiality, again due to the preparation and care taken in applicant interviews by police disclosure officers. From the pilot data it is possible to identify groups who are underrepresented in enquiries, particularly Black and minority ethnic groups and those classified as 'socially disadvantaged'. To some extent marketing and publicity do not appear to reach these groups, and there is no direct correlation between the amount of time, effort and money spent on marketing and subsequent take-up (Kemshall and Weaver, 2012).

Broader issues affecting take-up may be a policy misunderstanding of what the public wants, in particular mistaking media clamour for public appetite. It may be that the public wants reassurance that the statutory agencies work effectively, and that this mitigates any broader appetite for public disclosure. In addition, both the English and Scottish pilots found that the operation of the scheme itself could create barriers to access and use (Kemshall and Weaver, 2012). For example, making applicants undergo personal checks was seen as off-putting.

Finally, some applicants found the weight of knowing about a risk difficult to manage over the long term, particularly in the absence of clear advice and long-term support for how to manage living in relatively close proximity to someone they knew was a sex offending risk to children (Kemshall *et al.*, 2012b). Conversely, the message that there is nothing to

disclose wasn't always seen positively, with some applicants reporting a residual anxiety, and that nothing to disclose didn't necessarily mean no risk.

### **The current position on the child sex offender disclosure scheme in England and Wales**

By March 2012 there were 39 UK police forces participating, with 2,712 applications recorded and 299 disclosures made, resulting in a disclosure to application ratio of 1:9 (Wall, 2012). Interestingly the largest police force (Metropolitan London) has a low number of applications, some 27 in the first 12 months but with 25% resulting in a disclosure. This is partly explained by a large population of 7.8 million, a transient population, and potentially lower public confidence in policing and the scheme (Wall, 2012).

Some of the positive outcomes noted by the Association of Chief Police Officers (ACPO) are: new child protection investigations, new intelligence about registered sex offenders, information about breach of SOPOs, information enabling recall to prison, and in a few cases additional information on other risks such as serious domestic violence (Wall, 2012). Information on the overall costs of running the scheme since national inception have not been provided, and to a large extent and due to small numbers, work has been absorbed into the work of police forces and closely aligned to MAPPA work: in effect, disclosure sits within normal 'business'.

In June 2011 a judicial review against the Child Sex Offender Disclosure Scheme was instigated by a registered sex offender on the grounds that the offender was not given an opportunity to make representations about the disclosure prior to it being made. The judicial review deemed the scheme lawful subject to amendments being made to the guidance requiring decision-makers to consider if the person about whom the disclosure is to be made should be asked to make representations.<sup>1</sup> The judgment also seeks to balance the offender's right to privacy with public protection and risk minimisation. As such, the scheme in England and Wales and in Scotland remains far removed from the USA 'Megan's Law'.

<sup>1</sup> See *X (South Yorkshire) v Secretary of State for the Home Department* [2012] EWHC 2954 (Admin), available at: [www.bailii.org/ew/cases/EWHC/Admin/2012/2954.html](http://www.bailii.org/ew/cases/EWHC/Admin/2012/2954.html) (accessed 23 September 2013).

In considering the adoption of public disclosure for other jurisdictions a number of key points need to be addressed, as follows.

- Do we need this scheme and what is the evidence that it will work?
- Will it be implemented and used as expected?
- What is the expected cost?
- What is the likely impact and benefit for the costs?
- What is the value added by the scheme to our existing strategies to manage sex offenders safely in the community?
- What else are we doing that contributes to public safety, and can we strengthen it?
- What else could we do to achieve public safety?

At present the evidence is mixed at best on costs and benefits, with limited take-up. While there is evidence of positive outcomes it is difficult to discern fully whether such outcomes might have been achieved through other channels (e.g. disclosure via MAPPA, or the collection of police intelligence on registered sex offenders (RSOs)). Value added to existing public protection measures is particularly difficult to establish reliably.

## **Conclusion**

The community management of sex offenders can be conducted safely in the majority of cases if the right things are done, and done well. Multi-agency arrangements such as PPANI in Northern Ireland have much to offer, and recent research (albeit in an adjoining jurisdiction) supports this. Programmes of intervention supported by supervised accommodation, safe employment and well monitored reintegration are successful, with persuasive impacts on further reconviction rates.

Disclosure, particularly third-party disclosure through police and probation, can provide added safety for children and their families, but general public disclosure, while politically attractive, may have a rather more limited take-up and consequently lower levels of impact for the costs involved. The safe management of sex offenders in the community requires a number of strategies to be brought together in a coherent, well-resourced and cost-effective way. Politicians, policy makers and practitioners all have a responsibility for ensuring that these strategies are effective, properly used and well co-ordinated.



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