

Center for Missing and Exploited Children.

VRPHERG \ HY COMPACT
This to today, when scouts are taught to report a neighbor asking for help with groceries. The 1911 handbook also notes,

particularly successful when treated, with very low recidivism rates. In retrospect, the panic driven by Hoover and others seems quaint, as do the studies advocating for treatment and compassion because today, with the public registry and decades-long sentences, the stakes are far more grave.

TREATMENT AND COMPASSION FOR SEX OFFENSES IN THE 1950S AND 1960S

Looking back at the research from the 1950s and 1960s, we see a growing interest in psychiatric approaches to sex offense and treatment rooted in compassion and cure. In 1950, the journal *Federal Probation* devoted an entire issue to sex offenses. The introduction notes the aim of the special approach to the problem: "The purpose of this issue is to provide a forum for the presentation of research and clinical studies in the field of sex offenses." The articles in the issue examine the psychological origins of most sex offenses and why treatment is superior to simply enacting punitive laws.²⁹ The latter argument is advanced in a piece written by a police officer.³⁰ A judge notes that those sentenced for sex offenses must have

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most sex offenses and why treatment is superior to simply enacting punitive
laws.²⁹ The latter argument is advanced in a piece written by a police
officer.³⁰ A judge notes that those sentenced for sex offenses must have
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communities; the author, Dr. Abrahamnsen, urges the development of a special institute to study and treat sex offenses.³⁵

In the 1950s, we thus start to see a growing faith in psychiatry as the answer to sex offenses, a belief common to its practitioners, the courts and the police. For instance, in a 1952 study in a criminology journal, the author focuses on the motivation of those who commit sex crimes, and argues that the sole treatment is psychoanalysis.³⁶ K H Z U L W H U Q R W H V
only method for the successful rehabilitation of this vast social problem, is the psychiatric understanding of the motives behind the sexual offense and the imparting to the offender of this insight in a manner convincing to K L P³⁷ There is an emphasis on compassion for the perpetrator, the author also notes that the reasons for offenses include a lack of self-esteem and fulfillment.³⁸

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 American Journal of Psychiatry Ann Burgess and Lynda Holmström.⁵⁰
 They outline a specific psychological set of symptoms resulting from rape,
 which they see as the primary cause of a range of profound and negative
 long-term effects.⁵¹ 7KH FRQFHSW RI 3UDSH WUDXPD
 meaningful impact on the popular consciousness, especially the idea that
 the trauma resulting from sexual violence is one-dimensional and universal,
 regardless of the nature or specifics of the experience.⁵² While scientific
 studies have since largely debunked the rape trauma syndrome due to
 methodological flaws in the research, the idea of a rape QGURPH´ LQ W
 early 1970s resonated with a public that was only starting to recognize rape
 as a social problem and a court system just beginning to take rape
 seriously.⁵³

In 1979, in one of the first articles Child Abuse and Neglect on child
 sexual abuse, an author (Paula Jorné) discussed the need to be
 compassionate to both offenders and victims.⁵⁴ Jorné writes something that
 ZRXOG EH LQFRQFHLYDEOH WRGD\ FRPSDVVLRQ
 facilitate the growth of self-esteem in individuals who have already shown
 themselves to feel inadequate in coping with problems in appropriate ways.
 Thus

% XU JHV VZ ⁵⁹ however is more visibly focused on the rights of the victim, legal reform is having an impact on improving the conviction rate. IRU U D⁶⁰ Here we have an example of the shift in the tone of research and the politicization of scholarship in this area, which have gone from therapeutic to legal. nl 1974, Burgess and Holmstrom defined the syndrome in a psychiatric journal; in 1983, Burgess outlines the way the syndrome can increase conviction rates.

A recent study shows that while there is scientific consensus that the ³ UDSH WUDXP Developmental Law R is still used in courts. In the DUWLFOH ³ 7KH & KLOG 6H[XDO \$EXVH \$FR published in Child Abuse and Neglect author Roland Summit argues that sexually abused children rarely lie about abuse, and, in fact, retract DOOHJDWLRQV RI DEXVH LV ³ QRUPDO´ DQG VKR veracity.⁶² 6XPPLW ZULWHV ³ 8QOHVV WKHUH LV VSHF immediate intervention to force responsibility on the father, the girl will IROORZ WKH ^μ DRUG D QW FBRWVHHSU. This study helps DLQW lead to some horrific outcomes, including the wrongful convictions of dozens of men and women falsely accused in the 1980s daycare hysteria. Not only were they found guilty on the spurious grounds that children rarely, if ever, lie about sexual abuse, even when improperly questioned was even argued that retraction is actually evidence that a child was telling the truth.⁶⁶

Other research, though, continues to emphasize the extent to which punishment and involuntary confinement are failed policy. In 1985, Federal Probation publishes a recidivism study that shows that those convicted of sex offenses have an 11.3% recidivism rate.⁶⁸

59. Id. at 109.

60. Compare Burgess (1974), *supra*note 50 with Burgess (1983), *supra*note 57.

61. O'Donohue et al., *supra*note 52.

62. Summit, *supra*note 53.

63. Summit, *supra*note 53 at 188.

64. See Lana Manning, Nightmare at the Day Care: The Wee Care Case, *CRIME MAG.* (Oct. 13, 2009, 10:38 PM), <http://www.crimemagazine.com/nightmare-care-wee-care-case>.

65. See Amye R. Warren & Dorothy F. Marsil, Why Children's Suggestibility Remains a Serious Concern, 65 *L. & CONTEMP. PROBS.* 127, 12832 (2002).

66. See John E.B. Myers, Protecting Children from Sexual Abuse: What Does the Future Hold?, 15 *J. CONTEMP. L.* 31 (1989).

67. John Monahan & Sharon Kantorowski Davila, Mentally Disordered Sex Offenders: Mentally Disordered Offenders, 6 *PERSP. L. & PSYCHOL.* 191, 204 (John Monahan & Henry J. Steadman, 1983).

68. Joseph J. Romero & Linda M. Williams, Recidivism Among Convicted Sex Offenders: A 10-Year Follow Up Study, 49 *FED. PROB.*, Mar. 1985, at 58, 661.

In 1986, Browne and Finkelhor published a piece in *Psychological Bulletin* that as of July 2017 has been cited over 3400 times. This study, on the impact of child sexual abuse, is significant because it focuses on long-term effects, including post-traumatic stress disorder (PTSD), behavior, anxiety, feelings of isolation and stigma, poor self-esteem, difficulty in trusting others, a tendency toward revictimization, substance abuse, and depression. (WHUP SV\FKRORJLFDO HIIHFWV-destruction XGLQJ 3 DEXVH DQG VH[XDO PDODGM Xêâ B%~ `KDI)

of which caring adults and professionals must take notice.⁷⁵ In the keynote address by law professor John E. Myers at this conference about child victimization, Myers states,³ : H P X V W V K D N H R I I W K H F R P S O D us. Ignoring the warning signs of the backlash will have tragic consequences. Thousands, and eventually millions, of defenseless children are at risk. They plead with us to open our eyes and take action. No one HOVH FDQ 7KHOS WKHP ´

In the keynote address, Myers also Q R W H V W K D W F K L O G V H [D W R S L F ´ L Q a W K H a t P e S c h o l a r s D a r l y a t t e n t i o n t o t h e s u b j e c t h a s i n c r e a s e d . 7 H e D U J X I H s n a i v e t o t h i n k t h a t l o n g m a n d a t o r y p r i s o n t e r m s w i l l c o n t r i b u t e m a t e r i a l l y t o t h e s o l u t i o n o f c h i l d s e x u a l a b u s e . E v e n t u a l l y , p e o p l e r e a c t n e g a t i v e l y t o d i s p r o p o r t i o n a t e p u n i s h m e n t , a n d w h e n t h a t h a p p e n s t h e b a c k l a s h i s f u e l e d . I n t e r e s t i n g l y , w e s e e t o d a y t h a t t h e r e i s l i t t l e b a c k l a s h t o l o n g p r i s o n t e r m s , a n d e v e n l e s s

only is it claimed that nearly all women who seek therapy have been sexually abused; startlingly, it is alleged that such abuse is at the root of their problems.⁸² An article from 1994 that appeared in the *Journal of Consulting and Clinical Psychology* and has been cited over 1200 times since goes even further.⁸³ It asserts that earlier estimates of sexual abuse of women, even though 38% of women did not recall their experience of sexual abuse.⁸⁴ The author advises therapists to be careful that even women who claim that they have not undergone abuse might have been victims.⁸⁵ A year later, in 1995, the journal *Sexual Abuse: A Journal of Research and Treatment* begins publication.⁸⁶

In 1994, Congress passes the Wetterling Act, the federal law to track those convicted of sex offenses.⁸⁷ While registration for sex offenses had existed at the state level in various forms since as early as 1930, the new measure marks the first time federal legislation targets this population.⁸⁸ In 1990, Washington State passes the first law requiring community notification of sex offenses.⁸⁹ This is a significant moment: never before had a state required that communities be notified of residents with criminal histories.⁹⁰ The Washington law was based on the false notion that such offenders have a high rate of recidivism and that the safety . . . will further the governmental interests of public safety and public scrutiny of the crim

82. *Id.* at 13.

83. Linda Meyer Williams, *Recall of Childhood Trauma: A Prospective Study of Women's Memories of Child Sexual Abuse*, 62 *J. OF CONSULTING & CLINICAL PSYCHOL.* 1167, 1173 (1994).

84. *Id.* at 1167.

85. *Id.* at 1173-74.

86. See *Sexual Abuse: A Journal of Research and Treatment*, NLM CATALOG, <https://www.ncbi.nlm.nih.gov/nlmcatalog/9506704> (last visited Sept. 15, 2017).

87. See

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1996 ~~+~~PRESENT INSTITUTIONALIZING THE SEX OFFENSE LEGAL REGIME

The shift that takes place with community notification and public
 registry laws represents the extent to which ~~sex~~ offense law and policy
 result from popularly held belief and not from evidence.f80373Soon91 and r

In 2006, in a study on the decline in rates of child sexual abuse, authors Finkelhor and Jones cite economic and social factors, as well as advances in psychiatric pharmacology as reasons for the decline in the registry or other harsh sex offense laws.¹⁰⁰ Nevertheless, an article published in the journal *Sex Abuse* in 2007 is telling in terms of the careful language used even to suggest that treatment programs for sex offenders should be implemented in a way that respects their moral status as human rights holders and holds out the possibility of reentry to the human community if their potential for inflicting harm on others has been reduced.¹⁰¹ In an equally cautious introduction to the piece, the authors note that such programs are done in the interest of public safety and the well-being of victims. On sex offenders, do we need to worry that such restrictions eventually become too restrictive?

In 2008, a study by the same authors found that the number of sex offense victims; yet this key study, and the many others just like it, seems to have no effect on public or legislative enthusiasm for creating new laws based on flawed premises.¹⁰³

In a 2012 article about the 60% decline in child sexual abuse since 1992, the *New York Times* notes that those in the field of abuse treatment and advocacy are hesitant to acknowledge the decline, possibly due to the fear that the government funding on which they could be reduced as a result.¹⁰⁴ As law professor Marci Hamilton points out in the same article, the decline in child sexual abuse is not necessarily a result of better treatment of sex offenders.¹⁰⁵

100. David Finkelhor & Lisa Jones, Why Have Child Maltreatment and Child Victimization Declined? 62 J. Soc. Issues 685, 685 (2006).

101. Tony Ward, Theresa A. Gannon & Astrid Birgden, Human Rights and the Treatment of Sex Offenders, 19 SEX ABUSE 1 (2007).

DISCUSSION AND CONCLUSIONS

The world recognizes that U.S. sex offense laws violate human rights. In 2016, the UK refused to extradite a man wanted on sexual charges EHFDXVH WKH SRVVLELOLW\ RI FLYLO FRPPLWP the European convention of human rights.¹⁰⁶ The widespread registration laws were based largely on the kidnapping and murder of white middle FODVV FKLOGUHQ E\ VWUDQJHUV LQ DGGLWLR /DZ ´ WKHUH DUH DOVR VLPLODU IHGHUDO OD (abducted and murdered by a stranger in a 1981) and Jacob Wetterling (abducted and murdered by a stranger in 1989). While stranger kidnappings are exceptionally rare, numbering about 100 in the past 20 years, abductions ending in murders are decreasing, about half of these kidnappings involved adolescent girls, not young children. Nevertheless, the specter of these awful cases is so powerful and so embedded in our collective cultural consciousness that it not only drives the way we raise our children, but also ensures support for any law that appears to address this problem.¹⁰⁹

Sex offense laws such as registration and community notification, motivated by political opportunism, high profile crimes, and misleading research about the extent and impact of sexual abuse are not the only measures to have emerged out of emotion rather than evidence. In general, as Jeremy Travis and Bruce Western observe in their analysis of mass LQFDUFHUDWLRQ ³>V@RFLDO VFLHQFH HYLGHQ RQ GHOLEHUDWLRQV DERXW VHQWHQFLQJ SROL An examination of the implementation of the public registry highlights this tension. Politicians from both sides of the spectrum jump on the bandwagon of these laws, on the grounds that they protect children. Of

106. US fails to extradite alleged American pedophile from Britain, THE GUARDIAN (Feb. 26, 2016), <https://www.theguardian.com/law/2016/feb/26/us-fails-extradite-alleged-american-paedophile-to-germany>.

107. See Karen J. Terry & Alissa R. Ackerman, A Brief History of Major Sex Offender Laws in SEX OFFENDER LAWS FAILED POLICIES, NEW DIRECTIONS 50, 50 (Richard G. Wright ed., 2nd ed. 2015).

108. Janis Wolak et al., Child Victims of Stereotypical Kidnappings Known to Law Enforcement in 2011, OJJDP, JUV. JUST. BULL., June 2016, 1-3, 8.

109. Jill S. Levenson et al., Public Perceptions About Sex Offenders and Community Protection Policies 7 ANALYSES OF SOC. ISSUES & PUB. POL ¶ 1, 2, 4 (2007).

110. COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, NAT'L RESEARCH COUNCIL OF THE ACAD. OF SCI., THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 1, 37

course, no one, politician or not, wants to be perceived as opposing protection of children; likewise, no one will get elected for criticizing overly severe punishment of those with sex offense convictions. While there are a number of reasons for the growth in mass incarceration, one factor is the time served in prison for all crimes.¹² A report by the 6 HQWHQFLQJ 3URMHFW QRWHV WKH 3KLV sentences, including those without possibility of parole, and argues that about half of the growth in state prisons is due to increasing sentences across the board.¹³