

APPENDIX K

Literature Review: Targeting Sex Offenders¹

Recidivism and Risk Classification

In 1996, there were approximately 2 million reports of child abuse in the United States involving approximately 3 million children.² Twelve percent of these victims, or 360,000 children, suffered child sexual abuse.³ In addition, “in 1994, there were approximately 234,000 sex offenders under the care, custody or control of corrections agencies—60 percent under conditional supervision in the community—on any given day.”⁴ Also, according to the Bureau of Justice Statistics’ National Survey of Inmates in State Correctional Facilities, two-thirds of all offenders serving time for rape or sexual assault had a victim under the age of 18.

Because of the growing public concern over the threat which these offenders bring to their communities, and the increasing use of community notification and civil commitment legislation, in addition to incarceration, a brief examination of these offenders and the risks which they pose is essential. This section will attempt to explain recent research concerning recidivism rates for sex offenders, methodological problems surrounding this research, and the development of a system for risk classification of child sexual abusers.

Recidivism among child sexual abusers

A great deal of scientific literature has been published on the likelihood of sexual re-offending among persons committing sexual offenses. Much of this literature, however, is not conducive to comparisons across studies or straightforward summation of results because of the varied and imprecise study methodologies employed, examples of which include: poorly described subject selection and rejection criteria; poorly (or non-) defined sexual conduct; diverse definitions of recidivism; and varied lengths of follow-up.

¹ Much of the information contained in this section may also be found in U.S. SENTENCING COMMISSION, SPECIAL REPORT TO CONGRESS: SEX OFFENSES AGAINST CHILDREN: FINDINGS AND RECOMMENDATIONS REGARDING FEDERAL PENALTIES (1996).

² U. S. Department of Health and Human Services, CHILD MALTREATMENT 1996: REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (1998).

³ U. S. Department of Health and Human Services, *supra* note 2.

⁴ Lawrence A. Greenfeld, U.S. Department of Justice, Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault (1997).

A major review of the literature on sexual child abuse and recidivism has recently been completed. This review found that “in general, only 10% - 15% of sex offenders are detected committing new sexual offenses during a 5-year follow-up period.”⁵ This sexual offense recidivism rate is much lower than commonly assumed. However, certain factors may influence these recidivism rates, including treatment, type of sex offender and length of follow-up. Even with extended follow-up periods and thorough examinations of offense records, the recidivism rates for these offenders rarely exceeds 40%.⁶

Risk classification of child sexual abusers

The development of classification systems for sexual offenders serves two primary purposes: 1) evaluation of the risk of repeat offending, and 2) diagnosis and treatment planning. The most consistent finding is that criminal history, especially a history of sexual offenses, is the most important and accurate predictor of the risk of future sexual offending.⁷ This is consistent with research on the prediction of other sorts of recidivism.

In addition to using criminal history as an indicator of risk, other factors may be useful in predicting future deviant behavior. Perhaps one of the most significant and robust findings in the literature on sex offenders is that “the frequency of offending and the likelihood of recidivism is strongly related to the type of victim and the relationship between offender and victim.”⁸ The scientific literature has indicated two victim characteristics that are important in classifying sexual offenders: 1) the relationship of the victim to the perpetrator; *i.e.*, whether the abuse is intra-familial or extra-familial, and 2) the gender of the victim.⁹ “Most sexual abuse is committed by men (90%) and by persons known to the child (70% to 90%), with family members constituting one-third to

⁵ R. Karl Hanson, Ph.D., *What Do We Know About Sex Offender Risk Assessment?*, 4 PSYCHOLOGY, PUBLIC POLICY AND LAW at 67 (1998).

⁶ R. Karl Hanson, Ph.D., and Monique T. Bussiere, Ph.D., *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism*, 66 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 348-362 (1998).

⁷ R. Karl Hanson, *et al.*, *Long-Term Recidivism of Child Molesters*, 61 J. CONSULTING & CLINICAL PSYCHOL. 646-652 (1993). Nearly all of these offenders (93%) were followed for at least 15 years and some were followed for over thirty years. V.L. Quinsey *et al.*, *Actuarial Prediction of Sexual Recidivism*, 10 J. INTERPERSONAL VIOLENCE 85-105 (1995); and Rice, M.E., Quinsey, V.L., Harris, G.T., *Sexual Recidivism Among Child Molesters Released From A Maximum Security Psychiatric Institution*, 59 J. CONSULTING & CLINICAL PSYCHOL. 381-386 (1991).

⁸ Grant T. Harris, *et al.*, *Appraisal and Management of Risk in Sexual Aggressors: Implications for Criminal Justice Policy*, 4 PSYCHOLOGY, PUBLIC POLICY AND LAW 73-115 (1998).

⁹ The extra-familial versus intra-familial characteristic appears to be the more certain criterion for evaluating risk of recidivism at this time. The literature on the predictive impact of sex of the victim on recidivism, given that the victim is extra-familial, is mixed.

one-half of the perpetrators against girls and 10% to 20% of the perpetrators against boys."¹⁰

One long-term, follow-up study involved 197 child molesters in Canada.¹¹ In this study, male offenders were classified into three groups based on the characteristics of their victims: extra-familial boys; extra-familial girls; and intra-familial (incest). During the period of follow-up for these offenders, 42 percent were subsequently reconvicted of a sexual offense, a violent offense or both.¹² An important finding was that risk of recidivism varied by group. Offenders against boys were at significantly higher risk of recidivism than incest offenders or offenders against girls. For incest offenders, the recidivism rate was lower than for offenders against extra-familial girls, though not at a statistically significant level.¹³ This general pattern of greater risk for extra-familial offenders has been replicated by other researchers, though evidence on the importance of the gender of the victim is inconsistent.¹⁴

Efforts are under way to extend and improve classification of sexual misconduct through the use of physiologic (e.g. phallometric response to erotic stimuli) and psychologic (e.g. clinical interview, personality tests, etc.) measures. McGrath (1991) offers a decision tree framework for assessing the risk of sexual recidivism. He includes for consideration a broad array of factors such as: presence of other severe psychopathology (e.g. psychosis); presence of substance abuse disorders; use of force or violence; presence of ritualistic or bizarre offenses; denial of current offense; treatment refusal; numbers of victims; presence of other paraphilias; stability of environment; deviant sexual arousal patterns; prior criminal activity (both sexual and non-sexual); etc. He reviews the scientific literature supporting these elements as relevant in a classification model, but a

¹⁰ David Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse*, 4 *Future of Children* 31-53 (1994).

¹¹ Hanson, *et al.*, *supra* note 6. Nearly all of these offenders (93%) were followed for at least 15 years and some were followed for over 30 years.

¹² In this and other studies examining sexual recidivism, both sexual and violent offenses are generally included in an effort to account for charge bargaining practices. When reporting results, known sexual recidivism and violent recidivism are described separately.

¹³ Hanson, *et al.*, *supra* note 6 at 649. The specific rates of recidivism for these offender types was presented only in chart form. It appears that the recidivism rates (and approximate durations of follow-up for these groups), by victim relationship/sex, were: 65% of offenders victimizing extra-familial boys recidivated over a 20 year period; 50% of offenders victimizing extra-familial girls recidivated over a 30 year period; and 25% of incest offenders recidivated over 20 years.

¹⁴ W.L. Marshall & H.E. Barbaree, *The Long Term Evaluation of a Behavioral Treatment Program for Child Molesters*, 26 *BEHAV. RES. THER.* 499-511 (1988).

test of the predictive validity has yet to be performed.¹⁵ Likewise, Prentky and colleagues at the Massachusetts Treatment Center are developing classification models for adult rapists that focus on specific elements of the crime and include measures of lifestyle impulsivity in the decision matrix.¹⁶

Most research on risk-classification is retrospective; that is, it classifies offenders after the recidivating event and attempts to identify differences that were present before the event.¹⁷ Some studies have attempted to make retrospective “predictive” classifications. Rice and colleagues (1991) reported results on the accuracy of a measure (including personal, psychological, criminal and sexual preference characteristics of the offender) on “predicting” recidivism. They reported that 80 percent of the offenders could be correctly classified with this method.¹⁸

In addition to predicting the risk of future criminal behavior among sex offenders, it is also important to assess the impact which sexual abuse has on its victims. Several studies indicate that these children may experience extreme emotional distress, low self-image, impulsive behavior, and post-traumatic stress disorder.¹⁹ Also, over time, aggressiveness and sexual precocity may appear.²⁰ Current research indicates that

¹⁵ Robert J. McGrath, *Sex-Offender Risk Assessment and Disposition Planning: A Review of Empirical and Clinical Findings*, 35 INT’L J. OFFENDER THER. & COMP. CRIMINOLOGY 329-350 (1991)

¹⁶ Robert A. Prentky, *et al.*, *Predictive Validity of Lifestyle Impulsivity for Rapists*, 22 CRIM. JUST. & BEHAV. 106 (1995); Robert A. Prentky & Raymond A. Knight, *Identifying Critical Dimensions for Discriminating Among Rapists*, 59 J. CONSULTING & CLINICAL PSYCHOL. 643-661 (1991); Robert A. Prentky, *et al.*, *Development of a Rational Taxonomy for the Classification of Rapists: The Massachusetts Treatment Center System*, 13 BULL. AM. ACAD. PSYCHIATRY & L. 39-70 (1985).

¹⁷ See, e.g., Quinsey, *et al.*, *supra* note 6; Hanson, *et al.*, *supra* note 6; Rice, *et al.*, *supra* note 6; R. Karl Hanson, *et al.*, *A Comparison of Child Molesters and Nonsexual Criminals: Risk Predictors and Long-Term Recidivism*, 32 J. RES. CRIME & DELINQUENCY 325-337 (1995); Janice Marques, *et al.*, *The Relationship Between Treatment Goals and Recidivism Among Child Molesters*, 32 BEHAV. RES. THER. 577-588 (1994); and Fred S. Berlin & Carl F. Meinecke, *Treatment of Sex Offenders with Antiandrogenic Medication: Conceptualization, Review of Treatment Modalities, and Preliminary Findings*, 138 AM. J. PSYCHIATRY 601 (1981).

¹⁸ Rice, *et al.*, *supra* note 6. The authors also report a statistic which assesses the classification ability of the tool accounting for the chance probability of correct classification. They reported that their measures had a relative improvement over chance of 55%. That is, in a coin toss situation (two outcomes), this instrument would be better than chance 55% of the time. Given an equal probability of outcome (a coin toss), a correct prediction of the result of the toss would occur approximately 78 out of 100 tosses.

¹⁹ See P.E. Mullen *et al.*, *Child Sexual Abuse and Mental Health in Adult Life*, 163 BRITISH JOURNAL OF PSYCHIATRY 721-732 (1993). Also, see P.E. Mullen *et al.*, *The Effect of Child Sexual Abuse on Social, Interpersonal and Sexual Function in Adult Life*, 165 BRITISH JOURNAL OF PSYCHIATRY 35-47 (1994).

²⁰ B. GOMES-SCHWARTZ ET AL., *The Aftermath of Child Sexual Abuse: 18 Months Later*, in CHILD SEXUAL ABUSE: THE INITIAL EFFECTS (1990).

people who are “victimized during childhood are at higher risk of arrest for committing crimes as adults, including sex crimes, than are people who did not suffer sexual or physical abuse or neglect during childhood.”²¹ It is important to note, however, that several factors influence the long-term effects which child sexual abuse may have on the victim, including the age and sex of the victim, the relationship of the victim to the offender and the length of the abuse.

Current guidelines take multiple approaches to targeting dangerous offenders

The key to wise use of prison resources is to target those offenders who present the greatest risk of continued harm to society for the lengthiest incarceration. The current guidelines adopt varied, and sometimes inconsistent, approaches to this task. The criminal history guidelines in Chapter Four of the *Guidelines Manual* count previous convictions for sex offenses against children just as they count other previous offenses that fall within the rules governing criminal history points.

The criminal sexual abuse guidelines, §§2A3.1-4, take a different approach. An application note in each guideline states that “[i]f the defendant’s criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.” See, e.g., USSG §2A3.1, Application Note 7. In addition, the aggravated sexual abuse guideline recommends an upward departure in cases involving multiple victims or multiple acts with the same victim, if this behavior is not adequately captured by the counts of conviction or by application of the guidelines’ grouping rules.²²

The criminal sexual abuse and abusive sexual contact guidelines do address other risk factors, including the age of the victim and the victim’s relationship to the offender, in addition to criminal history. The criminal sexual abuse and abusive sexual contact guidelines call for a two- to four-level increase if the child is sixteen years of age or less. Also, the criminal sexual abuse and abusive sexual contact guidelines contain a two-level increase if the victim was “in the custody, care, or supervisory control of the defendant.”²³

The pornography guidelines take several different approaches to recidivist offenders. A five-level upward adjustment for “a pattern of activity involving the sexual abuse of a minor” was added to the trafficking guideline in 1992. However, the courts are applying this adjustment in inconsistent ways. In addition, the Application Notes to the trafficking guideline contain a broad recommendation for an upward departure “[i]f the defendant

²¹ NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN BRIEF: VICTIMS OF CHILDHOOD SEXUAL ABUSE - LATER CRIMINAL CONSEQUENCES, (1995).

²² See USSG §2A3.1, Application Note 5.

²³ United States Sentencing Commission, Guidelines Manual, §2A3.1 and §2A3.4 (1998).

sexually exploited or abused a minor at any time, whether or not such sexual abuse occurred during the course of the offense” The pornography production and possession guidelines, however, contain only age adjustments for high-risk offenders; that is, these guidelines specify a two- to four-level increase if the child is sixteen years of age or less. As the case analysis shows, high-risk offenders may be convicted and sentenced under any of the pornography guidelines. There appears to be no reason to limit the pattern of activity adjustment to the trafficking guideline.

Implications for sentencing policy

Research should be monitored so that reliable results can be incorporated into sentencing policy. At this time, however, the data are insufficient to base sentencing policy on these methods of classification. Classification tools have two measures of accuracy: 1) sensitivity, *i.e.*, the ability of a tool to avoid “false negative” errors by correctly identifying the persons who *will* recidivate; and 2) specificity, *i.e.*, the ability of a tool to avoid “false positive” errors by correctly excluding persons who *will not* recidivate. Generally, a classification tool performs better either in its sensitivity or specificity. For example, sensitivity can be improved but at the cost of labeling some offenders as potential recidivists who would not repeat the crime. Evaluating a classification system depends on the costs associated with the two types of errors.

From an incapacitation perspective, research presently supports targeting for lengthier incarceration those offenders who have a history of prior sexual misconduct against children. The guideline criminal history score is one method for focusing on repeat offenders. In addition, per the directives of this Team, expansion of the “pattern of activity” adjustment now found in the pornography trafficking/receipt guideline would also achieve this goal. However, proper use of this adjustment is necessary. By recognizing the other risk factors mentioned above, such as the relationship of the victim to the offender and the victim’s age and gender, this adjustment may improve the sensitivity of the guidelines with minimum damage to their specificity.