

The Adam Walsh Act

A False Sense of Security or an Effective Public Policy Initiative?

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With the enactment of the Adam Walsh Child Protection and Safety Act (AWA), states are required to standardize their registration and community notification practices by categorizing sex offenders into three-tier levels in the interest of increasing public safety. No empirical research, however, has investigated whether implementation of the AWA is likely to increase public safety. Using a sample of registered sex offenders in New York State, the current study examined the effectiveness of the Adam Walsh-tier system to classify offenders by likelihood of recidivism. Results indicated that the AWA falls short of increasing public safety. In fact, registered sex offenders classified by AWA as Tier 1 (lowest risk) were rearrested for both nonsexual and sexual offenses more than sex offenders in Tier 2 (moderate risk) or Tier 3 (highest risk).

Keywords: *Adam Walsh Act; SORNA; sexual recidivism; sex offenders; risk factors*

Prior to the 1970s, and the rise of the feminist movement, sexual assault remained a hidden phenomenon. In the 1980s, media attention to sexual victimizations, especially those involving children, led to an increased awareness of sexual violence and its impact on victims (see Levenson & D'Amora, 2007). Out of these movements, and as a result of a few heinous sexual crimes in the 1990s, sex offender policies were created that had the collateral effect of destigmatizing sexual victimization, increasing reporting rates, and assisting in the identification of sexual assaults.

The two most influential federal legislative attempts to date were the development of sex offender registries under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act; 1994) and the addition of community notification, which has become known as Megan's Law (1996). Although today all states have registration and notification laws, there is no

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standardization of these systems and, thus, states vary in how registration and community notification is employed. Recently, in an effort to further increase public safety, the federal government passed the Adam Walsh Child Protection and Safety Act (AWA; 2006). One of the key provisions of this Act is the Sex Offender Registration and Notification Act (SORNA), which standardizes registration and community notification practices by dividing sex offenders into three tiers based solely on the crime of conviction (AWA, 2006; Department of Justice, 2008).

Although the goal of this legislative initiative is to increase public safety, no empirical examinations have been conducted to determine whether the nationwide enactment of SORNA is likely to reduce sexual victimizations. Given the emotional public response to sexual crimes, it is essential to ensure the effectiveness of sex offender management approaches, such as the implementation of SORNA. Recently, a number of empirical studies have indicted that registration and community notification laws are limited in their ability to reduce sexual victimization (Freeman, in press; Sandler, Freeman, & Socia, 2008; Walker, Maddan, Vásquez, VanHouten, & Ervin-McCarthy, 2005; Zgoba, Witt, Dalessandro, & Veysey, 2008). The results of these studies have indicated that, although well intended, such laws have done little (if anything) to increase public safety and may in fact be lowering it. With these findings in mind, the current study sought to empirically assess whether the SORNA provisions outlined in the AWA would more effectively increase public safety than current registration and community notification practices. Specifically, the current study used a sample of convicted (registered) sex offenders in New York State to determine whether the tier system proposed under SORNA predicts sex offender sexual and nonsexual rearrests.

AWA

The AWA was signed into legislation by President Bush on July 27, 2006. It was named after the 1981 abduction and murder victim Adam Walsh (a 6-year-old Florida boy). The law was passed as an effort to further protect the public from sex offenders and amends previously enacted sex offender laws such as the Wetterling Act (1994) and Megan's Law (1996). States were required to enact all portions of the AWA by 2009 or risk losing 10% of their Omnibus Crime federal funding (AWA, 2006).¹

Title 1 of the AWA is SORNA, which standardizes the registration and community notification procedures of all 50 states. Specifically, under SORNA, sex offenders are divided into three tiers depending entirely on the crime of conviction and sentence length. Tier 1 consists of sex offenders convicted of misdemeanor offenses (e.g., forcible touching, receipt of child pornography), which result in less than 1 year of imprisonment. Both Tiers 2 and 3 require offenses to result in more than 1 year imprisonment, with the main difference between these tiers being the

nature of the sexual offense. Tier 2 includes offenders convicted of less severe sexual felony offenses (e.g., use of a minor in a sexual performance, criminal sexual act, production or distribution of child pornography), whereas Tier 3 encompasses severe sexual felony offenses (e.g., persistent sexual abuse, predatory sexual assault, aggravated sexual abuse; see Department of Justice, 2008). The tier assigned to each offender determines not only the length of registration, but also the extent of community notification to which the offender is subject. Tier 1 offenders are required to register annually for 15 years, Tier 2 offenders must register annually for 25 years, and Tier 3 offenders are required to register annually for the remainder of their lives (AWA, 2006; Department of Justice, 2008). The purpose of the tier classification system is to (on a national level) identify those sex offenders most at risk of sexual recidivism and, through community notification (i.e., national public registry), protect the public from these individuals by allowing the public to know the offenders' whereabouts.

In addition to the implementation of a tier system, SORNA expands the in-person verification requirements of offenders and enhances public access to relevant information by increasing the amount of information that is made public and by establishing a nationwide Internet registry (AWA, 2006; Department of Justice, 2008). It should be noted that SORNA is only one component of the AWA. Because this article is only interested in the effectiveness of the three-tier system to classify sex offenders, however, other aspects of the law are not discussed.

Risk Factors and Recidivism

Recidivism rates and risk factors related to sex offender recidivism have been extensively reviewed in the literature. This research has indicated that not all sex offenders pose the same risk to communities, as some types of offenders are more likely to reoffend than others. In one well known study, Harris and Hanson (2004) followed 4,724 sex offenders from both Canada and the United Kingdom for 15 years. Although 73% of the offenders had not been charged or convicted of a new sexual offense during the 15-year follow-up period, results did indicate that those who had male victims, were younger in age, and had a prior history of sexual offenses were at increased risk to sexually reoffend. These results were similar to the findings of Hanson and colleagues (Hanson & Bussière, 1998; Hanson, Scott, & Steffy, 1995; Hanson, Steffy, & Gauthier, 1993) who found that extrafamilial child molesters who preferred male victims were at a significantly higher risk to reoffend than incest offenders (regardless of victim gender preference) and those who preferred female victims.

Research has also suggested that male offenders who sexually reoffend are likely to be single, strangers to their victims, physically harm their victims, and to have past supervision violations (Dempster & Hart, 2002; Freeman, in press; Hanson &

Bussière, 1998; Harris & Hanson, 2004). Additional research has found that deviant sexual interest, antisocial personality traits, general self-regulation problems, prior sexual crimes (and engagement in a diversity of crimes), sexual preoccupation, numerous victims in one incident, and sexually offending at an early age are related to an increased risk of sexual recidivism for male sex offenders (Berliner, Schram, Miller, & Milloy, 1995; Hanson & Bussière, 1998; Hanson, Harris, Scott, & Helmus, 2007; Hanson & Morton-Bourgon, 2004; Långström, 2002; Långström, Sjöstedt, & Grann, 2004; Motiuk & Brown, 1996). No study, however, has found crime of conviction to be related to likelihood of recidivism.

Current Registration and Notification Practices

Many states have used the research on risk factors related to sexual recidivism to develop risk assessment instruments to classify sex offenders and determine the level and extent of registration and community notification. For example, New York State uses a standardized risk assessment instrument (which was created specifically for this purpose) that examines an offender's prior criminal history, level of violence, and victim preference. Based on this assessment, sex offenders are classified into three risk levels. Similarly, Nebraska uses a standardized risk assessment (developed by the University of Nebraska Law/Psychology Department) to place sex offenders into risk categories. This instrument considers factors such as offender age, prior conviction history, mental health diagnoses, disciplinary misconduct during incarceration, and victim information such as age, gender, and relationship to the offender (Nebraska State Patrol, 2009).

According to Levenson and D'Amora (2007), approximately half of the states use some form of risk assessment measure to classify sex offenders for registration and notification. Under SORNA, however, all states would be required to classify sex offenders based on the crime of conviction. Thus, using the SORNA three-tier system may impair the ability of states to accurately identify high-risk sex offenders because, as stated above, there is no empirical research to date that suggests crime of conviction is related to risk of sexual recidivism.

Purpose

Although much research exists that examines risk factors related to sexual recidivism, the three-tier system proposed under SORNA mandates the use of crime of conviction as the sole means to classify offenders. As there is currently no empirical research that suggests crime of conviction is related to risk of sexual recidivism, the goal of the current study was to empirically examine the ability of the SORNA three-tiered system to predict sexual recidivism. The study also sought to investigate

whether other well-established and easily obtainable risk factors (whether alone or in combination) might increase the predictive ability of SORNA.

Method

To test the predictive ability of the tier system under SORNA, a sample of registered New York State sex offenders both under community supervision (i.e., on probation or parole) and not under supervision was used.

Participants

As of June 2004, there were 18,602 sex offenders registered in New York State. Given the research that suggests female sex offenders are distinctly different from male sex offenders (see Center for Sex Offender Management, 2007; Cortoni & Hanson, 2005; Freeman & Sandler, 2008), all female sex offenders and offenders whose sex was unknown were dropped from the study ($n = 343$; 1.8%).² As such, the final sample consisted of only male registered sex offenders in New York State ($n = 17,165$; 92.2%). The data were retrieved from two sources. First, information was obtained from the New York State sex offender registry, which contains information on all registered sex offenders in New York State including offender demographics, offense characteristics, and victim information. Second, official criminal history information was extracted for all registered sex offenders from the New York State computerized criminal history database. Criminal history files contain information regarding characteristics related to arrest, conviction, disposition, and sentencing events. As only New York State criminal history information was obtained, crimes that may have occurred in other states were not included in this study.³

The majority of the sex offenders were White ($n = 10,911$; 63.6%), whereas 30.6% ($n = 5,246$) were Black, and 1.4% ($n = 241$) were categorized as Indian or Asian.⁴ The average registered sex offender was 32.88 years old ($SD = 11.77$) at the time he was arrested for his registerable sexual offense, with a range from 14 to 91 years of age. Most sex offenders were registered for sexual intercourse ($n = 7,451$; 43.4%) or sexual contact ($n = 5,182$; 30.2%), with the remaining offenders having been registered for committing deviant sexual intercourse ($n = 2,857$; 16.6%), promoting or possessing sexual performance by a child ($n = 304$; 1.8%), disseminating indecent materials to a minor ($n = 37$; 0.2%), kidnapping or unlawful imprisonment ($n = 64$; 0.4%), or patronizing/promoting prostitution ($n = 11$; 0.1%).⁵ Additional offender characteristics are presented in Table 1.

Offenders were followed starting from the date of their first release into the community after the instant offense. The follow-up period was ceased prior to the end of the study if the offender was arrested for a new criminal offense prior to June 4, 2004.

Table 1
Offender Characteristics by SORNA Tier Level

	Tier 1		Tier 2		Tier 3	
	<i>n</i> (%)	<i>M</i> (<i>SD</i>)	<i>n</i> (%)	<i>M</i> (<i>SD</i>)	<i>n</i> (%)	<i>M</i> (<i>SD</i>)
Offender demographics						
Offender race						
White	1,690 (73.2)		3,475 (70.0)		5,028 (56.8)	
Non-White	531 (23.0)		1,328 (26.7)		3,349 (37.8)	
Offender age at release		36.7 (13.3)		34.5 (11.3)		37.9 (11.6)
Supervising agency						
Probation	1,536 (66.5)		2,727 (54.9)		2,754 (31.1)	
Parole	65 (2.8)		1,335 (26.9)		4,795 (54.1)	
No supervision	708 (30.7)		904 (18.2)		1,309 (14.8)	
County of supervision						
Rural	147 (6.4)		266 (5.4)		351 (4.0)	
Midsized	1,050 (45.5)		2,444 (49.2)		3,504 (39.6)	
Urban	1,001 (43.4)		1,968 (39.6)		4,264 (48.1)	
Prior criminal history						
Number of prior drug offense arrests		0.5 (1.6)		0.5 (1.4)		0.5 (1.4)
Number of prior violent felony offense arrests		1.0 (1.4)		0.8 (1.3)		1.9 (1.7)
Number of prior sexual offense arrests		1.1 (0.7)		1.1 (0.7)		1.2 (0.8)
Number of variety of offenses in criminal history		2.6 (2.2)		3.5 (2.2)		3.8 (2.4)
Prior incarceration terms served		1.7 (4.0)		1.5 (2.6)		2.2 (3.1)
Prior supervision violations		0.3 (1.5)		0.3 (1.4)		0.5 (1.5)
Victim information						
Victim gender						
Female	1,940 (84.0)		4,033 (81.2)		7,482 (84.5)	
Male	193 (8.4)		596 (12.0)		867 (9.8)	
Mixed	14 (0.6)		48 (1.0)		153 (1.7)	
Victim age						
12 or younger	907 (39.3)		873 (17.6)		4,342 (49.0)	
13 to 17	904 (39.2)		3,276 (66.0)		1,218 (13.8)	
18 or older	250 (10.8)		211 (4.2)		1,873 (21.1)	
Both child and adult victims	55 (2.4)		128 (2.6)		283 (3.2)	
Number of victims		1.1 (0.3)		1.1 (0.4)		1.2 (0.5)
Outcome measures						
Sexual offense rearrest						
Yes	187 (8.1)		301 (6.1)		665 (7.5)	
No	2,122 (91.9)		4,665 (93.9)		8,193 (92.5)	
Nonsexual offense rearrest						
Yes	986 (42.7)		2,231 (44.9)		4,027 (45.5)	
No	1,323 (57.3)		2,735 (55.1)		4,831 (54.5)	

Note: SORNA = Sex Offender Registration and Notification Act. Percentages that do not add to 100% are due to missing information.

Dependent Variables

Research has shown that although sex offenders are a specialized group of offenders, they are likely to engage in both sexual and nonsexual offenses (Langan, Schmitt, & Durose, 2003). Thus, policies and interventions aimed at increasing public safety “should also be concerned with the likelihood of any form of serious recidivism, not just sexual recidivism” (Hanson & Morton-Bourgon, 2004, p. 4). As such, and to evaluate the public safety impact of the SORNA three-tier system, it is important to examine rearrest rates for both sexual and nonsexual offenses. Therefore, two measures of recidivism were used in the present study: (a) rearrest for a registerable sexual offense and (b) rearrest for any nonsexual offense. For the purposes of the current study, a registerable sexual offense was defined as any sexual crime that resulted in mandated registration with the New York State sex offender registry as stipulated in Correction Law Article 6c and, therefore, would result in mandated registration under SORNA. Each rearrest measure was a dichotomous indication of whether the offender was rearrested for the specific offense.

SORNA Tier System

Offenders’ tier level was a categorical variable with three levels: Tier 1 (low risk), Tier 2 (moderate risk), and Tier 3 (high risk). As stipulated by SORNA, tier classification was based solely on the crime of conviction. Specifically, tier classification was based on comparing New York State penal codes with descriptions for tier levels provided in the federal government’s SORNA guidelines (Department of Justice, 2008). Moreover, tier assignment was completed based on consultation with the New York State counsel that was working on implementation of the AWA. A complete listing of penal law descriptions and tier classification is presented in the appendix.

Established Risk Predictors

Given the risk factors reported by prior research (Hanson & Bussière, 1998; Hanson & Morton-Bourgon, 2004; Harris & Hanson, 2004; Motiuk & Brown, 1996), this study included several factors that have been shown to impact the recidivism rates of sex offenders, including offender demographics, offender prior criminal history, and victim information. These factors were included to determine whether any of them alone or in conjunction may improve the predictive accuracy of the SORNA tier system. These variables were also selected as they are all easily obtainable from basic criminal history files and are routinely made available to probation, parole, and other criminal justice agencies. Table 2 displays the correlation matrix for the risk predictors.⁶

Offender demographics. Given that the sample included probationers, parolees, and those not under supervision, a variable indicating the supervision type was included to control for any differences in supervision that may have affected the

Table 2
Correlation Matrix for the Predictor Variables

	1	2	3	4	5	6	7	8	9	10	11	12	13
1. Supervision type	—												
2. County of residence	-.27	—											
3. Tier level	.12*	.08*	—										
4. Prior VFO offense arrests	.20*	.13*	.26*	—									
5. Prior drug offense arrests	.12*	.12*	.01	.30*	—								
6. Prior registerable sex offense arrests	.07*	.01	.45*	.38*	.03*	—							
7. Variety of offenses	.23*	.10*	.16*	.57*	.39*	.20*	—						
8. Prior supervision violations	.13*	-.01	.05*	.27*	.16*	.08*	.29*	—					
9. Prior incarceration terms	.30*	.02	.08*	.51*	.48*	.17*	.57*	.32*	—				
10. Number of victims	.05*	-.03*	.21*	.00	-.04*	.05*	-.03*	-.02	-.02	—			
11. Victim age	.06*	.00	.08	.11*	.06*	.04*	.14*	.06*	.09*	.16*	—		
12. Victim gender	-.01	-.02	.02	-.05*	-.05*	.04*	-.12*	-.03*	-.05*	.27*	-.05*	—	
13. Offender race	-.12*	-.29*	-.14*	-.35*	-.24*	-.07*	-.37*	-.12*	-.27*	.06*	-.13*	.10*	—
14. Offender age	.02	.04*	.08*	.04*	-.02	.05*	-.14*	-.03*	-.05*	.11*	-.05*	.09*	.10*

Note: VFO = violent felony offense.

* $p < .0006$ (two-tailed).

likelihood of detection and/or reoffense. Race of the offender was dummy coded as 1(*White*) and 0 (*non-White*). In addition, offenders' age at the time of their first release into the community after their registerable sexual-offense conviction was included in the model. Finally, the model included a categorical variable representing offenders' county of residence to control for potential regional impacts across counties and disparities in supervision levels that may have affected the probability of detection (see Kruttschnitt, Uggen, & Shelton, 2000). The county variable was coded into rural (less than 50,000 people), midsize (between 50,000 and 499,999), and urban (500,000 or more).

Prior criminal history. Several prior criminal history variables were included in the analysis given the research that suggests an offender's prior criminal history is the most robust predictor of future criminal behavior (Hanson & Morton-Bourgon, 2004; Harris & Hanson, 2004; Romeo & Williams, 1985). These variables included (a) number of prior violent felony offense arrests, (b) number of prior registerable sexual offense arrests, (c) number of prior drug offense arrests, (d) number of different types of crime an offender had engaged in during his criminal career (variety of offenses), (e) number of prior incarceration terms served (both jail and prison), and (f) number of past supervision violations (both parole and probation).

Victim information. Several victim variables were included in the analysis given past research that suggests an offender's choice of victim is related to offender recidivism (Barbaree & Marshall, 1988; Hanson & Bussière, 1998). Victim information was based on the instant offense that resulted in the offender's mandated registration on the state sex offender registry. Victim gender was entered as three categorical variables: (a) male victim (1 = *male*, 0 = *other*), (b) female victim (1 = *female*, 0 = *other*), and (c) mixed victim gender (1 = *both male and female victims*, 0 = *other*). In addition, a categorical variable representing the age of the victim was included given the research which suggests that the age of victims favored by a sex offender is strongly related to that offender's criminality, with offenders who select younger victims being more likely to reoffend than those who select older victims (Hanson & Bussière, 1998). This variable was coded to correspond to the conventional categorization found in the extant research (under 12, 13-17, 18 or older). Finally, number of victims in the instant offense was also included, as it has been found to be related to offender recidivism (Motiuk & Brown, 1996).

Results

The SORNA provisions of the AWA mandate the classification of sex offenders into three tiers based solely on the crime of conviction. As such, the first part of this analysis examined the univariate relationship between tier level and sexual

Table 3
Correlation Between Predictor Variables
and Nonsexual and Sexual Rearrest

	Nonsexual Rearrest	Sexual Rearrest
SORNA tier level	.02	.00
Supervision type	.13*	.07*
County of residence	-.01	-.05*
Prior VFO offense arrests	.20*	.10*
Prior drug offense arrests	.17*	.03*
Prior registerable sex offense arrests	.05*	.10*
Variety of offenses	.42*	.16*
Prior supervision violations	.17*	.05*
Prior incarceration terms	.33*	.13*
Number of victims	-.06*	.00
Victim age	.07*	.02
Victim gender	-.08*	-.01
Offender race	-.20*	-.06*
Offender age at release	-.28*	-.07*

Note: SORNA = Sex Offender Registration and Notification Act; VFO = violent felony offense.

* $p < .0006$ (two-tailed).

and nonsexual rearrest. These univariate relationships are a direct test of SORNA, as tier level (and consequently crime of conviction) is the only factor used for registration and notification practices. As is illustrated in Table 3, which presents correlations between the predictor variables and sexual and nonsexual rearrests, tier level was not significantly correlated with either sexual or nonsexual rearrest. As such, it is unlikely that the three-tier system outlined in SORNA (which is based solely on crime of conviction) will accurately predict which sex offenders will reoffend and which ones will not. Moreover, the results in Table 3 indicate that several different variables, all of which are readily available in criminal history files, would be good predictors of recidivism. Many of these variables are well established to be related to the recidivism of male sex offenders, including offender age (Hanson, 2002), variety of past criminal history (Freeman, in press), prior sexual offenses (Hanson & Bussière, 1998), and prior incarceration terms (Hanson & Morton-Bourgon, 2004). In addition, many of these factors are found on commonly used actuarial instruments, such as the Static-99 (Hanson & Thornton, 1999) and the Minnesota Sex Offender Risk Screening Tool–Revised (MnSOST-R; Epperson et al., 1998).

To test whether any well-established risk factors add to the predictive ability of SORNA, Cox regressions were estimated to control for other risk factors that have been found to be related to sexual recidivism as well as to control for the fact that not all sex offenders were in the community for the same length of time. Although

some offenders may have been rearrested immediately after release/registration with the state, others may have been rearrested several years later, and still others may not have been rearrested at all. Once a sexual or nonsexual rearrest occurred, an individual was no longer at risk and, thus, was no longer observed. To gain an accurate estimate of the time each offender was in the community during the follow-up period, time spent in prison after that initial release date (e.g., for parole technical violations) was deducted from the total at-risk time period (i.e., time spent in the community). As the majority of sex offenders who were rearrested for both sexual and nonsexual offenses were arrested by the end of the 8th year in the community, the follow-up period was ceased after 3,000 days in the community. Sex offenders, on average, were in the community for 4.6 years ($SD = 3.0$) for the sexual offense rearrest model and 3.6 years ($SD = 2.9$) for the nonsexual offense rearrest model. Table 4 summarizes the Cox regression results.

Sexual Offense Rearrest

For the sexual offense model, all variables were entered in one step, which yielded a significant overall model, $\chi^2(20, N = 14,903) = 601.02, p < .001$. Significant differences in the rate of rearrest for a sexual offense emerged between the three tier levels. Specifically, sex offenders categorized as Tier 1 (lowest risk) were rearrested for a sexual offense more quickly than both Tier 2 (moderate risk) and Tier 3 (highest risk) offenders (104% and 90%, respectively).

Nine variables emerged as significant predictors of sexual offense rearrest: (a) number of prior incarceration terms, (b) number of prior supervision violations, (c) number of prior violent felony offense arrests, (d) number of prior registerable sexual offense arrests, (e) variety of offending history, (f) number of victims in the instant offense, (g) offender age, (h) county of residence, and (i) supervision type. Specifically, each additional prior incarceration term served increased the rate of sexual offense rearrest by 2.6% and each prior registerable sexual offense arrest increased the rate of rearrest by 34.1%, whereas each additional different type of prior criminal offense arrest increased the rate of rearrest by 27.8%. Moreover, the rate of rearrest for a sexual offense decreased by 5.7% for each prior violent felony offense arrest and by 10.2% for each prior supervision violation. Number of victims in the instant offense and age at the time of the instant offense arrest also affected the rate of sexual offense rearrest. Each additional victim in the instant offense increased the rate of rearrest for a sexual offense by 27.7%, whereas each 1-year increase in age resulted in a small (2.5%) decrease in the rate of rearrest for a sexual offense. Finally, county of residence and supervision type had a significant effect on sexual offense rearrests. The hazard ratios for county of residence (1.91 for rural counties and 1.34 for midsize counties) indicated that sex offenders residing in rural and midsize counties were rearrested at a faster rate than those residing in urban counties. Sex offenders under probation supervision, however,

Table 4
Cox Regression for the Two Outcome Measures

	Sexual Offense Rearrest			Nonsexual Offense Rearrest		
	<i>B</i>	<i>SE</i>	Exp(<i>B</i>)	<i>B</i>	<i>SE</i>	Exp(<i>B</i>)
Tier 2 compared to Tier 1	-0.71*	0.12	0.49	-0.29*	0.46	0.75
Tier 3 compared to Tier 1	-0.65*	0.11	0.53	-0.29*	0.46	0.75
Probation supervision (compared to no supervision)	-0.41*	0.10	0.66	-0.27*	0.04	0.77
Parole supervision (compared to no supervision)	-0.04	0.10	0.96	-0.27*	0.04	0.76
Rural county (compared to urban)	0.65*	0.14	1.91	0.18*	0.06	1.19
Midsized county (compared to urban)	0.30*	0.08	1.34	0.10*	0.03	1.11
Offender race ^a	-0.07	0.09	0.93	-0.18*	0.03	0.84
Offender age at release	-0.03*	0.00	0.98	-0.04*	0.00	0.96
Number of prior violent felony offense arrests	-0.06*	0.03	0.94	-0.03*	0.01	0.97
Number of prior drug offense arrests	-0.06	0.03	0.95	-0.02	0.01	0.98
Number of prior registerable sexual offense arrests	0.29*	0.04	1.34	-0.03	0.02	0.97
Variety of offenses	0.25*	0.02	1.28	0.22*	0.01	1.24
Number prior incarceration terms served	0.03*	0.01	1.03	0.07*	0.00	1.07
Number of prior supervision violations	-0.11*	0.04	0.90	0.04*	0.01	1.04
Number of victims in instant offense	0.24*	0.09	1.28	-0.02	0.05	0.98
Victim age 12 or younger (compared to both child and adult)	0.29	0.23	1.34	-0.08	0.10	0.92
Victim age 13-17 (compared to both child and adult)	0.24	0.23	1.28	0.02	0.10	1.02
Victim age 18 and older (compared to both child and adult)	0.54	0.24	1.72	0.06	0.10	1.06
All male victims (compared to mixed)	0.50	0.40	1.64	0.19	0.14	1.21
All female victims (compared to mixed)	0.59	0.41	1.81	0.15	0.15	1.16
-2 log likelihood		13,416.50			88,452.18	
Chi-square		601.02*			4,055.76*	

a. Coded 1 (*White*), 0 (*non-White*).

* $p < .01$.

tended to be rearrested for a sexual offense 33.7% less quickly than those under no criminal justice supervision.

Nonsexual Offense Rearrest

All variables were entered into the model in one step, and the overall model yielded significant results, $\chi^2(20, N = 15,646) = 4,055.76, p < .001$. Consistent with the analysis for sexual offense rearrest, sex offenders categorized as Tier 1 were rearrested for a nonsexual offense faster than other offenders. Specifically, Tier 1 offenders were rearrested for a nonsexual offense 34% faster than Tier 2 offenders and 33% faster than Tier 3 offenders.

Only three criminal history variables increased the rate of rearrest for a nonsexual offense, including each prior incarceration term served (by 7.0%), each prior supervision violation (by 3.9%), and each additional type of crime in an offender's history (by 24.0%). Each prior violent felony offense arrest, however, decreased the rate of arrest for a subsequent nonsexual offense. That is, each additional prior violent felony offense decreased the rate of rearrest for a nonsexual offense by 2.7%. As for non-criminal history variables, sex offenders residing in rural counties were rearrested for a nonsexual offense approximately 19.7% more quickly than those in urban counties, whereas those residing in midsize counties were rearrested 10.5% more quickly than sex offenders in urban counties. Significant differences also emerged for supervision type. Specifically, being under probation supervision reduced the rate of rearrest by 23.5%, whereas being under parole supervision reduced the rate by 23.8%. Finally, each 1-year increase in age reduced the rate of rearrest by 4.2%; whereas, being White reduced the rate of rearrest by 16.5%. Victim age, victim gender, number of victims in the instant offense, prior number of drug offense arrests, and prior number of registerable sexual offense arrests did not significantly impact the rate of rearrest for a nonsexual offense.

Discussion

The current study tested the ability of the tier system, as stipulated in SORNA, to predict sexual recidivism among a group of registered sex offenders in New York State. The results cast doubts on the ability of the SORNA provisions of the AWA to increase public safety. More specifically, results showed that those offenders classified as Tier 1 (lowest risk) were rearrested for both sexual and nonsexual offenses more quickly than both Tier 2 (moderate risk) and Tier 3 (highest risk) offenders and were rearrested for sexual offenses at a higher rate than Tiers 2 and 3 offenders. Moreover, as shown in Table 3, the results indicated that many other risk factors supported by empirical research would be better predictors of future sexual offending than the SORNA tier level. Given the results of the current study, the enactment of SORNA may give community members a false sense of security. That is, community members may believe they are safe if no Tier 3 offenders are residing in their neighborhood when, in fact, Tier 3 offenders are not at increased risk to reoffend. As such, SORNA appears unable to accurately identify high-risk offenders and, therefore, increase public safety.

This lack of any observed association between crime of conviction and sexual recidivism may be due to the fact that crime of conviction may not be an accurate indication of the type of offense that was committed. Because convictions in sexual offenses are often elusive—whether as a result of lack of evidence, victim’s hesitation to testify, credibility of the victim, or characteristics of the defendant—prosecutors may be more likely to offer a plea bargain in sexual offense cases to secure a conviction. As such, it is possible that crime of conviction does not accurately reflect the offense that was committed and, therefore, may be a poor predictor of future risk of reoffending. Thus, it is unsurprising that, as the current study found, other easily obtainable risk factors would be better predictors of recidivism and offer a more accurate risk criterion for the classification of sex offenders.

States had until July 2009 to fully implement the regulations outlined in the AWA.⁷ Yet, a recent analysis conducted by the Justice Policy Institute (2008) noted that, in all 50 states, the costs of implementing SORNA far outweigh the costs of losing 10% of Byrne funding. In fact, the Justice Policy Institute estimates that in 2009 alone, New York State would spend US\$31,300,125 for the implementation of SORNA, whereas forfeiting 10% of its Byrne funding would only result in a loss of US\$1,127,984.

Given the large fiscal implications of implementing SORNA, as well as results of the current study which indicate that the tier system does little to accurately predict which offenders will reoffend and which will not, perhaps states should reconsider the implementation of SORNA. Rather, if states are wedded to registration and community notification practices despite the empirical research that indicates the ineffectiveness of such laws to impact rates of sexual offending (e.g., Petrosino & Petrosino, 1999; Sandler et al., 2008; Walker et al., 2005; Zevitz, 2006; Zgoba et al., 2008), then perhaps the public would be better served if the scarce resources surrounding sex offender management were limited to the offenders who pose the greatest risk to the public’s safety (Harris & Hanson, 2004). Given the results of the current study, which indicate the lack of ability for the tiered system under SORNA to accurately identify offenders at high risk of sexual recidivism, the AWA would, in fact, target the strongest sanctions against those least likely to recidivate, while giving lesser sanctions to those most likely to recidivate (i.e., Tier 1 offenders).

Currently, the provisions outlined in SORNA do not discriminate between those sex offenders who can be rehabilitated and those who may continue to sexually offend. Yet, in recent years much has been learned about risk factors related to sexual recidivism, and a growing number of actuarial risk assessment instruments have been developed to identify those high risk sex offenders who pose the greatest threat to public safety. The two most well-known risk assessment instruments used for the prediction of sexual recidivism among male sex offenders are the Static-99 (Hanson & Thornton, 1999) and the MnSOST-R (Epperson et al., 1998), both of which have been shown to have moderate predictive accuracy in numerous international samples of sex offenders (Knight & Thornton, 2007). Although these risk assessment instruments do not

account for all factors that could be associated with recidivism, they provide a moderate prediction of recidivism and allow for a means to distinguish sex offenders based on risk (usually into categories of low, medium, and high risk).

In fact, results of the current study suggest that individual items found on these instruments are significantly associated with recidivism for a group of sex offenders in New York State. Specifically, the presence of prior sexual offenses, the number of previous sentencing dates, having male victims, and being younger (all items on the Static-99) were all related to an increase in the likelihood of sexual recidivism. Although some sex offenders are extremely dangerous and pose a threat to public safety, others present a low risk and can be effectively managed in the community with appropriate levels of supervision and treatment. Thus, the registration and community notification provisions of the AWA may be more effective if actuarial risk assessment instruments that measure both static and dynamic factors are used as a way to identify those most at risk to reoffend (see Levenson & D'Amora, 2007) instead of the currently proposed three-tier system based solely on crime of conviction. Not only would this approach prevent low-risk offenders from receiving the same sanctions as high-risk offenders, it would also conserve resources and allow registration and community notification practices to be directed at those most at risk to reoffend. Targeting intervention programs and legislative initiatives to specific types of sex offenders will more effectively reduce the likelihood of recidivism, ultimately increasing public safety, and will conserve the limited resources aimed at sex offender management strategies.

Conclusion

The idea behind the enactment of the AWA, to standardize registration and notification procedures nationwide, appeared to address limitations of the current system. In reality, however, the three-tiered system, as outlined in SORNA, fails to increase the effectiveness of current registration and community notification practices. In fact, as indicated by the results of the current study, the system proposed in SORNA actually decreases the ability of states to predict which sex offenders will sexually reoffend and which ones will not. More specifically, the use of almost any empirically based risk factor would yield more accurate predictions than the SORNA tier level, which is based solely on crime of conviction. Although no risk prediction system can accurately predict sexual recidivism 100% of the time, the results of the current study indicate that SORNA is almost completely ineffective at categorizing sex offenders based on risk of sexual recidivism. As such, it appears enactment of the AWA (and, therefore, SORNA) would not only cost states more money than they would lose if they were not to enact it, but also that such enactment would unlikely increase public safety.

There is, however, a broader question surrounding the ability of any sex offender registration and notification law to increase public safety. Specifically, several recent

studies (e.g., Petrosino & Petrosino, 1999; Sandler et al., 2008; Walker et al., 2005; Zevitz, 2006; Zgoba et al., 2008) have found registration and notification laws to be ineffective methods of reducing sexual victimizations. Furthermore, there is some evidence to suggest that these types of laws are increasing recidivism, as the unintended consequences of these laws may aggravate stressors known to be associated with sexual reoffending (Freeman, in press). Winick (1998) argued that

by denying them [sex offenders] a variety of employment, social, and educational opportunities, the sex offender label may prevent these individuals from starting a new life and making new acquaintances, with the result that it may be extremely difficult for them to discard their criminal patterns. (p. 556)

Given that the SORNA provisions increase the reporting requirements as well as the public distribution of housing and employment information, it is possible that the enactment of the tier system, as outlined in SORNA, may actually increase reoffending rates of convicted sex offenders. As such, perhaps it is time to replace these well-intended, yet ineffective, public policy initiatives (e.g., registration, community notification) with ones that are scientifically supported.

Appendix

New York State Penal Laws Matched to SORNA Tier Level

Level	Penal Law	Description	Offense Type
Tier 1	130.20	Sexual misconduct	A Misdemeanor
	130.52	Forcible touching	A Misdemeanor
	130.55	Sexual abuse third degree	B Misdemeanor
	130.60	Sexual abuse second degree	A Misdemeanor
	135.05	Unlawful imprisonment second degree	A Misdemeanor
	230.04	Patronizing a prostitute third degree	A Misdemeanor
Tier 2	130.25	Rape third degree	E Felony
	130.30	Rape second degree	D Felony
	130.40	Criminal sexual act third degree	E Felony
	130.45	Criminal sexual act second degree	D Felony
	135.10	Unlawful imprisonment first degree	E Felony
	135.20	Kidnapping second degree	B Felony
	135.25	Kidnapping first degree	A-1 Felony
	230.05	Patronizing a prostitute second degree	E Felony
	230.30	Promoting prostitution second degree	C Felony
	230.32	Promoting Prostitution first degree	B Felony
	230.33	Compelling prostitution	B Felony
	235.22	Disseminating indecent material to a minor first degree	D Felony
	250.45	Unlawful surveillance first degree	D Felony
	255.25	Incest second degree	D Felony
255.27	Incest first degree	B Felony	

(continued)

Appendix (continued)

Level	Penal Law	Description	Offense Type
	263.05	Use of a child in a sexual performance	C Felony
	263.10	Promoting an obscene sexual performance by a child	D Felony
	263.11	Possessing an obscene sexual performance by a child	E Felony
	263.15	Promoting a sexual performance by a child	D Felony
	263.16	Possessing a sexual performance by a child	E Felony
Tier 3	130.35	Rape first degree	B Felony
	130.50	Criminal sexual act first degree	B Felony
	130.53	Persistent sexual abuse	E Felony
	130.65	Sexual abuse first degree	D Felony
	130.65(a)	Aggravated sexual abuse fourth degree	E Felony
	130.66	Aggravated sexual abuse third degree	D Felony
	130.67	Aggravated sexual abuse second degree	C Felony
	130.70	Aggravated sexual Abuse first degree	B Felony
	130.75	Course of sexual conduct against a child first degree	B Felony
	130.80	Course of sexual conduct against a child second degree	D Felony
	130.90	Facilitating a sex offense with a controlled substance	D Felony
	130.95	Predatory sexual assault	A-II Felony
	130.96	Predatory sexual assault against a child	A-II Felony

Notes

1. A recent extension by the federal government allows states and tribal territories until July 27, 2010 to enact all portions of the AWA.

2. Registered sex offenders who were supervised by another state ($n = 1$; 0.0%) were also dropped from the study, as were those offenders who died ($n = 298$; 1.6%) or were deported ($n = 7,999$; 4.3%).

3. Of the 272,111 offenders released from prison in 1994, only 5% of the 67.5% who were rearrested within 3 years were rearrested out of the state in which they were released (Langan & Levin, 2002). As noted in an article on sex offender recidivism in Minnesota (Minnesota Department of Corrections, 2007), the number of sexual offense rearrests that occur out of state should be even less than the percentage of general crimes reported by Langan and Levin (2002).

4. The remaining 4.5% ($n = 738$) of offenders were of unknown race.

5. The type of offense was missing for the remaining 7.3% ($n = 1,259$).

6. The degree of multicollinearity among the risk predictors was assessed by estimating auxiliary regression equations (i.e., additional analyses with each independent variable serving as the dependent variable). When this method is used, a R^2 value $\geq .75$ indicates dangerous levels of multicollinearity. Results of the analyses in the current study revealed no signs of multicollinearity among the variables.

7. A recent extension by the federal government allows states and tribal territories until July 27, 2010 to enact all portions of the AWA.

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