

COMMUNITY NOTIFICATION

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EXECUTIVE SUMMARY

Community notification laws, which allow public access to information regarding sex offenders, have attracted widespread attention and support across North America. Community notification laws have been enacted in the United States and Canada at the federal and state/provincial levels. The three general types of notification practices in the United States are: (1) “broad community notification,” (2) “notification to organizations and individuals at risk” and (3) “access to registration information” (Matson & Lieb, 1996, p. i). Canadian federal legislation governing notification is discussed and notification practices in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario are highlighted.

Although notification protocols vary between the United States and Canada (and among states and provinces), some basic principles remain constant. In general, community notification only applies to potentially dangerous sex offenders. Local law enforcement agencies typically have the responsibility of collecting offender information and making a decision about notification. In making a decision about notification, justice agencies must try to achieve a balance between the public’s safety and right to know and the offender’s right to privacy. Once a determination has been made to release information, law enforcement agencies usually notify the public via the media, flyers, newspapers or telephone.

Several limitations to and problems associated with community notification are discussed. One limitation is that notification laws give the public a false sense of security. Few sex offenders are ever identified and, for those who are subject to notification, recidivism rates are unaffected. In addition, community notification constitutes cruel and unusual punishment and has been known to instigate vigilante justice. These problems are contrary to the principles of rehabilitation and the successful reintegration of the offender into the community.

The paper concludes that the release of offender information to the general public, particularly if the public has not been given appropriate advice on how to interpret and act on the information provided, causes more harm than good. However, community notification in limited circumstances (i.e., notifying victims or witnesses about the release of the offender), may be justified.

TABLE OF CONTENTS

INTRODUCTION	1
COMMUNITY NOTIFICATION DEFINED	1
UNITED STATES NOTIFICATION PROTOCOLS	1
CANADIAN NOTIFICATION PROTOCOLS	2
British Columbia	3
Alberta	3
Saskatchewan	4
Manitoba	4
Ontario	5
COMMUNITY NOTIFICATION LIMITATIONS	5
False Sense of Security	5
Cruel and Unusual Punishment	6
Vigilantism	6
Recidivism Rates	7
DISCUSSION	7
REFERENCES	8

INTRODUCTION

Community notification laws, which allow public access to information regarding sex offenders, have attracted widespread attention and support across North America. The first community notification law was enacted in Washington State in 1990 (Matson & Lieb, 1996). Since then, 20 other states have enacted similar laws, some of which are modelled after Washington's approach (Lieb, Maki & Slavick, 1996). In addition, the United States introduced federal legislation in 1994. In Canada, the Corrections and Conditional Release Act (CCRA) outlines the notification responsibilities of the Correctional Service of Canada upon releasing federal offenders into the community. At least five provinces, including British Columbia, Alberta, Saskatchewan, Manitoba and Ontario are currently releasing information about sex offenders to the public. This paper discusses current notification practices in the United States and Canada. The paper concludes with a discussion of the limitations of and problems associated with community notification.

COMMUNITY NOTIFICATION DEFINED

Community notification refers to “the distribution of information regarding released sex offenders to citizens and community organizations” (Matson & Lieb, 1996, p. 1). Although notification protocols vary between the United States and Canada (and among states and provinces), some basic principles remain constant. In general, community notification only applies to potentially dangerous sex offenders. In most jurisdictions, local law enforcement agencies have the responsibility of collecting offender information from justice departments, parole boards, community organizations and community members. In making a decision about notification, justice agencies try to achieve a balance between the public's safety and right to know and the offender's right to privacy. Once a determination has been made to release information, law enforcement agencies usually notify the public via the media, flyers, newspapers or telephone.

UNITED STATES NOTIFICATION PROTOCOLS

Washington was the first state to enact a community notification law (Matson & Lieb, 1996). The law was a provision of Washington's Community Protection Act of 1990. Washington's notification law gives local law enforcement agencies the authority to notify the public about convicted sex offenders living in the community. Since Washington enacted its community notification law in 1990, many states have enacted community notification laws.

Community notification laws in the United States vary from state to state. However, they can be grouped into three general categories: (1) “broad community notification,” (2) “notification to organizations and individuals at risk” and (3) “access to registration information” (Matson & Lieb, 1996, p. i). California is an example of a state which allows the public access to sex offender registration information (Matson & Lieb, 1996). In California, all adult and juvenile sex offenders, as well as sexually motivated offenders as defined in the California Penal Code, are required to register

specific information about themselves with their law enforcement office. Citizens can call their law enforcement office to find out whether someone they know is a registered sex offender.

Connecticut is an example of a state which notifies only those organizations and individuals at risk. Police agencies in Connecticut notify only specific persons about the release of an offender “when it is deemed necessary to protect [that] person from a specific sex offender” (Matson & Lieb, 1996, p. 9). This information is conveyed by the chief of police or resident state trooper.

Louisiana is an extreme example of a state with broad community notification laws. Upon release, community notification is mandatory for all convicted sex offenders (Matson & Lieb, 1996). The State Board of Parole requires the offender to notify the public by mail of his/her name, address and the offence for which he/she was convicted. Specifically, the released offender must notify people who live within one-square mile in a rural area or three square blocks in an urban area of the offender’s residence. The superintendent of the school district where the offender will reside must also be notified. The Board of Parole may also order the offender to conduct any other form of notification it deems necessary, including signs, handbills, bumper stickers or clothing labelled with the offence committed.

Recently, the United States government enacted federal legislation concerning community notification (Matson & Lieb, 1996). According to Matson and Lieb (1996, p. 1):

Title XVII of the Violent Crime Control and Law Enforcement Act of 1994 requires states to create registries of offenders convicted of crimes against children or sexually violent offences. This Act also encourages states to authorize the release of relevant registration information to the public, when necessary for the public’s protection.

In October, 1996, there were 185,393 registered sex offenders in the United States (Washington Institute for Public Policy, 1996). The Sex Offender Tracking and Identification Act of 1996 requires that the Federal Bureau of Investigation establish a national sex offender database within three years to track sex offenders as they move.

CANADIAN NOTIFICATION PROTOCOLS

Currently in Canada, the Corrections and Conditional Release Act (CCRA) outlines the Correctional Service of Canada’s responsibility with regard to notification of the release of federal inmates on an unescorted temporary absence, parole, statutory release or upon warrant expiry. Section 25(1) sets out the general responsibility of the Correctional Service of Canada to share information:

The Service shall give, at the appropriate times, to the National Parole Board, provincial governments, provincial parole boards, police, and any body authorized by

the Service to supervise offenders, all information under its control that is relevant to release decision-making or to the supervision or surveillance of offenders.

Section 25(2) of the CCRA requires the Correctional Service of Canada to notify police forces before the release of a federal inmate on an unescorted temporary absence, parole or statutory release. In the case of a federal inmate released on warrant expiry, Section 25(3) of the CCRA only requires the Correctional Service of Canada to notify police of the inmate's release when it is reasonably believed that the inmate poses a threat to someone.

At the provincial level, British Columbia, Alberta, Saskatchewan, Manitoba and Ontario are currently notifying the public about the release of sex offenders. Alberta and Manitoba have established specific protocols regarding the disclosure of offender information to the public.

British Columbia

British Columbia has drafted legislation concerning community notification about child abusers. The draft policy would apply to individuals charged or convicted of an offence involving physical or sexual abuse of a child (British Columbia Ministry of the Attorney General, 1995). The draft policy calls for information sharing between justice agencies about "known child abusers" and "offenders who pose a real risk of harm to children." This information sharing is intended to assist justice agencies in managing high risk individuals and to allow justice agencies to make informed decisions about community notification. The draft legislation provides justice agencies with specific criteria to assess each case and guidelines for community notification.

Alberta

The Alberta protocol regarding community notification has its roots in Section 31 of the Freedom of Information and Protection of Privacy Act (FOIPPA). Section 31 of FOIPPA requires the head of a public body to disclose information to the public or certain members of the public about a "risk of significant harm" to the public's safety or any information which is "clearly in the public interest." Where practical, the person to whom the information relates and the Commissioner must be notified of the release of information. The protocol was developed to establish guidelines and agreements about how Section 31 of FOIPPA would be implemented. It is an agreement between Alberta Justice the Correctional Service of Canada and chiefs of police.

Information regarding a potentially dangerous sex offender can be communicated by a police agency only (local city police or RCMP detachment) but referrals to the police can originate from Alberta Justice, the Correctional Service of Canada, a member of the public or an organization. Alberta Justice will use certain criteria to assess each case. These criteria include: (1) the offender's age and health, (2) the circumstances of the offence(s), including degree of violence, premeditation and number of victims, (3) offence history, (4) access to possible victims, (5) past performance on community supervision, (6) treatment program participation, (7) assessment results, (8) employment and (9) family and community support.

Once a determination has been made that an individual presents a risk to the public and the case is referred to the police, the police determine if any current legislation restricts the release of information. Second, an assessment is made regarding the balance between public safety and individual privacy interests. Third, the police review any recommendations made by the referral agent. The FIOP commissioner and the offender are made aware of the decision to notify. At this point, the offender has the opportunity to argue against the decision.

The Alberta protocol calls for disclosure if it is in the public's best interest. This disclosure should only be that which is necessary to achieve the "required" effect, that being to enhance public protection. Further, disclosing information should be weighed against an offender's right to privacy and the risk associated with alarming the public.

One concern regarding Alberta's protocol is the fact that the decision over each aspect of notification is left up to individual police agencies. Different police chiefs will invariably have different views on notification. We have already witnessed differences between notification in Edmonton and Calgary. For uniformity in the application of the protocol in Alberta, a panel such as the Manitoba Community Notification Advisory Committee (discussed below) should be formed to make recommendations for each case.

Saskatchewan

Saskatchewan has been notifying communities about the release of sex offenders on an informal basis. In May, 1996, the Saskatchewan government announced plans to establish a notification policy and to set up a notification committee like the Manitoba Community Notification Advisory Committee (Personal Communication, John Howard Society of Saskatchewan staff member, August 26, 1996).

Manitoba

In February, 1995, the Manitoba Community Notification Advisory Committee was formed in response to public concerns regarding potentially dangerous sex offenders (Association of Human Services in Alberta, 1996). The Committee's mandate is to balance the public's right to information with the offender's right to privacy. According to the Committee, "this is an important and delicate task requiring the expertise of individuals from a wide range of disciplines" (AHSA, 1996). The Committee is comprised of representatives from criminal justice agencies at the federal, provincial and municipal levels. The Committee works with the police in making decisions about community notification.

The Committee's protocol applies to sex offenders who are about to be released from a correctional facility, sex offenders who are currently being supervised in the community and convicted sex offenders who are believed to pose a continuing threat (AHSA, 1996). The Committee uses a specific set of criteria to determine whether an offender poses a danger to the public. The criteria considered by the Committee include: (1) the circumstances of the offence(s), (2) any probation or parole breaches, (3) treatment program participation, (4) assessments, (5) access to possible victims,

(6) employment and (7) family and community support. The Committee makes a recommendation and the final decision on notification is made by the police.

Ontario

In Ontario, the responsibility of notifying the community of a released sex offender currently rests with municipal police departments (Personal communication, John Howard Society of Ontario staff member, August 23, 1996). Each police department has set up its own criteria for determining what information will be released to the public. Like Alberta, Ontario's community notification practices lack uniformity because there is no board or committee to establish uniform guidelines. For example, an offender released from a provincial institution and confined to a wheelchair was subject to the same community notification as a relatively more dangerous, federally sentenced offender. This lack of uniformity is discriminatory in that some jurisdictions are more punitive than others.

COMMUNITY NOTIFICATION LIMITATIONS

While community notification has gained popularity in recent years, there are several limitations to and problems associated with the practice, including giving a false sense of security, cruel and unusual punishment, vigilante justice and not impacting on recidivism rates. These limitations and problems are discussed below.

False Sense of Security

Presumably, community notification is intended to enhance public safety. However, community notification laws actually give the community a false sense of security. The community may believe that all sex offenders have been identified, whereas this is not the case for a number of reasons. First, many sexual offences are never reported to the police. According to the 1993 General Social Survey (GSS), 90% of victims aged fifteen and over fail to report incidents of sexual assault (Canadian Centre for Justice Statistics, 1995, p. 7). Second, of those sexual offences reported, only a portion are cleared by the police. Only 69% of sexual assaults brought to the attention of the police are cleared (Canadian Centre for Justice Statistics, 1995, p. 8). The British Columbia Ministry of the Attorney General (1995, p. 10) recognizes the limits of community notification in its draft legislation on community notification of the release of child abusers:

Many abusers of children have never been charged or convicted. Therefore, this policy is only one tool available for the protection of children. Parents, schools and communities must also maintain their vigilance.

A final concern is that law enforcement agencies throughout North America lack sufficient resources to inform the public of every potentially dangerous offender (Houston, 1994). For example, Washington State's sex offender registration and notification laws have placed a considerable strain on law enforcement agencies. Police agencies have difficulties maintaining sex offender registries,

not to mention the overwhelming task of verifying the information and informing the public. Given these problems, community notification can do little to enhance public safety.

Cruel and Unusual Punishment

Critics of community notification argue that it constitutes cruel and unusual punishment. For offenders who successfully complete their terms of imprisonment and who wish to reintegrate themselves into society, community notification laws impose further punitive sanctions against them. Their debt to society has been paid and any further action to restrict their liberties would constitute cruel and unusual punishment.

In New Jersey, a number of sex offenders have spoken out against community notification legislation. These individuals refer to themselves as recovering sex offenders who have “cooperated with state treatment centers, gone through group and individual therapy sessions and have learned to control their deviant impulses” (Silva, 1995, p. 1982). Furthermore, many of them have successfully completed their parole terms and are considered to be rehabilitated by their therapists and parole boards (Silva, 1995). For these people, community notification laws are a barrier to their successful reintegration into society and adversely affect their efforts to become productive, valued members of the community. An offender cannot become a responsible member of the community as long as he is labelled and treated as a criminal (Bedarf, 1995).

Vigilantism

Critics of community notification also argue that such practices encourage vigilante behaviour against released offenders. A 1996 study into the success of Washington’s notification laws revealed that 3.5% of sex offenders, subject to notification laws, had been harassed by the public (Matson & Lieb, 1996). Furthermore, in almost half of these cases, the offender’s family was also harassed. Specific examples of vigilante behaviour that have occurred in North America are discussed below.

In Texas, Raul Meza was released after serving eleven years for the rape and murder of an eight year old girl. Following his release, Meza was thrown out of six communities before ending up at his mother’s house in Austin. According to his family, “Meza became a caged animal because of the constant haranguing of victim’s rights groups and the media” (Silva, 1995, p. 1989). In Washington, convicted sex offender Joseph Gallardo’s planned residence was burned down after the community was notified of his criminal history (Donnelly & Lieb, 1993).

In Alberta, the release of information regarding convicted sex offender Roger Bourgeois led to public protests and vigilante behaviour. After arriving in Edmonton, Bourgeois was subject to threats by a community determined to drive him out. Bourgeois was awakened on several occasions by several people pounding on his door, warning him to leave or die (Evans backs police..., 1995). Shortly thereafter, Bourgeois left Edmonton on a \$68 one-way bus ticket to another city provided by Alberta Social Services (Paedophile goes home..., 1995).

Recidivism Rates

Critics of community notification also point out that such practices do not affect recidivism rates. Between March 1, 1990 and December 31, 1993, a Washington study compared a group of sex offenders who were subject to notification laws, with a similar group of sex offenders who were released prior to the implementation of such laws (Schram & Milloy, 1995). The study found that the notification group (19%) had a lower rate of recidivism than the comparison group (22%) (Schram & Milloy, 1995, p. ii). This difference, however, is not statistically significant. Further, there were no significant differences in the rates of general recidivism between the groups. In light of this study, community notification appears to have no effect upon the recidivism rates of sexual offenders and, therefore, does not enhance public protection.

DISCUSSION

Community notification laws have attracted widespread support in recent years. Proponents of community notification laws argue that the public's right to know, the need to protect the public, the ineffectiveness of treatment programs, the perceived higher recidivism rates among sex offenders and the psychological damage often suffered by victims of sexual offences justify releasing personal information on sex offenders. Community notification is widely believed to enhance public safety. However, studies reveal that notification laws actually give the public a false sense of security. Few sex offenders are ever identified and, for those who are subject to notification, recidivism rates are unaffected. Further, community notification constitutes cruel and unusual punishment and has been known to instigate vigilante justice. These problems are contrary to the principles of rehabilitation and the successful reintegration of the offender into the community.

The release of offender information to the general public, particularly if the public has not been given appropriate advice on how to interpret and act on the information provided, causes more harm than good. However, community notification in limited circumstances (i.e., notifying victims or witnesses about the release of the offender), may be justified.

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