

# Sex Offender Recidivism: A Challenge for the Court

Laurie Robinson

It is stating the obvious that citizens want to feel safe in their homes and neighborhoods. They place their trust in those of us in the justice profession to help provide that safety, but, in their view, we have not always lived up to those expectations. More than four years ago, in deliberating on the issues of citizen disenchantment with the criminal justice system, three strikes laws, and the rush to incarcerate more offenders for longer and longer periods, it struck me that much of the public's *general* distrust of criminal justice and sentencing derives from its fear of *specific* offender populations, and highest among them, sex offenders.

Since that time, others at the Office of Justice Programs (OJP) and I have been working with researchers, practitioners, and policy makers from across the country to promote more effective policies and practices regarding sex offender management.

What follows is a discussion of some of the lessons we have drawn from the experiences of jurisdictions around the country that are working to combat this problem – particularly the key role judges can play in the effective management of sex offenders in the community in preventing sexual assault, and in promoting public safety.

## Background

In recent years, highly visible crimes – many of them sexual assault cases – have sparked concern for public safety among lawmakers. In response to these crimes, legislatures have enacted new laws designed to protect the public from sex offenders. These laws have significantly impacted the criminal justice system, offenders, and victims by increasing sentencing, requiring sex offender registration and community notification, lifetime supervision of some offender groups, and involuntary civil commitment. Today, more sex offenders have been arrested and incarcerated, and are under the criminal justice system's supervision, than ever before.

Data collected by the U.S. Department of Justice, Bureau of Justice Statistics (BJS), in 1996 indicate that approximately 234,000 sex offenders were under the care, custody, or control of correctional agencies in the United States.<sup>1</sup> Of those, almost sixty percent were under some form of conditional supervision. By 1997, this number was estimated to have increased to

260,000. Again, nearly sixty percent of these offenders were in the community under some form of supervision.

Most sex offenders will be released into our communities at some point – whether directly following sentencing, or after a term of incarceration in jail or prison. The prevalence of these cases and their seriousness, both in terms of the enormous impact on individual victims and the general fear and mistrust of the criminal justice system engendered by these incidents, demand that criminal justice professionals focus on ways to more effectively address this problem.

## The Current State of Knowledge

### *The Rate of Sexual Violence: What Is the True Extent of Sexual Assault?*

There is little current information about the true extent of sexual victimization. A 1992 study by the National Victim Center found that as few as twelve percent of all rapes were reported.<sup>2</sup> The BJS 1994-1995 National Crime Victimization Surveys indicated that only thirty-two percent of the offenses committed against victims twelve or older were reported to law enforcement.<sup>3</sup> A recent National Violence Against Women Survey reflected that seventy-six percent of 8,000 women surveyed reported that they had been raped or physically assaulted by a current or former husband, live-in partner, or date.<sup>4</sup> And these numbers do not address the critical issue of child victimization rates. What these data clearly point to is the urgent need for approaches to sex offender management that reduce the likelihood of reoffending and offer the greatest promise of ensuring public safety.

### *Typologies of Sex Offenders: Are All Sex Offenders Alike?*

Like so many other offender populations, sex offenders are not all alike. Sex offenders can be of any age, race, religion, profession, or gender. Depending upon a variety of factors, sex offenders pose varying risks to the community. While many typologies of sex offenders have been described by researchers in the past two decades, sex offenders can be thought of in roughly three categories: those who sexually assault adult women, those who are primarily characterized as intra-familial child molesters (incest perpetrators), and those who molest

## Footnotes

1. L. GREENFELD, *SEX OFFENSES AND OFFENDERS* at 15 (1997). This report is available from the Office of Justice Programs, Bureau of Justice Statistics (NCJ-163392).
2. D. G. KILPATRICK, C. N. EDMUNDS, & A. K. SEYMOUR, *RAPE IN AMERICA: A REPORT TO THE NATION* (1992). This report is available from the National Victim Center, Arlington, VA.

3. B. M. TAYLOR, *CHANGES IN CRIMINAL VICTIMIZATION 1994-95* (1997). This report is available from the Office of Justice Programs, Bureau of Justice Statistics (NCJ-162032).
4. P. TJADEN & N. THOENNES, *PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY* (1998). This report is available from the National Institute of Justice (NCJ-172837).

## WHAT DO WE KNOW ABOUT SEX OFFENDERS?

- Sex offenders are not all alike.
- Sex offenders fall roughly into three categories: those who sexually assault adult women, intra-familial child molesters, and extra-familial child molesters.
- Some sex offenders, once caught, are unlikely to reoffend. The most serious offenders will victimize again, regardless of any criminal justice or treatment intervention.
- Through a combination of effective criminal justice intervention and appropriate treatment, it is believed that we can reduce the likelihood that many will reoffend.

chopathic. These individuals pose the greatest risk to the community. As with most other criminal justice decisions, it is the offenders who fall in the middle of this continuum who cause us the greatest degree of uncertainty.

### Recidivism Rates

While the field is in a better position today to make distinctions among the universe of sex offenders, identifying the category a particular offender fits into or assessing an individual's risk to reoffend remain an inexact science. Recidivism rates vary among the categories and characteristics of sex offenders. For instance, a recent meta-analysis reported sexual recidivism rates of thirteen percent for child molesters and nineteen percent for rapists.<sup>5</sup> However, given that these rates were based upon a four to five-year follow-up period, and that we know from victimization data that sexual assault is underreported, many believe that these rates also are underestimates. Within categories of sex offenders, individual characteristics lead to varying recidivism rates. For example, studies have found that among child molesters, males who target young boys have much higher reoffense rates than those who target girls, and that extra-familial offenders have higher reoffense rates than intra-familial offenders.<sup>6</sup>

When sex offender recidivism rates are taken as a whole, it is

children who are not in their families. We are beginning to understand that these offenders pose varying risks, and accordingly, respond to varying treatment approaches.

It is helpful to think about sex offenders on a continuum. On one end are those sex offenders who, once caught, are unlikely to reoffend. Their risk of harming others in the future is low. For these offenders, the criminal justice intervention itself may be sufficient to stop future abuse. On the opposite end of the continuum are sex offenders who are extremely violent, aggressive, dangerous, or psy-

extraordinarily rare to find data that suggest recidivism higher than fifty percent over the span of an offender's lifetime. Thus, research indicates that at least half of all sex offenders will not be rearrested for another sexual offense.

### The Roots of Sexual Deviancy

There are many theories regarding the development of sexual deviancy. For example, some professionals believe that sexual offending is a learned behavior and that, through appropriate treatment, more responsible behaviors can replace sexual offending. Others postulate that sexual drive – including deviant sexual arousal – is imprinted at birth and therefore cannot be eradicated, but may be controlled. (For example, some believe that sexual urges can be controlled through a combination of medication and psychotherapy.) Additionally, some suggest that the absence of proper bonding and attachment in early childhood – or the exposure to violence or sexual assault in youth – can be factors that predispose some persons to sexually abusive behavior. Most experts believe that there are various developmental paths that can lead a person to become a sex offender.

### The Effectiveness of Treatment

The lack of empirical information in this field results in emphatic claims. It is not uncommon to hear officials assert that there is no cure for sexual offending, and that treatment does not work. However, at present, there is little scientific basis to support these statements. The simple truth is that, at this time, we do not know whether sex offenders can be “cured.”

However, some studies present optimistic conclusions about the effectiveness of treatment programs that are empirically based, offense-specific, and comprehensive.<sup>7</sup> The only meta-analysis on treatment outcome studies to date found a small, yet significant treatment effect.<sup>8</sup> This 1995 meta-analysis included twelve studies with some form of control group. The results of the meta-analysis indicated an eight percent reduction in the recidivism rate for offenders in the treatment group.

The majority of sex offender-specific programs in the United States and Canada now use a combination of cognitive-behavioral treatment and relapse prevention strategies. While there is still much to be learned about the effectiveness of these approaches, it is believed that treatment success is often related to the type of sexual offender, the treatment model being used, the specific modalities employed, and the effectiveness of related interventions from probation and parole. Although the effectiveness of treatment for sex offenders has not been confirmed, failure to complete treatment has proven to be a significant predictor of recidivism. As Hanson and Bussière noted in their meta-analysis, “One of our most important findings is that

5. R. K. Hanson & M. T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOLOGY 348-362 (1998).

6. R. K. HANSON & M. T. BUSSIÈRE, PREDICTORS OF SEXUAL OFFENDER RECIDIVISM: A META-ANALYSIS (1996). This report is available from the Department of the Solicitor General of Canada, Ottawa, Ontario (User Report 96-04). See also V. L. Quinsey, M. L. Lalumière, M. E. Rice, & G. T. Harris, *Predicting Sexual Offenses*,

in ASSESSING DANGEROUSNESS: VIOLENCE BY SEXUAL OFFENDERS, BATTERERS, AND CHILD ABUSERS 114-137 (J. C. Campbell, ed.) (1995).

7. R. Lieb, V. L. Quinsey, & L. Berliner, *Sexual Predators and Social Policy*, in CRIME AND JUSTICE 43-114 (M. Tonry, ed.) (1998).

8. G. C. N. Hall, *Sex Offender Recidivism Revisited: A Meta-Analysis of Recent Treatment Studies*, 63 J. CONSULTING & CLINICAL PSYCHOLOGY 802-809 (1995).

offenders who failed to complete treatment were at increased risk for both sexual and general recidivism.”<sup>9</sup>

### **The Critical Role of Community Supervision for Sex Offenders**

Given the lack of clear and convincing information about sex offenders and our inability to predict with precision which offenders will reoffend, many advocate for the longest possible sentences for these offenders. While this may be the best alternative for some offenders – particularly those who commit the most heinous offenses and are the most likely to reoffend – it may not be the most compelling course of action for many of the cases coming through our courts today.

The simple truth is that the majority of sex offenders are released into the community *at some point*, and many are only briefly incarcerated or are not detained at all. Given this, we must ask ourselves two questions: “Under what circumstances is a sex offender least likely to reoffend?” and “What can we do to reduce the likelihood of reoffense?” While we cannot assuredly say that sex offender-specific treatment completely eliminates the likelihood of reoffense, we can say with assurance that those offenders who are under correctional supervision – in combination with sex offender-specific treatment – are *less likely* to reoffend. Thus, the field is fairly well united in the belief that the responsible management of sex offenders includes rigorous supervision and sex offender-specific treatment. This provides a compelling argument – and a call to each community in this country – to make the establishment of a comprehensive system to manage these offenders a high priority.

### **The Elements of a Comprehensive Management System**

Experience in jurisdictions across the country suggests that there are two essential elements to the effective management of sex offenders under community supervision. In general terms, these two elements are the supervision of sex offenders by professional staff who are expert in working with these cases, and the provision of sex offender-specific treatment by professional staff who also have expertise in working with this population.

#### *Effective Supervision*

Sex offenders are different from most other offenders under community supervision. As one judge noted, “The person you expect in the courtroom when you think of a sex offender is not the one who typically stands before you.” Most sex offenders do not look the part of our stereotyped sex offender, or even act the part most of the time. They often do not present themselves as individuals who are likely to cause serious harm. In many cases, they can appear as among the most “mainstream” of all offenders: they often have families, are well educated, and have stable employment. Until recently, supervision staff may have observed that sex offenders were among the easiest, most compliant offenders on their caseloads. However, it is this very para-

dox – that sex offenders can and often do lead dual lives – that requires a unique approach to community supervision.

Standard conditions and methods of supervision are not sufficient to effectively manage these cases. Instead, community supervision officers must be educated about sexual offending patterns, must develop a keen awareness of the history and patterns of these offenders, and must move supervision out of the office and into the community. They must be especially observant and vigilant in enforcing supervision conditions and acting upon violations.

The following is a sampling of the kind of special conditions that are unique to sex offenders but routinely added to “standard conditions” in communities around the country:<sup>10</sup>

- Active participation in specific treatment for sex offenders until successfully discharged by the treatment team.
- No contact with the victim and/or the victim’s family.
- Payment for victim treatment through a probation escrow account.
- No contact with those under eighteen; full, appropriate dress when public view is possible; no non-therapeutic contact with other known sex offenders; no contact with pornographic materials.
- No work or volunteer activity where those under eighteen are likely to be encountered.
- Driving after dark prohibited; prohibited from areas where children are likely to congregate; prohibited from hitchhiking; restricted travel outside of the community.
- Disclosure of offense history is required to landlord, employer, police department, and school authorities, as applicable.
- Residence must be approved by the supervision agency; no unapproved visits with family; curfew may be imposed.
- No purchase, possession, or consumption of alcohol or drugs; testing as requested.

#### *Appropriate Treatment*

Because sex offenders are unlike other types of criminals, standard mental health treatment practices are not adequate to address their needs. Therapists who are not trained to work with this special population are ill prepared to deal with the complexity of these cases, the offenders’ seemingly paradoxical behavior, their highly manipulative personalities, and their secretive lifestyles. Conventional therapeutic approaches can allow the behavior of these offenders to remain unchecked, even after criminal justice intervention. Worse, inexperienced or ill-qualified therapists can be manipulated by sex offenders, just as others can be so manipulated. The best experience and current research tell us that only with sex offender-specific treatment, provided by professionals offering services that conform to the most recent literature about effective therapeutic interventions with this population, can we hope to disrupt the patterns of behavior that lead to reoffense.

9. Hanson & Bussière, *supra* note 5, at 358.

10. K. English, S. Pullen, L. Jones, & B. Krauth, *A Model Process: A Containment Approach*, in *MANAGING ADULT SEX OFFENDERS: A*

*CONTAINMENT APPROACH*, sect. 1, pt. 2, p. 30 (K. English, S. Pullen, & L. Jones, eds.) (1996). This report is available from the American Probation and Parole Association, Lexington, Kentucky.

## Collaboration: The Key to Effective Management

As we look at jurisdictions across the nation and examine the approaches to sex offender management developed over the past several decades, the most common denominator, the thread that can be found throughout, is collaboration.

When systems collaborate, they work together toward a common goal. Each entity within that system upholds their piece of the process, but does so in harmony with others. In this instance, the factions of a system do not work at cross purposes or make the work of the other more difficult. Instead, members of the system strive to achieve the optimal outcome, and increase their likelihood of doing so through a cohesive response.

One of the lessons learned about sex offenders is that information and disclosure are key ingredients to breaking the sexual offending pattern. Sex offenders rely on a system that allows them to keep the nature of their activities secret. Only through the confrontation of those secrets does the offender begin to deal with the behavior that jeopardizes the safety of victims. Thus, each of us in the system carries specific responsibility for dealing with sex offenders:

- Law enforcement officers serve as critical examiners of evidence to determine whether a crime contains a sexual component, and, when this is the case, to seek as much factual information as possible.
- Prosecutors must make appropriate charging decisions and refuse to plead sexual assault cases to non-sexual assault cases. The negotiation of such pleas by the prosecution, or the acceptance of them by the court, diminishes the likelihood that sex offenders will be confronted by the very behavior that resulted in their arrest.
- Community supervision agencies must recognize the extraordinary complexity of sex offender cases. They must ensure that talented, trained staff assume responsibility for these offenders, and they must support their officers in doing so. Officers must carefully monitor sex offenders on their caseloads and become proactive problem-solvers, ever vigilant in ensuring that the offender is held accountable and is in compliance with the court's orders.
- Treatment professionals must hold themselves to the highest standards as well, and remain current on emerging research and practice in this area. They must let go of traditional codes of confidentiality. In most therapist/client relationships, information obtained during treatment sessions is confidential; however, in the field of sex offender management, there can be no promise of confidentiality when further victimization is at stake. This kind of information must be exchanged between treatment providers and supervising officials in order to ensure all possible steps are taken to reduce the likelihood of reoffense. Secrets are the power base of the sex offender. In the field of sex offender management, secrets are carefully avoided.
- In communities across the country, we see barriers dissolve that once kept criminal justice and victims on opposite

sides of the fence. Victim advocates are now partnering with criminal justice professionals in a wide array of activities. There are even victim advocates in the offices of supervision staff, partnering in the monitoring and supervision of cases.

- In responding to cases of adolescent sex offenders, the collaboration expands to a network of others, including families, school staff, and social services workers. With both adult and adolescent offenders, families and significant others become key members of a network of community members who assume responsibility for supervising the offender.

### *The Court's Role in the Collaborative Process*

Judges are uniquely positioned to ensure that offenders receive the supervision and treatment that is paramount to reducing recidivism risk. It is critical that judges set special conditions that are uniquely designed for these offenders and monitor compliance with those requirements to increase the likelihood of successful outcomes. Judges can play a key role in ending the cycle of abuse by requiring that offenders actively participate in treatment services offered by qualified providers. Finally, judges must insist that the community supervision agency monitor the offender carefully.

In order to make appropriate sentencing decisions on sex offender cases, judges must understand the cases before them. Some of the information judges should have at their disposal in sex offense cases include:

- Complete information about the offender's criminal history to determine whether there is a known pattern of sexual offending;
- Complete information about the current offense – to determine the offender's motivations, and the extent and nature of the victimization;
- The preparedness of the supervision agency to provide careful monitoring and supervision of the offender; and
- The availability of sex offender-specific treatment services.

When deciding sex offense cases, judges must consider whether the acceptance of a plea will result in masking the true nature of the crime. By allowing a sex offender to plead to a non-sexual offense, or to enter a no-contest plea (also known as an *Alford* plea), an offender may be able to avoid treatment, diminishing the likelihood that the cycle of abuse will come to an end. No-contest pleas can also result in offenders denying their offenses once in treatment; those in denial are often the most difficult offenders to treat. This type of plea can also hinder resolution of the crime for the victim.

Judges must also consider the length of community supervision to impose – either in lieu of or in addition to incarceration – that is appropriate in each case. Longer periods of supervision provide a greater safety net with sexual offenders; it is wiser to decrease initial probation terms than to lack the ability to increase them when more supervision and surveillance is necessary. Some states have addressed this issue by developing lifetime supervision laws for sexual offenders.<sup>11</sup> However, no

11. Arizona, Colorado, New Hampshire, and Rhode Island all have implemented such laws.

empirical information is yet available to indicate the "ideal" period of supervision for sex offenders.

In the collaborative process, the court must require that the supervision and treatment agencies work closely together to monitor these cases and that they are steadfast in requiring compliance with conditions. Judges need to ensure that both supervision and treatment respond quickly when those conditions are violated. When violations occur, sound counsel should be provided regarding the appropriate response to the violation and the imposition of tighter controls where continued community supervision appears appropriate.

### Preventing Revictimization

Without question, sexual assault is among the worst kinds of victimization. An alarmingly high number of victims of sexual assault know their assailants, and research tells us that this is the most difficult kind of victimization to overcome.

There is much to learn from victimization surveys. These data tell us that most victims of sexual assault do not come forward. It is believed that this is largely due to the shame the victims feel, their fear of persecution, and, where the perpetrator is a family member, a sense of responsibility for disrupting the family.

The criminal justice system is designed to reduce victimization. Yet the system too often results in the revictimization of the innocent. Recognizing this, many jurisdictions around the country are forming stronger partnerships with victim advocacy organizations to provide support to victims and to establish court and supervision processes that guard their safety.

### Assistance to the Courts and the Field

Today, increasingly greater resources are being invested in exploring the issue of sex offender management. Over the past several years, the Justice Department and others have begun to assist courts and other criminal justice professionals to enhance their sex offender management practices.

In 1997, the Office of Justice Programs at the U.S. Department of Justice, in cooperation with the State Justice Institute and the National Institute of Corrections, established the Center for Sex Offender Management (CSOM) to serve as a national training and technical assistance resource. CSOM is working to implement recommendations that emerged from a National Summit that OJP convened in November 1996, and is collaborating with a number of jurisdictions around the country that have already developed promising, collaborative approaches to sex offender management. CSOM is monitoring, learning from, and supporting these "resource sites," as well as disseminating information about effective approaches to the rest of the criminal justice and treatment communities. CSOM is also designing and delivering a series of training programs around the country, and providing technical assistance to

selected jurisdictions as they undertake new efforts to develop comprehensive, collaborative strategies to respond to sex offenders in their communities.

In addition to these efforts, the Justice Department's Office of Justice Programs is also supporting several major research initiatives to better understand the adult sex offender population and the risk of recidivism, as well as the typologies of adolescent sex offenders and their treatment needs. And one of OJP's collaborating partners, the State Justice Institute, is supporting the development of a video-based training curriculum for judges on sentencing issues related to sex offenders, which will be pilot-tested later this year, and then made available to the judicial educator in each state and all of SJI's libraries in late 1999.

### Conclusion

There are additional steps the judiciary should be taking to address this issue. First, I would encourage judges to educate themselves about the issues involved in dealing with this special population of offenders.<sup>12</sup> Second, the court has a critical role as a leader in this area. So I urge you to reach out to those in your jurisdictions who are also concerned about this issue: prosecutors, the defense bar, probation, treatment providers, and the victims community. Work together to understand the issues and to develop practices in your community that promote justice and safety in these cases. By working together, we can find ways to effectively manage sex offenders, to care for victims, and to ensure the safety of our communities.

### For Additional Resources

For additional information about the Center for Sex Offender Management (CSOM) or the video-taped seminar for judges on sentencing sex offenders, visit the CSOM Website at [www.csom.org](http://www.csom.org) or call (301) 589-9383.



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12. The literature in this area is evolving. Three current texts that offer a fuller discussion on many of the issues presented here are: W. L. Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offender* (1990); B.K. Schwartz & H. R. Cellini (Eds.), *The Sex Offender:*

*New Insights, Treatment Innovations and Legal Developments*, Volume II (1997); and K. English, S. Pullen, & L. Jones (Eds.), *Managing Adult Sex Offenders: A Containment Approach* (1996). This report is available from the American Probation and Parole Association, Lexington, KY.