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## Community Treatment and Supervision of Sex Offenders: How It's Done Across the Country and in California

*By Marcus Nieto*

*Requested by Assembly Member Sharon Runner*

DECEMBER 2004

CRB 04-012

C A L I F O R N I A

R E S E A R C H B U R E A U

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ISBN. 1-58703-196-5

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## INTRODUCTION

Sexual crimes strike particular fear in our collective conscience, especially if the victims are children. It appears to be a growing category of crime. Since 1980, the number of imprisoned sex offenders has grown by more than seven percent per year, and in 1994, nearly one in 10 state prisoners were incarcerated for committing a sexual offense.<sup>1</sup> It is estimated that in the United States today there are over 265,000 convicted sex offenders under the jurisdiction of correctional agencies, with more than one half under some form of community supervision.<sup>2</sup> According to figures from the State Attorney General's Office, in California there are approximately 102,000 registered sex offenders of which 67,000 are under some form of community supervision.<sup>3</sup>

All states require that sex offenders on parole or probation register with their local law enforcement agency.<sup>4</sup> In addition, states are designing new techniques for managing and supervising sex offenders including individual and group therapy, dedicated parole caseloads, and lifetime supervision. However, many of these programs have limited funding. Many paroled sex offenders with learning disabilities and mental illness, for example, do not receive the same level of supervision as other sex offenders because it is not practical or feasible to have specially trained parole agents or case managers for this population. In many states including California, many paroled sex offenders do not receive specialized treatment or therapy as part of their supervision.

States are taking a number of different approaches to managing and supervising sex offenders once they are released from incarceration. One trend is to require sex offenders to participate in formal medical treatment programs as a condition of release. In a growing number of states, the most serious sex offenders are classified as sexual predators and are likely to remain incarcerated for indeterminate periods or undergo extended periods of specialized treatment in secure facilities. By 1998, 12 states (including California) had passed sexual predator laws that authorized limited or indeterminate periods of confinement and treatment in secure settings. Today, that number has grown to at least 17 states (see Table 1). Only California's law calls for a time-limited confinement of two years in the state department of mental health, with the possibility of extension.<sup>5</sup>

The purpose of this study is to examine community placement trends involving the least serious to the most serious sexual offenders, what the placement process involves, who is responsible, who is involved, when the community is notified, and to review the most successful treatment trends. In addition, California sex offender policies and practices will be examined and compared to national trends and innovations in specialized sex offender treatment and management supervision.



## **HOW STATES MANAGE SEXUAL PREDATORS: AN OVERVIEW OF PROCEDURES AND TREATMENT**

The term “sexual violent predator” (SVP) applies to offenders who target strangers, have multiple victims, or commit especially violent offenses of a sexual nature. Many states have enacted sexual predator laws that authorize the confinement and treatment of these types of offenders following completion of their criminal sentences. Key features of these laws include the following:

- Civil or psychopathological commitment of an SVP follows a criminal sentence and is to some extent an alternative to criminal sentencing.
- Criminal law particularly targets repeat sex offenders; civil commitment statutes can be used on individuals convicted of sex offenses for the first time.
- Persons committed to a sexual predator facility remain until they are judged safe to be released, either to a less restrictive environment or to the community. Individuals who were judged to be poor candidates for specialized treatment or who did not make adequate progress after they were admitted could be returned to the court for re-sentencing under criminal laws.

There are a number of state predator laws with variations in definition. In comparing state statutes, some differences emerge:

- Most states require the “beyond a reasonable doubt” standard used in criminal proceedings as the burden of proof for commitment; others use the lower standard of “clear and convincing evidence.”
- A few states (Illinois, Washington, and Wisconsin) specifically provide that juveniles may be civilly committed, while others (Arizona and Florida) allow commitment only of persons who are 18 years of age or older. The other states with SVP laws do not commit juveniles.
- California law allows a two-year confinement period, after which the inmate is entitled to a hearing. Other states with SVP laws authorize indeterminate periods of confinement.<sup>6</sup>

### **SEX OFFENDER CIVIL COMMITMENT PROCESS**

Currently, at least 17 states have enacted laws that allow for the civil commitment of SVP after their release from prison.<sup>7</sup> Most of these state statutes are modeled after Washington and Kansas, which were the first states to enact such laws (see Table 1).<sup>8</sup> Most states require that a SVP be hospitalized for treatment in a secure inpatient facility. Arizona, Illinois, and Minnesota hospitalize some SVP when necessary but emphasize community treatment programs. The typical process for civil commitment proceedings is summarized as follows:

- A person has been convicted of one or more sexually violent offenses and is scheduled for release from incarceration.
- The person is assessed to determine whether he or she meets the statutory definition of a sexually violent predator, usually by Department of Corrections or Department of Mental Health staff or an assessment team established for this purpose. This assessment is forwarded to the county prosecutor, state attorney general, or the district attorney in the county where the offender was last convicted.
- The county or state attorney decides whether there is sufficient evidence to file the case.
- For cases that are filed, the court determines whether probable cause exists to believe that the person is a sexually violent predator.
- Within 30 to 60 days after the determination of probable cause, a trial is held to determine whether the person is a sexually violent predator. The person has the right to an attorney, jury trial, and examination by an expert of his or her choice.
- If the court or jury determines that the person is a predator, the person is committed to the state facility for control, care, and treatment until the person's mental disorder has so changed that he or she is safe to be at large or can be released to a less restrictive alternative.

### ***Texas***

In Texas, the Department of Criminal Justice or the Department of Mental Health and Retardation initiates the process to determine if the offender, who is about to be released from prison or a state hospital, should be subject to civil commitment. A Multidisciplinary Team (MDT) consisting of members from the Council on Sex Offender Treatment (CSOT), Texas Department of Criminal Justice, Texas Department of Criminal Justice-Victim Services, Texas Department of Mental Health/Mental Retardation, and Texas Department of Public Safety reviews the request to determine if the offender should be tried for civil commitment. To be committed, the sex offender must have a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence as defined in Texas law (*Criteria in Health & Safety Code 841.003*). Once the MDT determines that the sex offender should be tried for civil commitment, a Special Prosecution Unit and the Office of State Counsel for Offenders represent the interest of the state and the offender at the civil commitment court proceedings. All trials are held in Montgomery County, Texas, and the state is responsible for the costs of the proceedings that cannot exceed \$2,500.00 per case.<sup>9</sup>

If a judge or jury determines that the Texas offender is a SVP, and is therefore subject to civil commitment, he is conditionally released without hospitalization to the custody and supervision of a case manager. As part of the treatment program, the SVP is monitored with Global Positioning System devices, subject to polygraph and penile plethysmograph tests (these are described later on page 28) to assess their control of sexual urges, and required to attend outpatient treatment sessions that include individual and group therapy.



Failure to comply usually results in the SVP being sent back to prison. The offender will remain on civil commitment indeterminately, or until his behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. The SVP is entitled to a biennial review presented by the case manager to a judge to determine if his behavior abnormality has changed. If there is evidence that it has, the judge shall set a hearing before a jury to determine the outcome. According to an official from the Texas CSOT, as of July 2004, no SVP has been released from the treatment program.<sup>10</sup> The treatment program began in 1997.



**Table 1**  
**Sex Offender Civil Commitment States**

State	Eligible Offenders/Offenses and Likelihood Standards	Responsible Agency	Treatment Setting	Standard of Proof	Judge/Jury	Period of Confinement	Release Authority
<b>Arizona</b>	Individuals at least 18 years old. Standard: Likely to engage in sexual violence.	Health Services	Hospital or community out patient setting	Beyond a reasonable doubt	Yes; 3/4 Rule	Indeterminate	Court
<b>California</b>	Individuals at least 18 years old with two or more victims. Standard: The person is a danger to the health and safety of others in that he or she will engage in sexually violent criminal behavior.	Mental Health	Hospital	Beyond a reasonable doubt	Yes; unanimous	2 years; can be extended by court with additional petition and trial	Court
<b>Florida</b>	Individuals at least 18 years old. Standard: Likely to engage in acts of sexual violence.	Children and Family Services	Hospital	Clear and convincing evidence	Yes; unanimous	Indeterminate	Court
<b>Illinois</b>	Can include juveniles between 14-18 years old. Standard: Substantially probable that the person will engage in acts of sexual violence.	Human Services	Secure facility or community out patient setting	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Iowa**</b>	Standard: Likely to engage in predatory acts constituting sexually violent offenses.	Human Services	Forensic Mental Health within Corrections	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Kansas**</b>	Standard: Likely to engage in predatory acts of sexual violence	Social and Rehabilitative Services	Correctional Mental Health facility	Beyond a Reasonable Doubt	Yes; unanimous	Indeterminate	Courts
<b>Massachusetts</b>	Individuals at least 18 years old. Standard: Likely to engage in further acts of sexual predatory conduct	Mental Health	Hospital	Beyond a reasonable doubt	Yes; unanimous	Indeterminate (one day to life)	Court or jury
<b>Minnesota**</b>	Standard: Likely to engage in acts of harmful sexual conduct.	Human Services	Hospital or community out patient setting	Clear and convincing evidence	No	Indeterminate	Commissioner
<b>Missouri**</b>	Standard: Individual is a menace to the health and safety of others and is likely to engage in predatory acts of sexual violence	Mental Health	Secure facility	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>New Jersey</b>	Individuals at least 18 years old. Standard: Has a mental disorder that makes the person likely to engage in sexual violence.	Human Service	Secure facility operated by the Department of Corrections	Clear and convincing evidence	No	Indeterminate	Parole Board

<b>Table 1 (Continued)</b>							
<b>Sex Offender Civil Commitment States</b>							
<b>State</b>	<b>Eligible Offenders/Offenses and Likelihood Standards</b>	<b>Responsible Agency</b>	<b>Treatment Setting</b>	<b>Standard of Proof</b>	<b>Judge/Jury</b>	<b>Period of Confinement</b>	<b>Release Authority</b>
<b>North Dakota**</b>	Standard: Likely to engage in further acts of sexual predatory conduct	Human Services	Hospital	Clear and convincing evidence	Yes; unanimous	Indeterminate	Court
<b>Oklahoma**</b>	Standard: Likely to engage in a predatory act of sexual violence	Mental Health	Secure facility	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>South Carolina**</b>	Standard: Likely to engage in acts of sexual violence	Mental Health	Secure facility	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Texas**</b>	Standard: The individual suffers from a behavioral abnormality that makes them likely to engage in a predatory act of sexual violence.	Council on Sex Offender Treatment	Community Outpatient Setting	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Washington**</b>	Individuals must meet definition of "predatory." Predatory defines as act directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization. Standard: Likely to engage in predatory acts of sexual violence.	Social and Health Services	Mental Health facility within Department of Corrections	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Virginia**</b>	Standard: The Individual is deemed a danger to the health and safety of others in the community and is likely to commit future acts of sexually violence.	Department of Mental Health, Mental Retardation, and Substance Abuse	Hospital	Clear and convincing evidence	Yes; unanimous	Yearly for up to 5 years; can be extended by the court every 2 years	Court or jury
<b>Wisconsin</b>	Can include juveniles (14-18). Standard: Substantially probable that the person will engage in acts of sexual violence.	Social Services	Hospital	Beyond a reasonable doubt	Yes; 5/6 Rule	Indeterminate	Court
Source: Washington State Institute for Public Policy, 1998 Updated by the CRB, 2004. **Denotes individual as an adult of at least 21 years old.							

There have been several challenges to Sexual Violent Predator (SVP) commitment laws across the country. According to the American Psychiatric Association, opposing such laws is necessary “to preserve the moral authority of the profession and ensure continuing societal confidence in our medical treatment model.”<sup>11</sup> Some psychiatric professional groups have also expressed concern over SVP laws on the grounds that civil commitment should be seen as the last response of a continuum of medical treatment options.\*

The U.S. Supreme Court in 1997 decided in a 5-4 decision that the Kansas SVP Act (*Hendricks vs. Kansas*) did not violate the U.S. Constitution. The U.S. Supreme Court’s decision on that case upheld the constitutionality of state laws that provide for the civil commitment of sexually violent predators for treatment purposes.

In a 2002 state case (*Kansas vs. Crane*), the U.S. Supreme Court overturned a Kansas Supreme Court ruling that the civil commitment procedure had to include a finding that the offender (Crane) was unable to control his violent sexual proclivities and thus posed a danger to the community (a stricter standard than the one the district court applied in allowing Crane to be committed). The U.S. Supreme Court reversed the decision of the Kansas Supreme Court, using the case as its opportunity to clarify what standard it expected states to use. In his majority opinion, Justice Breyer emphasized that the trial court was correct in its interpretation that the U.S. Supreme Court’s *Hendricks* decision did not require a showing of “*total or complete* lack of control” over sexual behavior. But that is not to say, Justice Breyer pointed out, that there does not have to be “*any* lack-of-control determination.”<sup>12</sup>

California’s SVP law has also been the subject of a legal challenge. The case of *Santa Clara County vs. Christopher Hubbart* questioned whether civil commitment violated the constitution’s guarantees of due process and equal protection. On January 21, 1999 the California Supreme Court decided that California’s SVP Act is constitutional both on its face and as applied to Hubbart.

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\* Association for the Treatment of Sexual Abusers, Position Paper, March 20, 2001. Offenders should have the opportunity to participate in treatment before they are considered for civil commitment. Usually this means access to treatment within the prison environment. Ideally, the evaluation of sexual offenders should occur before sentencing. Granting parole or any type of early release would be related directly to progress in treatment and other measures of reduced recidivism risk. The option of long-term or life-long specialized parole and probation could also serve as an appropriate method of managing highest risk offenders and could serve as an alternative to civil commitment where appropriate.



## **OTHER STATE APPROACHES TO SPECIALIZED SEX OFFENDER TREATMENT, COMMUNITY SUPERVISION, AND COMMUNITY NOTIFICATION**

Many state correctional systems either require or provide incentives for sex offenders to participate in prison-based specialized sex offender treatment programs before they are paroled to the community. Other states provide both prison-based treatment and aftercare as part of community supervision. Some states provide only specialized aftercare treatment for sex offenders during parole, including California.

Formal specialized sex offender treatment programs are being conducted in 34 state prison systems. California is not one of them. Specialized sex offender treatment programs in seven states were established by legislation: Colorado, Hawaii, Kentucky, Missouri, Oklahoma, Tennessee, and Texas. All other state specialized sex offender treatment programs were administratively established. The duration of treatment for sex offenders in 28 states is for one year or more, including 19 that conduct up to three years, and eight that conduct more than three years of treatment.<sup>13</sup>

A recent survey of state specialized sex offender treatment programs undertaken by a correctional agency in Colorado details the extent of prison-based treatment programs as shown in Table 2.

<b>Table 2</b>					
<b>State Specialized Sex Offender Treatment Programs+</b>					
<b>Programs and Populations</b>	<b>Formal Treatment Program)</b>	<b>Duration of Program</b>	<b>Number of Sex Offenders in Prison</b>	<b>Percentage of Prison Population /Sex Offense</b>	<b>Sex Offender Treatment Capacity</b>
Alaska	Yes	20 to 36 Months	496	24%	150
Arizona	Yes	3 to 5 Years	3,299	13%	274
Arkansas	Yes	1 Year	1,653	15%	150
Colorado	Yes	2 or Years	3,391	22%	230
Connecticut	Yes	6 Months	2,295	13%	325
Georgia	Yes	9 Months	4,839	11%	120
Hawaii	Yes	1 to 3 Years	634	18%	110
Illinois	Yes	12 to 18 Months	6,496	14%	150
Indiana	Yes	180 Hours	2,701	14%	*All are Monitored
Iowa	Yes	2 to 2 ½ Years	1,228	17%	180
Kansas	Yes	18 Months	2,002	23%	316
Kentucky	Yes	At Least 2 Years	2,000	14%	325
Massachusetts	Yes	6 Years or More	2,769	26%	690
Michigan	Yes	1 Year	9,756	21%	1,100
Minnesota	Yes	18-36 Months	1,164	20%	300+
Missouri	Yes	12 to 15 Months	3,500	14%	275
Montana	Yes	3 Years or More	465	33%	150
New Hampshire	Yes	12-16 Months	633	27%	120
New Jersey	Yes	3 to 4 Years	2,052	7%	800+
New York	Yes	6 Months	6,272	8%	530
North Carolina	Yes	5 Months	5,101	16%	75
North Dakota	Yes	2 to 5 Years	161	17%	60
Ohio	Yes	Up to 3 Years	9,100	19%	525
Oklahoma	Yes	3 Years or More	2,200	10%	160
Pennsylvania	Yes	18 to 24 Months	6,931	19%	1,200
Rhode Island	Yes	6 Months	405	13%	100
South Carolina	Yes	1 to 2 Years	2,300	10%	100
South Dakota	Yes	Up to 2 Years	550	22%	100
Tennessee	Yes	3 to 4 Years	3,036	18%	105
Texas	Yes	12 to 18 Months	25,398	17%	307
Vermont	Yes	1 to 3 Years	362	29%	70
Virginia	Yes	2 years or More	5,400	18%	300
Washington	Yes	Up to 3 Years	3,117	22%	200
Wisconsin	Yes	Up to 3 Years	4,000	19%	300
<b>Totals</b>		<b>Avg. 24 months</b>	<b>Annual 119,468</b>	<b>Avg. 17.4%</b>	<b>Avg. capacity 300</b>

Source: Source: Sex Offender Treatment Survey, Colorado Dept. of Corrections, November 2000.  
 \*All sex offenders are monitored from prison reception through parole.

According to the Colorado survey, the majority of states with prison-based sex offender treatment programs have limited capacity and therefore place many eligible offenders on waiting lists.

According to the survey, state programs with the highest number of treatment staff are Michigan (86), Texas (65), and Massachusetts (54). Twenty-one states require state licensing or certification of treatment staff, and three require only a masters or higher



level degree. In five states, the only requirement is sex offender-specific training. Most states have counselor to participant ratios of one to 10. In two states, one counselor facilitates groups of up to 20 participants. Seven states have only one or two counselors—for eight to 12 participants in four states, as few as six participants in one state, and as many as 25 to 30 participants in two states.

The cost of institutional prison treatment programs for sex offenders varies from-state-to-state. For example, it costs Kentucky approximately \$28,000 per year to house and treat a sex offender, Minnesota \$13,700 per offender to treat (not to house), Massachusetts \$4,500 to treat (not to house), Alaska \$3,700 to treat (not to house) and Colorado \$8,700 to treat (not to house).

According to the survey, 59 percent of the sex offenders complete their treatment programs. Completion percentages range from five percent in Massachusetts (which has a six year program) to 95 percent in Washington. Vermont and New Hampshire also reported high completion rates of 90 percent.

In nine states, aftercare takes place in a community residential center or setting. In 25 states, aftercare takes place on parole. In Massachusetts, a network of statewide community sex offender therapists provides services to inmates released on probation, parole, or discharge from sentence. At the Adult Diagnostic and Treatment Center (ADTC) in New Jersey, weekly aftercare is provided for ADTC parolees, those under lifetime supervision, those released from involuntary civil commitments, sex offenders mandated by their registration tier assignment, and ex-inmates who volunteer for treatment. In Virginia, some offenders may receive intensive post-release supervision or halfway house treatment, and/or continued counseling from community providers. The Alaska Department of Corrections contracts with treatment providers to provide aftercare for parolees that follow the same treatment standards as the institutional programs.<sup>14</sup>

### ***Adult Sex Offenders With Developmental Disabilities***

Many local and state jurisdictions struggle with parole supervision and specialized treatment of adult sex offenders with developmental disabilities. There is very little research on how states approach treating sex offenders with disabilities. In fact, only a few states have developed guidelines and treatment protocols for sex offenders with developmental disabilities. Some states including California house developmentally disabled sex offenders in secure dedicated facilities with other developmentally disabled patients.

The state of Vermont was awarded a federal grant to improve the state's management of sex offenders with developmental disabilities. The grant is being used to create a written policy for the management of these offenders; to develop a data management system; to educate the criminal justice and judicial systems about this population; to develop a best practices manual for working with sex offenders with developmental disabilities; to conduct training for supervision and treatment staff; and to develop a legal curriculum for this kind of offender.<sup>15</sup>

The Colorado Sex Offender Management Board and the Texas Sex Offender Council are examples of two states that have recently expanded existing state policies and guidelines for supervising and treating developmentally disabled sex offenders in prison and in the community. Some of the overlapping principles are:

- Sex offenders with developmental disabilities pose just as clear a threat to public safety as sex offenders without developmental disabilities.
- There is nothing inherent in the presence of developmental disabilities that causes sexual offending.
- Sex offenders with developmental disabilities should be offered treatment that is appropriate to their developmental capacity, their level of comprehension, and their ability to integrate treatment material and progress.<sup>16</sup>

Progress in treatment is generally slower for developmentally disabled sex offenders. The need for simple, direct language and difficulty with concepts and abstractions add to the difficulties. Group therapy is considered the best approach to controlling deviant sex behavior for this population. Evaluating the offender's level of cognitive impairment and contracting with treatment providers who are well versed in sex offending behavior and developmentally disabled individuals are essential to successful supervision. Supervising sex offenders with disabilities also requires a higher degree of collaboration with other governmental and social service agencies such as departments of mental health, social services, group home staff, and others that may be involved closely in the offender's daily life.

## **APPROACHES TO SPECIALIZED SEX OFFENDER TREATMENT**

Many of today's specialized sex offender treatment programs are designed with public safety as a top priority. In addition, they seek to provide a cost-effective approach to reducing recidivism, by combining prison-based education, cognitive-behavioral management, and risk assessment with post-release treatment, supervision, and monitoring. Correctional agencies are typically using three approaches in sex offender treatment although in practice, these approaches are not mutually exclusive and are increasingly used in various combinations.<sup>17</sup>

- The *cognitive-behavioral approach*, which emphasizes changing patterns of thinking that are related to sexual offending and changing deviant patterns of arousal. Most state treatment program components and therapeutic strategies are based on the approach;
- The *psycho-educational approach*, which stresses increasing the offender's concern for the victim and recognition of responsibility for their offense; and
- The *pharmacological approach*, which is based upon the use of medication to reduce sexual arousal. Anti-androgens such as Depo-Provera act by reducing testosterone and may be helpful in controlling arousal when these factors are undermining progress in therapy or there is increasing risk of re-offending.

Antidepressants and medications targeting obsessive-compulsive symptoms are also useful. Likely candidates for pharmacological treatment are those who are predatory, violent, have prior treatment failures, and have an inability to control deviant sexual arousal.

To prepare program participants for cognitive-behavioral work, a number of programs provide classes, workbooks, and low-intensity discussions to introduce sex offenders to the need for accountability and knowledge of deviant thinking and behavior. In some programs, this component is the first phase of treatment; in others, successful completion of this phase is a prerequisite to admission to the program.

Specialized sex offender treatment and management is different from traditional mental health counseling and psychotherapy because the focus is on protecting the community, sharing personal information with other professionals and criminal justice personnel, and understanding the harm done to the victim. In some ways these approaches to sex offender treatment parallel the 12-step alcoholics anonymous and therapeutic drug treatment programs in that changing or controlling deviant behavior, developing internal coping mechanisms, recognizing the victim, and taking responsibility for the crime are central to the treatment. When combining these approaches, most states require offenders to gradually complete each phase of the treatment as they begin to understand who they are, what they did, and who they hurt.

Table 3 summarizes the results of a survey of approaches to specialized sex offender treatment throughout the United States.

Table 3 State Specialized Sex Offender Treatment Program Components							
Program Components	Assessment for Treatment (tools)	Orientation to Treatment	Psycho-education (P) /Education (E)	Cognitive Behavior	Intensive Treatment (Group)	Transition to Community	Aftercare
Alaska	5	Yes	E	Yes	Yes	Yes	Yes
Arizona	4	Yes	P	Yes	Yes	Yes	Yes
Arkansas	1	Yes	P	Yes	Yes	Yes	No
Colorado	14	Yes	P	Yes	Yes	Yes	Yes
Connecticut	5	Yes	E	Yes	No	No	Yes
Georgia	1	No	P	Yes	No	No	Yes
Hawaii	1	No	N/A	Yes	No	Yes	Yes
Illinois	7	Yes	No	Yes	No	Yes	Yes
Indiana	6	Yes	E/P	No	Yes	No	Yes
Iowa	3	Yes	E	Yes	No	Yes	Yes
Kansas	4	Yes	P	Yes	Yes	Yes	Yes
Kentucky	5	Yes	E/P	Yes	No	No	Yes
Massachusetts	12	Yes	P	Yes	Yes	Yes	Yes
Michigan	5	No	P	Yes	No	No	Yes
Minnesota	3	Yes	P	Yes	Yes	Yes	Yes
Missouri	3	Yes	P	Yes	NO	No	Yes
Montana	3	No	E	Yes	Yes	No	Yes
New Hampshire	1	No	E	Yes	Yes	No	Yes
New Jersey	8	Yes	E/P	Yes	Yes	Yes	Yes
New York	3	Yes	No	Yes	No	No	Yes
North Carolina	5	No	P	Yes	Yes	No	No
North Dakota	6	Yes	E	Yes	Yes	Yes	Yes*
Ohio	4	No	P	Yes	Yes	No	Yes
Oklahoma	9	Yes	E	Yes	Yes	Yes	Yes
Pennsylvania	4	Yes	P	Yes	Yes	Yes	Yes
Rhode Island	N/A	Yes	P	Yes	No	Yes	Yes
South Carolina	7	No	E	Yes	Yes	No	No
South Dakota	4	No	P	Yes	No	No	No
Tennessee	8	No	P	Yes	Yes	Yes	Yes
Texas	5	Yes	P	Yes	Yes	Yes	Yes
Vermont	6	No	P	Yes	Yes	Yes	Yes
Virginia	8	No	P	Yes	Yes	No	No
Washington	3	Yes	E/P	Yes	No	No	Yes
Wisconsin	1	Yes	P	Yes	Yes	No	Yes

Source: Sex Offender Treatment Survey, Colorado Dept. of Corrections, Nov 2000.  
\*Sex offenders are referred to regional human service centers.

All 50 states mandate the drawing of DNA samples from convicted sex offenders, so they may be housed in databanks and used by law enforcement agencies to help identify criminal suspects and make arrests.<sup>18</sup>

Some research indicates that specialized sex offender treatment programs, which provide coordinated supervision from prison reception through parole works best. This requires that base-line information on each offender be gathered and systematically shared among

correctional agencies and everyone else involved in treating the inmate. It requires sex offenders to waive confidentiality.

The perception of enhanced risk of repeat offense provides a backdrop for the current approach many states have initiated to treat and penalize sexual criminals. In accordance, many states require combinations of either lifetime supervision for sex offenders, DNA testing, law enforcement registration, community notification, polygraph testing, civil commitment, and mandatory sex offender prison treatment. Some state management approaches to sex offender treatment and supervision stand out.

### ***Connecticut***

In Connecticut there is a unique and successful local collaboration in New Haven between the Court Support Services Division (which houses probation), sex offender treatment providers, and a victim advocate. The victim advocate, hired with funds from the Court Support Services Division, serves as part of the sex offender supervision team.<sup>19</sup>

Connecticut's approach to sex offender treatment is a variation of what is referred to as "restorative justice," which is gaining favor in the New England region, and other communities across the country and Canada. Restorative justice emphasizes healing the wounds of victims, offenders and communities caused by criminal behavior. Government's role is to preserve public order and to allow the community to build and maintain peace.

### ***Massachusetts***

The Massachusetts Department of Correction (MDC) has established a five-phase comprehensive treatment program for sex offenders. Inmates are identified as sex offenders immediately upon commitment to the department. All identified sex offenders willing to enter the treatment program are transferred to one of three medium security institutions where sex offender programming is available. Inmates refusing treatment remain in a secure (medium security) institution for the remainder of their incarceration, which is usually longer than the time it takes to complete the treatment program. In addition, they will be under high-risk supervision once they are released on parole and reintegrated into the community.<sup>20</sup>

Specialized sex offender treatment is carried out in five-phases. The five phases are:

- *Self-Guided Bookwork* - This phase is conducted independently under the supervision of a treatment provider and completed within six-months.
- *Psycho-Education* - This phase consists of weekly group meetings that provide an introduction to treatment, victim empathy, human sexuality, and relapse prevention. It is completed in three or more months, as determined by the therapist.

- *Treatment/Support Group* - These groups meet for two hours weekly to address common issues such as empathy, denial, and anger.
- *Intensive Treatment* - This includes several types of groups, activities, and classes, and a variety of psychological, psycho-educational, and polygraph assessments. This phase of treatment is expected to continue for 12 to 18 months, but length may vary.
- *Graduate Treatment* - This phase occurs at the Massachusetts Treatment Center; its group sessions focus on transition and relapse prevention.

The first three phases take place in three medium security institutions; phase four is available in one medium security institution for those offenders who progress the furthest. The final phase is an in-house aftercare program in which phase four graduates are used as mentors while they refine their relapse prevention and transition plans. Inmates must be within six years of their earliest projected release date to participate in the treatment program.

Aftercare services for sex offenders paroled from the MDC treatment program is provided by the Massachusetts Parole Board, Intensive Parole for Sex Offenders (IPSO). The IPSO case team is composed of two parole officers who provide supervision and case management to approximately 40 sex offenders, sex offender treatment providers, and a State Police polygraph examiner. Supervision includes at least two home and/or community visits per week, curfews, electronic monitoring, restriction of travel, daily logs maintained by the parolee, surveillance, drug testing, and polygraph examinations.

A total of 114 cases have been supervised by IPSO since its inception in 1994. Since February 1996, 34 offenders (38 percent) had been returned to prison: 30 for parole violations such as drinking, not attending treatment, and missing curfew; and four for a new criminal (nonsexual) offense. No offender has been returned for the commission of a new sex offense.<sup>21</sup>

### ***Wisconsin***

The Wisconsin approach is also a restorative justice variation. The Wisconsin Sex Offender Treatment Network was created as a nonprofit corporation with a volunteer board of directors. Network founders decided that the corporate structure was advisable so that grant funding could be obtained, and that the board would provide organizational guidance and credibility. Board members include a Roman Catholic archbishop, the clinical director of an inpatient prison sex offender treatment program, a prosecuting attorney, a leader in the Native American community, the director of the Department of Corrections, a psychiatrist, a psychologist, and the director of a sensitive crimes unit of a metropolitan police department. Board members meet twice annually for half-day meetings, occasional mail consultation, and other responsibilities. Income is generated from live and videotaped training programs. Over 100 part-time administrators manage the day-to-day operation of the treatment network with board members volunteering to provide program oversight, training curriculum development, and other activities.<sup>22</sup>

## *Texas*

In Texas, the Council on Sex Offender Treatment (CSOT) sets all standards for specialized sex offender treatment in state prisons and local communities, and maintains a registry of sex offender treatment providers. The CSOT has been in existence since 1983. A serious sex offender in state prison must complete a three-phase treatment program that takes up to 24 months before he is eligible for parole release to community treatment. Offenders in this program include sexually violent predators returned to prison on parole violation charges, inmates with a previous sex offense who are not in administrative segregation, and inmates who were convicted of a sex crime. The three phases are:

- *Evaluation and Treatment Orientation* - This phase of treatment consists of training directed towards the offender admitting guilt, accepting responsibility, understanding sexual offending, identifying deviant thoughts, and learning appropriate coping skills. Also, each participant receives a psychological evaluation from which an individual treatment plan is developed (3-6 months);
- *Intensive Treatment* - This phase attempts to restructure deviant behaviors and thought patterns to lower the risk of re-offending. Group therapy and various sanctions and privileges give the offender immediate feedback about their behavior and treatment progress (9-12 months); and
- *Transition and Relapse Prevention* - Participants continue in group therapy while working on behavioral changes and learning coping skills. They also begin to reconnect with their family support or an alternative support system, and learn the responsibilities that are expected to be met by parole officers, free-world treatment providers, and registration laws (3-6 months).

Continued specialized treatment in the community is mandatory for sex offenders who are released early from prison after treatment in this program. A risk assessment team determines the level of treatment and the intensity of supervision a sex offender will receive at the time of his release from prison. According to Texas CSOT officials, however, up to 60 percent of convicted sex offenders do not receive specialized treatment through this program while in prison, nor do they receive treatment while on parole because they do not get out on parole; the sentencing courts require them to complete the full term of their sentence.<sup>23</sup>

## *Vermont*

Vermont is notable for its use of volunteers with sexual predators. Its specialized volunteer program began in 1987 in Chittenden County, when the Vermont Department of Corrections (DOC) recognized that volunteers who were working with sex offenders in state institutions needed specialized training. The program is being replicated in other areas of the state. The Vermont Treatment Program for Sexual Aggression (VTSA), which began in 1988, included volunteer involvement in prerelease planning meetings.

Volunteers are recruited to establish a support relationship for the offender within the community where he is released. All volunteers are given DOC volunteer training and a record check. Volunteers designated to work with sex offenders also receive specialized training, which is provided by probation officers. Prior to release, sex offenders are strongly encouraged to develop their own community support networks. DOC staff supplements these support networks with volunteers. If an inmate has no post-release support, DOC and treatment staff create a volunteer team for support. Once an offender is released and living in the community, parole officers and volunteers hold meetings to discuss signs of potential problems and share their experiences. Volunteers are in frequent contact until the offender has found a job. Such contacts range in frequency from daily to two or three times per week. Volunteers are often recruited through a network of churches. DOC staff view volunteers as a vital part of stabilizing a sex offender's community behavior. With registration, sentencing conditions, and selective community notification, volunteers may offer the only relationship that is not focused primarily on risk management. They provide a significant social link to a "regular life." In addition, volunteers provide models for safe interaction and friendship.<sup>24</sup>

### ***Lifetime Supervision and Risk Assessment***

A number of state and local jurisdictions require lifetime supervision for sex offenders. Lifetime supervision is based on the assumption that sex offending can be a life-long, chronic pattern of abusive behavior, and that sex offenders may be unable or unwilling to control their criminal sexual behavior. Lengthy probation or parole terms have approximately the same effects.

Proponents of lifetime supervision assert that sex offending begins at an early age (between 14 and 20) and that their deviant sexual behavior is well ingrained, well rehearsed, and difficult to control by the time the criminal justice system and treatment providers intervene.<sup>25</sup> Even after treating sex offenders and releasing them back into the community there is a certain risk that they will commit another sex offense. Therefore, proponents believe that the best way to avoid future victimization is through ongoing and extended surveillance and specialized treatment. Such close supervision and surveillance may also improve the ability of supervising officers to prevent or detect changes in offenders' behavior patterns, such as a potential crossover to other types of sex offending, high risk lifestyle changes, or a shift to a new victim group.<sup>26</sup>

In Colorado, the legislature passed a *Lifetime Supervision Act* for convicted sex offenders who participate in prison treatment programs and comply with a broad format of treatment requirements. This approach allows judges to sentence offenders to prison terms and lifetime probation or parole for sexual offenses.<sup>27</sup> Washington also has lifetime supervision for certain sex offenders who have completed civil commitment treatment. In Maricopa County, Arizona, the lifetime nature of the probation sentence, combined with its special conditions and the use of the polygraph, makes this sentence acceptable to many victims of sex offenses. Given the relatively recent emergence of lifetime supervision practices, data regarding the effectiveness of this approach is not yet available.<sup>28</sup>



In New York, a five-member Sex Offender Board of Examiners estimates risk levels for inmates prior to their release. The court in which the sex offender was sentenced is notified of the risk level recommended by the Board and a final risk level to the inmate. *Level 1* and *Level 2* offenders must register at least annually by mail for 10 years, regardless of sentence length. *Level 3* offenders must register every 90 days in person to the local law enforcement agency for life. In addition, the public (community notification) has access to registry information through a 900-telephone number and a directory of all *Level 3* cases, organized by county and zip code.<sup>29</sup>

### ***Sex Offender Registration***

Sex offender registration laws are now commonplace throughout the United States.<sup>♦</sup> Federal law initially required that states adopt minimum standards for sex offender registration and community notification in order to receive federal funding. However, many states are exceeding those standards. The goals of the federal registration law (the *Wetterling Act*) include increasing public safety, deterring offenders from committing future crimes, and providing law enforcement with additional investigative powers. In order to achieve these goals, states have developed a number of approaches to sex offender registration. These include:

- Development of written policy and procedures, detailing the registration process.
- Collection of thorough information on registered sex offenders, with ready access to this information by all law enforcement officers.
- Development of systems to efficiently transfer registration information within and across state lines so that offenders cannot escape registration obligations.

The most comprehensive approaches to sex offender registration involve sharing information among state and local agencies include the sentencing court, state corrections and justice departments, local law enforcement, community organizations, and probation and parole. Close communication between those managing registration, those engaged in broad policy analysis and development, and those conducting the day-to-day monitoring of offenders, have prevented offenders from slipping through “cracks” in the system.<sup>30</sup>

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♦ In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Title XVII of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C.A. § 14071]). The Act requires states to create registries of offenders convicted of sexually violent offenses or crimes against children and to establish heightened registration requirements for highly dangerous sex offenders. It further requires offenders to verify their addresses annually for a period of 10 years and requires sexually violent predators to verify addresses on a quarterly basis for life. States that do not establish registration programs, in compliance with the Act’s provisions, are subject to a 10 percent reduction of Byrne formula grant funding (The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs [42 U.S.C. § 3750]). Any such funds will be reallocated to states that are in compliance (the Office of Justice Programs, U.S. Department of Justice, is monitoring states’ efforts to comply with the Wetterling Act). California continues to receive its share of funding.

## *Community Notification*

*Megan's Law* amended the *Wetterling Act* in May 1996 by requiring that "the state or any agency authorized by the state shall release relevant information as necessary to protect the public" concerning a specific sex offender. *Megan's Law* allows states discretion in determining if disclosure of information is necessary for public protection. It also allows states discretion in specifying standards and procedures for making these determinations. *Megan's Law* carries the same compliance deadline and consequences as the original *Wetterling Act*.

As a result of *Megan's Law*, all 50 states have enacted sex offender community notification laws. Tremendous variation exists among the states, and even within states, in how these statutes have been implemented. However, most states use one or more of the following practices for disseminating information: media release, door-to-door flyers, mailed flyers, community meetings, or Internet distribution. Recently, California passed a law giving citizens Internet access to names, addresses, and in some cases, pictures of as many as 55,000 of the most serious sex offenders. According to the California State Attorney General, the database will be accessible in January 2005. While the intention of community notification is to protect the public, its effects on the community, victims, and offenders have not been measured. Many notification programs throughout the country have made efforts to reduce any possible negative effects by educating communities about methods that citizens can employ to protect themselves and their families from sexual victimization and advising community members that most sexual abusers live undetected in the community.

Community notification through the use of special toll-free or pay "800" or "900" telephone lines as well as CD-ROMS are available in several states. They include New York, California, Florida, Oregon, Tennessee and Wisconsin.<sup>31</sup> The California Department of Justice (DOJ) maintains a 900 number for members of the public to inquire about specific individuals (at \$10 per call). The California Department of Justice also distributes CD-ROMs to all local law enforcement agencies for the public to view.<sup>32</sup>

The 900 number fees usually goes towards staff salaries, supplies, and administrative costs to maintain the program. There are also built-in safeguards against those who might abuse the 900 number for deviant purposes or who might be sex offenders themselves. Since its inception over four years ago, the California DOJ 900-phone number has fielded over 42,000 requests with approximately 1,400 apparent identifications of sex offenders.

Examples of some of the 900 number program benefits in which the subject of the inquiry was found in the violent criminal information network (VCIN) database are as follows:

- A caller with two children, ages eight and 13, requested any available information on her neighbor. The caller indicated that the neighbor invited her children to his house to play and help with yard work. The caller became suspicious because the

neighbor did not have any children. The inquiry revealed that the subject had been convicted for committing lewd or lascivious acts with a child under 14.

- A caller inquired about a neighbor who was spending a lot of time with her children. The neighbor gave gifts to her children and volunteered to baby-sit for free. The inquiry revealed that the subject had been convicted for committing lewd or lascivious acts with a child under 14.
- A caller wanted to check on a licensed contractor. The contractor was in a house with a mother and daughter, and the mother felt uncomfortable around him. The inquiry showed that the subject had been convicted for molesting children and sexual penetration with a foreign object.



## **THE ROLE OF LOCAL PROBATION, PAROLE AND TREATMENT PROFESSIONALS IN SEX OFFENDER MANAGEMENT AND SUPERVISION**

When a sex offender is paroled from prison, a parole officer is assigned to supervise and monitor him. In contrast, when a first time sex offender is sentenced by the court to a county jail and/or placed on probation, a probation officer is assigned to supervise him. In some states, probation systems are organized and integrated on a statewide basis, while in others, such as California, they are locally administered and funded. Some probation systems are funded on a statewide basis but are administered locally. Another variation is that some probation systems jointly administer adult and juvenile programs (including California), while others administer them separately.<sup>33</sup>

Probation in the United States is administered by hundreds of independent agencies operating under different state laws and following widely varying philosophies. Texas, for example, has over 100 independent, autonomous, local adult probation agencies. Over half of the 1,920 agencies which administer adult probation services across the country are operated at the state level (26 states) and the rest are county or municipal (24 states) agencies. Over half of all juvenile probation services (2,120 agencies) are administered at the local level and the rest at the state level. In California, New Jersey, and the District of Columbia, adult probation is the sole responsibility of local government.<sup>34</sup>

### ***Sex Offender Risk Classification***

Most state parole agencies attempt to measure the risk of re-offense to determine the level and degree of supervision. Most California sex offenders paroled from the California Department of Corrections (CDC) are automatically classified as high risk (see page 44 for discussion). The majority of local jurisdictions across the country and California county probation departments use pre-sentence investigation (PSI) reports or psychiatric evaluations to assess a sex offender's needs and risk. The primary purpose of these reports is to provide information about a sex offender to the court to assist in the disposition of the case. From the probation officer's perspective, the PSI presents an opportunity to make recommendations for or against community supervision; assess amenability to treatment; and to recommend specialized conditions of supervision based on the offender's criminal and sexual history and their risk to re-offend.<sup>35</sup> Most PSIs include all of the following:

- The police record of the sexual offender.
- The offender's personal history.
- The offender's sexual history.
- A psychiatric evaluation of the sexual offender.
- Collateral interviews of the offender's family members, employer, friends, and any other individuals with whom the offender interacts.

- An evaluation of the offender’s amenability to specialized treatment.
- Victim access to information about the sexual offense.
- Victim impact statement.
- The level of risk that the offender poses to the community.

Some probation and parole agencies also use classification tools to distinguish offenders who pose differing levels of risk and who have different treatment needs. Optimally, classification for risk and need should be based upon the results of empirically based instruments that have been statistically validated on a local criminal population.

Unfortunately, most California probation departments do not have access to instruments that have been both empirically tested and locally validated that can identify those sex offenders on an officer’s caseload that present the highest levels of risk. Some county probation departments have attempted to standardize the methods used for assessment of sex offenders, but have failed to reach consensus among stakeholders. In the absence of these tools, many agencies make these classification decisions based on their collective staff experience.<sup>36</sup>

## **KEY ELEMENTS OF COMMUNITY SUPERVISION AND IMPOSED CONDITIONS**

Sex offenders are commonly placed on probation after serving a jail sentence or in lieu of jail, or on parole after serving time in prison. Probation and parole agencies across the nation indicate that reliance on commonly used supervision practices alone (e.g., scheduled office visits, periodic phone contact, and community service requirements) does not adequately address the risks that sex offenders pose to the community.<sup>37</sup> So, in addition, sex offenders are usually monitored intensively in order to evaluate their level of compliance with all imposed conditions. This supervision typically includes on site confirmation that the offender is actively engaged in an approved treatment program, verifying the suitability of the offender’s residence and place of employment, monitoring the offender’s activities by unannounced field visits at the offender’s home and his place of employment and during his leisure time (e.g. is he engaging in inappropriate, high risk behavior such as collecting items that depict or are attractive to children), and helping the offender to develop a community support system—including friends, family members, and employers who are aware of the offender’s criminal history, are supportive of the community supervision plan, and can recognize the sex offender’s risk factors. Probation officers that can regularly involve an offender’s family, friends, and other community members will enhance their ability to monitor an offender’s compliance with probation conditions.<sup>38</sup>

Additional parole or probation conditions are often imposed on sex offenders. Examples from around the country and in many California counties include:

- Prohibiting use of videotapes or films or television programs that might arouse the sex offender in way that might lead to criminal conduct. In other words, a pedophile may not view programs whose primary character is a child.

- Prohibiting use of pornography or erotica, and patronizing adult bookstores, sex shops, topless bars, or massage parlors.
- Restricting access to areas where children congregate, such as parks, playgrounds, and schools.
- Prohibiting use and possession of a camera or video-recorder if the offender has photographed his victim(s) in the past.<sup>39</sup>

Some county probation departments in California have formed “family sexual violence units” to monitor felons who have committed sexual offenses in the act of domestic violence. According to one probation official, an increasing number of sex offenders commit some type of sexual battery against a wife or partner (*Penal Code 243.4 et seq.*). In some cases, the father or head of household has sexually assaulted his child as well (*Penal Code 269 et seq.*). Either way, a specially imposed condition of probation would require that the sex offender not go near his spouse or child, unless another adult approved by probation is present.<sup>40</sup> Two-thirds of boys and three-fourth of girls who were victims of sexual abuse in 1998 reported that the offender was a parent, relative, friend, or baby-sitter.<sup>41</sup>

### ***Specialized vs. Non-Specialized Caseloads***

Specialized approaches to sex offender supervision and treatment have been developed in jurisdictions around the country.<sup>42</sup> A nationwide survey of sex offender supervision practices conducted in 1996 found that “policies which promote the specialization of job duties for (probation and parole) officers who manage sex offenders were found to accompany practices associated with the effective management of sex offenders.”<sup>43</sup> In other words, specialized caseloads ensure against sex offenders becoming “lost” because of their seemingly compliant nature.

At a minimum, the specialized supervision of sex offenders requires a probation or parole officer to be able to talk openly about sexuality and sexual deviancy; to be knowledgeable about offender and victim issues; and to work collaboratively with treatment providers and other stakeholders to ensure compliance with community supervision and treatment requirements.<sup>44</sup> “Specialization means that no longer will a sex offender slip in the door just before 5 p.m., spend five minutes in the probation office talking about his job and last night’s basketball game, pay his fees, and leave.”<sup>♦</sup>

Adult sex offenders in California are supervised in special caseloads in 35 counties while 26 also offer sex offender treatment. Several treatment providers believe that collaboration among supervising agents, treatment providers, and other practitioners (e.g. victim advocates, law enforcement officers, and polygraph examiners) is essential for

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♦ An analysis of the caseload size of eight of Community Sex Offender Management’s National Resource Sites (Maricopa County, Arizona; Jefferson County, Colorado; New Haven, Connecticut; the Commonwealth of Massachusetts; Westchester County, New York; Jackson County, Oregon; the State of Vermont; and Spokane, Washington) reflects an average sex offender caseload size of approximately 47 sex offenders per officer.

success.<sup>45</sup> In addition, specialized training for agents who work with sex offenders and for treatment therapists is also an important component of supervision. Most California county probation departments managing sex offenders develop their own management training curricula for probation officers.<sup>46</sup> Currently, the Peace Officers Standards and Training (POST) does not provide certified training in sex offender management.

### ***The Use of Physiological and Monitoring Tools in Sex Offender Management***

The polygraph has become an important tool in treatment and supervision because it provides independent information about compliance with supervision conditions and progress in specialized treatment. Today, polygraph testing is used by parole departments in 14 states (Colorado, Hawaii, Indiana, Iowa, Kansas, Massachusetts, Minnesota, New Hampshire, Tennessee, Texas, Vermont, Virginia, Wisconsin, and Rhode Island). California state parole does not use polygraph testing. Many California county probation departments do use polygraphs. In some states, polygraph testing is required or provided for through state sex offender treatment standards and/or legislation. A number of states also use, or only use, polygraph examination as a tool for post-release monitoring and aftercare.<sup>47</sup>

Three types of post-conviction polygraphs are commonly administered to sex offenders under probation or parole supervision:

- *Full Disclosure or Sexual History Examination* is typically administered after an offender has been in treatment from three to six months.
- *Specific Issue Examinations* are used when an offender is either in complete denial or maintains that he did not commit the crime of conviction (in particular, offenders who were sentenced under an “Alford Plea”).<sup>†</sup>
- *Maintenance or Monitoring Examinations* are administered on a periodic basis, usually every six months. Offenders are seldom tested more than three times per year.<sup>48</sup>

When a sex offender is engaging in noncompliant behavior, a polygraph test may reveal information causing the parole or probation officer to revise the case plan or take other action to prevent relapse. In many jurisdictions, especially city and counties, the polygraph examiner is a key member of the case management team. Polygraph examiners who administer tests to sex offenders are specially trained to work with this population.

One professional organization which supports post-conviction (clinical) polygraph testing of sex offenders, states that *post conviction sex offender testing* (PCSOT) motivates clients to be truthful about their past sexual behaviors, possible recent relapses, and high-risk conduct.<sup>49</sup> Data comparing histories of polygraph-tested sex offenders with non-

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<sup>†</sup> An Alford Plea is defined as a “plea that allows the offender to admit that there is enough evidence to convict him at trial without admitting the offense of record.” This type of plea often subverts treatment since it is difficult to treat a sex offender who has not admitted responsibility for the offense.



tested sex offenders between 1988 and 1994 showed polygraph-tested sex offenders reported significantly higher number of victims (13.2 tested vs. 2.5 non-tested).<sup>50</sup> A properly administered polygraph examination can be an effective method for helping knowledgeable professionals distinguish truthfulness from attempted deception during the sex offender management and treatment process.<sup>51</sup> A Colorado study of polygraph testing using a team approach (treatment provider, parole officer, and polygraph examiner) vs. a single polygraph examiner found that sex offenders were more likely to disclose past histories and current behavior to the team rather than a single examiner.<sup>52</sup> Those who use the polygraph, however, also assert that decisions about levels of supervision and methods of treatment are based upon a variety of information, not just the results of polygraph testing.<sup>53</sup>

Debate over the validity and reliability of PCSOT is ongoing. Standardized examiner training and offender-testing practices can reduce error rates.<sup>54</sup> To date, there is no evidence that the gender of the examiner affects test accuracy or utility. Altogether, research and collective experience suggest that PCSOT can benefit sex offender treatment particularly when it is one of a comprehensive battery of management and treatment tools.<sup>55</sup> While test validity and reliability with sex offenders have not been empirically studied, organizations which support its use recognize that polygraph is a complex procedure, and the outcomes can be affected by examiner experience, data collection procedures, instrument interpretation, etc.<sup>56</sup>

According to one California county probation official interviewed for this report, authority to use polygraphs as a tool to monitor sex offender compliance rests with the sentencing court. While local police, county sheriffs, and district attorneys throughout California use polygraphs for interrogation purposes, most probation departments do not. For those probation departments that do (where the sentencing court is not involved), it is the treatment provider who authorizes the use of the polygraph as part of the ongoing assessment of the sex offender. In many cases, it is the sex offender who pays for the polygraph testing. Some counties have developed guidelines and procedures for use of polygraph examinations with sex offenders. According to a county probation official, in the past, there was frequent disagreement among probation, prosecution, and public and private defense regarding the legality of using polygraphs (both voluntary and court-ordered) as a tool in the community management of sex offenders. The research and dialogue that accompanied the development of the guidelines helped resolve many of these issues.<sup>57</sup>

Many county probation departments are cash strapped and view the use of polygraph as a luxury.<sup>58</sup> A county probation officer interviewed for this report contends that having more probation officers to monitor sex offenders is a better use of resources than using polygraphs.<sup>59</sup>

Most states, including California, do not have licensing laws or procedures for post-conviction sex offender polygraph testing. One of the concerns raised by probation and

parole officers in California is that there is no standardized procedure for how polygraph examiners administer the test, nor is there standardized training for polygraph examiners.<sup>‡</sup>

The *penile plethysmograph* is a physiological instrument that measures an offender's erectile response to various stimuli. The penile plethysmograph is an individually applied physiological test that measures the flow of blood to and from the genital area. Over the past 20 years the plethysmograph has evolved into a sophisticated computerized instrument capable of measuring slight changes in the circumference of the penis.<sup>60</sup> The penile plethysmograph is considered to be one of the more invasive techniques used in the field of sex offender management.

Deviant sexual arousal is a significant contributing factor in sex offending (research indicates that deviant sexual arousal is positively correlated with re-offense) and the self-report of offenders regarding their sexual arousal often is not reliable.<sup>61</sup> The Association for the Treatment of Sexual Abusers (ATSA) has developed guidelines for the use of the plethysmograph with sex offenders.<sup>62</sup> The California Coalition on Sexual Offending (CCOSO) endorses its use among treatment providers and it is used by its members as part of a battery of treatment tools for parolees. According to one provider, all parolees on her caseload must sign a release form agreeing to be tested by the plethysmograph as part of the specialized treatment and therapy.

The *Able Screen test* is another specialized treatment tool used by providers to assess a sex offender's sexual interest. It is a proprietary tool that is less invasive than the plethysmograph as far as assessing physical arousal. The Able Assessment for Sexual Interest (AASI) as it is called, is a two-part computerized test used to identify deviant sexual interests-in particular, to assess interest in children. The first part of the test is a comprehensive questionnaire of self-reported behaviors, accusations, arrests and convictions, and questions designed to identify cognitive distortions and truthfulness. The second part of the test objectively captures the client's deviant sexual interest while viewing 160 digital images of clothed adults, adolescents and children.

The data from both portions of the test are electronically transmitted for processing to the proprietary owner, Abel Screening, Inc. The data is processed and returned to the therapists via facsimile. Those reports include: a written summary of the questionnaire responses, a bar graph of relative sexual interest developed from the digital image portion of the test, and several Probability Values calculated from the client's responses on both parts of the test. According to supporters of the AASI, it is especially useful in helping sexual offenders with intellectual disabilities.<sup>63</sup>

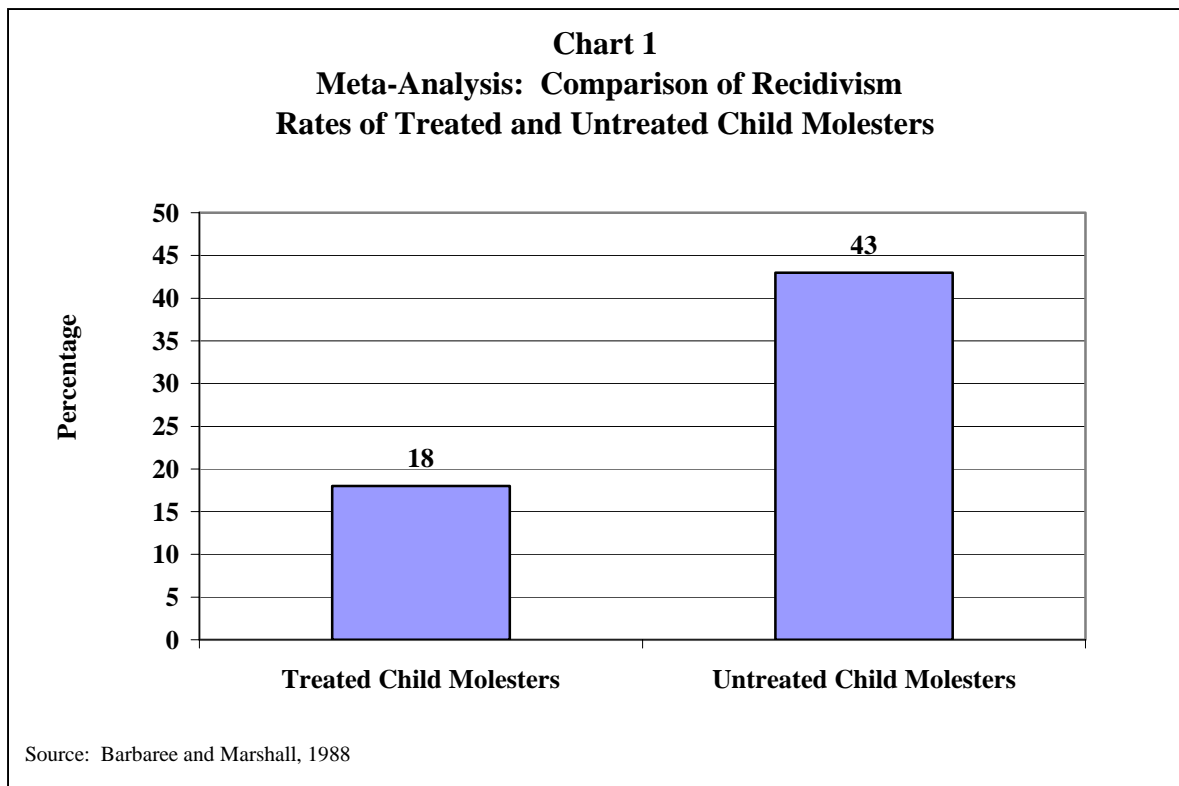
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<sup>‡</sup> The APA has developed standards for post-conviction polygraph testing of sex offenders and offers a 40-hour block of instruction for polygraph examiners who are interested in working with sex offenders. For more information about the APA, contact their national office at (800) APA-8037 or visit their website at [www.polygraph.org](http://www.polygraph.org).

The ASSI is used in 13 states and by the U.S. Probation and Parole Division in various stages of sex offender therapy (institutional and aftercare). Specialized sex offender treatment contractors in California use the ASSI to initially assess sex offenders who are assigned to their caseloads by parole officers.

## SEX OFFENDER RECIDIVISM RATES

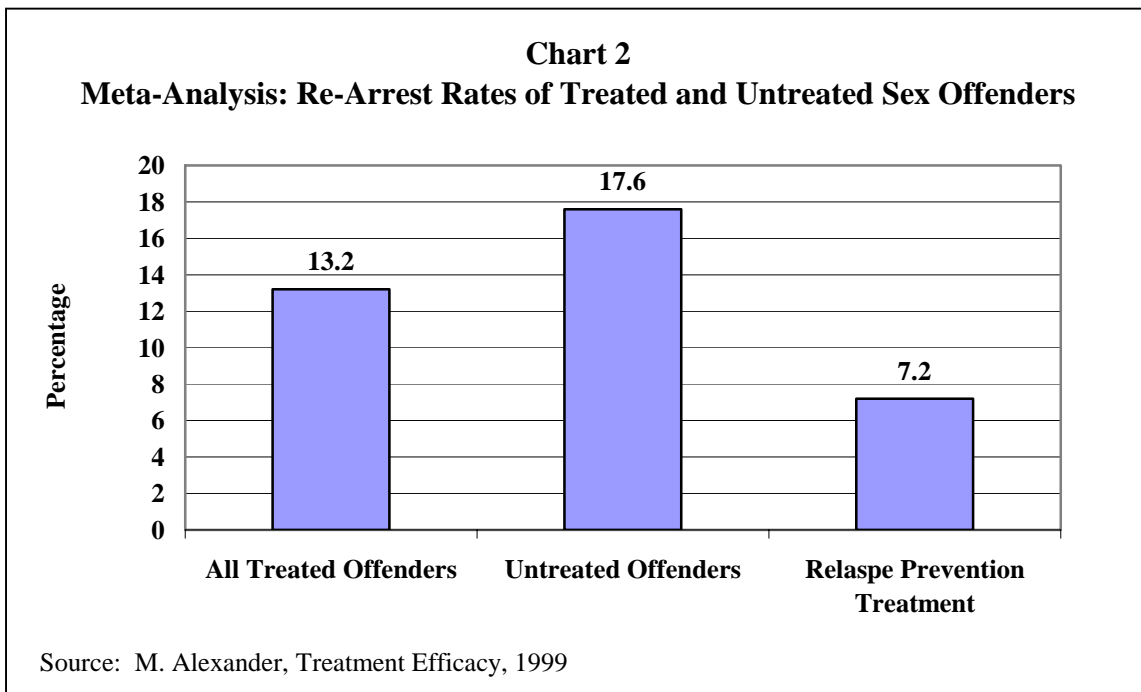
There has been a considerable amount written on the relative merits of institutional and community specialized sex offender treatment programs, which began developing across the country in the late 1990s. Few studies, however, are sufficiently rigorous to produce really compelling conclusions about the effectiveness of various treatment approaches or even about the differences in outcomes for treated and untreated sex offenders.<sup>64</sup> In California, there is very little data on paroled sex offender recidivism rates. The same is true for juvenile sex offenders paroled from the California Youth Authority. Several studies have simply looked at outcomes of offenders receiving specialized sex offender treatment, compared to a group of offenders not receiving treatment. For example, a 1988 study found a substantial difference in the recidivism rates (reconviction for a new charge) of extra-familial child molesters who participated in a community based cognitive-behavioral treatment program, compared to a group of similar offenders who did not receive treatment. Those who participated in treatment had a recidivism rate of 18 percent over a four-year follow-up period, compared to a 43 percent recidivism rate for the nonparticipating group of offenders (See Chart 1).<sup>65</sup>



A 1998 study of 400 paroled sex offenders over a five-year period showed a significant attitudinal difference between recidivists and non-recidivists. Recidivists saw themselves as being at little risk for committing new offenses, were less likely to avoid high risk situations, and were more likely to report (polygraph) engaging in deviant sexual behavior.<sup>66</sup>

An alternative approach to measuring trends in recidivism rates for specialized sex offender treatment programs is through meta-analysis. Meta-analyses combine the results of multiple studies, theoretically producing a reliable estimation of the effectiveness of treatment alternatives by generalizing the results of many studies and samples. Using this technique, one can estimate how strongly certain offender and offense characteristics are related to recidivism because they show up consistently across different studies.

For example, in a meta-analysis of 79 sex offender treatment outcome studies, involving 11,000 sex offenders, offenders who participated in relapse prevention treatment programs had a re-arrest rate of 7.2 percent for new sex offenses, compared to 17.6 percent for untreated offenders. The re-arrest rate for treated offenders (those who received other services such drug treatment, anger management, etc) was 13.2 percent (See Chart 2).<sup>67</sup>



In another meta-analysis of 61 research studies, the average sex offense recidivism rate across all studies (as evidenced by re-arrest or reconviction) was 18.9 percent for rapists and 12.7 percent for child molesters over a four to five year period. The rate of recidivism for nonsexual violent offenses was 22.1 percent for rapists and 9.9 percent for child molesters, while the recidivism rate for any re-offense for rapists was 46.2 percent

and 36.9 percent for child molesters over a four to five year period.<sup>68</sup> This study provides no information about the effectiveness of any treatment alternatives. Being young and single were consistently related to subsequent sexual offending. Sex offenders were more likely to re-offend if they had prior sex offenses or male victims, if they victimized strangers or extra-familial victims, if they began sexually offending at an early age, or if they engaged in diverse sex crimes.<sup>69</sup> The study found that sexual offense recidivism was most likely for offenders who had sexual interest in children, deviant sexual preferences, and sexual interest in boys. Failure to complete treatment was also found to be a moderate predictor of sexual recidivism. Being sexually abused as a child was not related to repeat sexual offending.<sup>70</sup>

### ***State Sex Offender Data***

The state of Washington recently completed a six-year study of released sex offenders committed under Washington's Sexually Violent Predator Law, and found a high recidivism rate. Recidivism is defined to include all new convictions, both within and outside Washington State, from the date of release from prison to the end of the follow-up period. Key findings were:

- A majority (57 percent) of the offenders were convicted of new felony charges.
- A large percentage (40 percent) was convicted of a new felony against a person (assault) including sex offenses.
- Almost a third (29 percent) committed a new felony sex offense.
- Sixteen percent failed to register as sex offenders.<sup>71</sup>

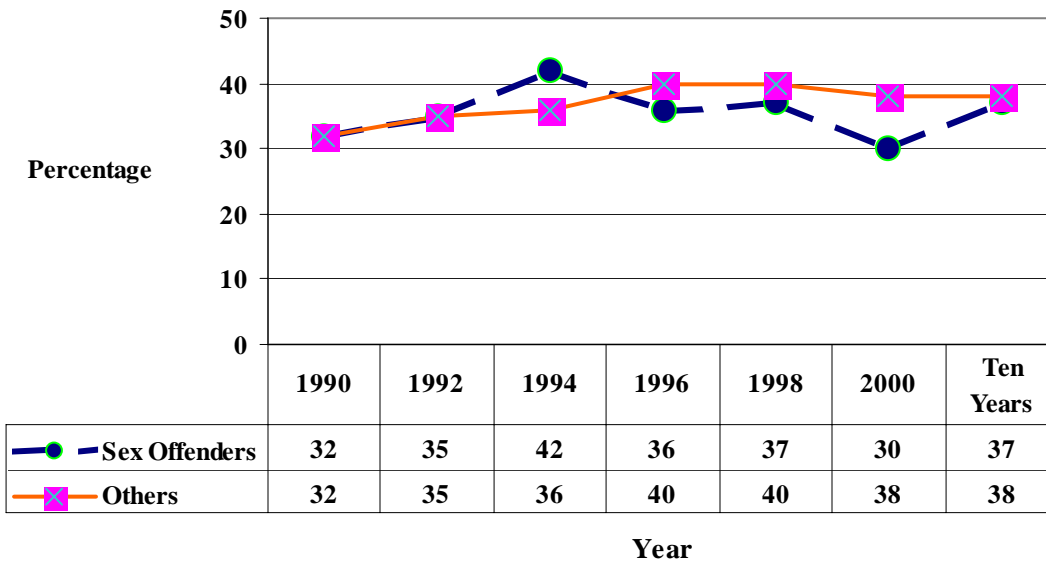
### ***California Youth Authority (CYA) Parole Recidivism Rates***

Since 1967, the CYA has reported information on the parole experiences of juveniles. In Chart 3, positive parole outcomes (meaning the inmate served his parole time without having parole revoked) over the period from 1990 to 2000 for juvenile sex offenders is compared to the general CYA population, and shows little difference between the two groups. In addition, the number of juvenile sex offenders removed from parole because of a sex related crime is relatively low (44 out of 1316 or three percent) over the 10-year period. A more specific longitudinal analysis of the outcomes such as comparing treated sex offenders with untreated sex offenders would be more revealing as to the success of the CYA specialized sex offender treatment programs.

### ***California Department of Corrections Parole Recidivism Rates***

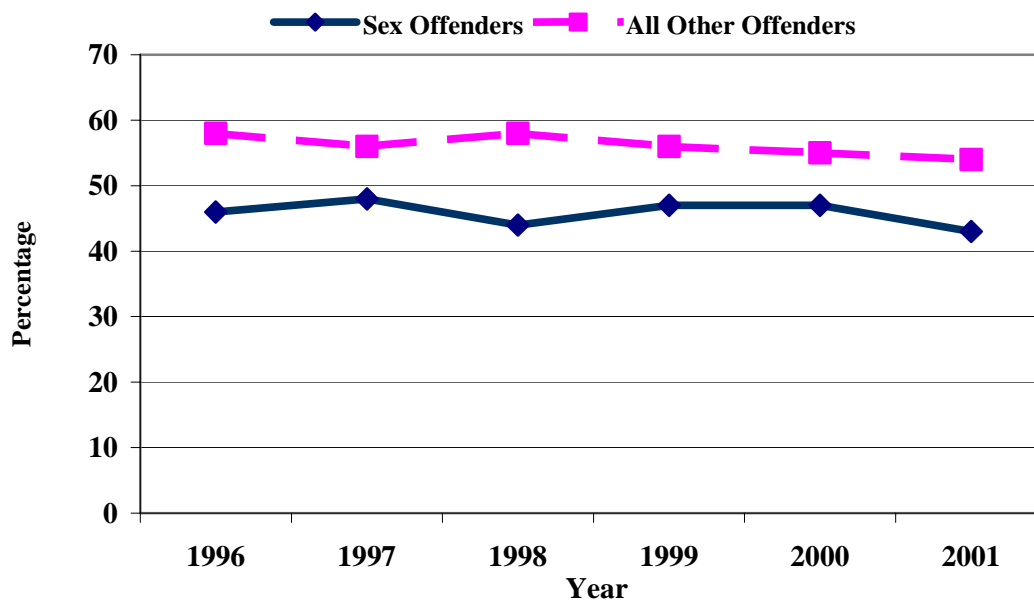
The only CDC data available on sex offender recidivism categorizes all parole violations together, so we cannot tell if the violation involved a sexual crime or something else. According to CDC data, over the last 10 years the parole revocation rate for inmates initially convicted of a sexual offense (as defined in *PC 290*) is less than the rate for the general population but still high at an average rate of 42 percent (See Chart 4).

**Chart 3**  
**24-Month Positive Outcomes For CYA Offenders: Ten Year Accumulation**



Source: CYA and California Research Bureau, 2004

**Chart 4**  
**California Parolee Rate of Return to Prison for Any Violation Over a Two Year Period**



Source: California Department of Corrections and California Research Bureau, 2004

## **What Works and What Doesn't?**

Available data on specialized sex offender treatment and intervention programs still does not conclusively tell us what works and what does not work. We do know that in some situations specialized sex offender treatment is better than no treatment, identifying individual risk factors is important in preventing relapses, and completing treatment or therapy is vital for sex offenders in preventing recidivism. California data is not helpful at this time in examining the effects of sex offender treatment on recidivism rates. However, there are enough sex offenders currently in specialized parole treatment programs to begin comparing the effects of treatment on preventing re-offending to those sex offenders not receiving treatment. This would be helpful to state policymakers.





# **STRATEGIES USED BY CALIFORNIA STATE AGENCIES IN THE MANAGEMENT AND POST - RELEASE SUPERVISION OF SEX OFFENDERS**

## **CALIFORNIA DEPARTMENT OF MENTAL HEALTH SEX OFFENDER COMMITMENT PROGRAM**

The California Department of Mental Health (CDMH) is responsible for managing and treating, sexually violent predators (SVP) in the state. SVP are felons convicted of a sexual crime who have subsequently been civilly committed to Atascadero State Hospital (*Chapters 762 and 763, Statutes of 1995, Welfare & Institutions Code, Section 6600, et seq.*). Atascadero State Hospital is also where mentally disordered sex offenders are housed and treated. Sexual violent offenders who are developmentally disabled are housed and treated by the California Department of Developmental Services at Porterville State Hospital. Because of the large number of potential SVP, the DMH is in the process of constructing a 1,500-bed facility for the housing and treatment of SVP next to Pleasant Valley State Prison in the City of Coalinga in Fresno County. The Department of General Services is overseeing construction, while the Department of Corrections will be in charge of the hospital's perimeter security.

The California definition of a SVP is "a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he will engage in sexually violent criminal behavior." The law defines substantial sexual conduct with a child younger than 14 years old as violent crime.

To initiate the civil commitment procedure, the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) conducts a review of each inmate's record during the six months before their parole release date to determine if the sexual offenses meet the legal definition. If the offender meets the definition he is referred to the DMH upon completion of his prison term to determine if he meets the SVP criteria. As of September of 2004, the CDC has referred 5,577 offenders to DMH for a civil commitment review. Over 2,450 of these referrals did not meet the SVP criteria. These offenders were subsequently released back to CDC for parole (see Table 3 for a review of the commitment process).

If the DMH determines that the offender meets the criteria, he is required to undergo a clinical evaluation to determine if there is a diagnosed mental disorder. This determination is made by two DMH clinicians (psychiatrists or psychologists). If both concur that the person has a diagnosed mental disorder, the DMH will refer the case to the county district attorney of record who can file a petition for a civil commitment hearing before a judge. To date, county district attorneys have filed 1,018 of these petitions.

If the clinicians do not agree, two independent clinical evaluators under contract with the DMH will examine the offender. If the second set of evaluators do not concur, the

offender will be released to CDC parole. If the second set of evaluators find the inmate meets SVP criteria, the DMH will refer the case to the district attorney of record. To date, 1,806 sex offenders did not meet the clinical evaluation criteria for civil commitment and were released back to CDC for parole and community supervision.

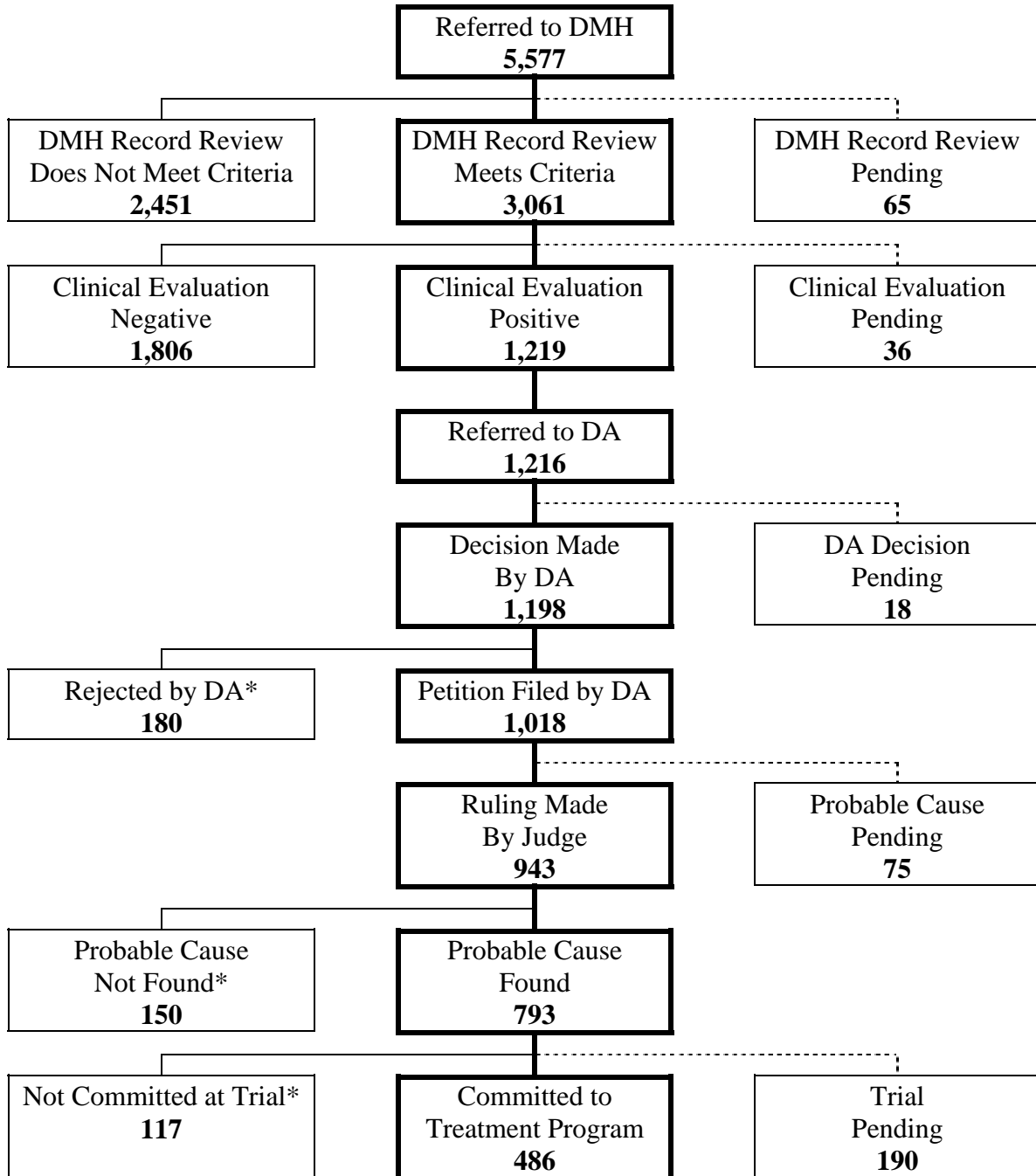
If the judge rules that there is probable cause that the offender should be civilly committed as a SVP, the offender has the right to challenge the civil commitment in court. Despite this hearing process, the offender can be held indefinitely by DMH psychiatrists for evaluation, by the court that oversees the commitment proceedings, or for preventive detention, according to a DMH official.

Since the SVP law was enacted in 1996, judges have ruled on 943 SVP cases of which 793 were found to have probable cause for a civil commitment. Sixty percent (486) of these offenders were found beyond a reasonable doubt by a court or jury to be a SVP, and were committed for a period of two years to the DMH for treatment in a secure facility.<sup>72</sup> Since 1996, 28 percent (267) of all rulings made by judges have resulted in the offender being released from DMH to CDC parole custody. Currently, 190 cases are pending civil commitment trial.

The SVP population held by DMH grew to 535 individuals as of January 28, 2004, but recently dropped to its currently level of 483 offenders. This figure also includes mentally disordered sex offenders. However, most of these offenders have not participated in DMH's treatment program because they are either awaiting their probable cause hearing or their civil trial. One DMH official contends that the high number of sex offenders currently awaiting trial is attributable to a backlog of cases from Los Angeles County.<sup>73</sup> According to one investigative study, many of the offenders were held by DMH in this status between 1996 and the beginning 2004 before being released by state psychologists, prosecutors, judges or juries without treatment or trial.<sup>74</sup>

According to DMH officials, it costs the department approximately \$41.6 million to operate and maintain the Sex Offender Commitment Program for 483 committed offenders as well as those awaiting civil commitment decisions. This includes costs related to program implementation and evaluations and court costs for persons referred from the Department of Corrections as potentially meeting the SVP criteria. This averages out to about \$59,500 per offender (Based on the number of years (8) the program has operated, divided by the accumulative number of offenders (5,577) and the average number of offenders by the annual cost) (\$41,583,000/697).

**Table 3**  
**Sex Offender Commitment Program (SOCP)**  
**All Cases as of 09/01/2004**



Note: This report is now available on the SOCP web site: <http://www.dmh.ca.gov/socp>.

### ***SVP Release From the Department of Mental Health Civil Commitment Program***

There are several requirements to protect the constitutional rights of the SVP. These include an annual examination of his mental condition; annual written notice from the DMH to the SVP of his right to petition the court for conditional release; a show cause hearing (why the offender should be held) if the offender does not waive this right; and potentially a jury trial and the benefit of all constitutional protections that were afforded him at the initial commitment proceeding trial. The person may not be held by the DMH for longer than two years, unless the DA files another petition for civil commitment and the court orders the commitment. The offender may also request a new trial after two years to determine if he should be held for further treatment. If the judge determines there is not probable cause, the petition is dismissed and the offender must be sent to CDC parole. If the judge determines that there is probable cause, the SVP remains with DMH until a trial is conducted. Since 1996, only three civilly committed SVP have been released from the DMH after completing the treatment program and successful petition of the court.

### ***Treatment Protocol For the Civilly Committed SVP***

The DMH specialized sex offender treatment program is designed to first help the offender identify the factors that place him at risk for sexual violence. Secondly, it assists him in planning, developing and practicing responses to cope with these high-risk factors to reduce his potential for relapse. Treatment plans may also include individual therapy sessions, couples/family counseling, and behavioral reconditioning (for modifying deviant arousal patterns). The program also provides a limited number of educational and vocational training activities.

### ***SVP Community Supervision and Treatment***

Only three patients committed under the SVP statutes has been granted conditional release by the court to community treatment and supervision under the Conditional Release Program (CONREP). The CONREP is a relatively small but successful program, in terms of low recidivism rates. According to DMH officials, CONREP offenders are four times less likely to re-offend after release than are other SVP who are released<sup>75</sup> SVP released to parole under this program are under heightened supervision (such as periodic urine screening for drugs, unannounced home visits, electronic monitoring, polygraph examinations, and chemical therapy) and continue to receive mental health care in the community. This therapy reinforces relapse prevention by seeking to identify high-risk situations, thoughts and behaviors that are precursors to sex offending which are specific to that patient and assist him to establish alternate thinking and behavioral patterns. CONREP parolees are also subject to community notification requirements.

It costs approximately an average of \$21,879 per CONREP participant. The DMH estimates the annual costs associated with treating sex offenders in CONREP is about \$3.7 million. These costs include evaluations treatment referrals, and supervision.

## **SEX OFFENDER TREATMENT AND SUPERVISION IN THE DEPARTMENT OF DEVELOPMENTAL SERVICES**

The Department of Developmental Services (DDS) operates seven secured facilities that provide rehabilitation and training services for persons who are developmentally disabled, including some who are sex offenders. Admission to one of these facilities requires either a formal determination that the individual meets stringent admission criteria, or a civil court order. Some individuals admitted in recent years have been persons civilly committed by the courts (*Welfare and Institutions Code Sec. 6500 et seq.*) because their behavior in the community led to involvement with the criminal justice system. Many are considered *mentally retarded* which is characterized by significantly sub-average general intellectual functioning (i.e., an IQ of approximately 70 or below). To be civilly committed as mentally retarded a person must be a danger to himself and others. According to DDS staff, the number of persons committed by the courts because of their involvement with the criminal justice system who are also mentally retarded has increased over the last five years. Currently, 21 individuals are housed in a secured treatment program at Porterville Developmental Center because they committed one or more sexual offenses as defined in *Penal Code Section 290.4 (a) (1)* and were declared by the court to be mentally retarded (*Welfare and Institutions Code Sec. 6509*). In addition, there are two persons confined at Porterville Developmental Center who committed sex crimes (*Penal Code Section 290.4 (a) (1)*), who were found to be incompetent to stand trial. The estimated average cost per year for one person housed at Porterville Developmental Center is \$130,000.

## **JUVENILE SEX OFFENDERS AND THE CALIFORNIA YOUTH AUTHORITY**

Juvenile offenders who commit sexual crimes for the first time are generally placed under the supervision of county probation officers, unless the crime meets the definition of a serious sex offense (*Penal Code Sec. 288*). In the event that a juvenile sex offender commits another crime, either a sexual offense or a different crime, a juvenile court judge will usually commit the offender to the California Youth Authority (CYA). Currently, 31 California counties will accept juvenile sex offenders for probation and 26 provide some form of specialized sex offender treatment. Many county probation departments without resources and treatment options simply have no choice but to commit the juvenile to CYA. For those counties that do have resources, once the probation department has expended all available sex offender services or options, a sentencing judge usually has no choice but to send the offender to CYA, even if it costs the county more than housing the offender. However, only those juvenile offenders whose crimes meet the criteria of a SVP (*Welfare and Institution Code 6604*) are eligible for commitment to the CYA Sex Offender Treatment Program.

A juvenile sex offender could stay at the CYA from a year to five years before he is ready for release to parole. Currently, the CYA has 210 sex offenders that meet the SVP criteria housed at four different program locations, two for older offenders (18 years-25 years old) and two for younger juvenile offenders (14-18 years old). The CYA specialized Sex Offender Treatment Program expanded within the last five years from

two sites to four because of the increasing numbers of SVP committed to the CYA. There are many juvenile sex offenders housed throughout the CYA system that do not receive specialized treatment because of the limited current program capacity and because only inmates meeting the SVP definition are admitted.<sup>76</sup> One study conducted for the CYA in 2003 found that only 16 percent of wards meeting the SVP definition were admitted into the program for treatment.<sup>77</sup>

The current sex offender treatment curriculum was developed in 2003 and is used in all four programs. A juvenile sex offender must complete several stages of treatment and therapy in each of three phases while in a CYA residential program. Each stage of therapy is designed to help the offender understand what he has done, develop empathy for the victim, and internal mechanisms to control deviant thoughts and behavior. At a recent site visit to the O.H. Close campus dorm in Stockton, all juvenile sex offenders in the program were required to attend GED classes five days a week with wards from other dorms during the day, except during a lock-down. In addition, these sex offenders spend individual and group therapy time together with program psychiatrists and other treatment specialist as part of the regular curriculum. According to the CYA program manager, this process is the same for all the sex offender programs in CYA.

A psychiatrist at the O.H. Close program indicated that some wards take longer than others to get through the different phases of therapy because of their age and the nature of their problems. For example, one 14 year old ward who has been in the program for over a year has not come to understand his deviant sexual behavior and what he did, and therefore, is unable to advance through the next phase of therapy. As a result, he may be there for an indeterminate number of years before he is ready for release.

The director of the O.H. Close treatment program says that juvenile wards that advance through the various phases of specialized treatment and are judged by staff as ready for release from the program still face many obstacles to recovery. First, are they ready and prepared for a return to society? Will they avoid the temptations that led to their sexual abuse? Do they have support systems to help them through the transitional period from incarceration to parole? These are just some of the issues that a juvenile sex offender who successfully completes the treatment program at O.H. Close must plan for if he is to succeed.

Another problem faced by paroled sex offenders, according to the director, is that their treatment program will probably be terminated or at least substantially changed when they are released to parole.<sup>78</sup> There are likely to be fewer treatment providers in the community where they are released compared to the number of treatment providers in the four residential programs.

### ***Parole Supervision***

The juvenile sex offender is assigned a parole agent who is supposed to monitor his progress and to help him become a productive and law-abiding member of the community. Many parole offices provide offenders with educational and employment

opportunities, counseling, substance abuse treatment, parenting programs and life skills training. If a parolee commits a new crime, or if he violates the conditions of parole, his parole may be revoked. If parole is revoked, the offender will be returned to an institutional setting for continued treatment.

In preparing for possible release to parole, the juvenile sex offender begins meeting with his assigned special parole agent approximately 90 days before a scheduled hearing with the Youthful Offender Parole Board (YOPB). The purpose of the meetings is to help the offender prepare for the YOPB hearing by developing a transitional plan for his adjustment to society and to clearly define what is expected of him. According to CYA parole agents, if the YOPB agrees with the offender's transition plan and the program recommends that he is ready to leave, approval for release to parole is usually granted.<sup>79</sup> The YOPB is also likely to impose "special conditions" of parole, in addition to establishing the standard rules which include paying restitution, maintaining contact with their parole agent, submitting to searches and not leaving the state without permission. Special conditions of parole may include participating in counseling or substance abuse treatment, not associating with negative peers, and staying away from previous victims, schools, parks, or other designated areas where he could victimize other persons. Upon receiving approval of parole by the YOPB, the CYA Office of Prevention and Victim Services will notify the victim by letter of the parolee's impending release while the general public is notified by press release.

Depending on the type of sexual offense and who the victim is, the parolee may be required to have special living arrangements. For example, if the victim was an immediate family member, relative, or a neighbor, the parolee could not live at home and would likely stay at a group home. If the victim was a stranger, chances are the parolee would live at his previous place of residence. The parolee is also required to complete his GED if he has not done so already. Additional requirements, depending on his age, could include meeting with an Employment Development Department (EDD) counselor to get job training or secure a job.

Not all juvenile sex offenders who leave CYA on parole receive aftercare treatment or therapy. For example, those paroled juvenile sex offenders who were not in the institutional treatment program or who completed the program and live in rural parts of the state (mountain and desert communities) do not have access to aftercare treatment or therapy. According to parole officials, they simply do not have the resources to provide aftercare treatment or therapy in all regions of the state.

Paroled sex offenders who have completed the treatment program and have access to aftercare treatment are required to attend a one and a half hour weekly therapy session and/or an anger management session at the CYA district parole office. This is the only time that the parolee is required to maintain continuity with the treatment started earlier in the residential treatment program. During this weekly visit the parolee also takes a urine sample for drugs. If the sample results in a positive or "dirty test," he would be sanctioned by the parole agent and required to attend substance abuse counseling as well.

A parole officer is assigned to supervise returning sex offenders from each of the four CYA sex offender treatment programs. These agents have an exclusive caseload of about 30 sex offenders each. According to one parole officer, in addition to his supervisory duties, he spends about 40 percent of his time at the specialized treatment program preparing the offenders for their possible release to parole. All together, he only meets with each of his caseload parolees twice a week (once at the therapy session and the other at school or work). The length of time a sex offender parolee is supervised could last from as little as six months to as long as seven years, depending on his age.

A general concern for all parole agents is that the anti gang message is adhered to by all parolees, including sex offenders. Parole agents assist parolees with their initial adjustment to the community, including residence placement, family counseling, job development and placement, and school enrollment.

## **COMMUNITY RELEASE AND SUPERVISION OF DEPARTMENT OF CORRECTIONS SEX OFFENDERS**

Most all CDC adult offenders are sentenced to serve a determinate number of years, and are granted a parole release date upon satisfactory completion of their sentences. Since 2001, California state law requires (*Penal Code Section 3005*) that all parolees under active supervision and deemed to pose a high risk to the public of committing violent sex crimes be placed on an intensive and specialized parole supervision caseload. High-risk sex offenders (HRSO), as they are called, currently number approximately 2,000 across the state, and are supervised by 52 high-risk parole agents (HRPA). All high-risk offenders, regardless of their status (sex offenders, mentally ill enhanced outpatients, and second strike violent felons), are supervised as part of specialized caseloads of about 40 parolees apiece. In addition, most inmates who are referred to the DMH for civil commitment as SVP, and are released because they did not meet the civil commitment criteria, are also included in the HRSO caseloads.\*

An incarcerated sex offender in CDC does not receive any relapse prevention treatment, specialized treatment, or therapy for their sexual crime. Funding is not available in CDC for such a program and according to one official, specialized treatment for a sex offender in the prison system would not work because it would place him at greater risk for injury if his offender status were known in the general prison population.<sup>80</sup> The only practical way it could happen would be to segregate all convicted sex offenders into one or more facilities. In addition, the parole agent does not engage in any pre-release planning with the offender prior to release on parole. When a HRSO is released on parole the Institutional Division of CDC is responsible for notifying any victims of the parolee's impending return to the community where the crime occurred.

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\* Some CDC inmates or parolees, who are referred to the Department of Mental Health for civil commitment and challenge and win against commitment, can be released without supervision if the case takes three years or more to resolve. This is because a parolee's civil commitment process and parole time run concurrently.



Some offenders released to parole with a prior sexual history (*Penal Code 290* violator), but a non-sexual commitment offense, report to the regional Parole Outpatient Clinic (POC) for evaluation to determine the type of service they are to receive, if any, and whether they should be classified as a HRSO. Many of the services available at POC are geared toward mentally ill parolees, and not HRSO. Types of services they might receive include the two major drug abuse programs (Substance Abuse Treatment and Recovery-STAR and Parolee Services Network-PSN), literacy labs, Parolee Employment Programs, and the Offender Employment Continuum.

Due to a lack of parole resources, some sexually violent offenders who are either released on parole or not civilly committed by the DMH, and who live outside the urban core areas of the four parole regions, are not included in the HRSO caseloads. Both current sex offenders and those with prior sex offenses must register as sex offenders with local law enforcement when released on parole.

All sex offenders are required to report for a parolee orientation, and register with local law enforcement as sex offenders. The parolee orientation usually includes a meeting with the parole officer, local law enforcement, and treatment providers in some cases. Currently, only about 300 of the 2,000 HRSO (or about 15 percent) across the state receive specialized treatment from licensed therapists. At this meeting the terms and conditions of parole are explained to the parolee, which he must agree too or risk being sent to the Board of Prison Terms for violating parole. At a minimum, conditions usually include where he can and cannot travel, people he can visit or not visit, places he cannot go, submission of weekly or by-weekly urine samples, and where possible, relapse prevention therapy at a CDC Parole Outpatient Clinic. Any additional meetings involving the parolee and the parole officer can be conducted unannounced at the parolee's worksite or at his home.

Other special conditions can be imposed by the parole officer based on the type of sexual offense committed as well as his criminal history. According to a parole agent in charge of sex offender supervision, they design special conditions to fit the kind of crime the parolee committed. For example, if he was cruising the streets in a car when he raped a woman, he might be prohibited from driving a car while on parole.<sup>81</sup> If there is a fearful victim in the county where the crime occurred, the parole officer can request that the Board of Prison Terms parole the HRSO to another county. A rapist or child molester is usually the most restricted HRSO and his mobility to work in local neighborhoods, near schools, or any place where children or women congregate would be limited. In addition, the parolee would have to wear an electronic bracelet so his movement could be monitored.

### ***Specialized Sex Offender Treatment Providers***

There is minimal funding available for HRSO treatment or therapy. There are just 13 sites within the four parole regions of the state that serve approximately 300 HRSO. One treatment provider also contends that while her program is effective it should include more HRSO and be expanded to more sites.<sup>82</sup>

Several treatment providers who work with HRSO contend that there are also many community barriers they must deal with, including landlords who fear liability if anything might go wrong during sessions or pressure from community groups about the presence of sex offenders. However, the number one concern of providers interviewed for this report in treating HRSO is honesty. It is easy for a HRSO to lie about who he is and what he did because he had no help or treatment in learning to accept responsibility for his actions while incarcerated. In fact, incentives to deny or ignore their offense are strong because sexual offenders are often assaulted or killed by other inmates appalled at their offense.<sup>83</sup>

Treatment providers initially administer a battery of tests to assess the stage of denial the parolee is in, what form of sexual deviancy should be their focus, and what is needed to control this type of behavior. These testing tools include a spectrum of aptitudes, thought patterns, behavioral examinations (the Multiphasic-Sexual Inventory-a personality trait assessment), Abel Screening (response to pictures of children) and the penile plethysmograph. These latter two assessment tools require the HRSO to sign a waiver in order for the tests to be administered because it is not included in the CDC contract. According to one treatment provider, the penile plethysmograph is an especially important part of the examination because data elicited from the responses provide the clearest indication of sexual deviancy.

To prepare program participants for cognitive-behavioral work, treatment providers use workbooks and low-intensity group discussions to introduce sex offenders to the need for accountability and knowledge of deviant thinking and behavior. As a parolee progresses through these group sessions (which can be anywhere from six months to three years), the treatment provider and parole officer will jointly determine whether a lessening of contact supervision is warranted.

Some treatment providers and parole officers contend that polygraph testing would assist in monitoring sexual arousal and progress of HRSO. Currently, this resource is available to local probation officers and treatment providers who monitor court-mandated therapy, but not to the CDC. According to one parole agent, polygraph monitoring could be important because it can confirm for providers the effectiveness of their therapy program and also unlock past sexual crimes (for which the HRSO cannot be convicted) that can be a focus of therapy. Once again, the current contract prohibits its use.<sup>84</sup>

### ***Parole Revocation of Sex Offenders***

According to CDC officials, revoking a HRSO parole is usually done on a case-by-case basis. For example, if cocaine played a role in the offender's sexual behavior, and he tested positive, then his parole would likely be violated. If cocaine didn't play a role in his sexual behavior, he would likely be placed in a drug treatment program. Some data suggests that sex offender recidivism and parole revocation rates are lower than other parolees (see Chart 4 page 35).<sup>85</sup> According to one supervising parole official, it is usually a pattern of bad behavior that results in a HRSO going back to prison. That

pattern would include testing positive for drugs, missing treatment, and missing supervision appointments (three violations).

Anecdotal information from one HRSO treatment caseload (30 parolees) indicates that between March 1, 2003 and June 21, 2004, three parolees have violated their conditions of parole (not related to a sexual crime) and two had new charges related to a sexual crime, for a general recidivism rate of 16 percent. Of the original 30 HRSO in this caseload, seven were successfully discharged and were replaced by 13 new parolees. According to one treatment provider, the fact that only two parolees in this caseload failed due to a sexual offense makes this program effective compared to other parolee programs.

HRSO caseload data is not available from CDC.<sup>86</sup> At this time there is no funding to track this type of offender data according to parole officials. It was an unfunded part of the law that required the CDC to establish a parole sex offender treatment program (*Penal Code Sec. 3005*).



## **LEGISLATIVE AND ADMINISTRATIVE OPTIONS**

While not necessarily the recommendations of the California Research Bureau, the author, or Legislative members requesting this report, the following options reflect some of the possible applications of this research.

### **SEXUALLY VIOLENT PREDATORS (SVP) CIVIL COMMITMENT PROCESS**

The current California civil commitment process for sexually violent predators is cumbersome and time consuming, resulting in a backlog of court cases and extensive litigation. In some counties, the district attorneys who are responsible for initiating civil commitment litigation have not aggressively pursued legal action against some offenders because the county does not want to risk having them returned on parole, should they not be civilly committed. This has effectively kept these offenders under indefinite legal custody without due process. Finally, these same sexually violent offenders who are waiting for a decision about their placement are housed in the Department of Mental Health at a cost to the state of about \$145 a day or about three times more than to house them in the CDC.

- The Legislature could reevaluate and streamline the state SVP civil commitment selection process. This could involve establishment of a single state entity responsible for developing SVP eligibility guidelines, risk assessments, and conducting and administering all civil commitment hearings including petitions for release. States like Texas and Colorado, which have a centralized council or board that oversees the SVP civil commitment process, could be a model for California.
- The Legislature could require that an SVP challenging his commitment with DMH be entitled to a hearing within a reasonable period of time, or be returned to CDC, which would presumably release him on parole. The point would not be to cause SVP to be released, but to ensure that they actually got the court hearing to which they are presumably constitutionally entitled.

### **SPECIALIZED SEX OFFENDER PRISON TREATMENT PROGRAMS**

Specialized treatment of sex offenders is a relatively new phenomenon. Prison-based sex offender treatment programs have not existed long enough to give policy makers a chance to determine whether they can work or not, and under what conditions. Nonetheless, there is a general perception that prison-based specialized sex offender treatment is better than no treatment because it helps offenders change their pattern of thinking about sexual offending and deviant arousal.

At any given time there are about 130,000 sex offenders in prison across the country; 14,000 are in California. The majority of state prison systems in the country have specialized sex offender treatment programs; California does not. CDC officials argue that they cannot provide specialized sex offender treatment because identifying inmates,

as sex offenders would expose them to the risk of violence from other prisoners. This risk could be reduced by segregating sex offenders in specially designated housing units within institutions or in freestanding facilities, as demonstrated in other states.

- CDC officials should combine various elements of other state programs to create a prison treatment program that meet California needs. This would also include development of sex offender treatment guidelines that could be used anywhere in the state prison system, similar to current drug treatment programs in California and other states.
- The Legislature could require the CDC to identify existing prison facilities that could best house sex offenders and facilitate treatment.
- California could begin a gradual phasing in of prison-based specialized sex offender treatment programs. For example, offenders whose sex crimes are the most serious and the most likely to benefit from treatment, could be the first candidates for the treatment program.

### **OVERSEEING LOCAL AND STATEWIDE SPECIALIZED SEX OFFENDER TREATMENT PROTOCOLS**

In some California counties, probation officers that supervise sex offenders under court order can authorize treatment providers to use certain assessment tools such as the polygraph and penile plethysmograph. Probation officers in other counties cannot. Some county probation officials contend that developing local sex offender treatment protocols is important because sex offenders receive quite different treatment in different counties, making it difficult to provide continuity of care.

- The Legislature could create a State Council for Sex Offender Treatment (CSOT) that could develop treatment standards and protocols for sex offenders and treatment providers. The CSOT could evaluate in-state and out-of-state sex offender treatment programs to set standards for treatment of sex offenders and for eligibility standards for treatment providers. It might be directed to rely particularly on information about the effectiveness of various treatment protocols, as measured by recidivism rates or other standards. The CSOT could also recommend to licensing and regulatory boards as well as current state and local treatment program directors methods of improving programs to meet council standards. Information about available sex offender treatment programs could be made available to parole agents, probation officers, appropriate state and municipal agencies involved in sex offender management, and the public.
- The Youth and Corrections Agency in conjunction with the Department of Health and Human Services, the Department of Alcohol and Drug Abuse, the Attorney General's Office, and the California Coalition on Sex Offending could serve as members of the CSOT. Their responsibilities could include developing guidelines for statewide standards for the assessment, evaluation, treatment, and behavioral monitoring of sex offenders. Similar standards already exist for interventions with convicted substance abusers.

- To help support the cost of the CSOT and establish a specialized treatment provider community, fees could be charged to specialized sex offender treatment providers as a condition of participation in the program. Fees could include sex offender treatment provider registration and renewal; training fees; publication fees; and fees for providing continuing education and other services to sex offender treatment providers. The CSOT could file a biennial report with the Legislature and the Governor about the activities of the council. In addition, the CSOT could prepare an annual list of registered sex offender treatment providers.
- As an alternative to the creation of a CSOT, the Legislature could designate a state agency to convene a working group of stakeholder organizations that would be responsible for the development and approval of policy guidelines and regulations regarding the management, supervision, and treatment of paroled and/or probation sex offenders. Regulations could cover such issues as who provides the treatment, what are their qualifications, standards of practice, code of ethics, types of assessment, etc. Member organizations could consist of representatives from the Department of Corrections, the Department of Justice, local law enforcement agencies, county public defender's, victim services community, local community-based sexual assault programs, clinical polygraph examiners and licensed mental health professionals with expertise in treating sex offenders.
- POST could develop training protocols periodically to keep the designated state agency or CSOT members up-to-date on issues in the management of sex offenders in the state. The designated state agency or CSOT could meet once a month. Subcommittees could be formed and meet as needed to discuss single issues—such as credentials for treatment providers and polygraph examiners, evaluation of standards, and use of the polygraph in sex offender management.

## **DEVELOPING A SPECIALIZED SEX OFFENDER TREATMENT EDUCATION CURRICULA**

Not enough treatment professionals are trained to work with sex offenders. There are few education and training programs in forensic psychology, psychiatry or social work, and existing programs offer little practical training for work with sex offenders. State universities that have a mandate to educate and train traditionally emphasize research methods over practical training in sex offender techniques.

- Correctional agencies could offer financial incentives to induce universities to hire instructors to teach the skills needed to manage and treat sex offenders.
- The Legislature could encourage universities and professional organizations to develop working guidelines for training more sex offender therapists in return for procedural access necessary to conduct field research and correctional internships.

## **POLYGRAPH TESTING**

Use of a polygraph to elicit information that could convict an offender is illegal and is discouraged by CDC and CYA parole officials. However, recognition of the value of the polygraph as a clinical and resource tool in the management of sex offenders on probation and parole in jurisdictions across the country is growing. Many California county probation departments encourage the use of the polygraph in the treatment of sex offenders. As long as polygraphs are used as management tools, sex offenders are protected from self-incrimination. Using a polygraph examination to extract incriminating historical information is only ethical when offenders are protected for the legal consequences of their honest self-reporting about pre-treatment behavior or post prison behavior.

- The Legislature could require the POST to develop standards for use by state correctional agencies in treating sex offenders. The Legislature could provide pilot grants to polygraph, correctional, and psychotherapeutic professionals to actively cooperate and encourage joint research and other ventures to enhance post-conviction sex offender treatment standardization, validity and reliability. This would in turn, enhance accuracy, utility and ethical practice.
- The Legislature could authorize the CDC and CYA to pilot test the use of polygraph testing with sex offenders in one trial region of the state based on standards developed by POST and other professional organizations. Participating paroled sex offenders would sign an informed consent waiver to participate in the pilot.

## **DATA COLLECTION**

Data collected on sex offenders in California who are in community treatment programs is uneven and inconsistent. Moreover, the state does not have any data on sex offender treatment program outcomes or its effects on parolee recidivism. Conversely, public notification and registration information about sex offender in the community is consistently accessible and available to the public through law enforcement.

- The State Attorney General is responsible for collecting sex offender statistics as part of community notification and registration. The Legislature could require the AG to convene a working group from state and local agencies responsible for treating sex offenders in the community to develop consistent and even indicators to measure success or failure of their programs. This would allow research to better evaluate what works and what does not work in sex offender treatment, and would provide the public with a better understanding of what local treatment programs are doing to make communities safer.



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