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The new American witch hunt

Demonizing sex offenders by passing tough, mindless laws rather than treating them makes little sense.

By Richard B. Krueger

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INCREASINGLY, legislation dealing with sex offenders is being passed that is punitive, untested, expensive and, in many cases, counterproductive — demonizing people who commit sexual offenses without offering any empirical information that the new laws will reduce sexually violent crime.

Last week, for instance, New York became the 19th state to enact so-called sexually violent predator legislation. This legislation provides for the indefinite "civil commitment" of sexual offenders who have served their time in prison and are about to be released.

The legislation was passed despite a lack of evidence that such laws actually reduce sexual violence and despite recent reports of warehousing and chaos in some programs and relentlessly rising costs in others.

It is just one example of the kind of punitive laws being passed across the country. Other measures include increasingly strict residency restrictions (such as those imposed by Proposition 83 in California, approved by the voters in November), more stringent rules for community notification regarding sexual offenders and monitoring by GPS (also mandated under Proposition 83, with cost projections of \$100 million annually, according to the state's legislative analyst).

In many states, politicians are eager to pass such legislation, which is enthusiastically supported by the public. Indeed, ask citizens what they think and you're likely to hear that they support laws to "get rid of perverts" who, in the eyes of many people, "deserve what they get."

This is not new. In general, dispassionate discussion of sexuality is difficult, even more so when it comes to sexual crimes. Ebbs and flows of public attention and vilification have often occurred in this country.

In the 1930s and '40s, castration was practiced in California, where sex offenders and homosexuals received this "treatment." Also, the first generation of sexual psychopath laws was passed during this time, mandating indefinite commitment for sexually violent predators. In the 1980s, society was roiled by a series of high-profile day-care-center abuse cases (such as the McMartin case and others that proved later to be unfounded). In the 1990s, there was a media uproar over supposed "ritualistic" and "satanic" sexual abuse.

These days, the pendulum continues to swing further toward the punitive end of the spectrum, with ever more draconian sentencing and post-release conditions. Under the federal Adam Walsh Child Protection Act, signed into law by President Bush in July, all sex offenders will be listed on the Internet, making information on offenders, regardless of whether they belong to a low-, medium- or high-risk category, publicly accessible; this includes people, for example, whose only crime is the possession of child pornography.

Obviously, this makes it increasingly difficult for ex-offenders to obtain residences or jobs — the mainstays of stability — and it subjects them to ongoing vigilantism

and public censure. Although notification may make sense for some, it does not make sense for all.

In California, the most recent debate has been over whether Proposition 83, the law passed last year banning registered sex offenders from living within 2,000 feet of a school or park, can be retroactively applied to the 90,000 offenders who have already been released from prison. (Two federal judges ruled last month that it may not.)

What is being created is a class of individuals that is progressively demonized by society and treated in such a way that a meaningful reintegration into society is impossible.

Yes, sexual abuse is a serious matter. Yes, individuals who commit sexual crimes should be punished. Unquestionably, a small percentage of sex offenders are very dangerous and must be removed from society. What's more, we know that sexual crimes are devastating to victims and their families and that we must do all we can to protect ourselves from "predators."

But demonizing people rather than treating them makes little sense, and passing laws that are tough but mindless in response to political pressure won't solve the problem either.

The reality is that, despite the popular perception to the contrary, recidivism rates for sexual offenders are among the lowest of any class of criminals. What's more, 90% of sex offenders in prison will eventually be released back into the community — and 90% of sexual offenses are committed by people known to their victim, such as family members or trusted members of the community — so rehabilitation is critical. It is not possible, affordable, constitutional or reasonable to lock up all sex offenders all of the time.

Society's efforts to segregate sex offenders are backfiring, resulting in unintended consequences. Homelessness is increasing among sex offenders, for instance, making it harder to monitor them and causing some law enforcement officials to call for a repeal of residency restrictions.

One of the greatest challenges to workable civil commitment programs is that offenders are so feared that, when they are ready to be reintroduced into society, no community will accept them — so instead they remain institutionalized indefinitely, creating ever-increasing costs without an end in sight.

Why has this demonization occurred? One reason is that offenders are hot news, and the more heinous the sexual crime, the more the media focus on it. Thus, our minds create a stereotype of egregious evil with respect to all sex offenders. We no longer distinguish between the most egregious cases and the others, despite the fact that the most terrible crimes represent only a small proportion of all sexual offenses.

But there *are* less serious crimes, and we should acknowledge that. Possession of child pornography is categorically different from a sexual assault. So is exhibitionism. The wife of a man who committed a hands-off crime involving possession of child pornography put it this way: "Each of these horrendous crimes drives another nail into our coffin."

Another reason for the demonization is that society has failed to fund research on the treatment and management of people convicted of sexual crimes — despite the fact that states are willing to spend hundreds of millions of dollars on unproven programs for treatment and containment.

The current public discourse on sex offenders is, therefore, without a base of empirical studies. Psychiatry, psychology and our national research institutes have eschewed involvement with such research.

No one is suggesting that sexual crimes should go unpunished or that some of the newer approaches — such as medication, intensive community supervision or even carefully considered civil commitment — are without value. What is becoming clearer, however, is that the climate in the United States makes reasonable discussion difficult.

What can be done? Some scholars, in an effort to interpose rationality between public fear and legislation, have suggested the concept of "evidence-based legislation." This is analogous to "evidence-based medicine" and would call on legislative bodies to inform their proposed laws with the best available scientific evidence — something that is rarely done now.

What is happening now with individuals who have committed sexual crimes is the modern-day equivalent of a witch hunt. Our images of the worst determine what we mete out to all sex offenders. It is time to reexamine our approaches and develop empirically based, scientifically sound measures and treatments to bring rationality back to this discussion.

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