

Sex laws

Unjust and ineffective

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America has pioneered the harsh punishment of sex offenders. Does it work?

Illustration by Noma Barr



ONE day in 1996 the lights went off in a classroom in Georgia so that the students could watch a video. Wendy Whitaker, a 17-year-old pupil at the time, was sitting near the back. The boy next to her suggested that, since it was dark, she could perform oral sex on him without anyone noticing. She obliged. And that single teenage fumble wrecked her life.

Her classmate was three weeks shy of his 16th birthday. That made Ms Whitaker a criminal. She was arrested and charged with sodomy, which in Georgia can refer to oral sex. She met her court-appointed lawyer five minutes before the hearing. He told her to plead guilty. She did not really understand what was going on, so she did as she was told.

She was sentenced to five years on probation. Not being the most organised of people, she failed to meet all the conditions, such as checking in regularly with her probation officer. For a series of technical violations, she was incarcerated for more than a year, in the county jail, the state women's prison and a boot camp. "I was in there with people who killed people. It's crazy," she says.

She finished her probation in 2002. But her ordeal continues. Georgia puts sex offenders on a public registry. Ms Whitaker's name, photograph and address are easily accessible online, along with the information that she was convicted of "sodomy". The website does not explain what she actually did. But since it describes itself as a list of people who have "been convicted of a criminal offence against a victim who is a minor or any dangerous sexual

offence", it makes it sound as if she did something terrible to a helpless child. She sees people whispering, and parents pulling their children indoors when she walks by.

Punish first, think later

The registry is a gold mine for lazy journalists. A local television station featured Ms Whitaker in a spot on local sex offenders, broadcasting a helpful map showing where she lives but leaving the specifics of the crime to each viewer's fearful imagination. "My husband's family saw me on TV," she says. "That's embarrassing."

What Ms Whitaker did is no longer a crime in Georgia. The state's sodomy laws, which in 1996 barred oral sex even between willing spouses, were struck down by court rulings in 1998 and 2003. And since 2006, thanks to a "Romeo and Juliet" clause in a sex-crimes law, consensual sex between two teenagers has been a misdemeanour, not a crime, if one partner is underage but no more than four years younger than the other.

The Romeo and Juliet clause was not retroactive, however, so Ms Whitaker is stuck on the register, and subject to extraordinary restrictions. Registered sex offenders in Georgia are barred from living within 1,000 feet of anywhere children may congregate, such as a school, a park, a library, or a swimming pool. They are also banned from working within 1,000 feet of a school or a child-care centre. Since the church at the end of Ms Whitaker's street houses a child-care centre, she was evicted from her home. Her husband, who worked for the county dog-catching department, moved with her, lost his job and with it their health insurance.

Thanks to a lawsuit filed by the Southern Centre for Human Rights, a group that campaigns against rough justice, Ms Whitaker won an injunction allowing her to return home. But her husband did not get his job back, and now works as a labourer. The two of them are struggling financially. And Ms Whitaker is still fighting to get her name removed from the registry. "When you're a teenager, you do stuff," she says. "You don't think you'll be paying for it when you're nearly 30."

Every American state keeps a register of sex offenders. California has had one since 1947, but most states started theirs in the 1990s. Many people assume that anyone listed on a sex-offender registry must be a rapist or a child molester. But most states spread the net much more widely. A report by Sarah Tofte of Human Rights Watch, a pressure group, found that at least five states required men to register if they were caught visiting prostitutes. At least 13 required it for urinating in public (in two of which, only if a child was present). No fewer than 29 states required registration for teenagers who had consensual sex with another teenager. And 32 states registered flashers and streakers.

Because so many offences require registration, the number of registered sex offenders in America has exploded. As of December last year, there were 674,000 of them, according to the National Centre for Missing and Exploited Children. If they were all crammed into a single state, it would be more populous than Wyoming, Vermont or North Dakota. As a share of its population, America registers more than four times as many people as Britain, which is unusually harsh on sex offenders. America's registers keep swelling, not least because in 17 states, registration is for life.

Georgia has more than 17,000 registered sex offenders. Some are highly dangerous. But many are not. And it is fiendishly hard for anyone browsing the registry to tell the one from the other. The Georgia Sex Offender Registration Review Board, an official body, assessed a sample of offenders on the registry last year and concluded that 65% of them posed little threat. Another 30% were potentially threatening, and 5% were clearly dangerous. The board recommended that the first group be allowed to live and work wherever they liked. The second group could reasonably be barred from living or working in certain places, said the board, and the third group should be subject to tight restrictions and a lifetime of monitoring. A very small number "just over 100" are classified as "predators", which means they have a compulsion to commit sex offences. When not in jail, predators must wear ankle bracelets that track where they are.

Illustration by Noma Barr

Despite the board's findings, non-violent offenders remain listed and subject to a giant cobweb of controls. One rule, championed by Georgia's House majority leader,

banned them from living within 1,000 feet of a school bus stop. This proved unworkable. Thomas Brown, the sheriff of DeKalb county near Atlanta, mapped the bus stops in his patch and realised that he would have to evict all 490 of the sex offenders living there. Other than the bottom of a lake or the middle of a forest, there was hardly anywhere in Georgia for them to live legally. In the end Georgia's courts stepped in and suspended the bus-stop rule, along with another barring sex offenders from volunteering in churches. But most other restrictions remain.

Sex-offender registries are popular. Rape and child molestation are terrible crimes that can traumatise their victims for life. All parents want to protect their children from sexual predators, so politicians can nearly always win votes by promising curbs on them. Those who object can be called soft on child-molesters, a label most politicians would rather avoid. This creates a ratchet effect. Every lawmaker who wants to sound tough on sex offenders has to propose a law tougher than the one enacted by the last politician who wanted to sound tough on sex offenders.

A self-defeating pillory

So laws get harsher and harsher. But that does not necessarily mean they get better. If there are thousands of offenders on a registry, it is harder to keep track of the most dangerous ones. Budgets are tight. Georgia's sheriffs complain that they have been given no extra money or manpower to help them keep the huge and swelling sex-offenders' registry up to date or to police its confusing mass of rules. Terry Norris of the Georgia Sheriffs' Association cites a man who was convicted of statutory rape two decades ago for having consensual sex with his high-school sweetheart, to whom he is now married. "It doesn't make it right, but it doesn't make him a threat to anybody," says Mr Norris. "We spend the same amount of time on that guy as on someone who's done something heinous."

Money spent on evicting sex offenders cannot be spent on treating them. Does this matter? Politicians pushing the get-tough approach sometimes claim that sex offenders are mostly incorrigible: that three-quarters or even nine out of ten of them reoffend. It is not clear where they find such numbers. A study of nearly 10,000 male sex offenders in 15 American states found that 5% were rearrested for a sex crime within three years. A meta-analysis of 29,000 sex offenders in Canada, Britain and America found that 24% had reoffended after 15 years.

That is obviously still too high. Whether or not treatment can help is disputed. A Californian study of sex offenders who underwent "relapse prevention", counselling of the sort that alcoholics get from Alcoholics Anonymous, found that it was useless. But a meta-analysis of 23 studies by Karl Hanson of Canada's department of public safety found that psychological therapy was associated with a 43% drop in recidivism. Some offenders—particularly men who rape boys—are extremely hard to treat. Some will never change until they are too old to feel sexual urges. But some types of treatment appear to work for some people and further research could yield more breakthroughs.

Publicising sex offenders' addresses makes them vulnerable to vigilantism. In April 2006, for example, a vigilante shot and killed two sex offenders in Maine after finding their addresses on the registry. One of the victims had been convicted of having consensual sex with his 15-year-old girlfriend when he was 19. In Washington state in 2005 a man posed as an FBI agent to enter the home of two sex offenders, warning them that they were on a "hit list" on the internet. Then he killed them.

Murders of sex offenders are rare, but harassment is common. Most of the offenders interviewed for this article said they had experienced it. "Bill", who spent nine months in jail for having consensual sex with a 15-year-old when he was 27 and is now registered in North Carolina, says someone put up posters with his photograph on them around his district. (In at least four states, each offender's profile on the online registry comes with a handy "click to print" function.) The local kids promptly stopped playing with Bill's three children. And someone started leaving chopped-up sausages on his car, a possible reference to castration. Bill and his family moved house.

Jill Levenson, of Lynn University in Florida, says half of registered sex offenders have trouble finding jobs. From 20% to 40% say they have had to move house because a landlord or neighbour realised they were sex offenders. And most report feeling depressed, hopeless or afraid.



"Mike" spent a year and a half behind bars for statutory rape after having sex with a girl who said she was 17, but was two years younger. He was 22 at the time. Since his release, he has struggled to hold down a job. Once, he found work as a security guard, but his probation officer told him to quit, since the uniform lent him an air of authority, which would not do.

He is now unemployed, and lives in a flophouse in Atlanta between a jail and a strip club. The area is too desolate to have any schools or parks, so he is allowed to live there. His neighbours are mostly other sex offenders and mentally ill folk who talk to themselves. "It's Bumville," sighs Mike. His ambition is to get a job, keep it and move out. Any job will do, he says.

Several studies suggest that making it harder for sex offenders to find a home or a job makes them more likely to reoffend. Gwenda Willis and Randolph Grace of the University of Canterbury in New Zealand, for example, found that the lack of a place to live was "significantly related to sexual recidivism". Candace Kruttschnitt and Christopher Uggen of the University of Minnesota and Kelly Shelton of the Minnesota Department of Corrections tracked 556 sex offenders on probation and found less recidivism among those with a history of stable employment.

Some bosses do not mind hiring sex offenders, if they know the full story and the offender does not seem dangerous. But an accessible online registry makes it all but certain that a colleague or a customer will find out about a sexual conviction. Sex offenders often report being sacked for no apparent reason. Mike had a job at a cake shop. His boss knew about his record. But one day, without warning, he was fired.

Publicly accessible sex-offender registries are intended to keep people safe. But there is little evidence that they do. A study by Kristen Zgoba of the New Jersey Department of Corrections found that the state's system for registering sex offenders and warning their neighbours cost millions of dollars and had no discernible effect on the number of sex crimes. Restricting where sex offenders can live is supposed to keep them away from potential victims, but it is doubtful that this works. A determined predator can always catch a bus.

Laws that make life hard for sex offenders also affect their families. A survey by Ms Levenson found that 86% of family members felt stressed because of registration and residence rules, and 49% feared for their own safety. "It's very difficult," says Bill. "Pretty much all the things that make you a good father are now illegal for me to do." He cannot take his children to a park, a pool, or a museum. He cannot be at any of their school events. And his children are ostracised. "The parents find out I'm registered and that's it," he sighs.

The penalties for sex offenders who break the rules can be severe. In Georgia the first time you fail to provide an accurate address or register annually with the county sheriff to be photographed and fingerprinted, you face ten to 30 years in prison. The second time: life. Yet because living on a public sex-offender registry is so wretched, many abscond.

Some states have decided that harsher sex laws are not always better. Iowa has sharply reduced the number of sex offences for which residency restrictions apply. Previously, all Iowan sex offenders who had abused children were barred from living within 2,000 feet of a school or child-care centre. Since where offenders lived was defined as where they slept, many would spend the day at home with their families and sleep at night in their cars at a highway rest stop. "That made no sense," says Corwin Ritchie of the Iowa County Attorneys Association. "We don't try to monitor where possible bank robbers sleep."

The Iowan politicians who relaxed the law gave themselves cover by adding a new rule against "loitering" near schools. Mr Ritchie thinks the new rules are better, but he would rather get rid of the residency restrictions entirely and let probation officers make recommendations for each individual offender.

No quarter

Nationwide, the trend is to keep getting stricter. In 1994 Congress ordered all states that had not yet done so to set up sex-offender registries or lose some funding. Two years later it ordered them to register the most serious offenders for life. In 2006 it passed the Adam Walsh Act, named for a six-year-old boy who was kidnapped and beheaded, broadening the categories of offence for which registration is required and obliging all states to upload their registries to a national database. States had until this summer to comply with that provision. Some objected. In May they were given another year's breathing space.

Illustration by Noma Barr



Other countries now seem to be following America's lead. Hottest on its heels is Britain, where the sex-offenders' registry includes children as young as 11. The British list is not open to the public, but in some areas parents may ask for a check on anyone who has unsupervised access to their child. France, too, now has a closed national directory of sex-offenders, as does Austria, which brought in some American-style movement restrictions on sex offenders earlier this year. After the disappearance in Portugal in 2007 of Madeleine McCann, a British toddler, some European politicians have called for a pan-European registry.

Human Rights Watch urges America to scale back its sex-offender registries. Those convicted of minor, non-violent offences should not be required to register, says Ms Tofte. Nor should juveniles. Sex offenders should be individually assessed, and only those judged likely to rape someone or abuse a child should be registered. Such decisions should be regularly reviewed and offenders who are rehabilitated (or who grow too old to reoffend) should be removed from the registry. The information on sex-offender registries should be held by the police, not published online, says Ms Tofte, and released "on a need-to-know basis". Blanket bans on all sex offenders living and working in certain areas should be abolished. Instead, it makes sense for the most dangerous offenders sometimes to face tailored restrictions as a condition of parole.

That package of reforms would bring America in line with the strictest laws in other rich countries. But few politicians would have the courage to back it. "Jane", the mother of a sex offender in Georgia, says she sent a letter to her senator, Saxby Chambliss, urging such reforms. "They didn't even read it," she says. "They just sent me a form letter assuring me that they were in favour of every sex offender law, and that [Senator Chambliss] has grandchildren he wants to protect."

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