The Future of Sex Offense Courts: How Expanding Specialized Sex Offense Courts Can Help Reduce Recidivism and Improve Victim Reporting

By: Catharine Richmond and Melissa Richmond

Specialty sex offense courts are a nascent judicial innovation that seek to improve general public safety through reducing recidivism. Decreased recidivism results from swifter, personalized, experienced, and consistent judicial action that encourages sex offenders to take more responsibility and seek rehabilitative assistance. In these specialized courts, communities of stakeholders work collaboratively to prevent future crime. Although somewhat counterintuitive, specialty courts that offer such intensive and specific attention are often more cost effective and efficient than their traditional counterparts. This Note argues that sex offense courts should be expanded beyond the handful of jurisdictions where they currently exist, not only to reduce recidivism, but also to potentially increase victim reporting. Although current statistics are imperfect, they uniformly suggest that victim reporting is low; this may be, in part, because victims often know their attackers and are reluctant to subject them to the criminal justice system with its harsh sex offense penalties, some of which, like registries, are essentially irreversible. Expansion of sex offense courts would allow incubation of new procedures that could further reduce recidivism and increase victim reporting.

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Introduction

Sex offense courts are a relatively new form of specialized court that have been created over the past decade in a handful of jurisdictions. These courts promote general public safety, but also focus individually on the rehabilitation of offenders and provide better victim outreach.²

Thousands of cases have been heard in sex offense courts. Based on available data, sex offense courts are reducing recidivism rates, which is good for society as a whole, individual sex offenders, and potential victims. If sex offense courts are producing positive results, it seems natural enough to advocate for their expansion to other jurisdictions. The decision to expand sex offense courts should be informed, however, by another question: Why do women report sex offenses so infrequently and would greater awareness of sex offense courts, due to their expansion, increase the rate of reporting of sex offenses?

This Note recommends the expansion of sex offense courts on their own merits as measured by reduced recidivism rates. The Note also suggests that expansion of sex offense courts would naturally lead to greater awareness of their existence and benefits, which would, in turn, cause more victims to consider reporting their sex crimes. Increased victim reporting is something that deserves greater study, particularly as new sex offense courts incubate their own individualized approaches in an effort to determine what works best for solving sex crimes.

This Note begins in Part I with a review of the development of current sex offense laws and the basic facts about sex crimes, sex offenders, and victims in the United States. Part II then looks at the development of specialized courts that deal with sex crimes and describes their

operation. Finally, in Part III, this Note argues how the expansion of sex offense courts with innovative procedures would likely lead to greater judicial efficiency, further reduced recidivism, and better reporting of sex crimes.³

I. Sex Offenses & Sex Offense Laws

A. Overview of Federal Sex Offense Laws

Since 1994, sex offense laws in the United States have become increasingly stringent. In particular, Congress has mandated that sex offenders be placed on publically available sex offender registries and follow a set of substantially limiting restrictions regarding residence, employment, and travel.⁴ However, these increasingly harsh sex offender laws are the product of fear-based legislation, not the result of the most current research about effective treatment of sex offenders or the realities of protecting past and potential sex offense victims.⁵

1. 1994 Jacob Wetterling Act

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as part of its Omnibus Crime Bill of 1994.⁶ The Jacob Wetterling Act was the first federal act to require states to track sex offenders by establishing a sex offender registry. It also required states to confirm the place of residence of most convicted sex offenders for ten years after their conviction and to confirm the place of residence of...

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³ The scope of this Note is limited to adult sex offenders and their adult victims. It does not include information about juvenile offenders or their victims or juvenile victims.
⁵ See Katherine Godin, The New Scarlett Letter: Are We Taking the Sex Offender Label Too Far?, 60-DEC R.I. B.J. 17, 17 (2011) (“Sadly, our practical judgment as a society has become clouded due to the emotional reaction to sex offenders. States, as well as the federal government, are quick to enact incredibly harsh, costly and mostly ineffective pieces of legislation in an attempt to assure the public that the government is not soft on sex offenders.”).
convicted violent sex offenders for life, on a quarterly basis. Under the Jacob Wetterling Act, states had discretion regarding whether to make the information on their sex offender registries available to the public.

2. 1996 Megan’s Law

In 1996, Congress passed Megan’s Law. This federal law followed the passage of similar Megan’s Laws in all fifty states and in the District of Columbia. The federal Megan’s Law expanded the requirements set forth in the Jacob Wetterling Act by requiring public dissemination of information in the state sex offender registries. It also allowed states to disclose information from sex offender registries for any purpose permitted under state law and required law enforcement to release information from sex offender registries necessary to protect the public.

3. 2005 National Sex Offender Public Website

In 2005, the federal government created the National Sex Offender Public Registry (“NSOPR”), which was a central location for members of the public to search state sex offender registries. This national sex offender registry was different from the National Sex Offender Registry, which is a law enforcement-only database maintained by the Criminal Justice Information Services Division of the FBI.

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7 Id.
8 Id.
10 Id.
12 See George Blum et al., Punishment; enhancement of sentence—Mandatory lifetime registration as sex offender, 18 CAL. JUR. 3D CRIMINAL LAW § 522 (2014) (arguing that sex offender registration is not a form of punishment and that “[o]ne of the purposes of the sex offender registration requirements is to assure that the person convicted of the crimes enumerated therein will be readily available for police surveillance at all times because the legislature deems them likely to commit similar offenses in the future,” even though the FBI maintains a sex offender registry for law enforcement purposes that is wholly different from publically available sex offender registries. Blum also notes that sex offender registry requirements get rational basis review and therefore high deference under Equal Protection Clause).
4. 2006 Adam Walsh Child Protection & Safety Act

The next year, in 2006, Congress passed the Adam Walsh Child Protection and Safety Act. The Adam Walsh Act renamed the NSOPR the Dru Sjodin National Sex Offender Public Website (“NSOPW”). In this way, the Adam Walsh Act solidified the national sex offense registry, which is still comprised of information provided by state sex offender registries. The Adam Walsh Act also strengthened the requirements for sex offense registration that were contained in Megan’s law, categorizing sex offenders into three categories with different requirements, and mandated that sex offender registries be available online with pertinent information and photos.

5. 2006 Sex Offender Registration & Notification Act

Title I of the Adam Walsh Act is the Sex Offender Registration and Notification Act (“SORNA”). SORNA sets the specific standards for sex offender registration and notification.

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14 United States Department of Justice, supra note 11.
15 See 3 Witkin, Cal. Crim. Law (4th ed. 2012) Punishment, § 137, p. 239 (describing in detail, the various types of sex offenders and sex offenses that must be registered, supplemented with cases to clarify what happens in cases of judicial discretion, retroactivity, jurisdictional conflicts, and transitory registrants. Overall, a large number of offenders must register under a very complicated set of rules.).
16 See Kristin M. Zgoba et al., A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act, 1, 3-4 available at https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf (2012) (reporting on recidivism for the National Institute of Justice, showing that the Adam Walsh Act classification system is ineffective at categorizing sex offenders based on likelihood of reoffense. The report was designed “to identify best practices and to inform public policy.” The “study sought to assess the relative effectiveness of various classification schemes used in sex offender management.” The authors found that “[t]he overall recidivism rate for the sample was 5.1% over five years and 10.3% over ten years.” However, “[t]he association between state and AWA tier designations and the 10-year recidivism rate was examined. Results indicated that a higher state assigned tier was significantly associated with sexual recidivism in the expected, positive direction, but a higher AWA tier was significantly associated with sexual recidivism in the unexpected negative direction. In other words, AWA tier 3 was associated with lower odds of sexual recidivism. The comparable analysis for 5-year sexual recidivism yielded similar results but was statistically significant only for AWA tier.” Additionally, “[t]he findings call into question the accuracy and utility of the AWA classification system in detecting high-risk sex offenders and applying concordant risk management strategies. If decision-making is be driven by assigning offenders into defined risk classes, those categories must be determined by empirically derived procedures that are most likely to correctly identify higher risk offenders in a meaningful, systematic, and hierarchical manner.”).
17 42 U.S.C. § 16901 et seq.
SORNA is administered by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which is also known as the SMART Office.\(^\text{18}\)

After the 2006 passage of the Adam Walsh Act, states were given until 2009 to implement the Act’s SORNA requirements.\(^\text{19}\) States that failed to comply would lose 10% of their justice assistance grants from the federal government. However, not a single state had implemented the SORNA requirements by the July 2009 deadline, so the deadline was extended by a year.\(^\text{20}\) After that extended 2010 deadline passed with only a handful of states complying, a third and final deadline of July 2011 was set.\(^\text{21}\) In July 2012, the House of Representatives approved reauthorization of the Adam Walsh Act. In January 2013, the Justice Department reported that there were still just sixteen states in compliance with SORNA.\(^\text{22}\)

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\(^{18}\) See Abril R. Bedarf, *Examining Sex Offender Community Notification Laws*, 83 CAL. L. REV. 885, 885, 899, 913 (1995) (criticizing community notification laws in general, SORNA, and the resulting national sex offender registry, by noting that the national registry “is an unwieldy database with little practical utility. In response, several states recently have adopted community notification laws that allow public access to sex offender registration data. These statutes seek to empower the community by enabling concerned citizens to monitor the activities of convicted sex offenders living in their community. This Comment suggests that community notification laws do not provide a reliable mechanism for tracking sex offenders as they move, and thus are no more effective than police registration. Moreover, community notification programs incite panic and violence within the community, and thereby prevent reformed sex offenders from reintegrating into the community. The author concludes that community notification laws are constitutionally infirm because they offend the dignity of man, and thus violate the Eighth Amendment guarantee against cruel and unusual punishment.” The Comment further argues that “registration statutes have not been effective. Law enforcement agencies have been unable to rely on registration laws in apprehending sex offenders because the agencies lack the enormous resources and personnel necessary to administer the registration laws effectively.” And, the Comment speaks about shame as the driving force behind community notification laws. “A true shame punishment would attempt to shape the offender’s moral character—to shame him into conforming to the community’s moral code. Advocates of community notification, however, reject the notion that sex offenders can rehabilitate. Shaming thus becomes merely an outlet for the community’s rage.”).

\(^{19}\) See HUMAN RIGHTS WATCH, *US: Sex Offender Laws May Do More Harm Than Good*, http://www.hrw.org/news/2007/09/11/us-sex-offender-laws-may-do-more-harm-good (Sept. 12, 2007) (noting that as far back as 2007 states were already engaged in careful calculus of whether to comply with the Adam Walsh Act. The report actually recommended that states “[r]efuse to change registration and community notification laws to meet Adam Walsh requirements; eliminate residency restriction laws; limit registration requirements to people who have been convicted of serious crimes and who have been individually assessed to pose a significant risk of reoffending; prevent unlimited dissemination of registry information by eliminating publicly accessible online registries. Community notification should be undertaken only by law enforcement officers and only about those registrants who pose a significant risk of reoffending.”).


\(^{21}\) Id.

\(^{22}\) Id.
compliance with SORNA (three and a half years after the original compliance deadline) were Alabama, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming.\footnote{See Teresa L. Welch and Samuel P. Newton, \textit{The History and Problems of Utah’s Sex Offender Registry: Why a Move from a Conviction-Based to a Risk-Assessment Approach Better Protects Children}, 47 NO. 6 CRIM. LAW BULLETIN ART 3, 287 (2011) (discussing Utah’s implementation of the Adam Walsh Act, challenging the constitutionality of Utah’s sex offender laws, and criticizing the Adam Walsh Act as ineffective because of its lack of focus on risk assessment. “In seeking to assuage this social panic, legislators are applying a conviction-based approach rather than a risk-assessment analysis when determining who must register and the mechanics of registration requirements. The conviction-based approach states that if one has a conviction for a registrable offense, one must register, and no other inquiry is held. On the other hand, a risk-assessment approach is one that allows an inquiry into a number of factors before any registration determinations are made. . . . Ultimately, the social panic generated by high profile cases undermines society’s goal of protecting our children. . . . ‘Under pressure from Congress, Utah also passed a 2008 bill to come into compliance with the Adam Walsh Act. The bill’s sponsor indicated that as a result of this legislation, Utah’s rules will ‘be as stringent, if not more stringent, than other states,’ and as another representative put it, would prevent ‘these guys … from forum shop[ping].’ . . . National and Utah statewide statistics do not show a decline in sex offense arrests resulting from the implementation of sex offender registry and notification laws. If the registries were truly effective, we would see a substantial decline in sex offenses within the last ten years based upon the increase in registry requirements. Instead, arrests for sex offenses have basically maintained their numbers.”).}

Notably, still “[m]ore than half of all states in the country have cited significant concerns regarding the implementation of certain aspects of the [Adam Walsh Act], including juvenile registration and notification, retroactivity, lack of judicial discretion, and the unfunded mandate.”\footnote{See S\TATE OF COLORADO, W\HITE P\APER ON THE IMPLEMENTATION OF THE ADAM WALSH ACT, available at http://constitutionaldefense.org/wp-content/uploads/2009/12/Colorado-Sex-Offender-Board-Says-Do-NOT-Implement-AWA.pdf.}

B. Realities of Federal Sex Offense Laws

On its face, a national sex offender registry seems like a good way to identify and track sex offenders; and, public notification and open access to sex offender information seem like they should provide a valuable tool for individuals to guard against predators in their communities. But, sex offender registry and notification implementation is more complicated that it appears at first glance.\footnote{See Amanda Y. Agan, \textit{Sex Offender Registries: Fear without Function?}, 54 J.L. & ECON. 207, 207 (2011) (discussing the ineffectiveness of sex offense registries as a public safety tool. The author used “three separate data sets and designs to determine whether sex offender registries are effective. . . . The results from all three data sets do}
imperfect conglomeration of differently administered and maintained state registries. Moreover, the national registry is missing complete information from many states.26

In addition to lack of information provided by states and the many discrepancies that exist among state registries, the large number of registered sex offenders in the United States, about 747,40827 in total, makes the registries unwieldy. Since there are about 300 million people in the United States and roughly half of those are males, with fewer than half being adult males, it is safe to assume that at least 1 in 150 men in the United States is a registered sex offender.

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26 Tracey Bateman Farrell, Validity, Construction, and Application of State Statutory Requirement that Person Convicted of Sexual Offense in Other Jurisdiction Register or Be Classified as Sexual Offender in Forum State, 34 A.L.R.6th 171 (2008) (supporting the idea that registries are cumbersome and difficult to administer). But see J.J. Prescott and Jonah E. Rockoff, Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?, 54 J.L. & ECON. 161, 161 (2011) (presenting “evidence that registration reduces the frequency of reported sex offenses against local victims (for example, neighbors) by keeping police informed about local sex offenders. Notification also appears to reduce crime, not by disrupting the criminal conduct of convicted sex offenders, but by deterring nonregistered offenders. . . . [N]otification may actually increase recidivism.”).

These over-inclusive registries make it seem unlikely that the victims for which recent sex offense laws are named would have been protected by the solutions provided in laws that bear their names.\textsuperscript{28} For instance, anyone who lives in an urban area might have hundreds of registered sex offenders who live, work, and recreate within a mile of their home. It seems implausible to think that urban dwellers will log onto the sex offender registry, study the registered sex offenders in their area, and gain a degree of increased personal awareness, and therefore protection. Though sex offenders and their victims fall into decidedly heterogeneous groups, most victims are young women who know their male attacker and are assaulted within a mile of their home—they almost never report the offense, in large part because of their personal relationship with the sex offender. The reality of victim profiles provide the lens through which sex offense laws should be considered.

There are even more problems: sex offender registration requirements have become so stringent that it’s almost impossible to be removed from the sex offender registry;\textsuperscript{29} the effects of registration on offenders and their families are unnecessarily severe;\textsuperscript{30} the constitutionality of

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\item \textsuperscript{28} See Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 151 (1994); Megan’s Law, 42 U.S.C. § 13701 (1996); The Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16911, et seq. (2006) (recording that these acts were named for Jacob Wetterling, Adam Walsh, and Megan Kanka, respectively, all of whom were abducted as young children. The laws were passed partially due to the panic that surrounds child abduction and sexual assault, but they cover all sex offenses, including those committed by adults against adults, which constitute a majority of sex crimes.).
\item \textsuperscript{29} See George L. Blum, \textit{Removal of Adults from State Sex Offender Registries}, 77 A.L.R.6th 197 (2012) (detailing the various, complex procedural steps to be removed from sex offense registries)
\item \textsuperscript{30} See \textit{HUMAN RIGHTS WATCH, US: Sex Offender Laws May Do More Harm Than Good}, http://www.hrw.org/news/2007/09/11/us-sex-offender-laws-may-do-more-harm-good (Sept. 12, 2007) (“The 146-page report . . . . [is] the first comprehensive study of US sex offender policies, their public safety impact, and the effect they have on former offenders and their families.” The report found that, “[l]aws aimed at people convicted of sex offenses may not protect children from sex crimes but do lead to harassment, ostracism and even violence against former offenders . . . . Human Rights Watch urges the reform of state and federal registration and community notification laws, and the elimination of residency restrictions, because they violate basic rights of former offenders.” It further found that “[h]ere is little evidence that this form of community notification prevents sexual violence. Residency restrictions banish former offenders from entire towns and cities, forcing them to live far from homes, families, jobs and treatment, and hindering law-enforcement supervision. Residency restrictions are counterproductive to public safety and harmful to former offenders. . . .” And, the report highlights that “the real risks children face are quite different: government statistics indicate that most sexual abuse of children is committed by family members or trusted authority figures, and by someone who has not previously been convicted of a sex
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current sex offender registration requirements have been called into question;\textsuperscript{31} and, the legal profession is split as to whether a registration requirement is a punishment, and if so, what kind of punishment.\textsuperscript{32}

C. Sex Offenses in the United States by the Numbers

While numbers never tell the entire story, the statistics surrounding sex offenses in the United States provide a detailed picture of the complicated problems in sex offense adjudication.\textsuperscript{33}

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\item See Catherine L. Carpenter & Amy E. Beverlin, \textit{The Evolution of Unconstitutionality in Sex Offender Registration Laws}, 63 HASTINGS L.J. 1071, 1071, 1132 (2012) (questioning the constitutionality of sex offender registration laws, in saying “even if sex offender registration schemes initially were constitutional, serially amended sex offender registration schemes . . . are not. Their emergence demands reexamination of the traditionally held assumptions that defined original registration laws as civil regulations. Two intertwined causes are responsible for the schemes’ constitutional downfall. The first is a legislative body eager to draft increasingly harsh registration and notification schemes to please an electorate that subsists on a steady diet of fear. When combined with the second cause, a Supreme Court that has yet to signal much-needed boundaries, the ensuing consequence is runaway legislation that is no longer rationally connected to its regulatory purpose. . . . [L]egislation has become unmoored from its constitutional grounding because of its punitive effect and excessive reach. . . . [R]amped-up registration schemes, designed to appease a fearful public, are no longer rationally connected to their regulatory purpose, thus transforming the legislation into criminal penalties cloaked in civil rhetoric.”).
\item See George Blum et al., 18 CAL. JUR. 3D CRIMINAL LAW: CRIMES AGAINST THE PERSON § 522 (2014) (describing the requirement of registration as a sentence enhancement, which suggests that it is penal in nature); but see 3 Witkin, Cal. Crim. Law 4th Punishment, § 137, p. 239 (2012) (describing registration as a nonpunitive form of treatment of a sex offender); see also Doron Teichman, \textit{Sex, Shame, and the Law: An Economic Perspective on Megan’s Law}, 42 HARV. J. ON LEGIS. 355, 357, 389-90 (2005) (arguing that notification laws are being used for deterrence purposes rather than public safety purposes and are therefore a punitive and flawed tool. The author shows that “a large number of scholars have argued that the true effect of these laws is punitive, referencing the harsh non-legal sanctions triggered by these laws such as physical attacks on offenders and their property, denial of housing, and termination of employment. However, “using SORNLs to punish sex offenders may in fact be an efficient way to sanction sex offenders. . . . [T]he question remains as to the desirability and effectiveness of such a use. . . . [S]anctioning regimes based on non-legal sanctions run the risk of raising the crime rate of the criminals that are subjected to them, because of both the psychological impact of stereotypes and stigmas as well as the economic aspects of marginal deterrence.”).
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1. Who Are the Victims?

In the United States, about one in six women will experience an attempted or completed rape at some point in their lifetime (i.e., 17.6% of women overall, with 14.8% of women experiencing a completed rape and 2.8% of women experiencing an attempted rape), whereas just one in thirty-three men (roughly 3%) will experience an attempted or completed rape. While sexual assault and sexual violence are not gender specific, the high numbers of women who are victims of sexual assault and violence show that gender plays a significant role in sexual offenses. To put the statistics in context, about 17.7 million American women have been the victims of an attempted or completed rape. Put a different way, nine in every ten victims of attempted or completed rape are women.

The effects of sexual assault on young women (and all victims) are devastating. Victims of sexual assault are three times more likely to suffer from depression, six times more likely to suffer from post-traumatic stress disorder, thirteen times more likely to abuse alcohol, twenty-six times more likely to abuse drugs, and four times more likely to contemplate suicide. Additionally, women are more likely to become pregnant as the result of a rape than they are

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36 NAT’L INSTITUTE OF JUSTICE & CTR. FOR DISEASE CONTROL PREVENTION, supra note 34.


from consensual intercourse. 39 Unfortunately, most victims do not receive treatment for the injuries they sustain during a sexual assault. 40

Put simply: most victims of sexual assault are women and most victims are young women. In fact, 80% of victims are under the age of 30. 41 Sadly, 44% of victims of sexual assault are actually girls who are younger than 18 years old. 42

2. Who Are the Offenders?

In the United States, about 80% of the individuals arrested for sex offenses are adults and about 95% of those arrested are males. 43 The average rapist is thirty-one years old and 52% of rapists are white. 44 Most sex offenders are younger, white, adult men, and surprisingly, these men are rarely strangers to their victims.

About two-thirds of rape victims know their offender and about 73% of sexual assault victims know their attacker. 45 In many cases, the attackers are actually well known to their victims. For instance, 38% of rapes are committed by a friend or acquaintance, 28% by an intimate partner, and 7% by a family member. 46

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42 Id. This Note addresses only sex offenses committed against adults and does not address adjudication of sex offenses committed against children.
46 Id. See also THE NAT’L CTR. FOR VICTIMS OF CRIME, SEXUAL VIOLENCE STATISTICS, 31 (2013), available at http://www.victimsofcrime.org/docs/ncvrw2013/2013ncvrw_stats_sexualviolence.pdf?sfvrsn=0 (reporting that
Most sexual assaults are perpetrated by men known to their victims and most take place in familiar places. More than half of all rapes and sexual assaults occur within one mile of a victim’s home or in their home. About 40% of take place in the victim’s home, 20% take place in the home of a friend, neighbor, or relative, and less than 10% take place in parking garages.

It is worth noting that most experts agree that sex crimes are not truly about the sexual gratification of the perpetrator, and it may be an oversimplification to say that sex crimes committed by men against women are rooted purely in misogyny. A variety of complicated and very personal motivations contribute to the commission of sex crimes.

Put simply: most sex offenders are adult men, they know their victims relatively well, and they commit their sex offenses in places very familiar to the victim.

3. How Many Sex Crimes Are Reported?

In the United States, about 64% of rapes are never reported. Figures relating to other unreported sex offenses are similarly high. For instance, around 66% of attempted rapes and 74% of sexual assaults are never reported. When sex crimes are reported, victims are most likely to make the reports.

“[m]ore than one-half of female victims of rape (51 percent) reported that at least one perpetrator was a current or former intimate partner.” And that, “[o]f female victims, 41 percent reported having been raped by an acquaintance, while 13 percent reported having been raped by a family member. About 14 percent reported having been raped by a stranger.”


48 Id.

49 See NAT’L INSTITUTE OF JUSTICE & CTR. FOR DISEASE CONTROL PREVENTION, PREVALENCE, INCIDENCE AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN SURVEY (1998), available at https://www.ncjrs.gov/pdffiles1/nij/183781.pdf (noting, for instance, women of different races are not victimized at the same rates. “Though 17.6% of women will be victims of attempted or completed rape in their lifetimes, 34.1% American Indian or Alaskan women will experience the same, whereas just 6.8% of Asian Pacific Islander women will be victims. 17.7% of white women, 18.8% of black women, and 24.4% of mixed race women will experience an attempted or completed rape.”).

50 Callie Marie Rennison, BUREAU OF JUSTICE STATISTICS, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION, 1992-2002, U.S. DEP’T OF JUSTICE (2002), available at http://www.bjs.gov/content/pub/pdf/rsarp00.pdf (“Most rapes and sexual assaults against females were not reported to the police. Thirty-six percent of rapes, 34% of attempted rapes, and 26% of sexual assaults were reported to police, 1992-2000.”); Lawrence A. Greenfeld, BUREAU OF JUSTICE STATISTICS, SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT, U.S. DEP’T OF JUSTICE (1997),
These figures show that sex offenses are some of the most underreported crimes.52

4. How Many Sex Crimes Are Prosecuted?

In the United States, not even 40% of sex crimes are reported to law enforcement.53 Just 10% of sex crimes lead to an arrest,54 only 4% end in a felony conviction, and just 3% of rapists will serve a prison sentence.55

Are most sex crimes prosecuted? Not even close. Of the sex crimes that are reported to law enforcement, just one in four lead to an arrest, and less than half of those arrested will be convicted of a sex crime.

5. Why Don’t Victims Report?

Reliable data does not exist on why victims don’t report sex crimes, because most sex crimes are never reported.56 However, the commonly cited reasons for non-reporting remain the same as they were decades ago.57

One reason victims may be reluctant to report sex crimes is they are embarrassed and ashamed. They don’t want other people to know they were assaulted because they may think it

http://www.bjs.gov/content/pub/pdf/soo.pdf (“In 1994 and 1995 a third of the victims said that the rape/sexual assault victimization was reported to a law enforcement agency.”).
51 Rennison, supra note 50 at 1 (“When a rape or sexual assault was reported to the police, the victim was the most likely to report it.”).
53 Id.
54 FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS (2006-2010).
56 See JUDGE J. RICHARD COUZENS, SEX CRIMES: CALIFORNIA LAW AND PROCEDURE APPENDIX 12B (2013) (reviewing myths and facts about sex crimes, the authors comment that “women are very reluctant to report rape to authorities for a number of reasons, including a fear of not being believed, guilt, shame, and fear of retribution”)
57 See Marjorie R. Sabie et. al., Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students, 55 J. OF AM. COLLEGE HEALTH 157 (2006) (“The authors asked college students to rate the importance of a list of barriers to reporting rape and sexual assault among male and female victims. The authors’ findings indicate that barriers prevalent 30 years ago, prior to efforts by the rape reform movement, continue to be considered important among college men and women. The barriers rated as the most important were (1) shame, guilt, embarrassment, not wanting friends and family to know; (2) concerns about confidentiality; and (3) fear of not being believed. Both genders perceived a fear of being judged as gay as an important barrier for male victims of sexual assault or rape and fear of retaliation by the perpetrator to be an important barrier for female victims.”).
makes them seem unwholesome and perhaps somewhat at fault for what happened, as if they invited the experience and now regret it.58

Another reason victims may be reluctant to report sex crimes is that they don’t want to relive the experience in the harshness of the investigatory and judicial processes. Humiliating questions are asked, terrible details are demanded, and, in perhaps the ultimate indignity, instruments and swabs are inserted into private and sensitive areas.59 This is known as revictimization.

A third, and the most important, reason victims may be reluctant to report sex crimes is they are afraid of or have sympathy for the perpetrator, who is likely someone they know.60 Victims may fear that the offender will have his life unalterably ruined with mandatory jail time, registration as a sex offender, and other penal and social consequences. In spite of the harm they have suffered, victims, on the whole, are not retributive and are not necessarily eager to see

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58 See Renee L. Binder, *Why Women Don’t Report Sexual Assault*, 42 J. OF CLINICAL PSYCHIATRY 437 (1981) (“For adult women, the primary reason for not reporting seemed to combine a type of guilt with embarrassment. The implication is that although external social factors have changed, the internal psychological barriers to rape reporting may remain.”).


60 See Bonnie S. Fisher et. al., *Reporting Sexual Victimization To The Police And Others: Results From a National-Level Study of College Women*, 30 CRIMINAL JUSTICE & BEHAVIOR 6 (2003) (noting that while most sexual assaults are not reported to law enforcement, many are reported to a friend. “Incidents were more likely to be reported to the police when they had characteristics that made them more ‘believable’ (e.g., presence of a weapon or assailant who was a stranger). The use of alcohol and/or drugs by offenders and/or victims had a unique effect, causing students to be more likely to disclose their victimization to friends but not to campus authorities. The implications of the findings for extant debates and for future research are also explored.”); BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY (1997), available at http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245 (“For both 1994 and 1995 the percentage of rape/sexual assault victimizations reported to a law enforcement agency was 32%. The most common reason given by victims of rape/sexual assault for reporting the crime to the police was to prevent further crimes by the offender against them. The most common reason cited [for] the victim for not reporting the crime to the police was that it was considered a personal matter.”); Richard B. Felson & Paul-Philippe Paré, *The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police*, 67 J. OF MARRIAGE & FAMILY 597 (2005) (“Sexual assaults, particularly those that involve acquaintances, are less likely to be reported [than all other violent assaults]. These patterns have not changed since the 1960s.”).
another life ruined.61 A primary concern for most victims is the prevention of future harm. Yet, victims are confronted with a binary choice of no report at all or a report that leads to such harsh consequences it might better be left alone.62

This Note suggests that if more victims were aware of sex offense courts because more of the courts existed as a result of expansion, victims might be more inclined to report sex crimes. This is because sex offense courts can offer more compassion, greater victim participation in the process, and greater flexibility with respect to offender punishment. As expanded sex offense courts incubate more ideas about how to increase victim involvement and awareness, the inclination to report might also increase. These are possibilities that should be explored as sex offense courts expand to other jurisdictions.

6. How Many Sex Offenders Reoffend?

Rates of reoffense for sex offenders are hard to calculate because of the low numbers of sex crimes that are reported and the very small number of offenders who are convicted.63

61 See Margaret J. McGregor et. al, Why don’t more women report sexual assault to the police?, 162 CANADIAN MEDICAL ASSOCIATION JOURNAL 162 (2000) (“Our results suggest that women who have been raped by an assailant who is not a stranger and those who have no physical injuries following a rape are more reluctant to involve the police. The increased probability of police involvement when a woman is sexually assaulted by a stranger or when the victim has some physical injury is consistent with previous studies.”).

62 See Jeffrey S. Jones et. al., Why Women Don’t Report Sexual Assault to the Police: The Influence of Psychosocial Variables and Traumatic Injury, 36 THE J. OF EMERGENCY MEDICINE, Issue 4 (2009) (“At the completion of the forensic examination, victims were asked to complete a psychosocial questionnaire designed to determine specific reasons why women reported or did not report their sexual assault to police. . . . 75% reported the sexual assault to police. One hundred six (25%) did not file a police report, but consented to a medical-legal examination. Women not reporting sexual assault were typically employed, had a history of recent alcohol or drug use, a known assailant, and prolonged time intervals between the assault and forensic evaluation (p < 0.001). . . . Only three of the 20 psychosocial variables examined were found to be significantly different in women not reporting sexual assault compared to reporters. The reasons for not reporting were primarily environmental factors (prior relationship with assailant) rather than internal psychological barriers (shame, anxiety, fear).”).

63 See CTR. FOR SEX OFFENDER MGMT., RECIDIVISM OF SEX OFFENDERS, http://www.csom.org/pubs/recidsexof.html (2001) (discussing the issues with measuring recidivism in methodology, the discrepancies and inconsistencies in research, the factors associated with recidivism, and providing a review of other studies); Hal Arkowitz and Scott O. Lilienfeld, Once a Sex Offender, Always a Sex Offender? Maybe not, SCIENTIFIC AM. (Apr. 3, 2008), available at http://www.scientificamerican.com/article/misunderstood-crimes/ (“Recidivism research is as difficult as it is important. For instance, although average rates tell us what percentage reoffends one or more times, we also need to be aware that a subset reoffends at a frighteningly high rate. In addition, there are reasons to think that published findings underestimate the true rates.”); Keith Soothill, Sex Offender Recidivism, 39 CRIME & JUST. 145, 156-67
However, most careful analyses of sex offender recidivism data have shown that the rates of reoffense are relatively low. A recent quantitative meta-analysis of other studies found that rates of reoffense were 14% over a five-to-six-year period and 24% over a fifteen-year period, which is in contrast to the public opinion that 75% of sex offenders will reoffend. These rates of reoffense are also lower than the rates of reoffense for most types of crimes.

64 Demothenes Lorandos & Terence Campbell, Sex offenders and sex offense recidivism, 2 CROSS EXAM. EXP. IN BEH. SCI 9:62 (2013) (“Most people—including judges and juries alike—assume that the risk of sexual recidivism is quite pronounced for sex offenders. Despite the prevalence of these assumptions, the relevant data demonstrate that they are mistaken. Commenting on his data obtained from numerous studies, Hanson indicated: ‘Not all sex offenders reoffend, and even high-risk offenders can change their ways.’”); Lawrence A. Greenfeld, BUREAU OF JUSTICE STATISTICS, SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT, U.S. DEP’T OF JUSTICE (1997), http://www.bjs.gov/content/pub/pdf/SO0.PDF (discussing older, but mostly confirming, statistics about the low rates of sexual recidivism).

65 Hal Arkowitz & Scott O. Lilienfeld, Once a Sex Offender, Always a Sex Offender? Maybe not, SCIENTIFIC AM. (Apr. 3, 2008), available at http://www.scientificamerican.com/article/missunderstood-crimes/ (“Recently sex crimes researcher Jill Levenson of Lynn University in Florida and her colleagues found that the average member of the general public believes that 75 percent of sex offenders will reoffend. . . . The evidence suggests otherwise. Sex crimes researchers R. Karl Hanson and Kelly E. Morton-Bourgon of Public Safety Canada conducted a large-scale meta-analysis (quantitative review) of recidivism rates among adult sex offenders. They found a rate of 14 percent over a period averaging five to six years. Recidivism rates increased over time, reaching 24 percent by 15 years.”); See also CTR. FOR SEX OFFENDER MGMT., RECIDIVISM OF SEX OFFENDERS (2001), available at http://www.csom.org/pubs/recidsexof.html (“Across all studies, the average sex offense recidivism rate (as evidenced by rearrest or reconviction) was 18.9 percent for rapists and 12.7 percent for child molesters over a four to five year period. The rate of recidivism for nonsexual violent offenses was 22.1 percent for rapists and 9.9 percent for child molesters, while the recidivism rate for any reoffense for rapists was 46.2 percent and 36.9 percent for child molesters over a four to five year period. However, as has been noted previously and as these authors warn, one should be cautious in the interpretation of the data as these studies involved a range of methods and follow-up periods.”); Patrick A. Langdon et al., BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, U.S. DEP’T OF JUSTICE, 1-2, 6, 10-11, 14, 24 (2003), available at http://www.bjs.gov/content/pub/pdf/rsor94.pdf (providing detailed statistics on recidivism rates for sex offenders in 1994. It is one of the more commonly cited studies relating to sex offender recidivism because of its thorough analysis of the data, though, at this point, 20 years later, the data is not fresh. “On average . . . sex offenders served 3½ years of their 8-year sentence (45% of the prison sentence) before being released. . . . For 71.5% of the 9,691 men (6,929), that arrest was their first ever for a violent sex crime. In other words, these 6,929 men had no previous arrest for a sex offense. . . . Compared to non-sex offenders released from State prisons, released sex offenders were 4 times more likely to be rearrested for a sex crime. Within the first 3 years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime. The rate for the 262,420 released non-sex offenders was lower, 1.3% (3,328 of 262,420). The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders.” The study found that there was “[n]o clear association was found between how long they were in prison and their recidivism rate” and that “[b]efore being released from prison in 1994, most of the sex offenders had been arrested several times for different types of crimes. The more prior arrests they had, the greater their likelihood of being rearrested for another sex crime after leaving prison. . . . Compared to non-sex offenders released from State prison, sex offenders had a lower overall rearrest rate. When rearrests for any type of crime (not just sex crimes) were counted, the study found that 43% (4,163 of 9,691) of the 9,691 released sex offenders were rearrested. The overall rearrest rate for the 262,420 released non-sex offenders was higher, 68% (179,391 of 262,420). . . . Another
7. Can Sex offenders Be Rehabilitated?

Effective treatment and rehabilitation is possible for many sex offenders.66 For instance, a meta-analysis found that about 17% of untreated sex offenders reoffended, while just under 10% of treated sex offenders reoffended.67 However, public opinion about the effectiveness of sex offender treatment differs greatly from professional findings, and there is disagreement among professionals about the most effective methods of treatment.68 However, it is generally agreed

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66 See Keith Soothill, Sex Offender Recidivism, 39 CRIME & JUST. 145 (2010) (discussing the effectiveness of clinical treatment and other interventions. (177)).
67 Hal Arkowitz & Scott O. Lilienfeld, Once a Sex Offender, Always a Sex Offender? Maybe not, SCIENTIFIC AM. (Apr. 3, 2008), available at http://www.scientificamerican.com/article/misunderstood-crimes/ (“Hanson and his colleagues conducted a meta-analysis on treatment and found that 17 percent of untreated subjects reoffended, whereas 10 percent of treated subjects did so. When recidivism rates for sex and nonsexual violent crimes were combined, 51 percent of untreated and 32 percent of treated subjects reoffended.”)
68 See Soothill, supra note 66, at 150 (“While great progress has been made within the area of understanding sex offender recidivism, there are still challenges ahead. There are two major issues to confront. First, there is currently a widening gap between the public reaction to sex crime and the approach of much of professional orthodoxy. Second, the current paradigm may be constraining developments, and the possibility of a paradigm shift needs to be addressed.”); See also, Karen Kersting, New hope for sex offender treatment, 34.7 AM. PSYCHOLOGICAL ASS’N 52, 52 (2003) (“[A] meta-analysis on the effectiveness of treatment for sex offenders [was] published in Sexual Abuse: A Journal of Research and Treatment (Vol. 14, No. 2) in 2002. That analysis showed for the first time a significant difference between recidivism rates for sex offenders who were treated and those who were not, says psychologist R. Karl Hanson, PhD, lead author of the study and senior researcher for the Solicitor General Canada. . . . The study revealed, among the most recent research samples, sexual recidivism rates of 17.3 percent for untreated offenders, compared with 9.9 percent for treated offenders. Though that’s not a large reduction, the large sample size and widely agreed-upon research methods make it statistically reliable and of practical significance, Hanson says.”); but see, Karen Franklin, Efficacy of Sex Offender Treatment Still Up in the Air, PSYCHOLOGY TODAY (Sept. 25, 2013), available at http://www.psychologytoday.com/blog/witness/201309/efficacy-sex-offender-treatment-still-in-the-air (citing Niklas Langstrom et al., Preventing sexual abusers of children from reoffending: systematic review of psychological and medical treatments, 347 BRITISH MEDICAL J. 4630 (2013)) (speaking generally to the lack of scientific studies on reducing recidivism through treatment. The article highlights that, “there is surprisingly little high-quality research on effective interventions. Partly, this is because of the lock-em-up-and-throw-away-the-key mentality of policy makers.” In addition, the study concluded that after “[s]couring research databases, a six-member, international research team was able to locate only three well-designed experimental studies. . . . [Only one study showed that] treatment . . . reduce[d] recidivism. That project used multisystemic therapy, a very promising approach that integrates the family and larger community in the treatment.” And, “[u]nder certain circumstances, with some people and some interventions, treatment could increase the risk of sexual reoffending. For instance,
that treatment plans for sex offenders must take into account personal risk factors and include individualized treatments.69

8. Summary of Sex Offense Numbers

The statistics surrounding sex offenses are grim, but also illuminating. Most victims of sex crimes are young women. Most perpetrators of sex crimes are younger, adult men, who are well known to their victims, and they commit their crimes in places very familiar to the victim. Most sex offenses are never reported to law enforcement. Many victims do not report because of shame, revictimization, and their personal relationship with the offender. Most victims are primarily concerned with prevention of future harm and not retribution. Of those sex offenses that are reported, just a small fraction lead to an arrest and an even smaller number lead to a conviction and incarceration. Sex offenders do not reoffend as often as other criminals. And, many sex offenders can be treated and rehabilitated.

II. Sex Offense Courts: The New York Model

Existing sex offense courts are specialty, or problem solving, courts. These courts are focused exclusively on adjudicating sex offenses. In many instances, a “sex offense court” is really just a specialized docket for sex offenses heard in a single court. Drug courts and domestic

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69 See CTR. FOR SEX OFFENDER MGMT., RECIDIVISM OF SEX OFFENDERS, 16, 17 (2001), http://www.csom.org/pubs/recidsexof.html (“Although there have been many noteworthy research studies on sex offender recidivism in the last 15 to 20 years, there remains much to be learned about the factors associated with the likelihood of reoffense. Ongoing dialogue between researchers and practitioners supervising and treating sex offenders is essential to identifying research needs, gathering information about offenders and the events leading up to offenses, and ensuring that research activity can be translated into strategies to more effectively manage sex offenders in the community. . . . Dynamic factors should influence individualized interventions. In addition, dynamic factors associated with recidivism should inform the structure of treatment and supervision, as these are characteristics that can be altered. These factors include the formation of positive relationships with peers, stable employment, avoidance of alcohol and drugs, prevention of depression, reduction of deviant sexual arousal, and increase in appropriate sexual preferences, when they exist.”).
violence courts are examples of more well-known, and increasingly popular, problem solving courts.

Problem solving courts, including sex offense courts, offer a variety of advantages, including efficiency, specialization, and cost-savings. In addition to these advantages, sex offense courts are set apart because of their specific goals. The overarching and primary goal of sex offense courts is the preservation of public safety;\textsuperscript{70} but, sex offense courts also focus on the rehabilitation of offenders, thereby operating under a modified therapeutic justice model.\textsuperscript{71} Like domestic violence courts, sex offense courts rely heavily on risk assessments of offenders to balance their simultaneous goals of protecting the community and rehabilitating offenders so that they can eventually be re-integrated into their communities.\textsuperscript{72} The hallmark practices of sex offense courts are early intervention, post-disposition monitoring, consistency, and accountability.\textsuperscript{73}

Problem solving courts are becoming more widely supported and are being increasingly implemented because they work. While sex offense courts may be the least palatable of the existing problem solving courts, this Note argues that their efficacy justifies their expansion. The specific, existing benefits of sex offense courts are discussed in more detail immediately below.


\textsuperscript{71} Id.

\textsuperscript{72} Id. at 1186 (“[S]ex offenders can be supervised as they are released from criminal incarceration. The intensity of control can be adjusted as necessary, depending on episodic risk assessments. Knowing that they may gain more freedom generates strong incentives for offenders to change their attitudes and behavior. The community also knows that increased control, including sending high-risk offenders back to prison, will be placed on the offender if necessary to protect the community. Risk management costs a lot less than confinement under either a state SVP law or a criminal sentencing law. It will also protect the community better than requiring offenders to register with the police or warning the community to protect itself. In sum, risk management provides the best of both worlds: stronger community protection combined with powerful incentives for sex offender rehabilitation.”).

\textsuperscript{73} \textsc{NYCourts.gov}, Sex Offense Courts, Problem-Solving Courts, available at http://www.nycourts.gov/courts/problem_solving/so/home.shtml.
Additional benefits that the expanded use of sex offense courts could create are discussed in Part III.

A. The Beginnings in Oswego County & Beyond

Sex offense courts are a recent innovation and are still, essentially, a limited judicial experiment.74 In 2005, in Oswego County, New York, the first sex offense court was opened using a grant.75 This “court” was really just a sex offense docket. In its first year of operation, the Oswego County court “handled 105 cases. Of those cases, zero cases were dismissed, 68

74 See supra note 70, at 1174, 1187, 1189-91, 1211-12 (John Q. LaFond is a preeminent expert on sex offense adjudication and sex offense courts. This article, which was published before the opening of the first sex offense court in Oswego County served as a road map for the creation of that court. It critiques traditional sex offender routes in the criminal justice system (1175-1180), discusses the difficulties in measuring recidivism (1180-81), and lays out a proposal for sex offender reentry courts (1187, 1195). LaFond claims that “sex offender courts, which are based on principles of Therapeutic Jurisprudence, can provide more intensive community supervision for a much larger group of sex offenders, while at the same time motivating them to change their attitudes and behavior. . . . Our existing approaches are dichotomous: we either hold sex offenders in custody—in prison or in sexually violent predator commitment facilities—or we release them to the community with little more than providing notification of risk to a community ill-prepared to deal with it. Our existing approaches do not produce successful reintegration. We need to build bridges between custody and release, and to prepare offenders for release in ways that will help to ensure successful reintegration. What does successful reentry mean in the context of sex offenders? First, it means developing risk assessment capacities through use of increasingly refined assessment tools already available, studying the accuracy of these instruments, and further refining these techniques based on experience and research. As noted earlier, tools for assessing future risk of sex offending have improved; unfortunately, we still know very little about how to predict when risk has been significantly reduced. . . . Limiting opportunities to reoffend requires accurate information about the offender’s past and potential victims and high-risk behavior patterns. This information is solicited and verified through use of periodic polygraph testing. Such testing or its potential has been found to increase the scope and accuracy of sexual history information, provides a basis for verifying whether the offender is currently engaging in high-risk or assaultive behavior, and helps to break down the denial that perpetuates much sexual violence, enabling cognitive restructuring and other treatment interventions to be more successful. . . . If violations of an offender’s conditions of release are discovered, a variety of sanctions can be imposed by the probation or parole officer, including increased surveillance, house arrest, electronic monitoring, home visits by the officer, requirements that the offender provide location information to the officer, additional mandated treatment, required community services, short-term jail sentences, placement in a half-way house for sex offenders, or even revocation of probation or parole. . . . Most sex offenders will inevitably be released into the community. Registration and community notification laws, although providing notice to the community concerning discharged offenders, leave the public without the tools necessary to protect itself from their continued danger. . . . Our proposal adapts these approaches to the sex offender context, positing for the judge a leading role as a member of an interdisciplinary risk management and treatment team that uses the community containment approach. The offender must, as a condition f

defendants [were] on probation,” and 65 were in jail or prison. No defendants “appearing in the Oswego Sex Offense Court from arraignment through disposition and community supervision [were] arrested for new charges.” Admittedly, those impressive results only represent data from one year and from one county in rural upstate New York. The initially reported successes of the Oswego County sex offense docket sparked an interest in sex offense courts for other New York counties. The subsequent standardization, expansion, study, and continued improvement of these sex offense courts provides a good model for further expansion.

Seeing the successes of the Oswego County sex offense court prompted Erie, Nassau, Orange, Queens, Suffolk, Tompkins, and Westchester Counties, also in New York state, to open their own sex offense courts. By May of 2013, New York had eight operating sex offense courts that heard more than 4,216 cases. New York’s continued implementation of sex offense courts shows that the municipalities in at least one state thought sex offense courts were valuable enough to grow. Beyond New York, Ohio and Pennsylvania have also instituted sex offense courts on a limited basis.

B. Sex Offense Court Model

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77 NYCOURTS.GOV, supra note 73.
78 Id.
79 See Vivan Nereim, County Plans to Launch Sex Offender Court, PITTSBURG POST-GAZETTE (May 5, 2011), available at http://www.post-gazette.com/stories/local/region/county-plans-to-launch-sex-offender-court-296474/. See also Daniel Lovering, Pennsylvania to be Third State with Dedicated Sex Offender Court, REUTERS (May 6, 2011), available at http://www.reuters.com/article/2011/05/06/us-court-sexoffender-idUSTRE74557N20110506. Though there are several news articles relating to sex offense courts in Ohio and Pennsylvania, there is not any information about these sex offense courts available online. The absence of information about these specialized dockets on the Internet does not mean they have ceased to exist, but inquiries to individuals in each court system about whether their sex offense dockets still exist, and, if so, how the dockets are functioning, went unanswered.
A set of guiding principles and best practices for sex offense courts have been increasingly recognized with the continued establishment of New York sex offense courts.\footnote{Herman, \textit{supra} note 75; LaFond and Winick, \textit{supra} note 74, at 1192-93 (suggesting that “other specialized treatment courts, or problem solving courts have been based on the very promising success of the drug treatment model”).}

Seven key elements of successful sex offense courts, as proposed by the Center for Court Innovation, are discussed below: (1) criteria for diversion; (2) risk assessments; (3) monitoring; (4) victim outreach; (5) judicial-offender relationships; (6) community of stakeholders; and (7) specialized training, assistance, and evaluation. A brief discussion of the Center for Court Innovations’ list of best practices for sex offense courts also follows.\footnote{NYCOURTS.GOV, \textit{supra} note 77 (describing the New York court system use of the same important elements; New York, though, labels them as nine “Key Principles:” Dedicated Court Part, Jurisdiction, Case Identification, Judicial Monitoring & Offender Accountability, Community Supervision, Training, Stakeholder & Community Resources, Victim Services, Technical Assistance, and Evaluation).}

\textbf{1. Criteria for Diversion}

Criteria for diversion help courts decide which charged sex offenses are adjudicated in sex offense courts.\footnote{Herman, \textit{supra} note 75.} The best system for diversion seems to be a dual-opt in system, which (1) requires the government and court to consider the criteria for, and agree with, the diversion and (2) requires the offender to opt into the program.\footnote{Peggy Hora & Theodore Stalcup, \textit{Drug Treatment Courts of the Twenty-First Century: The Evolution of Problem Solving Courts}, 42 GEORGIA LAW REVIEW 746 (commenting that “most participants have the option to opt out and they are all told what they are getting into and what the potential consequences might be they can also usually withdraw at any time and choose to be sent back to the traditional system”).} Criteria for courts and the government to consider can include restrictions to adult offenders, non-violent offenders, first time offenders, and/or misdemeanor offenses. A dual-opt in diversionary system allows the government and courts to consider specific surrounding circumstances and individual needs of victims and offenders. From the offender’s prospective, a dual-opt in system sets the tenor for the adjudication, because being diverted into a sex offense court is a privilege that comes with stringent requirements and the possibility of redirection back into a more traditional court and a
harsher sentence. If offenders know they will reject the rehabilitative treatment that is the hallmark of therapeutic justice modeled sex offense courts then they don’t need to opt-into a sex offense court and the court doesn’t need to waste precious space on them.\textsuperscript{84} Obviously, not every sex offender is, or should be, diverted into a sex offense court. If the number of offenders diverted exceeds the number of places on the available on the docket, participation would likely be determined by a lottery.

Once an offender has been diverted, the offender is immediately\textsuperscript{85} assigned to a sex offense court. An offender’s first hearing is held as immediately as possible after diversion.\textsuperscript{86}

2. Risk Assessments

Risk assessments are crucial to offense courts.\textsuperscript{87} For sex offenders, an initial, expedited risk assessment is needed almost immediately after diversion into sex offense court, and periodic risk assessments follow.\textsuperscript{88} Courts need reliable risk assessments right after diversion to know which offenders are safe to release from custody. Over time, sex offense court judges can use risk assessments as a tool to gain specialized experience with sex offenders and develop a sensitivity about who might be appropriately released before the completion of the sex offense court treatment. In an abundance of caution, newer sex offense courts will likely release fewer sex offenders. But, as courts become more confident over time, they may realize that it is safe to release more offenders than they may have initially released. Periodic risk assessments are

\begin{itemize}
\item \textsuperscript{84}There is controversy over whether defendants should be able to opt out of problems solving courts. See, e.g., id. at 753 (acknowledging that “if defendants are not convinced of the value of participation in that treatment, they almost certainly will fail”).
\item \textsuperscript{85}Herman, supra note 82.
\item \textsuperscript{86} See Karen Kersting, New hope for sex offender treatment, 34.7 AM. PSYCHOLOGICAL ASS’N 52 (2003) (noting that “[a]nomer key consideration for both psychologists and judges is timing. It’s crucial to start therapy as soon after incarceration as possible, LaFond says. Offenders often fail to realize the severity of their crimes, and an antagonistic prison environment can exacerbate feelings of being wrongly accused and hamper treatment.”).
\item \textsuperscript{87}Risk assessment is a well-establish practice in domestic violence courts.
\item \textsuperscript{88} John Q. LaFond and Bruce Winick. Sex Offender Reentry Courts: A Proposal for Managing the Risk of Returning Sex Offenders to the Community, 34 SETON HALL L. REV. 1173, 1185 (2004).
\end{itemize}
necessary not only to track treatment progress, but also to assess whether the recidivism rate has unexpectedly increased.

These risk assessments are crucial to the justification of releasing sex offenders—the only argument for allowing sex offenders to bypass incarceration due to overcrowding is that some pose little actual risk to the community and more dangerous criminals should take their places in jail. However, risk assessments, especially for sex offenders, are not without detractors. Apart from the deceptive nature of sex offenders as a whole, some commentators worry that sex offenders can never be treated; if one accepts this view, risk assessments are either pointless or inaccurate. Research on sex offender risk assessments is not strong. However, since risk assessments have been successful in other contexts and have been used with sex offenders, they should be a least a factor in judges’ decisions.89

3. Monitoring

Monitoring is another important element of sex offense courts.90 Many types of monitoring can be instated, but frequent court appearances, check-ins with law enforcement or treatment personnel, and GPS trackers are all common. Some commentators have suggested using lie detector tests to monitor compliance.91 This is an intriguing idea. If lie detector tests were easily administered and reliable, they would be an incredible solution to the kinds of problems typically associated with measuring sex offenders’ recidivism (deception, inaccurate

89 See Kersting, supra note 86 (discussing how risk factors should be taken into consideration when creating punishment and/or treatment plans for sex offenders. “‘A large part of the challenge to managing this group is educating the courts that sex offenders are a highly heterogeneous population and not all of them are at high-risk for reoffending.’ . . . People commit sexual crimes for different reasons. ‘Some are highly predatory, highly psychopathic and have repeated offenses, making them more likely to reoffend.’ In the last 10 years, psychologists have made substantial advances in clearly identifying factors that increase an offender’s risk of committing an offense after release. These factors include the number of offenses, intimacy deficits, sexual preoccupations and age. Actuarial scales for determining an offender’s risk of committing more sex crimes after treatment are available, but not always trusted by judges and many clinicians.”).
90 Herman, supra note 85, at 1204.
91 See LaFond and Winick, supra note 88 at 1204.
However, there are obvious problems with using lie detector tests: they are expensive, not widely accepted as admissible in courts, and often generate false positives. However, lie detector testing may be the best option among a group of imperfect solutions for monitoring released sex offenders.

4. Victim Outreach

Victim outreach is a critical element of sex offense courts and has two main components. First, is victim notification. Many states already have notification statutes. Sex offense courts must comply with existing statues, and can self-impose additional notification requirements (e.g., notifying victims upon offender release from incarceration, graduation from the program, or termination of GPS tracking). Victim notification comes at a nominal cost to courts and help victims to feel empowered following a crime. Second, is victim referrals to treatment and/or services. Sex offense courts can have counselors or centers they coordinate with to make sure victims have access to sensitized professional help. Many victims cannot afford post-trauma treatment. States may chose to pay for such treatment, but the cost to states should be covered by sex offenders themselves, as discussed in more detail below.

5. Judicial-Offender Relationships

In sex offense courts, judges interact personally with offenders. This practice has been successful in other problem solving courts, like drug and domestic violence courts. However, regular and personal interactions in sex offense courts can be difficult for both offenders and judges. Sex offenders, as a group, are more likely to deny or justify what they have done. Judges

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92 Id. at 1207-08 (proposing that such tests can be especially beneficial to victims of sex crimes who have often been harmed by close family or friends).
93 Not that their results would need to be admissible in evidentiary terms, but the fact that other courts have not widely used them speaks to the fact that there is a good deal of uncertainty surrounding their veracity.
95 LaFond and Winick, supra note 91, at 1204, 1209-10.
are also more likely, even with training, to personally disapprove of (and even be repulsed by) the sex crimes that offenders have committed. And, a recidivist sex offender is more dangerous than say, a lapsed drug addict. Frequent hearings and periodic, accurate risk assessments can help alleviate problems like the potential for denial by offenders, judges whose personal feelings prevent the formation of meaningful offender-judicial relationships, and reoffense. Granted, some of the personal behaviors that are hallmarks of the judicial-offender relationship in other problem solving courts (like hugs and chastising) are probably less appropriate in sex offense courts. Instead, sex offense court judges can fall back into their more traditional, neutral role and provide traditional incentives\(^6\) to stay in the program that do not include the personal praise of the judge.\(^7\)

6. Community of Stakeholders

Given the risks associated with recidivism, sex offense courts establish a cooperative, highly communicative community. This community is composed of the usual parties (judges, prosecutors, defense attorneys, treatment providers), but also has additional players (risk assessment specialists, GPS trackers). A core team meets regularly to discuss individual cases and respond rapidly to any developing issues. Judges make the final call through orders, but take into account the expert counsel of the team members. One of the main issues with such meetings is time. Few of the key stakeholders, unless compelled, would ordinarily have enough time in their schedules to attend such meetings and sending representatives is costly. In addition, there is the familiar concern that traditionally adverse parties working together outside the presence of the offender may cause Due Process concerns. However, despite these issues, other jurisdictions have had such meeting both in drug and domestic violence courts. Even if meetings among

\(^6\) Id. at 1197 (citing reduced and deterred sentences as incentives.).  
\(^7\) Id. at 1192.
stakeholders are initially costly and time consuming, they appear to be critical to the problem-solving and therapeutic models.

7. Specialized Training, Assistance, and Evaluation

Specialized training, assistance, and evaluation should also be key elements of sex offense courts. Because of the heinous nature the crimes that precipitate the cases in sex offense courts, stakeholders of all kinds receive specialized training. Even court personnel who do not interact directly with sex offenders receive specific instruction that enables them to provide technical assistance for others involved in the process. And, because sex offense courts are still relatively new, evaluation and continual improvement is crucial for the long-term success of sex offense courts.

C. Criticisms of Sex Offense Courts

Sex offense courts have been met with numerous criticisms. Five of the major objections are below.

1. Can Sex Offenders Really Be Treated?

First, there is skepticism surrounding the premise that sex offenders can be treated. If sex offenders cannot be treated, expanding the use of sex offense courts wouldn’t make much sense. Some claim that even if therapy works, the results cannot be measured in any reliable way. If sex offenders cannot be treated and/or if the success of a given treatment cannot accurately be determined, then there is not a strong treatment-based, data driven argument for the expansion of sex offense courts. However, recidivism rates can be measured, even if imperfectly, and sex offense courts do not necessarily need to provide treatment for offenders. Sex offense courts provide benefits as specialty courts, with a tested system of monitoring offenders who

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98 Id. at 1173-74, 1181-82, 1184.
99 Id. at 1180-81 (asserting that “the true rate of sexual recidivism is unknown and unknowable”).
would have been released anyways and sensitive treatment of victims, even if they cannot effectively treat or cure sex offenders.

2. Potential for Reoffense & Resulting Additional Harm

Second, commentators have highlighted that any treatment model will result in some participants’ reoffense. Given that the offenses involved here are serious and usually involve highly sympathetic victims who have been traumatized, some have argued that sex offense courts, as a matter of public policy, are unacceptable. If a judge ultimately is forced or chooses to send violators to jail, then it is questionable whether the program as a whole contributes to bettering society—releasing offenders into the public who would have been in jail absent the program, only to have them commit crimes and be sent back to jail does not seem wise or practical. The response to this argument is that domestic violence courts, even if not fully scientifically proven successes, also have the potential for serious harm from recidivism and they have been accepted and adopted in quite a few jurisdictions.\(^{100}\) Perhaps the specific answer to these concerns is swifter and harsher sanctions for technical violations. Or, in the style of the Oswego County court, courts could err on the far side of caution by only releasing those with exceedingly low probabilities of recidivism.

This criticism could prove to be the political death knell of sex offense courts; it would be difficult for a politician to seriously advocate for such a program in light of an opponent accusing the supporter as weak on crime and not protective of victims and the community. Yet, if we have to put people back on the streets, we might as well develop a system that will carefully monitor the offenders to prevent future harms. The timeliness of this argument is reflected in a Vermont

\(^{100}\) Then, of course, there is the issue of similarity. Are the differences between domestic violence and sex offense courts too numerous to justify using arguments made for domestic violence courts for sex offense courts? Given that domestic violence courts are themselves not even fully validated, is it unwise to use them as a model for other, possibly more dangerous models of courts?
bill that proposes to make judges factor in the various costs of sentencing options when
sentencing even nonviolent offenders. Judge Richard Posner himself has said, “judges should
consider the costs when imposing lengthy sentences that keep inmates locked up until old
age.” The unfortunate reality of the penal system is that some states, like Kentucky, currently
send about a quarter of offenders to privately operated out-of-state facilities. If there is backlash
to these practices, their only option will likely be to release prisoners from their overcrowded
jails; if that is the case, then releasing nonviolent sex offenders based risk assessments may be
the lesser of two evils.

3. Are Sex Offenders the Least Deserving Offenders?

Third, sex offenders could be labeled as the “least deserving offenders” and any program
seen as tending to help them may receive strong opposition from victim advocacy groups. What
politician facing reelection or reappointment wants to champion programs that help sex
offenders? However, sex offense courts give offenders the ability to participate in the treatment
process and, as a stakeholder, an offender’s first commitment is to take responsibility for the
misdeed. To additionally ameliorate such resistance, sex offense courts might also also have
the authority to make a blanket rule against plea agreements including Alford pleas. Although
this would not placate those who want sex offenders incarcerated, it would give the victims some

A4.
102 Id.
103 Kristine Herman, Sex Offense Courts: The Next Step in Community Management?, CTR. FOR COURT
management (implying that victims are better served by the responsibility offenders are forced to take in sex offense
courts.).
104 John Q. LaFond and Bruce Winick, Sex Offender Reentry Courts: A Proposal for Managing the Risk of
Returning Sex Offenders to the Community, 34 SETON HALL L. REV. 1173, 1196 (2004).
redress, especially given that many District Attorneys plead down sex offense crimes because they are difficult to prosecute.

4. Due Process Concerns

Fourth, sex offense courts present Due Process concerns. Defense attorneys who are regularly meeting with prosecutors as part of a “community” may not be able to advocate for their clients as vigorously as they would be able to in a traditional adversarial system. Offenders may question whether their participation is essentially coerced if their only other option is jail. On a different level, if a jurisdiction faces overcrowded dockets, a lottery system to enter a sex offense court may violate Due Process, if some offenders get treatment or release over jail while others are denied those opportunities by chance. The frequent face-to-face interactions between defendants and judges may also tread closely to the line of Fifth Amendment self-incrimination concerns. And, even those who support the problem-solving model can admit that the “community” arrangement is untraditional. However, given the

105 Herman, supra note 103.
106 Peggy Hora & Theodore Stalcup, Drug Treatment Courts of the Twenty-First Century: The Evolution of Problem Solving Courts, 42 GEORGIA LAW REVIEW 478 (admitting that “instead of each side attempting to bolster its case for or against the offender, the prosecutor and defense attorney approach a case with the defendant’s recovery as the goal”).
107 Id. at 521-23 (conceding that the waiver of rights required for most treatment programs of courts “may [require] defendants to do more than they would be if they had gone through the traditional process”).
108 Id. at 481-82 (acknowledging that defendants lose a sort of buffer when they have to communicate directly with the judge). See also Jonathon Kaden, Therapy for Convicted Sex Offenders: Pursuing Rehabilitation Without Incrimination, 89 J. CRIM. L. & CRIMINOLOGY 347, 349-50 (1998) (discussing how courts can address Fifth Amendment concerns in sex offense courts. “[T]he state must offer immunity from future prosecution, protection against probation revocation, and access to treatment that does not require an admission of responsibility in order to preserve the Fifth Amendment right against self-incrimination for convicted sex offenders in court-mandated therapy. . . . Offenders who plead not guilty and testify in their own defense at trial face an unsavory choice between confessing guilt in therapy and risking that their admission will foreclose rights of appeal and lead to further incrimination for perjury or other crimes, or refusing to admit guilt and risking removal from therapy and revocation of probation. Offenders who plead not guilty and testify in their own defense, and then admit guilt in therapy risk further incrimination for two reasons: (1) if completion of sex offender therapy is predicated on an admission of guilt, and the offender completes therapy, his probation officer will know that he admitted guilt and committed perjury at trial, and (2) therapy for sex offenders is often characterized by more limited confidentiality than in traditional client-therapist relationships, so an offender’s admission of guilt may, and in some cases must, be disclosed.”).
proliferation of other problem solving courts, Due Process concerns do not seem to hold much weight with higher-level review courts. The advantages of treatment and release may come at a price (the untraditional arrangement of community relationships), but defendants and the community seem willing to accept. And, as one commentator noted, Due Process may be equally or more violated in traditional courts that subject the offender to countless delays and rescheduling.

5. Financial and Legislative Constraints

Fifth, as previously mentioned, there may be an impermissible power imbalance if courts start ordering treatments and other supervisory services for defendants for which the legislature has not set aside adequate funding. If the judiciary needs the permission or help of the legislature, it faces the obvious problems of underfunding and legislative inertia.

III. Future of Sex Offense Courts

Although in existence for less than ten years, judges sitting in sex offense courts have now presided over thousands of cases. The measurable results from this decade of experience alone, in terms of reduced rates of recidivism, should be the justification for further expansion of sex offense courts. Increased awareness of these courts as they expand will lead to increased reporting of sex crimes, which should lead to further interest in more expansion. Also, as these courts are established in additional jurisdictions where they do not presently exist, the new courts can incubate ideas about how to further improve the benefits flowing from the courts as presently administered.

A. Expansion of Sex Offense Courts to Other Jurisdictions

Sex offense courts can and should be created in jurisdictions where they do not presently exist. Other jurisdictions can look to the sex offense courts in New York as a model. As these
courts become more widespread, their existence will become more widely known. Greater awareness should lead to more frequent reporting of sex crimes by victims and the benefits that flow from use of the courts, as discussed below, will correspondingly increase.

1. Improved Judicial Administration

Victims who are reluctant to report sex crimes should be more willing to do so if they know there is a specialized court available to deal with all of the sensitive aspects involved. Victims don’t want to be treated in a way that makes them feel like they are being victimized a second time by the judicial system—they understandably want to avoid further pain and trauma. They may even like to feel like they and their perpetrators have been treated fairly.

Victims need to be aware of the availability sex offense courts before their willingness to report a sex crime will increase. There are so few jurisdictions with sex offense courts available at present that awareness of those courts outside of their own jurisdictions (or even within) is necessarily limited. If they do expand, victims will become more widely aware of these specialized courts likely prompting more of them to report crimes because they believe the system will going to treat them with greater dignity, respect, and fairness than in a traditional court. The greater numbers of victims reporting is a compelling reason by itself for the expansion of sex offense courts.

2. Flexibility in Sentencing

Victims are also reluctant to report sex crimes because they often know the perpetrator and are aware of the drastic consequences that are likely to result from their reporting. In spite of the crime committed against them, the victims continue to have concern (and perhaps even compassion) for the perpetrators, whose lives will be inalterably impacted with harsh sentences and mandatory sex offender registrations. Sex offense victims, therefore, face a terrible choice:
they can live with the humiliation and private pain accompanying the crime while the perpetrator goes free or they can report the perpetrator, knowing the harsh consequences that will result, perhaps without any lessening of their own pain and risking the additional humiliation of being subject to a judicial system not focused on their needs.

If victims know that there is flexibility in sentencing, rather than strictly mandatory punishments and sex offender registrations, their options will be less stark which may make them more apt to report a sex crime. Flexibility in sentencing is much more likely in sex offense courts that are established to deal specifically with the perpetrators and victims of sex crimes. The availability of this flexibility can only increase if there are greater numbers of sex offense courts. This flexibility is another reason for the expansion of these courts.

B. Incubation of Additional Improvements in Sex Offense Courts

As sex offense courts expand to other jurisdictions, the new courts can begin to experiment with improvements on what is already available in existing sex offense courts. These improvements can be incubated so that, over time, the best improvements can be implemented in the existing and prospective sex offense courts in other jurisdictions. Some embryonic ideas for improvements are suggested here.

1. Criminal Fines to Fund Greater Awareness

Imposing criminal fines on sex offenders can provide a funding source that can be used to pay for efforts to increase awareness of sex offense courts. Even as a basic matter of fairness, sex offenders should pay fines according to the severity of their crimes and their ability to pay.\footnote{This would have to be carefully considered as “ability to pay” is a concept foreign, and perhaps counter, to the criminal justice system.} This would be roughly analogous to the imposition of punitive damages in civil cases. The more heinous the offense, the greater the fine. Similarly, the greater the ability of the defendant to pay,
the greater the fine, on the theory that the defendant’s future conduct is more likely to change if the financial pain is significant enough to influence motivation or at least action.

The penalties collected could be used to pay for the development of a website, hotline, app, and other digital tools that promote the benefits of sex offense courts, as well as victim counseling and other victim services and reimbursement of governmental costs. Since many women who are sexually assaulted are under age 30, know their attacker, and never make a report, they should be able to Google, “What should I do if I am sexually assaulted?” and one of the top resulting hits should be an easy to navigate website about how to report a crime, why victims should report sex crimes, and what their report will mean if their claim is adjudicated in a sex offense court rather than a in normal court. The reader is encouraged to run a quick Google search to see what results currently come up given such a search. Unfortunately, sex offense courts won’t appear in the results.

If victims could quickly discover the benefits of sex offense courts (quicker trials, more victim advocacy, greater victim involvement, increased access to victim services, less jail time for the attacker if convicted, and more sophisticated consideration of rehabilitation for the attacker), they should be more likely to make a timely report, when evidence of the sex crime still exists. The advantage of using penalties collected from sex offenders to advertise sex offense courts is that the costs of increased advertising do not require increased taxes or diversion of government funds from other deserving programs. Instead, the funding would come from a new stream of revenue, collected from offenders to benefit current and future victims.

2. Increased Victim Influence on Perpetrator Punishment

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110 The recent creation of the federal government website, 1 is 2 Many, at http://www.whitehouse.gov/1is2many, and its accompanying PSAs and media campaign, shows a governmental interest in the creation of online tools that benefit victims of sexual assault and help them feel like they are not alone. The 1 is 2 Many campaign also seeks to discourage sexual harassment and sexual assault.
Victims want, and should be able, to play a more active role in determining what will happen to their attackers, if convicted, from the beginning of the process. Of course, victims cannot dictate exactly what will happen because, in a criminal setting, the state has a significant interest in ensuring the consistent and fair application of law. Nevertheless, there should be a greater degree of deference accorded to the victim’s desires with respect to the perpetrator. For instance, some victims might be more willing to report a sex crime if they could check a box on the initial police report that indicated that they are unwilling to make the report unless their offender is spared from having to register on a public sex offender registry. Or, some victims could be interested only in assuring that their attackers are registered with law enforcement. Others may want to ensure their attackers receive rehabilitative treatment. Still other victims may be anxious for their attackers to serve the maximum possible amount of jail time.

Whatever a victim’s preferences, victims might have greater incentives to report sex crimes if they could play a more active role in the adjudicative process. Once again, finding a way to educate victims about the active role they could play in a sex offense court is an important element if increased victim involvement is to have the intended effect of increasing reporting.

3. Increased Offender Involvement in Punishment Choice

Convicted sex offenders should be able to chose between sentences, as is allowed in some drug courts. For instance, a sex offender who would normally be required to serve five years in jail should be allowed to opt out of the jail time by agreeing to monitoring for five years by a court, including weekly check ins, rehabilitative therapy, restorative payments of fines, and other measures the judge deems necessary. If a sex offender failed to comply with the terms of the monitoring, the offender would be required to serve the initially sentenced jail time. In this
way, sex offense court sentences that focus on structured monitoring, not incarceration, could incentivize offenders to make choices likely to be in line with rehabilitation. Of course, judges in sex offense courts should have the discretion to allow or deny such choices depending on the particular circumstances of each case.

In some cases, compliant offenders should be able to avoid mandatory sex offender registration if they successfully complete the terms of their monitoring. This, quite obviously, would be a controversial step and might require advance legislative reforms in light of the sex crime registration laws already on the books. However, depending on the circumstances, avoiding registration as a sex offender might be the best outcome, certainly for the perpetrator, but perhaps from the perspective of the victim as well. The judge would still have to determine that society’s interests would be served by such a result as well.

Judges in sex offense courts should be granted greater latitude in creating individualized solutions to address the needs of victims, the futures of offenders, and the protection of society so that it does not end up with additional victims. As judges in sex offense courts come up with better solutions, those solutions can be incubated and then expanded to other courts.

**Conclusion**

As a theoretical matter, our society thinks it needs tough, mandatory punishment for sex offenders, without much leniency. As a practical matter, however, we have to ask ourselves whether harsh punishment is invariably the appropriate response to all sex offenses. The fact is that most sex crimes are committed against young women by young men, who are largely known to their victim, by or near homes, and go unreported. This may be, at least in part, victims’ reluctant to identify their attackers because they know what harsh consequences will result.
Although victims may wish the attack had not happened and will not recur, they nevertheless cannot bear to inflict what seems like retaliatory pain and suffering on their attacker.

If sex offense victims can be persuaded that they and their perpetrators will be treated in a more appropriate, nuanced, and fair manner, it naturally follows that they will be more willing to report sex crimes. Sex offense courts offer that kind of alternative to the harsh treatment awaiting sex offenders and victims alike in most jurisdictions today. Although they are relatively new, sex offense courts have proven worthy of careful consideration. The sex offense courts in New York have reduced recidivism rates already. Their expansion into other jurisdictions, along with careful incubation of ways to increase awareness of their benefits, is likely to increase the reporting of sex crimes, which is better for victims and society than what we have today.