

Chapter 12: Sex crime

Sexual offending is often seen as somehow 'different' to other forms of offending – even other prisoners in custodial settings shun the sex offender. Sexual crimes and their management have moved up the political agenda over the last decade. Punishments have increased and a range of other measures been put into place to try and 'regulate' the sex offender in the community.

Some Background Features to Sexual Offending

Sexual offending invariably takes place in 'private' in much the same way as consensual sexual activities. As such it is often difficult to bring it into the public arena of investigation, prosecution etc and is often a matter of one persons word against another.

Sexual offending also usually presumes an absence of 'consent' by one of the parties; the sexual activity is coercive and imposed or one of the parties lacks the capacity to make a valid consent. Children invariably lack this capacity to consent and we talk of an 'age of consent'. People with mental health problems or learning difficulties similarly lack the capacity to make a valid consent.

Some sexual activities may take place with consent but still constitute sexual offences because they are taking place within 'prohibited relationships'. Such relationships are usually between family members such as father and daughter, or brother and sister. Sexual relationships are also now prohibited between some workers and the young people they work with even if they are over the age of consent; teachers and children's home workers for example might commit the offence of 'abuse of trust'.

Forms of Sexual Offending

The idea of 'consent' – or the absence of 'consent' – being at the heart of sexual offending alongside that of the 'prohibited relationship' gives us a clue as to the different forms that sexual offending might take:

- Coercive sexual activity such as rape or sexual assault
- Sexual activity with children too young to consent
- Sexual activity with people with intellectual impairments making consent invalid
- Sexual activity with people unable to consent because of impairment by alcohol or drugs
- Intra-familial sexual activity (incestuous)
- The commercial exploitation of children even with their consent (this includes travel to other countries where law enforcement maybe more lax – sometimes referred to as 'sex tourism').
- The production of pornographic images (esp. those of children)
- Abuse of trust

Criminal Processes

Investigation

The investigation of sexual crime is hampered by its often 'private' nature; the challenge is to make that which is 'private' into a 'public' matter. The police have improved their interviewing techniques and forensic medical testing over the last twenty years.

Prosecution

Prosecuting agencies face the same challenges as the police to produce substantive evidence to place before a judicial hearing. In the past they have been accused of too easily 'giving up' (known as 'discontinuance') and contributing to the so-called 'attrition rate' whereby cases fail to get to court; attempts are continually made to improve the success rate of presenting cases in court.

The Hearing

Victims of sexual crime have not always had the best of court hearings. Remedies to improve the position of victims as court witnesses include the use of video links, pre-recorded testimony and other 'special measures' to assist the intimidated witness. Limitations have also been placed on the extent to which a woman's past sexual history can be brought into court as evidence; in the past it has been used to discredit and 'smear' women as credible witnesses.

Punishment

Since 1991 the punishments available to courts for sexual offenders have been steadily increased in severity – longer custodial sentences – extended supervision in the community – automatic life imprisonment for repeat offenders – 'imprisonment for public protection' for those considered dangerous. At the same time offenders have been offered sex offender treatment programmes in prison – and in the community – to try and contain their offending.

Civil Measures

Running parallel to these criminal processes are a range of civil measures designed *not* to punish but to contain and regulate the sexual offender in the community. In essence they follow the form of 'injunctions' telling offenders what they must desist from – *failure* to comply will put them into the criminal courts:

- The sex offender register - created in 1997 the register is not a register as such but 'a requirement' placed on designated offenders to notify the police every-time they change their address (or names) – the idea is that the police are going to improve their knowledge of the whereabouts of sex offenders in a given area at any one time. The register was not retrospective and applies only to offenders post September 1997.

- Multi Agency Public Protection Panels (MAPPPs) - were created in 2001 to oversee the register (as well as other people deemed a risk to the community) and ensure appropriate action is taken against those likely to re-offend whilst in the community.
- Sexual Offences Prevention Orders - may be applied for on those with known convictions for sexual offences who are now acting suspiciously and look likely to re-offend; the Order details activities they must desist from and – if not already on it – places their names on the register.
- Risk of Sexual Harm Orders – may be applied for on those who are trying to engage children in sexual activities – sometimes known as ‘grooming’. The subject of this Order will have to desist from the named activities; he does not need to have committed any previous offences.
- Foreign Travel Orders – may be applied for on those who might otherwise travel abroad for purposes of ‘sex tourism’; the Order prevents them from travelling.
- Notification Orders – may be applied for on sexual offenders who committed their offences in other countries but are now resident in the UK; the court would need sufficient evidence that the offences did take place. An Order places the offender on the UK register and requires them to notify changes.

Future Possibilities

The government has been looking at various ways of tightening the regulation of offenders in the community; eg the scanning of irises as a form of identification, the use of polygraphs (lie detectors) to help manage sex offenders, sophisticated electronic tagging systems etc.

There has been much debate about opening up the sex offender register for public inspection so that communities – and not just the professional - might know the whereabouts of sex offenders living amongst them. This is done in the USA where it is known as ‘community notification’ or ‘Megan’s Law’. At present the UK government has not been persuaded that this is something they wish to introduce here.