

REDEFINING SEX OFFENDERS: THE FIGHT TO BREAK THE BIAS OF FEMALE SEX OFFENDERS

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I. INTRODUCTION

“Women could never do such a thing!” This is a phrase that often comes to mind when people think of female sex offenders.¹ The denial of women’s involvement in sex crimes is the result of stereotypes surrounding traditional gender roles.² Throughout history, women have been characterized as weaker than men and incapable of committing certain crimes.³ The inability to see pass this social norm has inadvertently led to the overlooking of female sex offenders.⁴ Instead, this antiquated gender bias has resulted in the overwhelming acceptance that sex offenders are only males.⁵ The public perception of a sex offender often consists of a predatory man lurking in the shadows, not a woman who is acquainted with her victim.⁶ The presumption of women as nurturing and trustworthy individuals has caused many to argue that women are less likely to commit these types of heinous crimes over their male counterparts.⁷ Yet, over the course of recent years, research and the emergence of disturbing new cases have revealed that women, like men, engage in sex offenses.⁸ The double standard between female and male sex offenders has been a constant issue for the courts.⁹

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¹ Stephanie S. Reid, *Bad Bad Teacher!: How Judicial Lenience, Cultural Ignorance, and Media Hype have Inevitably lead to Lighter Sentences, Underreporting and Glamorization of Female Sex Offenders*, 11 WHITTIER J. CHILD & FAM. ADVOC. 353-69 (2012).

² *Id.* at 367.

³ Randa Embry & Phillip M. Lyons, Jr., *Sex-Based Sentencing: Sentencing Discrepancies Between Male and Female Sex Offenders*, FEMINIST CRIMINOLOGY, 7(2), 147-48, 151-52,158 (2012).

⁴ Julia Hislop, *Female Sex Offenders Are Often Overlooked*, N.Y. TIMES (Feb. 21, 2013), <https://www.nytimes.com/roomfordebate/2013/02/20/too-many-restrictions-on-sex-offenders-or-too-few/female-sex-offenders-are-often-overlooked>.

⁵ Deborah Goodwin, *Anything You Can Do, I Can Do Shorter: An Analysis of Lenient Sentencing for Female Sex Offenders in the United States*, 25 WM. & MARY J. WOMEN & L. 433-40 (2019).

⁶ Embry & Lyons, *supra* note 3, at 152.

⁷ *Id.*

⁸ Goodwin, *supra* note 5, at 434.

⁹ Bryan Robinson, *Female Offenders Driven by More Than Sex*, ABC NEWS, (Mar. 21, 2006), <https://abcnews.go.com/US/story?id=92325&page=1>.

Over the course of a few decades, courts throughout the United States have begun to lay the foundation on how to confront sex offenders.¹⁰

In *Meloon v. Helgemoe*, the Court acknowledged the existence of gender inequality in laws pertaining to sex offenders.¹¹ The *Meloon* Court held the New Hampshire statute, which prohibits a male from having sexual intercourse with a female under the age of fifteen, but is silent as to a woman having sexual intercourse with a male under the age of fifteen, violated the Equal Protection Clause of the 14th Amendment.¹² This was just one of various efforts that were made to ensure gender equality in sex offender laws. In recent years, the Jacob Wetterling Act and later the Sex Offender Registration and Notification Act were passed, which requires states to implement a registry of sex offenders and crimes against children.¹³ Although such laws have significantly impacted the prosecution of sex offenders, there are still disparities between the convictions of female and male sex offenders.¹⁴ Despite there being an increase in the arrests of female sex offenders, the number of those convicted for their sex crimes remain relatively low due to the lack equal enforcement of sex offender laws across both genders.¹⁵ According to one report by the U.S. Department of Justice, only 1,500 women were currently imprisoned for committing sexual offenses in comparison to 140,000 men at the beginning of the 21st century.¹⁶ The disproportion in the punishment of sex crimes is one of the most noticeable examples of gender inequality in the treatment of sex offenders.¹⁷

Some may argue these numbers are a reflection that women are less likely to commit sex crimes since women tend to adhere to the traditional gender roles, such as mothers, daughters, aunts, nieces, teachers, and babysitters.¹⁸ In reality, these discrepancies are partially

¹⁰ *Legislative History of Federal Sex Offender Registration and Notification*, SMART, <https://smart.ojp.gov/sorna-archived/legislative-history-federal-sex-offender-registration-and-notification> (last visited Apr. 21, 2021).

¹¹ See *Meloon v. Helgemoe*, 564 F.2d 602, 603 (1st Cir. 1977).

¹² *Id.*

¹³ *Legislative History of Federal Sex Offender Registration and Notification*, *supra* note 10.

¹⁴ Goodwin, *supra* note 5, at 436.

¹⁵ Tina M. Allen, *Gender-Neutral Statutory Rape Laws: Legal Fictions Disguised as Remedies to Male Child Exploitation*, 80 U. DET. MERCY L. REV. 111-18 (2002).

¹⁶ Goodwin, *supra* note 5, at 436.

¹⁷ *Id.*

¹⁸ Donna Vandiver & Glen Kercher, *Offender and Victim Characteristics of Registered Female Sexual Offenders in Texas: A Proposed Typology of Female Sexual Offenders. Sexual Abuse. A J. OF RES. AND TREATMENT*, 16(2), 122-26 (2004).

attributed to how prosecutors, and ultimately judges, handle these types of cases.¹⁹ Female sex offenders generally serve shorter jail sentences for the same sex crimes that males commit due to underlying gender bias.²⁰ This inconsistency in punishment of female sex offenders begs the question of whether the criminal justice system is more concerned with punishing those who are traditionally known for committing sex offenses as opposed to punishing sex offenses as a whole, irrespective of gender.²¹ In a research administered in 2012 by Randa Embry and Philip Lyons, results showed a difference in the sentencing for sex offenses across both genders.²² The sample comprised of a total of 6,000 sex offense crimes, in which half were committed by men and the other by women.²³ The average sentencing length for crimes of rape, child sexual assault, and sodomy was 8.42 years for males, as opposed to 7.92 years for females.²⁴ When compared to men, this study revealed women are sentenced to shorter or less severe sentences with regard to the same sex offenses as male sex offenders.²⁵

In order to break the bias surrounding female sex offenders, people need to be educated as to the reasons behind the underreporting of these types of sex crimes. Part II of this note will address the prosecution of female sex offenders who are given little to no jail time, the unique relationship female sex offenders have with their victims, and the shame and fear that victims feel in coming forward.²⁶ Part III of this note will discuss how the criminal justice system tries to combat sex crimes all the while enabling gender bias through the implementation of shorter sentences for female sex offenders.²⁷ Lastly, Part IV will look to the totality of these circumstances in explaining the discrepancies between female and male sex offenders, and how members of society can help influence the prosecution of female sex offenders in the United States.²⁸

¹⁹ Embry & Lyons, *supra* note 3, at 150.

²⁰ *Id.*

²¹ Goodwin, *supra* note 5, at 436.

²² Embry & Lyons, *supra* note 3, at 154.

²³ *Id.*

²⁴ *Id.* at 158.

²⁵ *Id.*

²⁶ Vandiver & Kercher, *supra* note 18, at 124.

²⁷ *Id.*

²⁸ *Id.*

II. UNRAVELING THE TRUTH BEHIND THE UNDERREPORTING OF FEMALE SEX OFFENDERS

Evidence of shorter sentences for female sex offenders are particularly prevalent in circumstances involving the exploitation of children.²⁹ Female sex offenders often have a history of exploiting their dominant relationship or authority status with children or adolescents with little to no repercussion for their heinous actions.³⁰ For example, when a thirty-six-year-old Ohio female teacher pled guilty to three counts of sexual battery for engaging in an affair with a student, she only served 180 days of house arrest, followed by five years of probation.³¹ Ohio's state statute sets forth a sentence of one to five years for third-degree sexual battery.³² In Missouri, the state statute provides that a defendant who commits second-degree statutory rape is to be sentenced to seven years in prison.³³ That same statute also makes sodomy punishable up to five years to life.³⁴ Yet, these laws are not equally enforced against the states' female sex offenders.³⁵ In one particular case, a twenty-two-year-old Missourian female teacher was charged with both rape and sodomy of an eleven-year-old child.³⁶ She originally received probation and a 14-year sentence, which was suspended shortly after.³⁷

Underreporting of female sex offenders due to a lack of punishment has made the prosecution of female sex offenders as a whole incredibly difficult.³⁸ While a 2004 and 2012 study by the Bureau of Justice showed women made up only 2% of sex offenses in the United States, those results are not necessarily accurate due to underreporting.³⁹ Even though the number of reported sexual offenses are minimal for female sex offenders, this does not negate the fact that sexual abuse is still happening in large numbers.⁴⁰ In Massachusetts, a 1984 report from the Commissioner of Probation for the Massachusetts Trial Court revealed that out of [twenty](#) females charged with rape, 70%

²⁹ Reid, *supra* note 1, at 363.

³⁰ *Id.*

³¹ *Id.*

³² OHIO REV. CODD ANN. §2929.13.

³³ MO. ANN. STAT. §566.034.

³⁴ Reid, *supra* note 1, at 360.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Embry & Lyons, *supra* note 3, at 154.

⁴⁰ Goodwin, *supra* note 5, at 436.

received no sentence, while 15% were found not guilty.⁴¹ These statistics are extremely alarming since they are further confirmation of an ongoing pattern of shielding female sex offenders.⁴² As the issue of female sex offenders has grown more prevalent in the United States, the lenient sentences that female sex offenders receive have become increasingly controversial.⁴³ The ongoing bias of traditional gender roles is greatly hindering the prosecution of female sex offenders.⁴⁴

Underreporting is also the result of the lack of reporting by victims who experience inappropriate sexual encounters.⁴⁵ One reason why victims do not come forward more often is based on the character traits shared by the victims who have been abused by female sex offenders.⁴⁶ These victims tend to range from children, teenagers, and adults, all of whom share some level of vulnerability.⁴⁷ As for the female sex offenders, there seems to be a reoccurring pattern in their closeness to the victims, which allows for the disguise of sexual abuse.⁴⁸ This includes mothers, aunts, teachers, nannies, grandmothers, or other women with close ties to the victim.⁴⁹ These group of women are generally known for asserting some level of control or power over their victims.⁵⁰ A report of female sex offenders in Texas revealed that out of 471 arrests, most were charged with sexual offenses related to children.⁵¹ This research also showed 46% of victims were acquainted with their female abuser.⁵² Evidently, it is this very acquaintance and the victims' vulnerability that has impacted the underreporting in this country.⁵³ Over the years, evidence of these types of sexual encounters between female sex offenders and their victims have gained increasing media attention.⁵⁴

⁴¹ Allen, *supra* note 15, at 117.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Goodwin, *supra* note 5, at 439-40.

⁴⁵ *Id.* at 122, 124.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Reid, *supra* note 1, at 367-69.

⁴⁹ Vandiver & Kercher, *supra* note 18, at 125.

⁵⁰ *Id.*

⁵¹ *Id.* at 126.

⁵² *Id.*

⁵³ Reid, *supra* note 1, at 366-67.

⁵⁴ Goodwin, *supra* note 5, at 437.

A high-profile case shows the closeness of a female sex offender to her victim is that of Mary Kay LeTourneau.⁵⁵ The former Washington school teacher served time in prison after she was convicted of two counts of second degree rape of her underage student.⁵⁶ Upon the entering of a guilty plea, Letourneau, like many other female sex offenders, received a lenient sentence of 180 days in the county jail.⁵⁷ Interestingly, the court also ordered Letourneau to "have no contact for the maximum term of life with her victim ... or with any minors without the supervision of a responsible adult having knowledge of the convictions."⁵⁸ When Letourneau violated those terms, sparking further outrage, she was sentenced to about seven and a half years in prison.⁵⁹

Another prime example of a high-profile case involved a twenty-three-year-old Florida teacher, Debra Lafave, who performed sexual acts with one of her students on school grounds and at her home.⁶⁰ She was arrested and convicted of lewd and lascivious battery.⁶¹ Even having been convicted, Ms. Lafave served no jail time.⁶² Yet, she faced up to thirty years for the rape of her student and lewd battery.⁶³ But an important detail in that case to acknowledge was the fact that the victim was ultimately pressured by his mother to come forward.⁶⁴ For male victims, especially, sexual abuse tends to take on a different meaning.⁶⁵ It is often perceived as a rite of passage.⁶⁶ Male victims have a harder time equating such sexual advances with sexual abuse.⁶⁷ In contrast, for female victims, sexual abuse is underreported due to fear and shame of coming forward.⁶⁸ It often takes years before female victims are able to truly come to terms with being sexually abused.⁶⁹ These cases are

⁵⁵ Madeline Holcombe & Jennifer Henderson, *Mary Kay Letourneau, who was convicted of raping 13-year-old student she later married, has died of cancer*, CNN (July 8, 2020), <http://www.cnn.com/2020/07/07/us/mary-kay-letourneau-death/index.html>.

⁵⁶ *Id.*

⁵⁷ Allen, *supra* note 15, at 111.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Goodwin, *supra* note 5, at 437.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Robinson, *supra* note 9.

⁶⁶ *Id.*

⁶⁷ Reid, *supra* note 1, at 367.

⁶⁸ *Id.* at 369.

⁶⁹ Shaila Dewan, *Why Women can Take Years to Come Forward with Sexual Assault Allegations*, N.Y. TIMES (Sept. 18, 2018), <https://www.nytimes.com/2018/09/18/us/kavanaugh-christine-blasey-ford.html>.

indicative of the close relationship a victim often shares with a female sex offender and the lenient sentences imposed on female sex offenders.

More recently, the controversial case of Jeffrey Epstein, his female partner, Ghislaine Maxwell, and Epstein's other female accomplices, has catapulted the movement of ending the bias of female sex offenders.⁷⁰ The Epstein documentary shed light on the horrific reality of female sex predators, like Ghislaine Maxwell, who used their power, in this case socioeconomic status, to manipulate and take advantage of their female victims.⁷¹ Epstein also had a number of female associates that helped him recruit victims.⁷² Those recruiters targeted young women in financially desperate situations by promising to help further their education and careers.⁷³ One of those recruiters, Sarah Kellen, who was a high-ranking employee of Epstein, was accused of arranging girls for sex sessions with Mr. Epstein at his Palm Beach home.⁷⁴ Another one of Epstein's associates, Lesley Groff, arranged for the travel of underage girls for the purpose of administering erotic massages while on vacation with Epstein.⁷⁵

By raising awareness of female sex offenders and their association to their victims, people can start to truly understand the discrepancies in the underreporting by victims. Despite the recent increase of stories involving female sex predators, there is a grave concern that remains. This nation is left to wonder why women who sexually abuse their victims bear little to no repercussions. Perhaps the answer lies in the enforcement of sex offender laws against women in particular.

III. HOW THE CRIMINAL JUSTICE SYSTEM HAS FOUGHT AGAINST AND PERPETRATED THE GENDER BIAS OF FEMALE SEX OFFENDERS

The criminal justice system of the United States has made great strides in sex offender laws.⁷⁶ Although there have been fundamental

⁷⁰ Poco Kernsmith, *What the Jeffrey Epstein case reveals about female sex offenders*, CONVERSATION (Sept. 24, 2019), <https://theconversation.com/what-the-jeffrey-epstein-case-reveals-about-female-sex-offenders-123423>.

⁷¹ *Id.*

⁷² Amy Julia Harris, et al., *How a Ring of Women Allegedly Recruited Girls for Jeffrey Epstein*, N.Y. TIMES (Aug. 29, 2019), <https://www.nytimes.com/2019/08/29/nyregion/jeffrey-epstein-ghislaine-maxwell.html>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Legislative History of Federal Sex Offender Registration and Notification*, *supra* note 10.

changes in our criminal justice system, there is still a lot of work to be done in tackling the issue of female sex offenders.⁷⁷ Further attempts to establish gender equality of sex offender laws are evident through the enactment of state statutes that emphasize gender-neutral laws.⁷⁸ In Michigan, the legislature has removed the reference to gender from the Michigan state statute by defining a victim as "the person alleging to have been subjected to criminal sexual conduct."⁷⁹ Similar gender-neutral sex offender laws have been implemented in other states, such as New York.⁸⁰ NY Penal §130.20 provides either "male or female" is guilty of sexual misconduct when he or she engages in sexual intercourse without consent.⁸¹ Using clear and concise language can have a positive effect on the prosecution of female sex offenders by the criminal justice system.

The federal courts and many state courts have also attempted to prevent the sexual exploitation of children by prohibiting defendants from raising the defense of reasonable mistake of age against a statutory rape charge.⁸² Still, the issue surrounding the element of intent to rape has been debated by many defendants who believe that they should be able to raise the defense where the statute is silent as to intent.⁸³ For example, Michigan's statute on criminal sexual misconduct declares that a person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person who is between the ages thirteen and sixteen.⁸⁴ Sexual penetration is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required."⁸⁵ The statute is completely silent as to the defendant's intent.⁸⁶ Under these circumstances, courts tend to give deference to legislative intent by construing the statute's silence to

⁷⁷ *Id.* The United States made a huge leap in the reform of sex offender laws with the passage of the Jacob Wetterling Act and later the Sex Offender Registration and Notification Act, which requires states to implement a registry of sex offenders and crimes against children. *Id.*

⁷⁸ Allen, *supra* note 15, at 115.

⁷⁹ *Id.*

⁸⁰ N.Y. PENAL LAW § 130.20.

⁸¹ *Id.*

⁸² *See* People v. Cash, 419 Mich. 230, 351 N.W.2d 822 (1984).

⁸³ *Id.* at 237.

⁸⁴ MICH. COMP. LAWS SERV. § 750.520A(H).

⁸⁵ *Id.*

⁸⁶ *Id.*

the element of intent to rape as negating the defense of a reasonable mistake of fact as to the victim's age.⁸⁷

As much as the criminal justice system tries to fight sex crimes, in some way it enables gender bias through the implementation of shorter sentences for female sex offenders as opposed to male sex offenders.⁸⁸ Results from the U.S. Department of Justice annual Bureau of Justice Statistics Report showed an increase in the overall number of documented sexual offenses committed by women and the arrests that followed, with the number of those imprisoned female sex offenders remaining relatively stagnant.⁸⁹ This report is strong evidence of a lack of correlation between the amount of arrests and convictions of female sex offenders.⁹⁰ Mary LeTourneau, who was arrested and charged with two counts of rape, is an obvious example of the extremely lenient punishment that female sex offenders face.⁹¹ In contrast, in *People v. Cash*,⁹² the thirty year old male defendant was convicted of third-degree criminal sexual assault of a fifteen year old girl and sentenced to a term of five to fifteen years.⁹³ Under the Michigan statute, a person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person who is between the ages of thirteen and fifteen.⁹⁴ Unlike Mary LeTourneau, Cash received a long-term prison sentence, and was never offered any other rehabilitative alternative or probation.⁹⁵ Although the punishment was justified in Cash's case, there should be equal punishment amongst all sex offenders, not just male offenders.⁹⁶ Another example of such disparity in the sentencing of female sex offenders involves a mother from Maine.⁹⁷ The mother, Sarah Conway, was sentenced to eight years in prison, followed by eighteen months of supervised release, after sexually assaulting her three-year-old son.⁹⁸ Meanwhile, her boyfriend was sentenced to eighteen years in prison for the same crime.⁹⁹

⁸⁷ *Cash*, 419 Mich. at 239.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Reid, *supra* note 1, at 360-61.

⁹¹ Allen, *supra* note 15, at 111.

⁹² *Cash*, 419 Mich. at 234.

⁹³ *Id.*

⁹⁴ § 750.520A(H).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Goodwin, *supra* note 5, at 439.

⁹⁸ *Id.*

⁹⁹ *Id.*

The reasoning behind these disturbing inconsistencies stems from the inability of the justice system to separate traditional gender roles from the sex crimes committed by women.¹⁰⁰ Justice cannot truly be served so long as the bias of female sex offenders continues to exist. It will take something more than the implicit and explicit language of federal and state laws to break the gender bias in sex crimes in order to have female sex offenders brought to justice. Such change is embedded in the overall enforcement of the new gender-neutral laws equally across both genders, which will help to undo the antiquated ideology that women are incapable of committing heinous sex crimes.¹⁰¹

IV. CONCLUSION

The acknowledgment of sex crimes as punishable under the law has come a long way. But there is still a long way to go, specifically when it comes to holding female sex offenders accountable for their sex crimes. All people should be equal under the law. Female sex crimes should not be shielded from sex offender laws. In this new era of social media, people have essentially stepped into the shoes of fact finders as they eagerly look to details of new and old cases of female sex offenders. It is this very curiosity that will allow for this topic to keep growing. Hopefully the criminal justice system will follow and finally begin to fairly prosecute female sex offenders to the full extent of the sex offender laws.

¹⁰⁰ *Id.* at 436.

¹⁰¹ Allen, *supra* note 15, at 115-17.