

October 24, 2006

TO: WI Legislative Council Special Committee on Placement of Sex Offenders.

FROM: Mel Flanagan, Milwaukee Circuit Court Branch 4

RE: 2006 National Symposium on Sex Offender Management and Accountability, September 24-26, sponsored by the Bureau of Justice Assistance.

I attended the above symposium and tried to collect as much helpful information as I could to assist the committee. I will attempt to summarize some of the information below and I have also attached additional related documents.

1. **The Adam Walsh Child Protection and Safety Act of 2006** was adopted by Congress and mandates that all states be in compliance within 3 years (with 2 possible 1 year extensions for cause). It mandates a registry of sex offenders compatible with the federal registry, requires in-person registrations with photo identification, makes all failure to register offenses felonies, mandates community notification and provides for grants to help develop appropriate management, treatment and registry programs. **See attachment #1.**
2. **Trends in State Legislation and Policies:**
 - A. 21 states have legislation establishing the use of GPS tracking of certain sex offenders at a cost of about \$10.00 per day as compared to \$4.00 per day for electronic monitoring systems. *This does not include the staffing costs required to run the tracking system and monitor offenders.*
 - B. At least 16 states have civil commitment laws (AZ, CA, FL, IL, IA, KS, MA, MN, MO, ND, NJ, DC, TX, VA, WA, and WI).
 - C. At least 17 states prohibit convicted sex offenders from living or working within a certain distance from schools. Another 12 states Prohibit sex offenders from going near certain places where there are children.
 - D. 15 states require lifetime supervision of certain high risk sex offenders.

3. Concerns: Are we going in the right direction?

- A. There is a lack of evidence based research evaluating these trends.
- B. One size fits all supervision may not be an effective or economical means of supervising sex offenders.

One example is to compare the supervision of offenders who assault strangers with supervision of offenders who have assaulted non-strangers or family members. Certain forms of supervision which may be effective for one group may in fact be ineffective with the other.

About 20% of reported cases (and 5% of total cases) involve a stranger as offender. The vast majority of the cases are perpetrated by an offender who is known to or related to the victim.

Residency restrictions and geographical boundaries won't necessarily protect potential victims who are related to the offender by blood or marriage. Currently, 61% of reported victims are under the age of 18 and the overwhelming majority of these victims were known to or related to the person who assaulted them.

Mandatory sentences may result in less reporting of offenders, as there would be increased pressure on the victim to not report or to recant. Victims of known offenders most often seek to get the offender into treatment and stop the abuse. A mandatory prison sentence is likely to be a disincentive to reporting.

Programs & scarce resources could be tailored to the specific type of offender rather than on a one size fits all mold. The result could be a more offender specific supervision and the ability to focus resources on the most dangerous offenders.

- C. Many states (including WI) have restrictions on Shared Living Arrangements (SLA) which prohibit sex offenders in the community from living at the same location. Clustering of offenders appears to be a concern of many communities.

States that allow SLA have had measurable success and find it easier to manage, supervise and provide appropriate group treatment to sex offenders in groups of 3-5. Some studies indicate that offenders are less likely to reoffend if they 'monitor' each other and are in SO treatment together. It also is less costly to supervise and house offenders in SLA groups. See **attachment #2**.

- D. GPS programs require more investment in staff, training, and hardware than conventional electronic monitoring. 24 hour supervision and ability to respond to violations has proven to be a very costly system. Given the projected increase in sex offenders on supervision annually, consideration should be given to tracking selected offenders rather than all offenders.

Attached please find a chart projecting the increase of 980 offenders under supervision. *This does not include all sex offenders.. See attachment # 3.*

4. Promising developments:

A. **The use of polygraphs in the treatment and supervision of sex offenders; the containment approach.**

The value of post-conviction polygraph seems undisputed among those states that use it. It provides an independent source of information that is not contingent on the offender's self-report.

Research shows that self-reports and recorded crimes seriously understate actual criminal acts of sex offenders and that managing sex offenders based on these alone would endanger public safety. Findings of multiple, previously undisclosed victims have been reported in the research and it has been effective at determining when an offender is approaching a level of imminent risk of re-offending.

The containment approach to management of sex offenders combines sex offender treatment, criminal justice supervision and post-conviction polygraphs. The use of the polygraph increases the accuracy of the offender's reported history & behavior, which dictates appropriate supervision and treatment to manage risk. See **attachment #4.**

B. **Sex Offender (SO) treatment does reduce recidivism.**

Appropriate treatment combined with containment can improve public safety and significantly reduces the re-arrest rate of offenders.

A study of paroled sex offenders in Colorado indicated that sex offenders who **have not** had treatment and who are released on parole are at least **8 times** more likely to get arrested for a **violent** crime during the first year out than those who have participated in treatment. For more information see: <http://dcj.state.co.us/ors> & **attachment #5.**

C. Specialized Task Forces.

Some communities have created specialized task forces to monitor sex offenders on supervision in the community and those on the sex offender registry. This requires a state and local partnership to coordinate services and security. The communities have shown great success in integrating the offenders into housing, treatment and employment while also keeping a very close eye on the offenders. To read about this type of program in San Diego, see www.sdsafe.org.

D. Maximize existing state resources:

States have utilized other existing resources to handle the management and control of sex offenders in their jurisdiction. Mississippi utilizes the State Department of Transportation to issue annual identification cards for sex offenders. In this way they are able to have a state-wide system easily available to all offenders with the ability to record changes in address or circumstances and update photos at little expense.

5. Top 5 concerns nationally for effective management & containment

- A. Lack of housing for sex offenders.**
 - 1. Community education and collaboration needed.
 - 2. Use of SLA housing might in fact provide greater security.
 - 3. Homeless offenders are increasing in numbers.
 - 4. Communities are restricting access of offenders to affordable housing.
- B. Lack of appropriate SO treatment resources and funding.**
- C. Lack of employment resources for sex offenders. Employment can be correlated with lessening recitivism.**
- D. Lack of funding to train staff to properly supervise sex offenders.**
- E. High workload & ratio of supervisory staff to offender undermines the effectiveness of supervision.**

**THE SEX OFFENDER REGISTRATION AND NOTIFICATION PROVISIONS OF THE
ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 (P. L. 109-248)**

The Adam Walsh Child Protection and Safety Act includes a comprehensive revision of the national standards for sex offender registration and notification. This statement summarizes the relevant provisions of the Act. The descriptions of these provisions are organized under the following headings:

I. SEX OFFENDER REGISTRATION AND NOTIFICATION STANDARDS

- A. Names and purposes
- B. Covered jurisdictions
- C. Covered offenses and offenders
- D. Classes of sex offenders
- E. Required registration information
- F. Disclosure and transmittal of information
- G. Where registration is required
- H. Initial registration
- I. Keeping the registration current
- J. Verification/showup requirements
- K. Duration of registration
- L. Consequences of registration violations
- M. Time for implementation

II. RELATED FEDERAL GOVERNMENT FUNCTIONS

- A. Guidelines and regulations
- B. SMART Office
- C. National Sex Offender Registry
- D. National Sex Offender Website
- E. Registry management software
- F. Funding and assistance programs
- G. Studies and reports
- H. Federal and military sex offenders
- I. Sex offenders entering the United States

I. SEX OFFENDER REGISTRATION AND NOTIFICATION STANDARDS

A. Names and purposes

The short name for Title I, which contains the sex offender registration and notification standards, is the "Sex Offender Registration and Notification Act." The Act establishes a comprehensive national system for the registration of sex offenders and offenders against children, in order to protect the public from such offenders. The program established by the Act is also referred to as the "Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program." (Relevant provisions: §§ 101-03.)

B. Covered jurisdictions

The jurisdictions subject to the Sex Offender Registration and Notification Act are the states, the District of Columbia, the principal territories, and Indian tribes to the extent provided in § 127. (Section 127 generally allows an election by Indian tribes between functioning as registration jurisdictions or delegating their registration and notification functions to the states in which they are located.) The general requirement for covered jurisdictions is to maintain a sex offender registration and notification program conforming to the Act's standards. The Attorney General is directed to issue guidelines and regulations to interpret and implement the Act. Jurisdictions and their officials are immune from liability for good faith conduct under the Act. (Relevant provisions: §§ 111(9)-(10), 112, 131.)

C. Covered offenses and offenders

The "sex offenders" for whom registration is required include persons convicted under the laws of state, local, tribal, federal, military, or foreign jurisdictions. However, registration based on a foreign conviction is not required if it was not obtained with sufficient safeguards for fundamental fairness and due process as provided in the Attorney General's guidelines or regulations. "Conviction" for purposes of the Act usually means an adult conviction, but it includes delinquency adjudications of juveniles age 14 or older for offenses comparable to aggravated sexual abuse as defined in 18 U.S.C. 2241, or an attempt or conspiracy to commit such an offense. (Roughly speaking, the referenced federal "aggravated sexual abuse" offense encompasses forcible rape or its equivalent, and offenses involving sexual acts with victims below the age of 12.) (Relevant provisions: § 111(1), (5)(B), (6), (8).)

The predicate "sex offenses" for which registration is required in case of conviction include: (i) offenses whose elements involve a sexual act or sexual contact with another (regardless of victim age), (ii) most sex offenses and abduction offenses involving minors (i.e., persons below the age of 18) as specified in the statute, (iii) the principal federal sex offenses as specified in the statute, (iv) military offenses as specified by the Secretary of Defense, and (v) attempts or conspiracies to commit any of the foregoing offenses. However, offenses involving consensual sexual conduct with adults are not covered, unless the adult was under the custodial authority of the offender, and offenses involving consensual sexual conduct with minors are not covered if the victim was at least 13 years old and the offender was not more than 4 years older than the victim. (Relevant provisions: § 111(5)(A), (C), (7), (14).)

D. Classes of sex offenders

The Act distinguishes three classes of sex offenders ("tiers") based on the nature of the registration offense and the offender's recidivism. Tier I is the lowest (default) category for sex offenders who do not satisfy the criteria for classification in a higher tier. Tier II includes offenders convicted of various sorts of felony sex offenses against minors – generally speaking, the predicate offenses for this tier include offenses involving sexual contact with minors (and attempts and conspiracies to commit such offenses), child prostitution offenses, and production

or distribution of child pornography. Tier II also includes offenders convicted of a felony sex offense that occurred after a prior sex offense conviction. Tier III generally includes felony offenders convicted of sexual assaults involving sexual acts with victims of any age, offenses involving sexual contact with children below the age of 13, nonparental kidnapping of minors, and attempts or conspiracies to commit any of the foregoing offenses. Tier III also includes offenders convicted of a felony sex offense that occurred after a prior conviction or convictions of the offender that would qualify the offender for inclusion in Tier II. (Relevant provisions: § 111(2)-(4).)

Under the Act's standards, the tier classifications have implications for the required duration of registration, the frequency of required showups by sex offenders to verify registration information, and the required public disclosure of information about sex offenders through the Internet. (Relevant provisions: §§ 115, 116, 118(c)(1).)

E. Required registration information

The Act requires that the registration information include name, Social Security number, residence address, names and addresses for places of employment and school attendance, license plate number and description for motor vehicles, physical description, text of the law defining the registration offense, criminal history of the offender, current photograph, fingerprints and palm prints, DNA sample, copy of driver's license or identification card, and any other information required by the Attorney General. (Relevant provisions: § 114.)

F. Disclosure and transmittal of information

Section 118 of the Act generally requires that all information about each sex offender in the registry must be made available to the public through the Internet, and that the field search capabilities of the Internet sites must include zip code/geographic radius searches, and other field search capabilities needed for full participation in the national sex offender website (established by § 120) as provided by the Attorney General. The Internet posting requirements for sex offender information would be subject to: (i) mandatory exemption of victim identity, Social Security number, and arrests not resulting in conviction, and (ii) discretionary exemption of information about tier I sex offenders not convicted of offenses against minors (as specified in § 111(7)), employer name, and name of educational institution attended. The Attorney General would have the authority to exempt additional information from Internet disclosure. (Relevant provisions: § 118.)

Section 121 of the Act provides that, immediately after a sex offender registers or updates a registration, an appropriate official shall immediately provide the information in the registry (other than information exempted from disclosure by the Attorney General) to:

- (i) The Attorney General, for inclusion of the information in the National Sex Offender Registry (established by § 119(a)) or other appropriate databases.

(ii) Appropriate law enforcement (including probation) agencies and schools and public housing agencies in areas in which the sex offender resides, works, or goes to school.

(iii) Each jurisdiction in which the sex offender resides or works or goes to school, and each jurisdiction from or to which a change of residence, employment, or student status occurs. (Two related provisions – §119(b) provides that the Attorney General shall ensure that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions; § 113(c) provides that a jurisdiction in which a sex offender appears to report a change of name, residence, employment, or student status must immediately provide that information to all other jurisdictions in which the offender is required to register.)

(iv) Agencies responsible for employment-related background checks under the National Child Protection Act.

(v) Social service entities responsible for protecting minors in the child welfare system.

(vi) Volunteer organizations in which contacts with minors or other vulnerable individuals might occur.

(vii) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

The requirement that the information be provided “immediately” is qualified to allow that the entities referenced in (vi) and (vii) – volunteer organizations and other requesters – may elect to receive the notification no less frequently than once every five business days. (Relevant provisions: § 121.)

G. Where registration is required

Sex offenders are required to register and keep the registration current in each jurisdiction in which they reside, work, or go to school. A sex offender must also initially register in the jurisdiction in which convicted if it is different from the jurisdiction of residence. (Relevant provisions: §§ 111(11)-(13), 113(a).)

H. Initial registration

Initial registration is generally required prior to completing a sentence of imprisonment, or not later than three business days after sentencing if the sex offender is not sentenced to imprisonment. At the time of initial registration, an appropriate official must inform the sex offender of his or her registration duties, obtain a signed acknowledgment, and ensure that the sex offender is registered. The Attorney General has the authority to prescribe rules for the registration of sex offenders who cannot be registered within the normal time frame, and to specify the applicability of the Act’s requirements to sex offenders convicted before its

enactment or its implementation in a particular jurisdiction. (Relevant provisions: §§ 113(b), (d), 117.)

I. Keeping the registration current

Sex offenders are required to keep the registration current in each jurisdiction in which they reside, work, or go to school. This includes appearing in person in at least one such jurisdiction within three business days to report any change of name, residence, employment, or student status. (Relevant provisions: § 113(c).)

J. Verification/showup requirements

The Act requires that a sex offender periodically appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which the offender is required to be registered. The required frequency of such showups is at least annually for tier I sex offenders, at least semiannually for tier II sex offenders, and at least quarterly for tier III sex offenders. (Relevant provisions: § 116.)

K. Duration of registration

The required registration period is 15 years for a tier I sex offender, 25 years for a tier II sex offender, and life for a tier III sex offender. However, for a tier I sex offender, the registration period could be reduced from 15 years to 10, and for a tier III sex offender registered on the basis of a juvenile delinquency adjudication, the registration period could be reduced from life to 25 years, if the offender maintains a "clean record." A clean record in the relevant sense means not having a subsequent felony or sex offense conviction, successfully completing any period of supervision, and successfully completing an appropriate sex offender treatment program certified by a jurisdiction or the Attorney General. (Relevant provisions: § 115.)

L. Consequences of registration violations

The Act provides that each jurisdiction (other than an Indian tribe) shall provide felony penalties for the failure of a sex offender to comply with its requirements. Appropriate officials are to notify the Attorney General and appropriate law enforcement agencies of sex offenders' failure to comply with registration requirements and to revise the jurisdiction's registry to reflect the nature of the violation; the officials and agencies involved are to take any appropriate action to ensure compliance. (Relevant provisions: §§ 113(e), 122.)

M. Time for implementation

Jurisdictions have three years to implement the new sex offender registration and notification requirements; the Attorney General may authorize up to two 1-year extensions of this deadline. Jurisdictions which fail to substantially implement the Act within the applicable time frame are subject to a 10% reduction of Byrne Grant funding. The principal pre-existing

sex offender registration and notification provisions of federal law are repealed, but the effectiveness of the repeal is delayed until the deadline for implementation of the new Act's standards. (Relevant provisions: §§ 124, 125, 129.)

II. RELATED FEDERAL GOVERNMENT FUNCTIONS

A. Guidelines and regulations

As noted in the course of the foregoing summaries of the new sex offender registration and notification standards, the Attorney General is generally directed to issue guidelines and regulations to interpret and implement the new standards, and is also authorized to carry out several more specific functions in fleshing out or supplementing the Act's provisions, which could be done through the implementing guidelines or regulations. (Relevant provisions: §§ 112(b), 113(d), 114(a)(7), (b)(8), 117(b), 118(a), (b)(4), (c)(4), 119(b).)

B. SMART Office

The Act creates a new Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("Smart Office") in the Department of Justice. The SMART Office's functions would include: (i) administering the national standards for sex offender registration and notification, (ii) administering grant programs relating to sex offender registration and notification and other grant programs authorized by the Act as directed by the Attorney General, (iii) cooperating with and providing technical assistance to states and other public and private entities in relation to sex offender registration and notification and other measures for the protection of the public from sexual abuse or exploitation, and (iv) performing such other functions as the Attorney General may delegate. (Relevant provisions: § 146.)

C. National Sex Offender Registry

The Act provides a new statutory basis for the National Sex Offender Registry (NSOR), the database maintained by the FBI which effectively compiles information obtained in the states' sex offender registration programs and makes it available to law enforcement agencies on a nationwide basis. (The pre-existing statutory basis for NSOR is 42 U.S.C. 14072(b).) (Relevant provisions: § 119(a).)

D. National Sex Offender Website

The Act provides a statutory basis for the national sex offender website (www.nsopr.gov) – which makes information in the various state sex offender websites accessible to the public on a nationwide basis through single-query searches – and names it the "Dru Sjodin National Sex Offender Public Website." (Relevant provisions: § 120.)

E. Registry management software

The Act directs the Attorney General, in consultation with the jurisdictions, to develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites. The functions of the software would be to facilitate immediate exchange of information among jurisdictions, public access over the Internet to sex offender information, full compliance with the Act's requirements, and communication of information to community notification participants under § 121. The first complete edition of the software is to be made available to jurisdictions within two years. (Relevant provisions: § 123.)

F. Funding and assistance programs

The Act authorizes a number of federal grant or assistance programs that are specifically concerned with sex offender registration:

- (i) A "Sex Offender Management Assistance Program," involving grants to jurisdictions to offset the costs of implementing the new sex offender registration and notification standards. (§ 126.)
- (ii) A direction to the Attorney General to use federal law enforcement resources to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements (§ 142), and an authorization of grants to states and other entities to assist in enforcing sex offender registration requirements (§ 623). Also, a direction to the Attorney General to assist jurisdictions in identifying and locating sex offenders relocated as a result of a major disaster (§ 144).
- (iii) An authorization of grants to states and other entities to carry out programs requiring an appropriate official to verify periodically the residence of all or some registered sex offenders (§ 631).

In addition to the funding and assistance programs specifically concerned with sex offender registration, supporting effective sex offender registration is included among the objectives of some more broadly defined funding or assistance programs under the Act. (Relevant provisions: §§ 145(a)(4), 625(b)(1), (3).)

G. Studies and reports

The Act directs a number of studies and reports relating to sex offender registration: (i) Directs the National Institute of Justice to conduct a comprehensive study to examine the control, prosecution, treatment, and monitoring of sex offenders, with a particular focus on sex offender registration and notification and sex offender treatment (§ 634). (ii) Directs the Attorney General to submit annual reports to Congress concerning implementation of various aspects of the Sex Offender Registration and Notification Act (§ 635). (iii) Directs the Government Accountability Office to study the feasibility of using driver's license registration processes as means of promoting compliance with sex offender registration requirements (§ 636). (iv) Directs the Attorney General to conduct a study of risk-based sex offender

classification systems (§ 637).

H. Federal and military sex offenders

The Act perpetuates with some amendment pre-existing provisions relating to federal and military sex offenders, including requirements that federal correctional and supervision authorities notify state and local registration and law enforcement authorities concerning the release of federal sex offenders to their areas, and requirements that released federal sex offenders register in the jurisdictions to which they go as conditions of their federal supervision. It enacts a new version of the federal failure to register offense (and related provisions), creating federal criminal liability for sex offenders who fail to register under circumstances supporting federal jurisdiction, such as interstate travel. (The pre-existing version of the federal failure to register offense is 42 U.S.C. 14072(i).) The Act also enacts some new provisions relating to penalties or restraint for sex offenders who are required to register, e.g., a mandatory additional 10 year prison term for registrants who commit certain federal sex offenses. (Relevant provisions: §§ 141, 210, 216(1), 401, 702, 704(a)(3).)

I. Sex offenders entering the United States

The Act directs the Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, to establish a system for informing relevant jurisdictions about persons entering the United States who are required to register. (Relevant provisions: § 128.)

**REPORT ON
SAFETY ISSUES RAISED
BY LIVING ARRANGEMENTS FOR
AND LOCATION OF
SEX OFFENDERS IN THE COMMUNITY**

**AS PREPARED FOR
THE COLORADO STATE JUDICIARY COMMITTEES,
SENATE AND HOUSE OF REPRESENTATIVES
(Pursuant to Section 16.11.17-103(4)(j), C.R.S.)**



March 15, 2004

**Colorado Department of Public Safety
Division of Criminal Justice
Sex Offender Management Board
700 Kipling Street, Ste. 1000
Denver, Colorado 80215
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EXECUTIVE SUMMARY

The Colorado Division of Criminal Justice, Office of Domestic Violence and Sex Offender Management, conducted research on the safety issues raised by living arrangements of sex offenders in the community. This research primarily focused on two questions:

- (1) Do the living arrangements of sex offenders, including Shared Living Arrangements, have an impact on community safety?
- (2) Do the location of sex offender residences, specifically in proximity to schools and childcare centers, have an impact on community safety?

To answer these questions, probation files were reviewed on both a random sample of sex offenders under probation supervision in the Denver metropolitan area and an all-inclusive sample of sex offenders under probation supervision in the Denver metropolitan area living in a Shared Living Arrangement (n = 130 for the combined sample). Data were extracted from the first 15 months of supervision for the sex offenders selected for this study.

The findings and subsequent recommendations are presented below.

- (1) High-risk sex offenders living in Shared Living Arrangements had significantly fewer violations than those living in other living arrangements. In addition, the average overall number of violations was low in Shared Living Arrangements, which is surprising, given that this was the only residence type that had significantly more high-risk sex offenders. Shared Living Arrangements also had one of the shortest amounts of time between when a sex offender committed a violation and when the probation officer or treatment provider found out about the violation. In addition, the roommates

of sex offenders living in Shared Living Arrangements called in violations of probation and treatment requirements to the sex offender's treatment provider and probation officer more times than roommates in any other living arrangement. This leads back to the conclusion that a positive support system, which 100% of the Shared Living Arrangements provided, is an important component of being successful in treatment.

Recommendation: Shared Living Arrangements appear to be a frequently successful mode of containment and treatment for higher risk sex offenders and should be considered a viable living situation for higher risk sex offenders living in the community.

- (2) Although residences' proximity to schools and childcare centers was not *specifically* analyzed; two things could be inferred from maps created for this project. One, in urban areas, a large number of schools and childcare centers are located within various neighborhoods, leaving extremely limited areas for sex offenders to reside if restrictions were implemented. Second, sex offenders who have committed a criminal offense (both sexual and non-sexual) while under criminal justice supervision appear to be randomly scattered throughout the study areas -- there does not seem to be a greater number of these offenders living within proximity to schools and childcare centers than other types of offenders. In addition to the maps, the state of Iowa's legal challenge to their law provides some insight into the constitutionality of restricting sex offender residences.

Recommendation: Placing restrictions on the location of correctionally supervised sex offender residences may not deter the sex offender from re-offending and should not be considered as a method to control sexual offending recidivism.

- (3) The research findings indicated that sex offenders on probation living with their families in the Denver metropolitan area were more likely to have a criminal and technical violation than those living in other types of residences. Support was another component related to the number of criminal and technical violations. Those who had support in their lives had significantly lower numbers of violations than those who had negative or no support. When support was examined for high-risk offenders, those with no support and living with a family member or friends had the highest numbers of violations (criminal, technical, and total). These findings suggest that although a high-risk sex offender may be living with a family member or friends, it does not necessarily mean that he or she is living in a supportive or healthy environment.

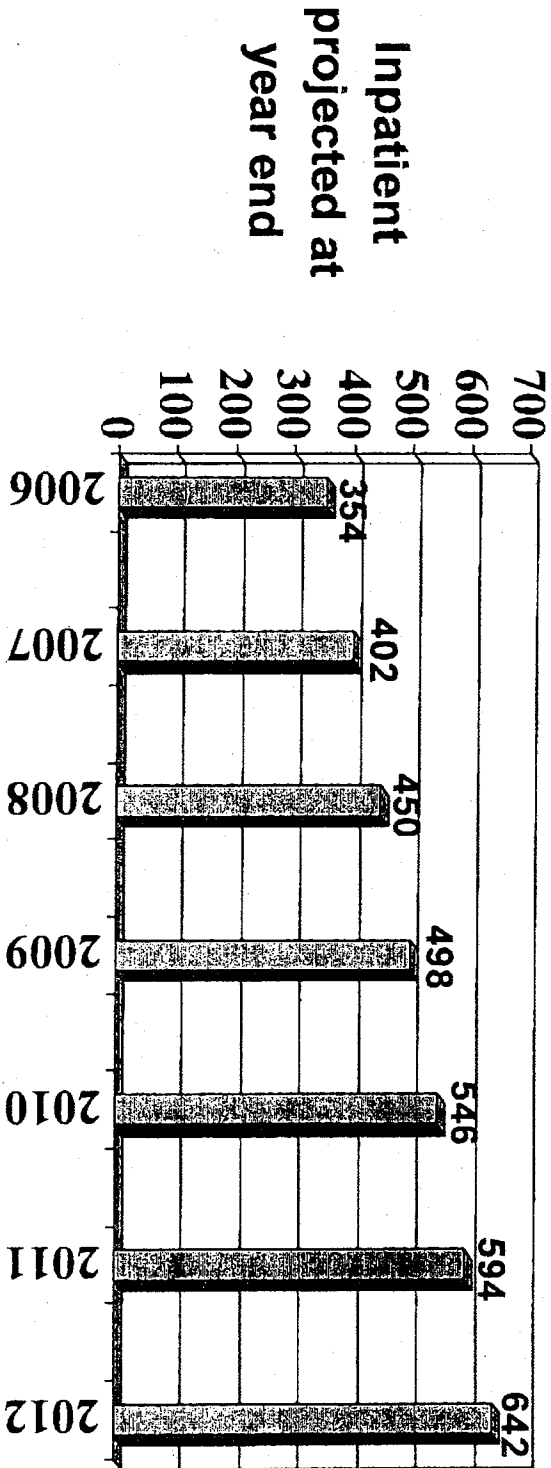
Recommendation: *Efforts should be made to ensure that the sex offender's support in the home is positive in order to aid in his or her treatment.*

Recommendation: *While the findings in this report suggest a link between a sex offender's support in the home and performance in the community, more research in this area should be conducted to further inform this important finding.*

- (4) **General Recommendation:** *The Sex Offender Management Board should consider the findings from this report when revising the Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders.*

Projected Growth Rate of Chapter 980 Population

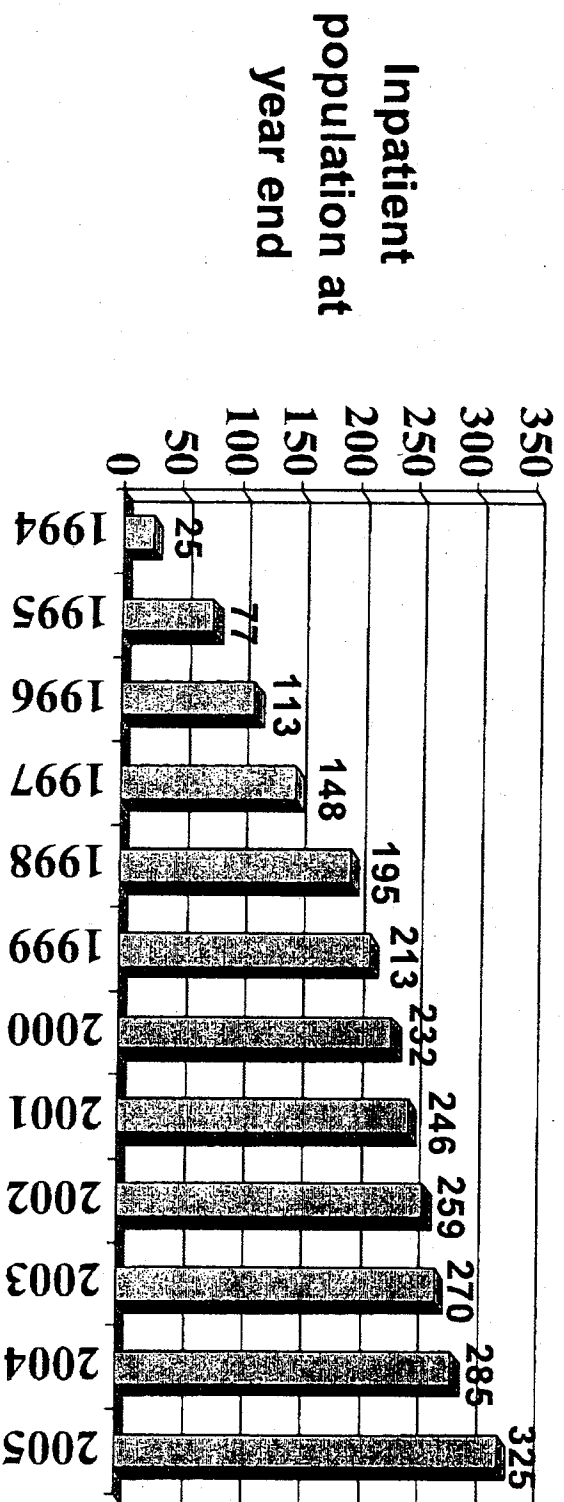
Inpatient Chapter 980 Population



*Includes both committed and detained.

Historical Growth Rate of Chapter 980 Population

Inpatient Chapter 980 Population



*Includes both committed and detained.

THE CONTAINMENT APPROACH: An Aggressive Strategy for the Community Management of Adult Sex Offenders

Kim English
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Most convicted adult sex offenders remain or return to the community. This article recommends a specific approach to the community management of adult sex offenders, which holds convicted abusers accountable for the risk they pose to the community. The containment approach can be achieved only when criminal justice and related agencies proactively engage in a multidisciplinary, multi-agency strategy that seeks to close the natural fragmentation that occurs across multiple agencies and systems. The containment strategy described here begins with 5 distinct components: (a) a victim-centered philosophy, (b) multidisciplinary collaboration, (c) specific management tools, (d) consistent multi-agency policies and protocols, and (e) program quality-control mechanisms. This strategy cannot be implemented without a local, ongoing commitment to teamwork and community safety. The strategy must be customized to jurisdictions seeking to minimize public risk and maximize offender and public agency accountability. It is an evolving approach that is based on empirical data and field experience.

Introduction

Every 5 minutes in America, nearly 30 children are molested (American Humane Association, 1995) and someone is forcibly raped (Federal Bureau of Investigation, 1995). One in eight women is raped during her lifetime—nearly one third before the age of 11—and 84% of these rapes are never reported to the police (Kilpatrick, Edmunds, & Seymour, 1992).¹

According to *Rape in America: A Report to the Nation* (Kilpatrick et al., 1992), only 22% of rape victims were raped by strangers. This means that the majority of rapists—nearly four out of five—had extraordinary access to their victims and sufficient privacy to commit this heinous crime.

It is clear that most rapists will never come into contact with the criminal justice system. But for those who do, criminal justice system policies and practices must eliminate both sex offenders' access to potential victims and any privacy the

Kim English is Director of the Office of Research and Statistics for the Colorado Division of Criminal Justice, Department of Public Safety. This research was funded by Grant 92-IJ-CX-K021 from the National Institute of Justice. Points of view expressed herein are mine and do not necessarily represent the official position of the U.S. Department of Justice. I gratefully acknowledge the work and assistance from colleagues Linda Jones and William R. Woodward of the Division of Criminal Justice and Suzanne Pullen from the Office of Probation Services.

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¹Kilpatrick et al. (1992) conducted a 3-year longitudinal study of 4,008 adult American women. The study found that more than two thirds of the rape victims who did not report the crime said it was because they did not want their family to know about the rape (over one third of those raped were raped by family members) or they did not want people to think it was their fault (39% were raped by boyfriends, ex-boyfriends, or other acquaintances).

Attachment # 4

offenders may enjoy. The criminal justice system can exert significant control over offenders' opportunities to commit new crimes and, at the same time, strictly abide by nondiscriminatory and humane rules of ethics and the law. This is the essence of an aggressive sex offender containment strategy.

Criminal justice professionals in jurisdictions across the country have begun to reform many current practices that inadvertently give sex offenders opportunities to reoffend. Containment strategies operate in circumstances of multi-agency collaboration, explicit policies, and consistent practices that combine case evaluation and risk assessment, sex offender treatment, and intense community surveillance designed specifically to restrict offenders' privacy and access to victims.

While offenders are under official supervision, every effort is made to prevent them from obtaining the opportunity to hurt others. And, given the lifelong nature of this problem for many sexual abusers who come into contact with the criminal justice system, a growing number of professionals endorse court sentences that impose lifelong correctional supervision under the containment model.

Method

A study (English, Pullen, & Jones, 1996) conducted by the Colorado Division of Criminal Justice for the National Institute of Justice, U.S. Department of Justice, identified a system of innovative methods local jurisdictions are using to manage adult sexual offenders. The 2-year investigation involved a telephone survey of a national sample, stratified by population and geography, of 732 probation and parole supervisors; an extensive literature review on victim trauma and sex offender treatment; a systematic document review of scores of materials ranging from agency memoranda and protocols to legislation and administrative orders; and field research involving site visits to 13 jurisdictions in six states (Arizona, Colorado, Louisiana, Texas, Ohio, and Oregon). The findings from the field research resulted in a description of a promising approach for managing adult sexual offenders, which is presented here.

During the field research, more than 100 face-to-face interviews were conducted in formal and informal settings. Data were gathered from probation officers, parole officers, defense and prosecuting attorneys, law enforcement personnel, social service workers, sex offender treatment providers, sexual assault victim treatment providers, polygraph examiners, judges, correctional administrators, police detectives, parole authorities, victim advocates, and sexual offenders.

According to methodologist Babbie (1995) "[b]eing there" is a powerful technique for gaining insights into the nature of human affairs" (p. 300). Being there was, indeed, the only way to begin to build an understanding of the scope and complexity of issues that local criminal justice practitioners grapple with daily to safely manage sex offenders under their charge.²

During the study (English et al., 1996), patterns emerged from observing innovative management practices that many professionals were undertaking. These practices were grounded in the scientific literature, specifically sex offender treatment and victim trauma research and theory, and were frequently supported by

²In fact, I urge policymakers to appoint committees of working professionals to advise them on issues related to this complicated and dangerous correctional population.

multi-agency agreements and often by state policy. Practitioners told us that they were working to close gaps and inconsistencies in sex offender management, because where gaps exist, offenders frequently position themselves to reoffend, cause conflicts among staff and agencies, and skillfully distract others from the dangerous threat they pose to the community.

Research findings are traditionally presented in the past tense, to reflect the time frame in which the data were collected and to restrict generalizations beyond that time period. Yet, hard work continues in many jurisdictions that served as the foundation for this study (English et al., 1996), work intended to improve the criminal justice response to sex offenders. In recognition of this ongoing work and because the containment approach is part research and part theory—an evolving social experiment that operationalizes the best of empirical data and human experience—the description below is in the present tense.³

Research Findings

The Containment Approach: Five Components

Overview: In many jurisdictions in the United States, professionals are actively involved in the development, implementation, and evaluation of locally defined and developed sex offender containment strategies. In these locales, mechanisms are in place to hold identified sex offenders continuously accountable for the damage caused by sexual assault. Containment professionals believe that proactively coordinating policies and practices pertaining to the monitoring, supervision, and treatment of sex offenders allows for many, although not all, sex offenders to spend portions of their sentences in the community. Although many citizens believe convicted sex offenders are sent directly to the penitentiary, in fact, most sex offenders receive community supervision, either as a direct sentence to probation or, following time in prison, on terms of parole. Because many of these crimes occur within families, the relationship between the abuser and the victim is complex and multidimensional. "Lock 'em up and throw away the key" sanctioning may not best serve the community's interest, so the containment strategy is an important sentencing option.

Community-based sex offenders are held accountable for their behaviors, and every effort is made to avoid allowing the offender to access past or potential victims. While serving time in the community, many offenders on probation and parole work and pay for their supervision and treatment, and, sometimes, victim treatment.

The containment approach reflects a specific case-by-case management strategy that occurs within the context of a communitywide initiatives that are aimed to eliminate opportunities for reoffending by individuals convicted of sexual assault. Opportunities for sex offenders to assault again begin with society's lack

³Support for aggressive containment systems by Assistant U.S. Attorney General Laurie Robinson led to the recently created Center for Sex Offender Management in June 1997. The Center's goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. As a collaborative effort of the U.S. Office of Justice Programs, the National Institute of Corrections, and the State Justice Institute, the Center is jointly administered by the Center for Effective Public Policy and the American Probation and Parole Association and is located at 8403 Colesville Road, Suite 720, Silver Spring, Maryland 20910.

of understanding of the insidious nature of these crimes and the multitude of ways that offenders manipulate situations and perceptions specifically to lay the groundwork for the next crime. Closing the gaps on these opportunities requires a systemwide, multidisciplinary approach founded on a clear and common goal: victim safety.

Our research (English et al., 1996) suggests that a sex offender containment approach consists of five core components. The exact development of each component varies according to local needs and values, but some version of the following five elements seems to exist in a fully operational and continually evolving containment approach: (a) a consistent multi-agency philosophy focused on community and victim safety; (b) a coordinated, multidisciplinary implementation strategy; (c) a case management and control plan that is individualized for each sex offender; (d) consistent and informed public policies and agency protocols; and (e) quality-control mechanisms designed to ensure that policies are implemented and services are delivered as planned. These components are described below, and examples are given from jurisdictions engaged in implementing sex offender containment approaches.

Component 1: Community safety philosophy. The effects of sexual assault on victims are often brutal and long-lasting. Victim research indicates that entrenched, long-term trauma is significantly related to the trust violation between the perpetrator and the victim (abuse by a father or step-father is associated with the worst outcome) and also to the duration and frequency of the abuse (Beitchman et al., 1992; Hindman, 1988; Salter, 1988). Psychological recovery from the assault is often prolonged for victims of these types of assaults. Also, Hindman's research revealed that trauma may be associated with the response the victim receives when he or she discloses the crime. If the response—whether from a school counselor, criminal justice officials, or a parent—implies that the victim was at fault, then the experience of trauma is magnified and recovery may be delayed.

For this reason, the containment approach begins with an explicit philosophy that values victim protection and community safety as paramount objectives of sex offender management. Criminal justice officials' commitment to the healthy recovery of the victim and the well-being of the community begin to guide policy development, program implementation, and the actions of professionals working with sexual assault victims and perpetrators.

The need for the victim-oriented philosophy is based on the recognition that case management decisions, even those grounded in agency policies, can jeopardize public safety and negatively impact sex assault victims. A common, victim-centered philosophy allows for the reassessment of traditional policies and practices with a new awareness drawn from the research literature on sex offenders and victim trauma.

The key to understanding the need for a victim-oriented-public safety approach is understanding the constant struggle that professionals endure to hold the offender accountable. Holding dangerous, manipulative, and often obsessive offenders constantly accountable is difficult indeed.⁴ Grappling daily with sex

⁴See Pullen and Pullen (1996) for a compelling discussion of the very difficult job sex offender containment professionals perform to humanely uphold public safety.

offender psychodynamics can rock the foundation of professionals' personal belief systems. Sexual assault—from acquaintance rape to incest, rape—murders, voyeurism, or weaponless-stranger rapes—occurs because the offender deliberately obtained the opportunity to assault someone:

Our safety seems less precarious if we believe sexual abuse is performed by individuals who have taken momentary leave of their faculties. . . . Many aggressors, seeking to minimize their responsibility for offenses, would also have us believe their behaviors are the product of irresistible impulses overwhelming their self-control. Offenders have numerous incentives to misrepresent their acts as impulsive rather than as the product of active planning and intention. . . . In reality, many offenders carefully plan offenses so that they appear to occur without forethought. (Pithers, 1990, p. 344)

Understanding these matters of opportunity and planning, along with the fact that sex offenders are generally not forthcoming about the scope and frequency of their deviant sexual activity, is fundamental to the philosophical foundation of a containment approach to managing sex offenders. The significant planning involved allows containment professionals to identify the modus operandi of each offender. Then therapists and criminal justice professionals can deliberately interrupt the planning behaviors and aggressively contain the offender.

By recognizing that the official response to sex crimes can assist or impede the victim's recovery, it follows that a clear, victim-oriented philosophy is essential in jurisdictions committed to a containment approach to sex offender management. "Making the victim whole" is the restorative justice phrase used since the early 1980s to describe the mission of the Jackson County, Oregon, Probation and Parole Department in the sex offender management process.⁵ "What's best for the victim?" is the question returned to again and again during quarterly meetings of Oregon's Sex Offender Supervision Network of adult probation and parole officers. Likewise the Colorado Sex Offender Treatment Board (1996) has designated that "community safety is paramount" among its nine guiding principles.

When a victim-oriented philosophy is at the center of a sex offender containment approach, it is reflected in public policies directed toward sex crime perpetrators. An example of operationalizing this philosophy is the Oregon law regarding sex offender notification. Because community notification laws might be devastating to the victim when the perpetrator is a family member, the 1994 Oregon statute explicitly directs probation and parole officers to develop and implement the notification plan. This mandate reflects the fact that the supervising officer is often in the best position to understand the case, that is, the offender's modus operandi to gain the necessary access and privacy to assault again. Most important, the officer understands the impact of notification on the victim. Public notification in some Oregon jurisdictions, then, occurs on a case-specific basis, which guards against revictimizing family members.

Component 2: Collaboration. The second feature of a sex offender containment approach includes a collection of implementation strategies that rely on cross-agency coordination, multidisciplinary partnerships, and within-agency job

⁵See English et al. (1996) for a description of the Jackson County, Oregon, Probation/Parole Sex Offender Management Program, Oregon Sex Offender Supervision Network.

specialization. When this effort takes the form of intra-agency, interagency, and interdisciplinary teams that are made up of professionals who specialize in sex offender cases, management gaps begin to disappear. Teamwork tends to overcome the fragmentation that commonly occurs from the multilayered nature of the criminal justice system. Also, the team approach minimizes duplication of effort and maximizes resources. It creates a rich pool of information and perspectives to improve the management of sex offenders. Teamwork strengthens both the motivation and the effectiveness of individuals, and a well-functioning team provides a support network for coping with the ongoing stress of managing dangerous cases.

Sometimes, jurisdictions have one large interagency team that deals with policy issues, and several smaller teams are formed to accomplish a variety of more specific tasks. Depending on the task (e.g., law enforcement investigation vs. parole supervision), each team may meet at different points and with different frequency during the management of a single case. The teaming of prosecution and law enforcement for training purposes is crucial, for example, to ensure that the necessary information is obtained to prosecute a case and to preclude certain defenses. For example, Nanetti and Greer (1996) maintained that a knowledgeable police investigator can make a strong case by effectively interviewing the suspect.⁶

Colorado, for example, has a Sex Offender Treatment Board with multidisciplinary membership defined in legislation. The Board has issued guidelines for the evaluation, treatment, and behavioral monitoring of adult sex offenders (Colorado Sex Offender Treatment Board, 1996). The guidelines designate a case management team for community supervision, led by the probation or parole officer, and comprised (at a minimum) of the officer, a Board-approved treatment provider, and a Board-approved polygraph examiner. Naturally, any team is enhanced with the participation of a specialized law enforcement officer, the prison treatment provider (if the offender is on parole and had been in prison treatment), the victim's therapist, and other individuals with primary involvement in the case.

Finally, job specialization is central to multidisciplinary teams. Voluntary job specialization tends to increase consistency at all stages of sex offender management, from investigation through prosecution and sentencing to assessment, monitoring, and treatment. Whatever the size of the jurisdiction, job specialization shrinks the containment community and closes gaps in the system, gaps that are actively sought out by the perpetrator and often pried open for the sake of avoiding accountability measures. Also, cross-training by specialists

allows physicians to learn the evidentiary issues prosecutors face, law enforcement officers and prosecutors to learn about common reactions to trauma from rape crisis counselors, and victim advocates to learn more about the criminal justice system so that they can better help victims prepare for court. (Epstein & Langebahn, 1994, p. 85)

Component 3: Containment-focused case management. The research data are clear that many offenders have multiple paraphilias. *Crossover* is the term used

⁶Nanetti and Greer (1996) noted that common defenses include (a) the touching was not sexually motivated or was accidental or innocent; (b) the child's graphic description of sexual matters is based on prior knowledge; (c) the alleged abuse is a fantasy, the child wants attention; and (d) the identification of the perpetrator is inaccurate.

to refer to the fact that many rapists of adult women also rape children and that many exhibitionists are also voyeurs and, given the opportunity, may progress to more aggressive behaviors. In groundbreaking research, Abel and Rouleau (1990) obtained self-report data from sex offenders that quantified this crossover: 51% of the 561 male participants had assaulted multiple age groups, 20% assaulted both genders, and 23% of incest perpetrators also molested children outside the family. This research also documented the frequency of offending behavior. The 561 participants reported victimizing 195,407 individuals, with crimes ranging from child rape to obscene phone calls. The crossover research also revealed an early age-at-onset for some abusers, with deviant behaviors starting as early as 10 years of age, suggesting that for convicted adult sex offenders, the behavior is likely to be well entrenched and integrated into the offenders' lifestyle (Able, Mittelman, & Becker, 1985; Awad, Sanders, & Levene, 1979; Becker, Cunningham-Rathner, & Kaplan, 1986; Groth, 1977; Groth, Longo, & McFadin, 1982; Smets & Cebula, 1987).

The acknowledgment of crossover and early-onset may be two of the most important aspects of the containment strategy, for the criminal justice system has traditionally managed sex offenders as if they were their conviction crime: "He is a rapist;" "She is a male-oriented child molester;" "He is a male pedophile." On the basis of these conviction-crime assumptions, many convicted offenders have been given, in the course of normal supervision, significant access to victims and an inordinate amount of privacy with vulnerable children and adults. For example, it is not uncommon to place a paroled rapist in a home with children because decision makers assume the conviction crime represents the scope of his sexual interests. If the offender sexually abuses one of these children, the approved parole plan then represents the first step in an officially sanctioned opportunity for the offender to rape again.

A successful sex offender containment approach includes a case management plan that clearly defines surveillance tactics to hold sex offenders accountable on a day-to-day basis. Information that is gathered specifically to identify the scope and frequency of the offender's deviant sexual arousal and behavior patterns forms the basis of a surveillance and management plan customized for each offender. This approach requires three interrelated, mutually enhancing activities: criminal justice supervision, sex-offender-specific treatment, and polygraph examinations. Visualize a triangle, with the three corners anchored with the three interventions just mentioned and with the offender contained inside the triangle. The triangle exists within a multitude of accountability measures: DNA testing, law enforcement registration linked to detailed modus operandi investigation database, specialized criminal justice caseloads, case management teams (including police units, social services, prosecutors, and probation, and parole officers), multidisciplinary investigation teams (including emergency room medical staff, rape crisis center staff, school counselors, victim advocates, prosecutors, prison officials, and law enforcement), official lists of approved service providers, confidentiality waivers, public service campaigns to stop child abuse,⁷ fully funded and supported child advocacy centers, consistent and adequately funded public

⁷STOP IT NOW! is a unique example of a primary prevention program developing strategies to prevent sexual abuse through public education and sex offender treatment. For further information, contact STOP IT NOW! at P.O. Box 495, Haydenville, Massachusetts 01039.

policies (including legislation and administrative and executive orders), and other efforts to control sexual offenders.

The triangle is anchored at each corner by three key activities: (a) criminal justice supervision and surveillance plans toward each offender's idiosyncratic offending patterns, (b) sex-offense-specific therapy for the offender, and (c) polygraph examinations conducted by highly qualified and specially trained investigators. The criminal justice supervision activity is informed and improved by the information obtained in sex-offender-specific therapy, and therapy is informed and improved by the information obtained during well-conducted postconviction polygraph examinations.

The three components are effective only if they work cooperatively, as appears to occur with many cases processed in many jurisdictions nationwide.⁸ Nevertheless, the first anchor on the triangle is the criminal justice system. Sexual assault is a crime, and the criminal justice system has primary jurisdiction over convicted sex offenders. The criminal justice system has important containment power when it uses well-trained, multi-agency teams and supervision tools, such as surveillance officers doing unanticipated home visits, urinalysis testing, verified law enforcement registration, detailed presentence investigations, lengthy terms and special conditions of supervision, employment restrictions, and clear and consistent sanctioning practices.⁹ Consistent plea bargaining is an important part of a successful containment strategy because certain pleas, such as Alford, no-contest pleas to nonsex crimes, and even sentences to diversion programs, minimize the seriousness of the behavior and can inadvertently reinforce an offender's denial of the crime.¹⁰ Pleas to nonsex crimes are discouraged, and the factual basis of the crime should be entered as part of any plea agreement.

A key contribution of the criminal justice system to the containment approach is the consequences it can leverage against the offender whenever the conditions of community supervision are violated. Without this constant pressure to adhere to the behavioral expectations detailed in the conditions of supervision and the treatment contract, community safety is dependent on the goodwill of the offender. Even the most motivated client needs serious consequences leveraged on his or her behalf to support him or her in moments of dangerous weakness. The criminal justice system, in the containment strategy, provides external controls and meaningful consequences that can occur only within a legal environment. According to Herman (1989), "Vigorous enforcement of existing criminal laws prohibiting sexual assault might be expected to have some preventive effect since both the compulsive and opportunistic offenders are keenly sensitive to external controls" (p. 188).

⁸For further information, contact officials in Jackson County, Oregon; Ontario, Oregon; Multnomah County Oregon; Clakamus County, Oregon; Maricopa County, Arizona; Arapahoe, Boulder, Jefferson, and Mesa Counties in Colorado; Massachusetts State Police/Framingham, Massachusetts; Division of Community Corrections in Everett, Washington.

⁹One district judge in Colorado refuses deferred judgments for sexual assaults, but when the case is weak will enter this judgment and attach strict conditions of court supervision to increase the likelihood that dangerous offenders will violate and return to court on a revocation, only to have the deferred judgment stricken and the original sentence imposed.

¹⁰Salter (1988) described multiple levels of denial: denial of the acts themselves; denial of fantasy and planning; denial of responsibility for the acts; denial of the seriousness of the behavior; denial of internal guilt for the behavior; and denial of the difficulty in changing abusive patterns.

Vigorous enforcement translates into surveillance strategies that are geared to each offender's idiosyncratic assault patterns—that offender's method of operation combined with criminal justice consequences when the offender engages in preassaultive behavior. For example, if an offender uses the Internet for sexual gain, the terms and conditions of probation or parole must prohibit the offender from owning or accessing a computer, and the consequences for failing to comply with parole or probation conditions of supervision might be 3 days to 3 weeks in jail, or longer. Likewise, depending on the offender's habits, telephone bills must be scanned for 900 numbers (one offender in Maricopa County, Arizona, had to take out a second mortgage to pay for \$24,000 in bills for 900 calls). Home visits must be unscheduled, and officers must look for toys, children's videotapes, animal crackers, and catalogs that are dog-eared at the children's underwear section. Bindings such as silver tape, wire, shoelaces, and bungee cords become the target of searches of homes and automobiles. In some jurisdictions such as New York, state law prohibits searching for anything beyond that which is in plain view.¹¹ Such laws which are based on the protection of individual rights, may inadvertently protect dangerous sex offenders by granting them what might be argued as excess privacy. I recommend public-safety-based modifications of such laws in cases of convicted sex offenders.

Sex-offender-specific treatment, a second anchor in the triangle, assists clients to develop internal controls over deviant thoughts and behaviors. The Colorado Sex Offender Treatment Board (1996) defined *sex-offense-specific treatment* as "a long term comprehensive set of planned therapeutic experiences and interventions to change sexually abusive thoughts and behaviors"¹² (p. 9). Sex-offense-specific programming focuses on actual sexual behavior, arousal, planning, and rationalizations, not stress, alcohol abuse, or childhood injuries because these distract from important work pertaining to directly and immediately stopping the abuse. Related issues are addressed in time, and often simultaneously, but first the offender must fully assume responsibility for the damage he or she has caused the current victim(s) and take all measures necessary to prevent the future abusive behaviors.

Sex-offense-specific therapy is unlike traditional psychotherapy. Treatment providers care best for the client by not first trusting the client's word but by seeking corroborating information. The therapist immediately targets behavioral and attitudinal changes because a client's current beliefs and actions likely represent a threat to the community. Unlike traditional therapy, counselors will not support the client's lifestyle when it revolves, even remotely, around accessing victims unless a myriad of safety nets are in place. Also, by using criminal justice system consequences, therapists help to motivate nonvoluntary clients to engage in treatment, complete homework assignments, and learn and use the tools of internal management.

¹¹It is possible that when the New York legislature amended P.L. 65.10 by adding subdivision 5 in 1996, allowing the court to impose reasonable probation conditions when the court determines such conditions are necessary or appropriate to ameliorate the conduct which gave rise to the offense, that surveillance methods based on specific offending patterns of individual offenders might become allowable. My thanks to Janice E. Taylor, general counsel to the New York City Department of Probation, for clarifying this issue.

¹²I am particularly grateful to Linda Jones for her work with the Colorado Sex Offender Treatment Board in drafting the 1996 Colorado Standards.

Sex-offense-specific treatment providers seek to obtain from the client, in a group therapy setting, descriptions of misguided thinking patterns, rationalizations, psychological defense mechanisms, and step-by-step methods each client uses to set up opportunities to assault victims. According to Pithers (1990), founder of the Vermont Prison's sex offender treatment program,

Although victims may be selected opportunistically, the act itself has generally been nurtured for a considerable time in the offender's most secret fantasies. The sex offender's deviant fantasies are tantamount to planning sessions for the refinement of future behaviors. (p. 334)

Thoughts and fantasies are the stuff of therapy, not criminal justice supervision. Regardless of whether therapy works,¹³ its role in the criminal justice containment strategy is, at a very minimum, to get inside the offender's head and obtain the method-of-operation information necessary for criminal justice officials to safely manage the offender and protect potential victims.¹⁴ Of course, treatment also provides the offender with self-management skills, and, by linking treatment to surveillance, public safety is enhanced. Furthermore, offenders may need to be pressed into a nondeviant lifestyle for some time—through close surveillance—before he or she begins to see its value and internalize the behaviors necessary to live safely and productively.¹⁵

By working with the therapist, the supervising officer can learn the offender's long-term patterns that precede actual assaults and tailor each offender's conditions of supervision to target his or her specific assault precursors. The officer can then restrict employment, driving, leisure-time activities, and other at-risk ventures as necessary. In cases of noncompliance with treatment or supervision requirements, officers can request that the court or parole board consequence the offender with supervised community service, jail time, halfway house placement, or long-term prison sentences. The key is detecting, for possible supervision revocation, at-risk behavior rather than new assaults.

This level of surveillance requires time, so probation and parole officers working toward a containment strategy should have a caseload size limited to 25. It is not uncommon for sex offender specialists to have caseloads that number in the hundreds, and under such circumstances, public safety cannot be secured. Reallocating criminal justice resources to safely implement a containment approach seems feasible. If the cost of incarceration averages \$20,000 per year per offender (for juvenile offenders, it is usually double this figure), then for every year that four adult offenders are aggressively supervised in the community rather than in prison, at least \$80,000 of public funds can be redirected to lower the caseload size for sex offender specialists. Construction costs may be estimated at \$80,000 per cell; if construction costs are avoided for four offenders, an additional one-time

¹³Ample evidence exists that certain types of intervention may work for certain types of sex offenders (see English, ch. 18 in English et al., 1996), but most of these studies rely on arrest records, which is an insensitive indicator of actual offending.

¹⁴I am grateful to Peggy Heil, Director of the Sex Offender Treatment Program at the Colorado Department of Corrections, for helping me understand this specific value of treatment.

¹⁵I am grateful to Sam Olsen, Jackson County, Oregon, Probation and Parole officer, for helping me understand this aspect, and so many others, of the containment strategy.

cost of \$320,000 could be reallocated toward aggressive community containment and victim services.

The third anchor in the supervision triangle is the postconviction, polygraph examination conducted by an examiner who specializes in sex offender exams. Data obtained from postconviction polygraph examinations are used to inform the treatment plan. Similar to a physician, psychotherapists cannot design a meaningful treatment plan without full knowledge of the offender's problems, current and historical. Furthermore, supervising officers cannot monitor the risk an offender poses to community without knowing all the types of opportunities and victims that attract the offender. The value of the polygraph examination in obtaining additional information that is helpful to case supervision and clinical intervention is well-known by those who use this tool.¹⁶

The postconviction polygraph examination is used to detect previously undisclosed deviant interests, behaviors, types of victims, and preassaultive behaviors (e.g., stalking or looking at pornographic material) that indicate a certain offender is approaching a level of imminent danger, either to a specific victim or to the community at large. The risk behaviors vary across offenders—they are as varied as any human's sexual interests and preferences—and the treatment provider, supervising officer, and other team members must work together to develop the most meaningful polygraph questions.

The postconviction polygraph examination is to sexual offenders what the urinalysis drug test is to drug offenders. It is an independent source of information that is not contingent on the offender's self-report. Its use in the containment strategy requires a highly qualified examiner that is a member of the American Polygraph Association and who has received special training in clinical testing with convicted sex offenders. The polygraph examiner is a critical member of the supervision team. The examiner plays a very distinct role within the containment system, and this role should not be contaminated by the training of therapists or officers to become polygraph examiners.

The polygraph report is released to both the treatment provider and the supervising officer. The report contains detailed information about disclosures obtained during the examination. The report identifies the questions asked of the offender and, using a computerized scoring system, presents the probability of error for each truthful or deceptive response. It is quite common to obtain inconclusive results on any given question, and this finding reflects a lack of data on the physiological measures and should not be interpreted otherwise (it is common for nonpolygraph professionals to infer a deceptive finding when inconclusive results are found).

The value of the postconviction polygraph seems undisputed among those who use it. Findings of multiple, previously undisclosed victims and paraphilias have been reported by researchers studying sex offenders and polygraph data (Abrams, 1991; English, Heil, & Alhmeyer, 1998; Hindman, 1988).

The value of the polygraph is reflected in its growing use in the community management of sex offenders. In 1995, the Tennessee legislature passed a law that

¹⁶While conducting the field research that serves as the foundation for the description of the containment approach, numerous probation and parole officers reported that they considered the polygraph an essential component of community supervision of sex offenders. Many reported that they would not supervise this population without it.

made polygraph testing mandatory for sex offenders on probation (Tennessee House Bill No. HB0308, 1995). Since January 1996, Colorado has required the use of the polygraph in the treatment and monitoring of all sex offenders who are serving community sentences. On July 1, 1998, Wisconsin removed statutory barriers in the use of the polygraph with sexual offenders. California, Colorado, Florida, Indiana, and Texas have developed guidelines for polygraph examination with sex offenders, and at least three other states, (Oregon, Washington, and Wisconsin) are seeking to develop guidelines at this writing.

According to Colorado polygraph examiner J. Jenks (personal communication, August 18, 1997), the value of the data generated from an examination is tied directly to the ability of the examiner. Professionalism, accountability, and objectivity are key requirements, along with special training in conducting exams with this special population. The National Association of Polygraph Specialists in Sex Offender Testing/Monitoring (the members of which belong to the American Polygraph Association) has recommended core requirements for sex offender examiners, including the documentation of conducting at least 500 specific-issue polygraph examinations and a minimum of 20 hr of annual training in the area of sexual assault. In addition, Jenks recommended videotaping every examination to monitor professionals for quality control and to document offender disclosures that they may later recant. Colorado standards for managing adult sex offenders require the use and 3-year storage of such videotapes.

Question construction is a key factor in the validity of the polygraph examination. Questions must be specific and time-bounded, and the words used in the questions must be clearly understood by the client. A clinical, sex-offense-specific exam takes at least 1.5 hr and consists of three phases: the pretest, the actual test, and the posttest. During the pretest, the questions are presented to the client, words are defined, and the examination process is explained. During the actual test, the offender is connected to the machine to obtain measures of respiration, Galvanic Skin Response, and cardiovascular interbeat intervals. The exam is completed and is immediately scored. The posttest consists of an interview between the examiner and the client, and the offender is given an opportunity to amend answers given during the prior test phases.

According to the Association for the Treatment of Sexual Abusers (ATSA, 1997),

The polygraph's utility lies in its ability to elicit information not available through traditional interviewing techniques. When utilizing polygraph examinations with sexual abusers, therapists should work in conjunction with polygraphers in developing protocols for pre-examination interviewing, question formulation, reporting and use of results. Specific decisions relative to instrumentation, interpretation of data and questions formulation should be made by trained polygraph examiners.¹⁷ (p. 52)

The polygraph is used in three ways in the containment of sex offenders. The sexual history examination, included as part of a comprehensive psychosexual evaluation, is used to obtain an abuser's lifetime sexual history. This examination ideally focuses on the offender's self-reported sexual history as disclosed in therapy and written as an ongoing homework assignment. Indeed, the verification

¹⁷ATSA devotes six pages to the polygraph examination (pp. 52-57). The Standards are available from ATSA, 10700 Southwest Beaverton-Hillsdale Highway, Suite 26, Beaverton, Oregon.

of the frequency and range of behaviors, numbers and types of victims, and the ages that paraphilic behaviors commenced is essential for the development of a relevant treatment plan and a safety-oriented surveillance strategy. The specific-issue examination focuses on a specific allegation or behavior. Finally, the maintenance examination is conducted periodically to assess the offender's compliance with treatment and supervision requirements. Maintenance polygraphs should be used frequently when the supervision team has reason to believe the offender may be at risk of reoffending. The Department of Defense Polygraph Institute (Dollins, Cestaro, & Pettit, 1995) reported the efficacy of repeated polygraph testing for the Zone Comparison Test, so concerns about the habituation of offenders to frequent polygraphs may be unfounded.

Disclosures of new crimes may be handled in a variety of ways, from granting limited immunity, to requirements that new disclosures of crimes not reveal names, dates, places, or other prosecutable information, to granting no immunity. Whatever the approach, it must be agreed on by local criminal justice officials and become an explicit part of an overall containment strategy. When a supervision program "minimizes the importance of the actual behavior and does not provide any concrete method for monitoring it, failures are likely to go unrecognized, sometimes with disastrous consequences" (Herman, 1989, p. 184). The use of the polygraph every 3 to 6 months (and perhaps more frequently) in the context of a containment strategy, with clear consequences for failure to disclose, may minimize this type of failure.

One frequently unanticipated consequence of instituting the polygraph in the supervision of sex offenders is the emotional impact the new information has on workers. Many people cope with this difficult subject by staying uninformed about it to various degrees. Denial seems to be an important part of the sex offender's manipulation pattern, and it also can help containment professionals manage their stress. However, information obtained after jurisdictions begin using the polygraph disallows this coping mechanism. Many professionals who work with sex offenders become traumatized by the scope of deviant behaviors, the details of the abuse, and the numbers of victims hurt by offenders, and when such information gets multiplied every time polygraph details about a new case are obtained, professionals may begin to experience, on a very personal level, the pain of victims and perpetrators. When this occurs, professionals experience secondary trauma. Secondary trauma is likely to increase when jurisdictions introduce the use of the polygraph examination in the containment strategy.

Empathy and exposure to traumatic material are the forces behind this difficult syndrome, also called *compassion fatigue* (Figley, 1995; Stamm, 1995). Police, firefighters, and other emergency workers report that they are most vulnerable to compassion fatigue when dealing with the pain of children (Beaton & Murphy, 1995). "Trauma is contagious," said Herman (1990, p. 180). Add to this the fact that most sex offenders target criminal justice workers with their abuse of power and manipulative behaviors, and professionals are frequently left feeling shocked and overwhelmed (Pullen & Pullen, 1996). Because the containment system requires offenders to disclose the full scope and frequency of their abusive behaviors, key power holders in jurisdictions that implement the containment strategy should endorse and implement policies that help professionals with burnout, isolation, generalized feelings of mistrust, and other symptoms of

secondary trauma. These policies can include limiting caseload sizes, working in teams, frequently training on issues that include coping with trauma, supporting flex time, providing time for exercise, and valuing socializing.

Component 4: Informed and consistent public policies. The fourth component in this comprehensive approach requires the development and implementation of informed, consistent, and collaboratively generated public policies and agency protocols in regards to sex offender management. Ideally, local criminal justice practitioners are actively involved in creating public policy at all levels of government. That is, informed policy requires experts in sex offender management to work with state legislatures, governors, and state judicial and corrections departments to assure that the policies reflect the latest thinking in this ever-evolving field. Consistency is key, and as we have described elsewhere (English et al., 1996, p. 2.14), written guidelines should address, but are not limited to, the following:

- Timelines for victim reporting (Epstein and Langebahn, 1994);
- The acceptance or rejection of plea agreements in cases of sexual assault;
- The weight given in sentencing to an offender's denial of the crime;
- The use of polygraph information;
- Family-reunification-assessment protocols;
- Confidentiality waivers;
- Investigation procedures;
- Crisis intervention;
- Presentence investigation report information;
- Failure to progress in treatment;
- Revocation procedures;
- Third-party liability-duty to warn potential victims;
- Employment restrictions for sex offenders under criminal justice supervision;
- Length of community supervision (i.e., lifetime);
- Management strategies to deal with burnout and secondary trauma;
- Special supervision conditions, modified as more information about the case is disclosed through treatment and polygraph exams;
- Clear, felony consequences for sex offenders who fail to register with local law enforcement;
- Blanket immunity for containment professionals who act in good faith to safely and thoughtfully implement community notification laws; and
- Protocols to enhance team functioning when fragmentation occurs.

The range of activities that require such documentation is quite large and is reflected in the description of the other components of the containment approach. However, the primary activity among the components is the need for open communication and information-sharing at all stages of the management of sex offenders.

Component 5: Quality control. The fifth and final piece required to systematically contain sex offenders within criminal justice jurisdictions requires the implementation of quality-control mechanisms. Quality-control activities range from regular, multi-agency case review meetings to ensure prescribed practices are delivered as planned to the sophisticated collection of data-tracking offenders who fail in treatment or commit new sex crimes, as occurs in the Maricopa County (AZ) Probation Department.

Systematic monitoring of the processes of service delivery is vital to the

success of the approach described here. Sexual abuse cases are difficult to manage, and the offender generally attempts to manipulate the system and the criminal justice professional just as he or she did the assault victim(s). Containment professionals can burn out, get soft, miss red flags, or become cynical and otherwise ineffective. Working together as a team is the first line of defense against these common phenomena. To maintain the humanity and integrity that is the core of the containment system, policymakers must proactively develop and implement mechanisms that hold professionals accountable along with sexual abusers.

Honest communication among team members and strict adherence to agreed-on protocols are the first steps in a continuum of quality-control mechanisms. The next level is ongoing monitoring. The next step is process evaluation that brings together stakeholders to collectively define some of the most important aspects of a process evaluation and identify the questions to be addressed and the measures to be used. Such studies are the best vehicle for program directors to document success and get the necessary feedback to identify and resolve problems.

Quality-control measures include clear descriptions of the target offender population, the program selection process, dropout-revocation rates, and staff training. In the criminal justice community, program success is often measured according to whether an offender is rearrested in a given time period. Arrest is an inadequate measure for sexual recidivism because most offending goes unreported. And it is a particularly challenging measure when the objective of the containment system is to detect, detain, and, when necessary, sometimes revoke offenders before the commission of a new assault.

Most professionals in jurisdictions that implement an aggressive containment strategy are collecting data that can be analyzed and fed back into the program and also to policymakers. Such efforts help clarify failure and success and contribute to the knowledge base of an ever-evolving, innovative public safety model.

The Containment Approach Is Evolving

The containment strategy is based on empirical data and theoretical concepts that are consistent with the best available information from the field. As new studies are conducted and published (about risk for reoffense, psychopathy, hormonal therapy, aggression and the brain, surveillance tools, and the impact of broad public policies such as public notification and civil commitment), the containment strategy will reinvent itself, prioritizing victims while influencing and being influenced by larger public policy debates.

Until a full-scale process and outcome evaluation of the containment approach is completed, anecdotal data obtained during field interviews reveal important support for the containment strategy for managing adult sex offenders who are serving community sentences:

- Many probation and parole officers believe containment strategies result in an increased likelihood that offenders will be officially detected committing preassault behaviors that, otherwise, might have escalated into sexual assaults.
- Many professionals engaged in collaborative efforts say that they better understand the responsibilities of their colleagues in other agencies and can better provide them with the information they need and that they, in turn, receive better information from other agencies.

- Professionals report fewer conflicts among each other because they are all working toward similar, explicit goals.
- Local victim organizations, including rape crisis centers, generally support containment strategies.
- Professionals directly responsible for containing sex offenders say that they feel they have more control of their clients and more influence on criminal justice decisions that affect their cases.
- Offenders often pay for their treatment and portions of their supervision, and sometimes they pay for their victim's treatment.

Conclusion

The *Rape in America* (Kilpatrick et al., 1992) report is a reminder that most (84%) of sexual assaults are never reported to officials. Researchers and policymakers should use the attention currently riveted on this issue as a springboard to better understand and prevent the problem of sexual assault. Now is a time for careful research, judicious dialogue, and innovative programming.

As the media and the public focus on policies driven by heinous, but relatively rare, sex crimes, truly challenging problems loom ahead. Many cultural norms nurture environments in which some humans are objects to be overpowered by others in the name of power and sexual gratification. Although this last issue is obviously beyond the scope of this article, the public's interest in sexual crimes gives researchers and policymakers an opportunity to examine the problem of sexual assault with a wide-angle lens: The containment approach, civil commitment, and community notification are important but narrow components of the public safety discourse. The momentum from the current sex offender control policies must be used to spur thinking and challenge assumptions. For example, the responsibility for managing this social problem falls squarely on the shoulders of child and adult rape victims to report the crime,¹⁸ yet most victims never tell a law enforcement agent. Without understanding this phenomenon, criminal justice professionals will never access many offenders who would benefit from involvement in the containment strategy.

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¹⁸I am most grateful to Fran Henry, President of STOP IT NOW!, for helping me understand this important component for building a safer society.

elements of change

Highlighting Trends and Issues in the Criminal Justice System

Office of Research & Statistics

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Colorado Department of Public Safety

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A Prison-Based Therapeutic Community in Colorado for Sex Offenders

The Office of Research and Statistics (ORS), Division of Criminal Justice (DCJ) completed an evaluation of the sex offender therapeutic community (TC) at the Colorado Department of Corrections (CDOC). This EOC briefly describes the study.

Research Approach

The evaluation focused on two primary questions:

1. Are the components of Colorado Department of Corrections (CDOC's) sex offender therapeutic community grounded in theory and best practice, and
2. Are outcomes for sex offenders who receive Sex Offender Treatment and Monitoring Program (SOTMP) services better than outcomes for sex offenders who do not receive these services?

The answers to both questions was **YES**. To address these questions, research staff reviewed the literature, examined 578 offender files, attended TC house meetings and 67 treatment group sessions, conducted 7 focus groups, surveyed the treatment staff, and analyzed new arrests, court filings and prison incarcerations on over 3,000 sex offenders.

Among the many findings, this evaluation determined that applying a modified TC method of managing sex offenders offers an approach that reduces the likelihood that an offender will commit new violent offenses. A copy of the full report can be found on our website at: <http://dcj.state.co.us/ors/>

What is a Therapeutic Community?

Therapeutic communities (TCs) have been a method of treatment for drug abuse and addiction for nearly 40 years. Generally, they are drug-free residential programs that use hierarchical models with treatment stages that reflect increased levels of personal and social responsibility as well as peer influence (1).

Many studies have found the TC approach to be an effective means of treatment for substance abuse, especially with reducing relapse to drug and criminal recidivism.

The CDOC Sex Offender TC operates as a Modified Therapeutic Community,

meaning that some of the traditional principles of TC intervention were modified to accommodate sex offenders. For example, peer influence is a key component of a traditional TC. But because sex offenders tend to evaluate relationships in terms of who has more power, this TC was modified to minimize opportunities for power or control over others and to maximize opportunities for equal peer relationships and responsibility for others.

In this *modified* sex offender TC, inmates are housed together in a therapeutic milieu where they live and work with others who are working on similar treatment issues. Participation in the TC requires that offenders agree to be accountable for their own behaviors as well the behaviors of their "brothers."

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(1) National Institute of Drug Abuse (NIDA) Research Report Series-Therapeutic Community at <http://www.drugabuse.gov/ResearchReports/Therapeutic/Therapeutic2.html>

A Attachment #.5

Highlighted Findings from the Outcome Evaluation

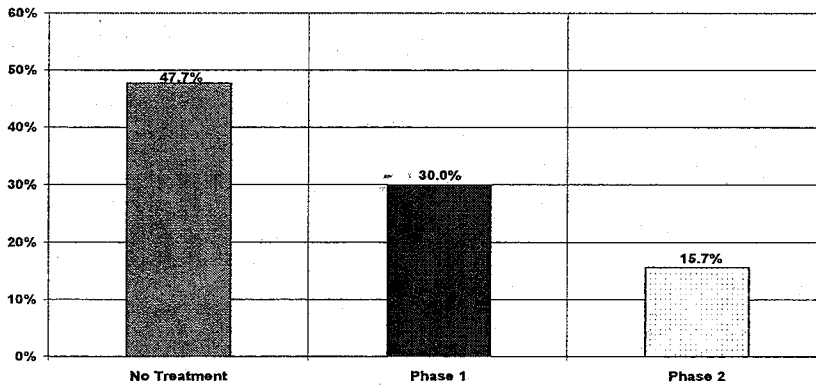
Over 3,000 sex offenders released from DOC between April 1993 and July 30, 2002 were included in the outcome analysis. Sex offenders were assigned to one of three treatment groups:

- **No Treatment**, which included all of those who had less than 30 calendar days in Phase 1 treatment.
- **Phase 1** included those with more than 30 days in Phase 1 and no Phase 2 (or TC) treatment.
- **Phase 2 (or TC)** treatment included those who participated in both Phase 1 and Phase 2 sex offender treatment.

Phase 1 is an intense educational treatment program that meets for 2 hours, 4 days each week for 6 months.

Phase 2 (or TC) is a modified therapeutic community, where inmates live and work together and agree to be accountable for their own behaviors as well as the behaviors of their "brothers."

Table 1:
Revocation Rates of Sex Offenders Released to Parole
Between April 1, 1993 and July 30, 2002
n=1585



FINDING: Participation in treatment was significantly associated with success on parole. We analyzed parole completion/revocation rates for 1,585 sex offenders released to parole between April 1, 1993 and July 30, 2002. Nearly half (47.7%) of the offenders in the **no treatment** group were revoked back to prison. This rate was three times higher than the group that participated in the TC, and it was 50% higher compared to the group that participated in Phase 1.

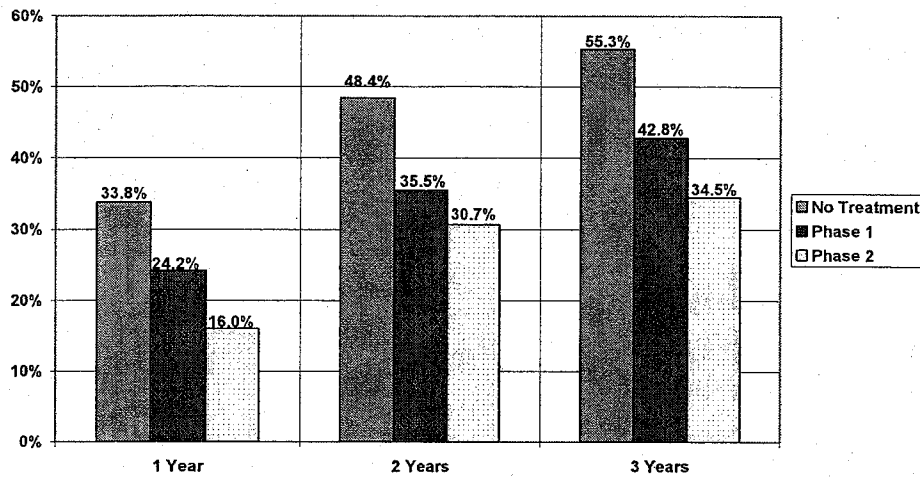
Table 2: New Arrest is Correlated with Fewer Months in Treatment

New Felony or Serious Misdemeanor Arrests		Average Months in Treatment
Follow-up Period: 12 Months	No Arrest	27.4 Months
	New Arrest	19.3 Months
Follow-up Period: 24 Months	No Arrest	30.1 Months
	New Arrest	20.0 Months
Follow-up Period: 36 Months	No Arrest	30.1 Months
	New Arrest	17.5 Months

FINDING: The length of time an offender participates in treatment was significantly related to positive outcomes after release from prison. This finding is consistent with research in the area of substance abuse: the greater time an offender spends in treatment (including cumulative multiple treatment episodes), the greater the likelihood that the offender will succeed following treatment. **For each additional month spent in the TC, inmates increased their chances of success upon release by one percent (12 percent per year).**

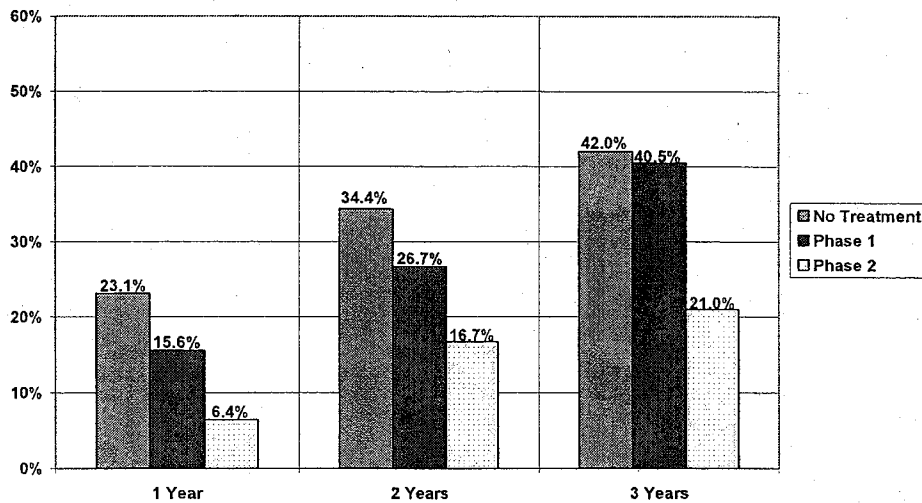
Continued Highlighted Findings from the Outcome Evaluation

Table 3:
Convicted Sex Offenders Discharged from Prison:
Arrest for a New Felony or Serious Misdemeanor at 1,2,3 Years
n=2040



FINDING: The long term outcome of offenders who were first placed on parole was significantly better than the group that was discharged from prison without parole, reflecting the value of parole supervision for community safety.

Table 4:
Convicted Sex Offenders Discharged from Parole:
Arrest for New Felony or Serious Misdemeanor at 1,2,3 Years
n=1003



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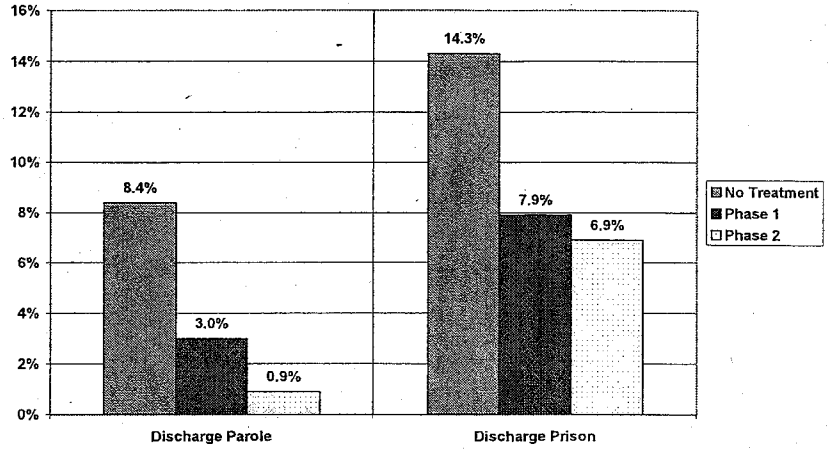
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Table 5:
Convicted Sex Offenders Discharge Parole vs. Discharge Prison:
Arrest for a Violent Felony or Serious Misdemeanor at 1 Year



Sex Offenders who have **NOT** had treatment and who are released on parole are at least **8 TIMES** more likely to get arrested for a **VIOLENT** crime during the first year out than those who have participated in the TC.

If we are not sending this newsletter to the correct person, or if you would like someone else to be added to our mailing list, please contact Pat Louder — FAX 303-239-4491.