

# SEX OFFENDER MANAGEMENT:

## Children's rights, Megan's Law and the Child Sex Offenders Review

by Kate Fitch, Policy Researcher, NSPCC and Diana Sutton, Head of Policy and Public Affairs, NSPCC

Previous research suggests that where offenders have stability in their lives and are well integrated into a community, they are less likely to re-offend..

The following article outlines the NSPCC's findings from its recent research into the effectiveness of Megan's Law in the United States. It also outlines the NSPCC's response to the Home Office Child Sex Offenders Review and discusses the issue of community notification from a children's rights perspective.

### WHAT IS 'MEGAN'S LAW'?

'Megan's Law' is the term used to describe the use of compulsory 'community notification' for convicted sex offenders in the United States. The law enables police forces to provide members of the public with information about known sex offenders who are living locally. The law aims to promote public and community safety by increasing awareness of sex offenders who are thought to be at high risk of re-offending. Megan's Law is not an evidence-based policy but was adopted in the US in response to a series of high profile crimes against children.

### DEVELOPMENTS IN THE UK

There has been much publicised debate, mainly in the media, about the possible introduction of a Megan's Law in the UK, as well as discussion about the threat of predatory sex offenders. Last year, the then Home Secretary John Reid announced a review into the current methods used to manage and monitor child sex offenders, including an analysis of whether more information about offenders should be disclosed to members of the public.

### MEGAN'S LAW AND USE OF DISCLOSURE: A CHILDREN'S RIGHTS PERSPECTIVE

At first glance, without detailed analysis, it is easy to see why such a populist policy could appear attractive to some Ministers, campaigners and the general public. However, throughout its research, the NSPCC has found clear examples of where Megan's law can make children less safe and contravene children's rights, as contained in the United Nations Convention on the Rights of the Child (UNCRC).<sup>1</sup>

### THE BEST INTERESTS OF THE CHILD PRINCIPLE

Article 3 of the UNCRC states that: *'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'* Although the wider use of disclosure may implement the child's right to information (contained in article 17 UNCRC), thorough analysis does not lead to the conclusion that fuller use of disclosure is really in the child's best interests, nor would it implement other key rights. The NSPCC's research found that several outcomes associated with Megan's Law put children at greater risk of abuse. Where the policy does not succeed in delivering improvements in children's safety, it does not meet the best interests of the child test.

A clear example of this is where sex offenders decide to 'go underground' in an attempt to evade the notification and supervision requirements associated with Megan's Law. This problem has been

widespread in the US with non-compliance levels for states such as California as high as 30 per cent.<sup>2</sup> When offenders have absconded they can be extremely difficult to locate, even when an arrest warrant has been issued. Offenders who have gone underground are a greater threat to children as they cannot be monitored, nor made subject to treatment and supervision.

Previous research suggests that where offenders have stability in their lives and are well-integrated into a community, they are less likely to re-offend.<sup>3</sup> However, Megan's Law can often affect an offender's ability to find suitable accommodation and employment. Offenders may also experience social isolation and become less likely to complete treatment programmes. If community notification undermines attempts by sex offenders to re-integrate into society and desist from harmful behaviours, these individuals will then pose a much greater risk to children.

Much of the debate around Megan's Law has discussed the rights of parents to know the location of sex offenders, as opposed to the rights and best interests of the child. This view is supported by the fact that very few states conduct any systematic evaluation into the impact of community notification on offender recidivism or on the number of assaults against children by strangers.

### **THE RIGHT TO PROTECTION FROM SEXUAL ABUSE**

Article 34 of the UNCRC obliges States parties to protect children against all forms of sexual exploitation and sexual abuse. However, because of its focus on placing offenders on registers and therefore protecting children from assaults by strangers, Megan's Law can detract parental awareness from more common crimes, such as intra-familial abuse. When parents take measures to protect their children from convicted sex offenders living locally, they may develop a false sense of security. This is due to the fact that most parents are unaware that only 5 per cent of children under the age of 16 who have been sexually abused had been targeted by adult strangers.<sup>4</sup> Also, due to the low level of reporting and conviction of sexual crimes, registers will not contain information about all strangers who pose a threat to children. Megan's Law, therefore, is not comprehensive as it fails to protect children from the forms of abuse from which they are most at risk.

### **IMPACT ON VICTIMS OF ABUSE**

There are fears that Megan's Law can have a neg-

ative effect on the willingness of children who are victims of sexual abuse within the family to speak out. These children may be reluctant to place abusing and non-abusing family members at risk of retribution or exposure. A clear case of this was experienced by the Stop it Now! organisation in Vermont. When this organisation was established in the summer of 1996, almost 60 per cent of the calls they received were from sexual abusers or children at risk of abuse. When news of Megan's Law emerged in the Vermont press, phone calls from these groups stopped completely. In subsequent years these groups have comprised only 12-16 per cent of calls.

Children who are abused by people they know may also be concerned that community notification may inadvertently expose their own identity as a victim. This clearly contravenes Article 8 of the UNCRC which states that: "States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without lawful interference." In cases where children suffer from a violation of their privacy in this way, their resulting identification as a victim can affect their ability to recover from the abuse. This is in contravention of Article 39 of the UNCRC which obliges States parties to take all appropriate measures to promote the social reintegration and the physical and psychological recovery of children who have been abused.

### **IMPACT ON CHILDREN WHO SEXUALLY HARM**

Fifty to sixty per cent of sexual offences in the US are carried out by young people under the age of 18.<sup>5</sup> In many American states, young people convicted for sexually harmful behaviour can be subject to the same rules governing the community notification of sex offenders. In Washington State, for example, all children convicted for sexual offences are subject to the same rules about notification as adults, and may have their personal details published on sex offender registry websites. In other states such as California, where young people are not made subject to notification requirements, they may be made subject to lifetime sex offender registration for serious crimes. In states where registration is for life, young people will continue to feel the effects of Megan's Law throughout their lives.

Making children and young people subject to sex offender registration and notification contravenes their rights in several ways. Firstly, in many serious cases, young people can be tried for sexual

**If community notification undermines attempts by sex offenders to re-integrate into society and desist from harmful behaviours, these individuals will then pose a much greater risk to children.**

## There are fears that Megan's law can have a negative effect on the willingness of children who are victims of sexual abuse within the family to speak out. These children may be reluctant to place abusing and non-abusing family members at risk of retribution or exposure.

offences in adult courts and subject to the same punishments as other sex offenders. Article 1 of the UNCRC clearly identifies the age of the child as 18 (unless majority is attained earlier under the law of the State party), and elsewhere states that trials involving children must be child-focused.<sup>6</sup> Secondly, this practice violates the right to privacy of these children, as contained in articles 16 and 40(2)(vii) of the UNCRC.

Making children who are prosecuted for sexual offences subject to community notification can also have unintended consequences. For example, if prosecutors modify their charging decisions to avoid subjecting young people to registration and notification, this can mean that the children involved may not be able to access treatment programmes to help them deal with their sexually harmful behaviour. There is an increasing body of evidence which suggests that work with children who are sexually harming is effective in reducing sexual risk.<sup>7</sup> This means that failure to access treatment programmes may prevent the rehabilitation of the child as detailed in Article 40 of the UNCRC which stresses the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. It also fails to protect children who may become the targets of any future abuse.

### IMPACT ON NON-OFFENDING FAMILY MEMBERS

When information about convicted sex offenders is made available to the public, the individuals concerned may become the targets of vigilantes. There is also the possibility that non-offending family members, including children, can become the focus of vigilantism, violence, and stigma because of their relationship with the abuser. In the US in 1993 for example, the family home of Joseph Gallardo, a convicted child rapist from Washington State, was burned down. As well as placing children in obvious danger, this clearly impacts on the child's

right to privacy, and their freedom from discrimination as stated in Article 2 of the UNCRC which declares that: "States parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members."

### MAIN FINDING

The NSPCC does not support the introduction of Megan's Law into the United Kingdom. There is no proof that such a law would be in the best interests of the child as it does not deliver tangible safety benefits to children and will not promote the fulfilment of other articles of the UNCRC.

### THE RECOMMENDATIONS OF THE CHILD SEX OFFENDER REVIEW IN THE UK AND THE NSPCC'S RESPONSE

Despite the headlines about castration and single mums being able to check on a new boyfriend, the recent Home Office Review did not recommend a wholesale change to current sex offender management arrangements in the UK and did not advocate the introduction of a Megan's Law. The main recommendations of the review relating to community notification are:

- The strengthening of existing multi-agency arrangements (MAPPAs) and more consistent application of good practice;
- A duty on MAPPAs authorities to consider the disclosure of information in every case;
- Piloting a process where certain people can register a child protection interest in a named individual with the police and obtain information about the individual.

The first two points are in line with the NSPCC's research and recommendations to the review. The final point is not supported by the NSPCC and is potentially problematic. In each of the three pilot areas, parents and carers will be able to register a 'child protection interest' if they have concerns about any individual who has unsupervised contact with children. In response to these concerns expressed by a member of the public, if the individual concerned has previous convictions for child sex offences, then the police will have a duty to consider disclosure of this information. However, clarification is needed as to what these pilots will consist of, how exactly a 'child protection interest' will be defined and whether this will mean greater information sharing in practice. This measure was introduced in response to concerns that perpetrators of

sexual abuse can target single parents in order to gain unsupervised access to their children.

The NSPCC broadly welcomes the proposals to strengthen current arrangements and the rejection of the introduction of a Megan's Law. However, additional funding must be sufficient if sustainable improvements are to be achieved. Also, there are concerns that if funding is limited, new measures which encourage the public to take a more active role in the disclosure process may add pressure to police workload and may detract attention from existing offender monitoring and supervision.

There is also a need for clear guidance on the implementation of the pilot schemes to ensure that disclosure is applied appropriately and consistently. The NSPCC still believes there is a need for greater provision of offender treatment programmes and therapeutic services for children who have experienced abuse, as well as public awareness campaigns.

The NSPCC believes that the problem of children and young people who display sexually harmful behaviour is a key element in debates around sex offender management. The NSPCC supports the development of a national strategy for the assessment and treatment of children who are sexually harming and believe that this is urgently required. There is a real need to improve the quality of local interagency policy and guidance about how to manage and respond to this group and for the development of high quality, tiered services.<sup>8</sup> Services should be evaluated in terms of their success not only in relation to sex offending recidivism, but also in relation to how successful the intervention is in meeting the child's broader developmental needs. Recent research shows that services for this group are often fragmented, geographically patchy in coverage and hidden within more generic services.<sup>9</sup>

We recommend that the Home Office work closely with other departments to identify resources available for specialist assessments, including training and appropriate supervision for those involved at the initial assessment stage, and for the recruitment and retention of specialist workers for assessment and treatment work.

## CONCLUSION: CHILDREN'S RIGHTS AND THE POLITICAL PRIORITY TO CHILDREN

At the time of writing there was a change of Prime Minister; a new Ministerial team, including a Secretary of State for the first time with the word

**The NSPCC does not support an introduction of Megan's Law into the United Kingdom. There is no proof that such a law would be in the best interests of the child as it does not deliver tangible safety benefits to children and will not promote the fulfilment of other articles of the CRC.**

'Children' in their title; a Minister for Children with an enhanced brief; and work has commenced on writing manifestos for the next election. In addition to this, the Conservative Party has commissioned its own review of childhood policies, *Lost Childhoods*, and the government have submitted their Periodic Report to the UN Committee on the Rights of the Child. With the high political priority now placed upon children's policy, it is imperative that the Government further embrace a comprehensive children's rights framework and incorporate this into all of its work.

✎

### FOOTNOTES:

1 Fitch, K. 2006. *Megan's Law: Does it Protect Children?* (2)

NSPCC. For a full copy of the report, see:

[www.nspcc.org.uk/inform](http://www.nspcc.org.uk/inform)

2 Laite (1997) 'Problems with Community Notification Justifications' 10(2) *Federal Sentencing Reporter*.

3 Edwards and Hensley (2001) 'Contextualising Sex Offender Management Legislation and Policy 45(1) *International Journal of Offender Therapy and Comparative Criminology*, 83.

4 Cawson et al (2000) *Child Maltreatment in the United Kingdom* London: NSPCC: 86.

5 See Fitch, above, n. 1: 47.

6 Article 40(3) UNCRC.

7 See Bentovim, A. 2002. 'Preventing Sexually Abused Young People from Becoming Abusers and Treating the Victimization Experiences of Young People who Offend Sexually' 26 *Child Abuse and Neglect* 661; and Hawkes, C., Jenkins, J.A. and Vizard, E., 'Roots of Sexual Violence in Children and Adolescents' in Ved Varma (Ed). 1997. *Violence in Children and Adolescents*.

8 A four tiered strategic framework is now widely accepted as the basis for planning and commissioning services for children. Tier 1 offers services provided by practitioners who are not specialists working in universal services; this includes GPs, health visitors, school nurses, teachers, social workers, youth justice workers and voluntary agencies. Tier 2 refers to more specialist services provided in the community. Tier 3 offers specialised services for children and young people with more severe, complex and persistent disorders. Tier 4 are essential tertiary level services for children and young people with the most serious problems, such as day units, highly specialised outpatient teams and in-patient units.

9 Hackett, S. & Mason, H. 2004. *The Needs of Young People who Display Sexually Harmful Behaviour and the Effectiveness of Interventions and Service Approaches to Meet these Needs and to Prevent Sexually Abusive and Criminal Behaviour*. National Organisation for the Treatment of Abusers.