

Research Overview: Sex Offender Treatment Approaches and Programs



New Mexico Sentencing Commission

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Table of Contents

Executive Summary.....	3
Introduction.....	4
Sex Offenders and Their Patterns of Assault.....	4
The Use of Polygraph Testing.....	5
Sex Offender Treatment Approaches.....	6
State Laws Aimed at Sex Offender Management.....	8
Civil Commitment and Lifetime Supervision.....	9
Treatment Programs and Results: Colorado Case Study.....	10
Conclusion.....	13
Appendix A.....	14
References.....	18
Addenda.....	A1-11

Executive Summary

- A National Women's Study estimated that every year over 680,000 women are forcibly sexually assaulted.
- Rape and child sex abuse crimes cost an estimated \$170 billion per year in health and quality of life expenses.
- Studies of sex offender patterns of behavior have revealed that many sex offenders have vast histories of sexual assaults against many more victims that do not show up in their official criminal records.
- An estimated 90% of all convicted sex offenders who serve time in prison are ultimately released back into the community.
- The Containment Model for managing sex offenders in the community incorporates a comprehensive program of risk assessment, monitoring, supervision, intervention and treatment.
- Several states have passed civil commitment statutes as a way to manage their most dangerous convicted sex offenders.
- Colorado's Sexually Violent Predator law calls for lifetime supervision for certain classes of sex offenders.
- Several states have created boards or committees that oversee the development and implementation of sex offender management and treatment programs.
- Sex offending is considered a serious behavioral problem that cannot be cured but must be actively managed for the lifetime of the offender.

Introduction

The treatment and management of convicted sex offenders has become an intensely studied criminal justice and corrections issue over the last ten years, and has been raised from a purely corrections issue to a broad public safety issue. Recent research has revealed new information about sex offenders, the nature of their offenses and their rates of offending, and has changed the philosophies and approaches to treating this specific class of criminal. Information about the effectiveness of various incarceration, treatment and monitoring programs enacted by several states is now being made available, and can serve as a blueprint for building sex offender treatment and management programs in New Mexico that have the highest potential to improve public safety.

Sex Offenders and Their Patterns of Assault

A National Crime Victimization Survey in 1997 identified more than 307,000 incidences of rape/sexual assault, many of which were not formally reported to police authorities (1). A previous National Women's Study surveyed 4,008 women and estimated that every year over 680,000 women are forcibly sexually assaulted (2). According to a National Institute of Justice report, the average rape or attempted rape costs the victim over \$5,000 in out of pocket expenses (mostly health and mental treatment costs) and over \$80,000 in quality of life expenses (lost time at work or school, lost productivity, pain and suffering, etc.) for a combined cost of over \$170 billion per year for rape and child sex abuse (9,3). As of 1997, about 234,000 convicted sex offenders were under the control of corrections agencies, and many more sex offenders were released back to the community or had not been incarcerated as part of their sentence (4).

A key component of preventing sexual assault and child molestation crimes is identifying potential sex offenders, a task made difficult by the wide variety of racial, ethnic, age and socioeconomic profiles of sex offenders. Some sex offenders share characteristics of other criminal offenders with low levels of education, lack of steady employment, alcohol and drug abuse problems, and extensive criminal histories. Others do not have typical criminal lifestyles – an Oregon study found typical sex offenders in that state to be male,

high school graduates, employed, and having established support groups (friends, family) in the community (5).

There are however, some characteristics that sex offenders share, including childhood victimization and abuse, as well as early exposure to pornography, all of which have an impact on future adult sexual offending (6). Research also indicates that juveniles are responsible for 30 to 60 percent of all cases of child sexual abuse and 20 to 30 percent of sexual assaults committed against adults; highlighting the need for sex offender treatment and management programs specifically aimed at juvenile offenders (7). A need is also being identified for programs specifically aimed at female sex offenders, a category of offenders that has been overlooked in the past. Female sex offending, which may account for up to 13 percent of all abuse of females and 24 percent of all abuse of males, is often underestimated due to a variety of reasons including the idea that women are often viewed in society as primary care givers with more freedom than men to touch children, and the fact that female sexual offenders often victimize members of their own families, who may be reluctant to report a sexual crime (8).

The Use of Polygraph Testing

The frequency of sexual offense behaviors committed by sex offenders, when revealed through self-reporting and polygraph exams, is often many times higher than would be expected or identified through official criminal histories. A report on 23 rapists and 30 child molesters who were undergoing institutional treatment found that while in treatment, the rapists admitted to committing 5,090 various sex offenses, including 319 child molestations and 178 rapes, though each rapist had an average of 1.9 arrests for sex offenses. The child molesters had an average of 1.5 arrests each, though as a group admitted to 20,667 individual offenses including 5,891 child molestations and 213 rapes of adult women (10). A Colorado Department of Corrections study used polygraph examinations of incarcerated sex offenders and found that, on average, each offender admitted to committing 521 sex offenses on 182 victims in the years before they were identified as a sex offender. Of all of these offenses, less than 1% were reported in the offenders' official criminal records (11).

The high rate of offending by sex offenders is also obscured by traditional recidivism studies that may only identify a fraction of new charges for convicted sex offenders. A study of rapists and child molesters who completed treatment in a Massachusetts treatment center between 1959 and 1985 found that rapists had a recidivism rate of 39% for new charges, 24% for new convictions, and 19% for new imprisonment, while child molesters had a recidivism rate of 52% for new charges, 41% for new convictions, and 37% for new imprisonment. This study showed that convicted sex offenders remained at risk for re-offending throughout the life of the 25-year study. A traditional recidivism study that only tracks offenders for two to three years would only identify 25% of the new charges, and a five-year study would only identify 30% of the new charges (12). A study that incorporated the use of polygraph exams of 128 convicted sex offenders who were on probation and living in the community and participating in treatment programs found that 41% of the offenders had engaged in new sex offense behaviors and 86% had engaged in risky behavior or had committed new crimes by 18 months into the treatment program (13).

Sex Offender Treatment Approaches

The majority of convicted sex offenders do not go to prison, instead they receive sentences for treatment and supervision, and 90% of all sex offenders who serve time in prison are ultimately released back into the community (4). The fact that most convicted sex offenders are returned to the community and are at a high risk for recidivism has led to treatment and supervision approaches that focus on preventing known sex offenders from committing new crimes. The *Containment Model* is primarily aimed at increasing public safety through a collaborative, multidisciplinary strategy that provides active supervision of sex offenders in the community (14). The model incorporates assessment, monitoring, supervision, intervention and treatment into a comprehensive program designed to make it difficult for convicted sexual offenders to re-offend and to help them learn how to control their own behavior (14, 15).

Containment model programs include a number of components aimed at constructing a web of supervision and support for sex offender management such as:

- Victim orientation and protection for public safety;
- Cross-agency collaboration among all of the public agencies that will contribute to sex offender supervision;
- Case management techniques that recognize the complete criminal history and modes of offending by a sexual offender;
- Public and political policies that support sex offender management and supervision; and
- Quality control components that constantly measure the services that are being provided and gather data on the programs and the offenders (16)

A key basic component of the containment model is recognizing the fact that many victims do not report sexual offenses against them, and most sexual offenders have vast criminal histories that have gone undetected. The use of polygraph testing on sexual offenders has been cited as an extremely effective way to obtain detailed information about habits and offending patterns of sexual offenders so they can be effectively supervised and managed in the community. Polygraph testing plays a roll in enforcing the expectation of honesty and accountability of sexual offenders, much like urine testing for drug offenders, and can be used as a tool to detect new offenses (14, 17). A study by the Colorado Department of Public Safety of three states that implemented post-conviction polygraph testing found that polygraph exams revealed:

- Additional types of victims were at risk;
- Offenders crossed over between adult and child victims;
- High risk behaviors were related to assault patterns; and
- New crimes were identified.

Overall, the report concluded that the use of polygraph exams as a tool in the containment model enhanced public safety through the improved management of convicted sex offenders living in the community (17).

State Laws Aimed at Sex Offender Management

The enactment of many state laws that deal with sex offender management grew out of several federal laws that were passed in the mid-1990s. In 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was written to spur states to create convicted sex offender registries, and by 1999 all 50 states had passed laws requiring sex offenders to register. In 1996, “Megan’s Law” was passed regarding community notification of sex offenders who are released into the community. By 1998, all states had passed laws that allowed for community notification or access to sex offender registration information (18). A California study of recidivism rates of convicted sex offenders who had been released into the community and required to register found that 49 percent were re-arrested for some type of offense and 25 percent were re-arrested for a sex crime. The study also received responses from state criminal justice agencies that indicated sex offender registration was effective in helping to identify, locate, and arrest suspected sex offenders and that it deterred offenders from committing new sex offenses (19). A key issue with registration and community notification laws is finding a balance between the public’s right to know about sex offenders in the community and the need to successfully integrate sex offenders back into the community. A study of Wisconsin’s community notification laws found that many community members did not understand the purpose of community notification meetings – nearly 20 percent thought they were meeting to discuss the removal or prevention of the sex offender from living in their community (21).

The number and types of state laws that address supervision and registration of sex offenders is varied. A review of state crime legislation by the National Conference of State Legislatures highlighted new laws that were passed in 2002 including:

- Ohio and Oklahoma passed laws that made certain serious sex crimes against children punishable by life imprisonment without parole;
- In Maryland, repeat sex offenders can face life sentences;
- A ballot initiative in Arizona was passed that prohibits bail for certain defendants of sex crimes against minors;

- A new Minnesota law requires a 10-year conditional release period when a person has a previous sex offense;
- New legislation in California allows counties to establish Sexual Assault Felony Enforcement (SAFE) Team programs to identify, monitor, apprehend and prosecute habitual sexual offenders who violate conditions of probation or parole; and
- In Georgia, the Department of Education now provides all elementary and secondary schools with a list of registered sex offenders in their areas

Civil Commitment and Lifetime Supervision

In addition to supervision and registration programs, several states have passed civil commitment statutes as a way to manage their sex offender populations. In Minnesota, the Sexually Dangerous Persons statute allows for the commitment of a sex offender without having to prove that the offender has the inability to control his/her own sexual impulses. Between 1987 and 1998 in Minnesota, 8,700 adults were convicted of felony sex offenses, with 3,900 (45 percent) receiving prison sentences while the remaining 4,800 were managed through probation in the community. Of the three thousand offenders who were incarcerated and then released to the community following their sentences, 287 were assessed by the Minnesota Department of Corrections as posing a high risk to public safety and were referred for civil commitment. Of those, 135 were eventually civilly committed. The population of civilly committed sex offenders in Minnesota is growing at a current rate of 18 per year, with a current cost for confining and treating these offenders of \$20 million, and that amount is expected to double in the next five years. Iowa and Wisconsin also have civil commitment statutes; there are currently 180 sex offenders in Wisconsin and 12 in Iowa who are under civil commitment (20).

Colorado does not use civil commitment to manage dangerous sex offenders, but passed a law in 1998 that allows for the lifetime supervision of certain sex offenders (called Sexually Violent Predators – SVPs). The law calls for sex offenders convicted of a predatory act to be considered for lifetime supervision, and there are currently

approximately 60 individuals under lifetime supervision. Tennessee also recently passed legislation for lifetime supervision of some sex offenders that requires the offenders to attend sex offender treatment and undergo four polygraph tests per year. The SVP lifetime registration law in Pennsylvania requires that sex offenders have a photo taken four times a year and attend monthly counseling sessions (20).

In addition to laws that govern sex offender sentencing, several states have legislated boards or committees to oversee the implementation of sex offender assessment and treatment programs. Colorado established a Sexual Offender Management Board (SOMB) that oversees all issues related to the sex offender population in the state. The Colorado SOMB develops standards and guidelines for assessment, evaluation, treatment and behavioral monitoring of sex offenders as well as for the development of protocol for notifying the public about sex offenders who are being released back into the community. In 1992 Iowa created a voluntary, multi-disciplinary committee called the Iowa Board for the Treatment of Sexual Offenders (IBTSA) which designs program standards and professional certification for sex offender treatment providers. The Tennessee Sexual Offender Treatment Board (SOTB), created in 1995, develops best practice guidelines for treatment providers and acts as a consulting organization to the state legislature on sex offense issues. The state of Washington employs an End of Sentence Review Committee that provides risk assessment for sex offenders as well as establishes certification standards for sex offender treatment professionals (20).

Treatment Programs and Results: Colorado Case Study

A recent national study by the Colorado Department of Corrections on sex offender treatment programs in prison found that 39 states offer treatment programs to incarcerated offenders. Of these, 20 are offered as therapeutic communities and are modeled after drug and alcohol treatment programs. They are highly structured residential programs that integrate the inmates' community life as they work toward changing their behavior (22). Colorado has taken an approach that combines therapeutic communities for treatment while offenders are in prison with more specialized treatment that focuses on monitoring and accountability for behavior after the sex offenders have

been released back into the community. The following overview of the Colorado system is taken from the Colorado Department of Corrections Sex Offender Treatment and Monitoring Program Fact Sheet (23):

The Colorado Department of Corrections (CDOC) supervises over 4,000 identified sex offenders, of which 95 percent will ultimately be released back into the community. Incarceration alone is effective in preventing new offenses only during the time of incarceration, and with incarceration alone, offenders are at a higher risk to re-offend after being released.

The CDOC has an intensive sex offender treatment program that specializes in community supervision and polygraph assessment and monitoring of sex offenders who are released back into the community. This allows offenders to be reintegrated into the community under a number of conditions:

1. Sex offenders participate in intensive treatment in prison which defines their risk areas and relapse prevention plan prior to their release.
2. Information learned in treatment and monitoring of sex offenders contributes to defining profiles and modes of operation of offenders before they are released, which can contribute to faster re-apprehension if an offender commits a new crime.
3. Sex offenders are DNA tested and informed of their responsibility to register with law enforcement prior to their release.
4. Sex offenders who are paroled receive specialized Risk Assessment Management Program community supervision which ensures that the offenders continue in treatment during their transition into the community, implement their relapse prevention plans, and are monitored and polygraph tested on their risk areas.
5. Under this model, sex offenders are given the resources and support they need to modify and control their behavior.

The CDOC has conducted three major reviews of its Sex Offender Treatment Program. The first review in 1989 analyzed offenders who had completed more than

40 treatment sessions compared to offenders who transferred or paroled from treatment before completing 40 sessions. Both groups were seen as motivated to change.

- Offenders with less than 40 treatment sessions had a 32 percent new crime rate.
- Offenders with more than 40 treatment sessions had an 8 percent new crime rate.

A review in 1994 included all sex offenders who were identified in the CDOC since 1988.

- Of the offenders who were released and then returned to prison for a new crime, 34 percent had received no treatment, 7 percent had completed less than 50 treatment sessions, and 2 percent had completed more than 50 treatment sessions.

A third review in 1996 studied offenders who were released from prison between January 1994 and May 1996 and returned to the CDOC for any reason (including technical violations or new crime).

- Of the offenders who were returned, 21 percent had received no treatment, 9.3 percent had completed less than 50 treatment sessions, and 6.1 percent had completed more than 50 treatment sessions.

The CDOC has found that the knowledge gained on sex offenders through the Sex Offender Treatment Program has increased public safety by:

- working with law enforcement to solve crimes;
- sharing knowledge of sex offenders with law enforcement, victims' groups, prevention efforts and other interested groups;
- providing suggestions for improvements in legislation to manage and monitor sex offenders; and
- reducing the rate of recidivism of sex offenders through treatment and monitoring.

Appendix A provides brief overviews of 19 other programs in local communities across the country, including tribal programs in several Indian nations.

Conclusion

Sex offense crimes are dangerous, complex and difficult to predict and detect. While many laws aimed at punishing and treating sex offenders have been passed in various states in the last ten years, most may do little to actually stop new sex crimes from being committed. Many sex offenders have a long history of offending and many different victims, and most of offenses are never reported or detected by law enforcement, corrections or treatment authorities. Sex offenders are deeply ingrained in their modes of behavior by the time they come into contact with the criminal justice system, and trying to change their behavior is a difficult task – sex offending is a behavioral problem that cannot be cured, but can only be managed for the lifetime of the offender. Programs that incorporate specialized treatment, intensive monitoring and supervision, and cross-agency integration show the most success at reducing sex offense recidivism (25).

Appendix A

The following nineteen overviews of sex offender treatment and management programs comes from the Center for Sex Offender Management case studies of National Resource Sites (24).

- **Dodge, Fillmore, and Olmsted County's, Minnesota** Sex Offender Unit provides specialized and comprehensive evaluation, supervision, and treatment services for adult and juvenile sex offenders, victims, family members, and communities. The unit has used an institutionalized approach to the collaborative case management of sex offenders for over seventeen years. Victim safety has long been a top priority, and Victim Service representatives serve critical roles as members of the case management team, as well as the Community Notification Committee and other partnerships.
- **The Utah Juvenile Sex Offender Authority** is dedicated to further developing a continuum of services for juvenile sex offenders. The site has implemented a comprehensive system for the assessment, management, and treatment of juvenile sex offenders. Standards for the treatment of juvenile sex offenders have been adopted from those set forth by the National Adolescent Perpetrator Network.
- **The Navajo Nation in Tuba City, Arizona** has developed a committee comprised of representatives from the Tribal Court, Tribal Probation, the Tribal Council, the Tribal Prosecutor's office, law enforcement, mental health providers, local schools, child advocates, community members, and others to examine critically what resources are available to treat and supervise sex offenders and to provide restoration to victims of sexual assault. These entities work together on an ongoing basis in order to ensure that they are capitalizing on their resources in the most effective way possible in order to prevent future victimization.
- **The Assiniboine-Sioux Tribes at Fort Peck, Montana** convene Child Protection Team meetings at the local rape crisis center. Representatives from the Bureau of Indian Affairs, the Tribal Court, Indian Health Services, the FBI, the Criminal Investigators, and others participate in these meetings, used mainly as a venue to discuss their sex offender cases and explore solutions to their common problems. The tribes' approach is victim centered, and utilizes community education on an ongoing basis to encourage victims of sexual assault to report the crimes that have been perpetrated against them and seek assistance from the tribes' extensive support network.
- **Tarrant County, Texas** established a council in 1981 that has implemented multi-disciplinary sex offender units in several criminal justice agencies; established a children's advocacy program; developed treatment guidelines for perpetrators and victims of sexual assault; and have promoted consistently collaborative relationships among those responsible for the community management of sex offenders. Tarrant County also operates a "chaperone" program as part of their approach to sex offender management. Through this program, sex offenders identify significant others who agree to chaperone sex offenders while in public places. Chaperones are taught extensively about the

dynamics of sex offending behavior, and trained to recognize and respond to the signs of relapse behavior.

- The **Colorado Sex Offender Management Board** has developed statewide standards for the supervision of sex offenders. These standards include guidelines regarding the certification of treatment providers, polygraphers, and plethysmographers. The board has also developed standards for the management of developmentally delayed sex offenders and sex offenders who have been sentenced to lifetime probation.
- **Orange County, California** has developed an intensive sex offender unit whose mission is to enhance public safety, provide victim protection, and promote victim reparation through a collaborative approach to managing sex offenders in the community. Orange County has also developed guidelines for sex offender treatment providers, which address treatment, modality, content, and duration. The approach holds as its chief values the prevention of victimization, the protection and recovery of victims, and the well being of the community, including the offender.
- **Jackson County, Oregon** is among the earliest programs (developed in 1982) to use a comprehensive, collaborative approach, involving treatment providers, community corrections, law enforcement, polygraphers, mental health and children's services, and prosecutors. Representatives from all of these disciplines participate in monthly collaborative meetings. Treatment is offered to the offender, the non-offending family members, and victims. The community corrections agency has also provided leadership across the state on community notification practices that promote public safety.
- In **New Haven, Connecticut**, there exists a unique collaboration between the Office of Adult Probation, the sex offender treatment provider, and a victims' advocate. The victim advocate, hired with Probation Department funds, serves as part of the sex offender supervision team. This effort builds on a collaborative model developed in another area of the state, and takes advantage of a previously established partnership among probation, police, treatment, and victim services concerning issues of community notification and officer safety. A researcher is documenting the outcomes of the efforts in both parts of the state.
- **Maricopa County, Arizona** has pioneered lifetime probation supervision, and was one of the first jurisdictions to use specialized caseloads, including intensive supervision, for sex offenders. There is extensive collaboration among probation, the court, the prosecutor's office, treatment providers, and law enforcement. The probation department has secured assistance from the National Institute of Justice to evaluate the effectiveness of their approach.
- **The Wisconsin Sex Offender Treatment Network** used the initial support of the Wisconsin Corrections Department to provide training to therapists from around the state. That training has helped to ensure the availability of specialized, professional treatment capacity across Wisconsin. The Network provides training for new professionals and continuing education and networking for Fellows of the Network.
- In **Massachusetts**, a group including the Parole Board, the Department of Correction, the Office of the Commissioner of Probation, and the Sex Offender

Registry Board are working together to create a continuum of treatment and supervision for sex offenders throughout the criminal justice system. A single treatment provider is providing treatment within the institutions and training to parole officers who manage sex offenders. Researchers have been added to the institutional treatment staff to offer additional opportunities for program evaluation and the development of refined risk assessment instruments. The Parole Board has implemented an Intensive Parole Supervision Unit as a pilot program using a containment approach that combines treatment, supervision, and use of the polygraph.

- In **Westchester County, New York**, the Probation Department works closely with the court, the district attorney's office, and sex offender treatment providers. The department uses a supervision model based on 26 probation conditions imposed by the court at sentencing. These emphasize accountability and relapse prevention strategies, and are monitored by officers with caseloads kept at 35 per officer. Treatment groups are offered on-site at the department's offices.
- **Jefferson County, Colorado** is a rural district with the first juvenile sex offender probation unit in the state. This jurisdiction is developing the standards for juveniles for use by other judicial districts in Colorado. The state is also doing extensive data collection in several sites, including this one, to test/validate seven different risk assessment instruments on sex offenders.
- **Chittenden County, Vermont** was the first county to have an integrated and comprehensive statewide sex offender supervision and treatment program. It pioneered the use of relapse prevention with sex offenders in 1983, and currently has in place a continuum of prison and community based programs that match services to offender risk and need levels. A recent innovation is Vermont's use of trained community volunteers to provide support to offenders reintegrating into the community.
- In **Washington County, Vermont**, the Department of Social and Rehabilitation Services (SRS), Barre District, and the Washington County Mental Health Services (WCMHS) have partnered since 1993 to provide local individualized or “wraparound” supervision and treatment services for juveniles with sexual offending behaviors. The SRS is responsible for juvenile probation and contracts with WCMHS to provide therapeutic case management to these youth. WCMHS case managers maintain caseloads of up to six youths each; SRS caseloads are usually over 25 juveniles. In each case, a treatment team (consisting of a SRS worker, WCMHS case manager, sex offender treatment provider, substitute care providers, and others) is formed to assess risk of reoffense, come to consensus about needed supervision, create a treatment plan, and monitor the youth’s compliance with the plan. The treatment plan is strength-focused—all parties involved help the adolescents focus on and acknowledge their strengths, while addressing their specific problems and teaching them appropriate behavior.
- **Spokane, Washington** is noteworthy for the innovative leadership of law enforcement, particularly in the area of neighborhood supervision in conjunction with probation and community organizations. The Spokane Police Department, Department of Corrections, and community volunteers work closely on registration, community notification, and supervision issues.

- **Johns Hopkins/National Institute for the Study, Prevention, and Treatment of Sexual Trauma** represents the medical approach to the treatment of sex offenders. The Institute works closely with members of the defense bar representing offenders voluntarily seeking treatment prior to arrest or conviction, as well as with Federal probation providing treatment to their probationers.
- **The Yankton-Sioux Tribe of South Dakota** has formed a multi-disciplinary team including representatives from the U.S. Attorney's Office, Federal and Tribal Probation, Tribal Social Services, Indian Health Services, the tribal school system, law enforcement, victim advocates, and others that meet on a monthly basis to combat the many issues facing those responsible for the prevention, treatment, and supervision of sexual offenders. The team is committed to coordinating services for victims of sexual assault, working together to prevent sexual abuse, and to promoting collaboration among those who manage sex offenders.

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ADDENDA PAGES

ADDENDUM 1

Containment Model Expanded

The Containment Model is a multidisciplinary approach to managing sex offenders in the community. There are five elements in the Containment Model that must be included in order to maximize the effectiveness of the model:

1. **A clearly articulated community safety/victim-oriented mission.** This mission is the foundation of the model and requires that case decisions, practices and cross-agency policies be based on methods that prevent harm toward current and potential victims by known sex offenders;
2. **Coordinated activities of many well-informed, multi-disciplinary, intra- and inter-agency collaborative teams.** Participating agencies must be committed to developing specialized sex crime units wherever it is possible and appropriate. Integration should include the victim community, law enforcement, probation, parole, the treatment community (including prison treatment providers), the courts, social services/child protective services, hospital emergency room staff, and the prosecution and defense bars;
3. **Use of a variety of containment strategies.** Community containment strategies are usually implemented by a three-member team made up of the supervising officer, treatment provider, and post-conviction polygraph examiner. This team utilizes a wide range of risk management tools such as intense surveillance, specialized treatment incorporating regularly scheduled post-conviction polygraph examinations, law enforcement registration, urinalysis testing, electronic monitoring, curfews, and DNA testing. The team also uses sanctions for pre-assaultive behaviors and emotions that many sex offenders carry out before committing a sexual assault;

4. **Consistent, informed public policies.** Public policies must be based on research and best practices, and should address gaps in the risk management activities and empower the supervising officer to respond quickly to offender behaviors that are out of compliance with treatment requirements and supervision conditions;
5. **Resources dedicated to state and local quality control efforts.** Quality control is directed at program monitoring and evaluation and professional standards of practice to ensure victim safety and the humane treatment of offenders.

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The Value of Polygraph Testing in Sex Offender Management. Research Report
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Division of Criminal Justice, Office of Research and Statistics. Denver, CO.

ADDENDUM 2

The Use of Polygraph Testing in Post-Conviction Sex Offender Management

The implementation of the Containment Model is based on having an accurate and complete set of information about the sex offender's behavioral history. Because most offenders have used secrecy and deception as part of their offending activities, relying on offender self-reporting and therapist questionnaires may not be enough to implement the appropriate treatment requirements. The Association for the Treatment of Sexual Abuses (ATSA) recommends the use of polygraph tests for validating offenders' self-reporting, much as urinalysis is used to monitor and validate substance abusers.

The use of polygraph exams, formally known as psycho-physiological detection of deception (PDD), raises several important questions:

- How is the polygraph used in managing sex offenders?
- How reliable is it?
- Is the use of polygraph testing legal and ethical?
- What does its use actually add to the management and treatment of sex offenders?

A 2000 study by the Colorado Department of Public Safety for the National Institute of Justice surveyed 700 probation and parole officers, observed post-conviction polygraph examinations, reviewed published research and engaged in field research in 17 jurisdictions in seven states to answer the above questions.

How is the polygraph used in managing sex offenders?

Polygraph exams are used in conjunction with treatment and supervision practices to ensure that the offender is being truthful about their past or present offending behaviors.

- **Sexual history disclosure polygraph exams** are used to verify the accuracy and completeness of self reported sexual history information provided by the offender during treatment. The expectation that the offender will be truthful, coupled with

the ability to verify offender information through polygraph exams, increases the incentives for the offender to make full disclosure about their behavior.

- **Denial and other specific issue exams** are used to verify details about specific suspected violations of the offender's probation or parole, or to verify details of the conviction offense when the offender's version of what happened differs from the victim's version.
- **Maintenance or monitoring exams** are used to verify that the offender is complying with the terms of their post-conviction parole or probation.

The information gathered from post-conviction polygraph exams, in addition to other assessment tools, is used to develop or modify treatment and supervision in ways that are appropriate given the offender's risks and needs.

How reliable are polygraph exams?

The accuracy and reliability of polygraph exams is one of the most debated legal and ethical issues related to its use. A recent review of polygraph reliability and validity studies by Forensic Research for the American Polygraph Association found that:

- 96 to 98 percent of exams correctly identified deception;
- the test-retest reliability of field exams was 92 percent; and
- 82 percent of exams conducted in laboratory mock crime studies correctly identified deception.

Many variables can affect the accuracy and reliability of polygraph exams, and the American Polygraph Association has published a set of testing standards aimed at reducing variation in practice across exams.

Is the use of polygraph testing legal and ethical?

The issues of self-incrimination, invasion of privacy, and the admissibility of polygraph evidence in court are all key legal and ethical concerns impacting the use of polygraph testing.

Self-Incrimination Issues

In *Marcum v. State*, 983 S.W. 2nd 762 (Tex. App. 14th Dist., Sept. 17, 1998) the court found that polygraph exams administered as part of a court-ordered probation condition that revealed additional crimes through a parolee's confession were admissible in a parole revocation hearing. In *Minnesota v. Murphy*, 465 U.S. 420 (1983), the court found no violation of Fifth Amendment rights in using polygraph exams to question sex offenders on probation, though statements made cannot be compelled.

Because learning about prior offenses is important in treating and managing sex offenders, some jurisdictions grant limited immunity in order to gain more information that is relevant to successful implementation of the containment strategy.

Privacy Concerns

Sex offenders who take post-conviction polygraph exams are subject to practices that reduce their privacy rights. Offenders are required to waive confidentiality, and are expected to provide full disclosure on their sexual history, at-risk behaviors, and new crime information. Many people are disturbed about these intrusions of the government into the lives of private citizens. However, because secrecy and deception has often played a very large role in the lives of sex offenders, many treatment professionals believe that encouraging, and in some cases requiring, sex offenders to reveal secrets is both beneficial and therapeutic for the offenders. Information about past and present offending behavior is difficult to obtain and is important in determining the treatment and supervision planning for each offender. Polygraph testing has been equated by some researchers to urinalysis testing for substance abuse offenders, and ultimately critical to the overall management of sex offenders.

Admissibility of Polygraph Evidence in Court

The polygraph exam process often reveals information about new criminal or risky behavior that violates the offender's conditions of parole or probation. The information may then be provided to court or parole authorities and new sanctions can be applied.

Concerns about the use of polygraph information in court are related to several specific issues regarding standards of evidence including:

- lack of agreement about whether polygraphy is a scientifically valid technique;
- lack of known error rates;
- lack of controlling standards of practice in the polygraph professions;
- questions about juries giving polygraph findings excessive weight in the decision-making process and weakening their role as determiners of truth.

In *State v. Travis* (125 Idaho 1, 867 P.2d 234, 1994), the court found that while the defendant's agreement to a probation condition requiring polygraph exams did not establish admissibility of the results, the defendant was uncooperative and resisted supervision, causing revocation of his probation. *Patton v. State* (580 NE.2nd 693, Ind. App. 1992) found that "the benefits of the polygraph exam must be obtained without the exam results being admissible in any subsequent court proceeding." Field research on the use of polygraph exams by various jurisdictions found that most parole and probation officers used deceptive exams as a trigger for increased surveillance and supervision of offenders. Twenty-five percent of research respondents indicated that a deceptive polygraph exam could result in treatment termination.

What does the use of polygraph exams actually add to the management of sex offenders?

A comparison of information known before the treatment and polygraph process began and what was known after the treatment and polygraph process demonstrated how self-disclosure is tied to the polygraph process. The findings indicated that when the post-conviction treatment/polygraph process was used, more information was gained about sex offenders in the following areas:

- additional types of victims were at risk;
- offenders cross over between adult and child victims;
- incest offenders cross over between types of victims;
- high risk behaviors indicated patterns of assault;
- new crimes and behavior problems were identified;

- high-risk behavior was identified.

Based on the research compiled by the Colorado Department of Corrections for this report, the authors concluded that the use of post-conviction polygraph exams enhanced the management of the risk of sex offenders in the community.

From: English, K., Jones, L., Pasini-Hill, D., Patrick, D. and Cooley-Towell, S. (2000).
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ADDENDUM 3

Sex Offender Management Boards

Six states use some type of systematic method to integrate individuals from different agencies in order to provide a coordinated system for managing sex offenders. A board was used in Iowa, Illinois, Colorado, Pennsylvania, and Tennessee; Wisconsin developed a bi-monthly interagency meeting; and Washington developed an end-of-sentence review committee. Specific legislation provided authority to the boards in Illinois, Colorado, Pennsylvania, and Tennessee and the committee in Washington.

The various boards and committees share several common characteristics, most common being the development of organizations to facilitate a collaborative effort in managing sex offenders. In addition, the Iowa and Illinois also had the goal of developing professional standards for sex offender treatment providers. The Colorado and Pennsylvania boards were created in response to Megan's Law, the Wetterling Act, and the Lychner Act. Tennessee's board was created to establish best practice guidelines for sex offender treatment providers.

Several of the boards also have legislative functions. The Colorado and Iowa boards provide a coordinated response to the legislature, track current legislative issues, and promote legislation concerning sex offender management. The Colorado board offers significant input into new legislation regarding sex offenders.

All of these states have some set of standards for sex offender management including:

- professional certification for treatment providers;
- best practice guidelines for professionals;
- risk assessment tools;
- notification and/or registration programs.

Several issues and challenges raised in the creation and implementation of these boards include:

- ensuring that the appropriate number and mix of people were appointed to the board;
- involving all interested parties as early as possible in the process;
- providing the board with appropriate, well-organized staff;
- making sure the legislature has clearly written language for implementation and authority of the board and its policies;
- providing enough funding to carry out the functions of the board; and
- providing enough time and administrative assistance to members of the board to get work done in an efficient manner.

From: Minnesota Department of Corrections. (2000). Sex Offender Policy and Management Board Study. Viewed on the Minnesota Department of Corrections web site on Sept. 5, 2003 at <http://www.doc.state.mn.us>.

ADDENDUM 4

The Use of Civil Commitment Laws To Maintain the Incarceration of Sex Offenders

Several states have developed a strategy to maintain the incarceration of sex offenders who are considered to be too dangerous to release into the community after they have served their original sentences. Florida, Iowa, Illinois, Kansas, Texas, Wisconsin and Washington, among others, currently employ civil commitment that confines offenders to a treatment facility for an indefinite period of time. In its June 1997 decision in *Kansas v. Hendricks*, the U.S. Supreme Court upheld the constitutionality of the use of a civil commitment process to continue the confinement of sexually violent criminal offenders who are found to have a "mental abnormality" that causes them to pose a danger to others, even if they are not found to have a "mental illness." In upholding the statute, the Court gave the states broad discretion to define mental abnormality and to determine whether a violent sex offender who has completed his or her prison sentence poses a continuing danger to others.

Laws that provide for the civil commitment of sexually violent criminal offenders are controversial and have been criticized from a number of vantage points. One is regarding basic civil rights and the idea that sex offenders who have completed their prison sentences have already served their sentence and paid for their crime. Another is that committing sex offenders to mental health facilities for long periods of time, and potentially indefinitely because of the perceived incurable nature of sex offense behavior, means that less resources are available to provide services for people with treatable psychiatric illnesses. And in several states there have been questions about the amount, if any, of real treatment civilly committed sex offenders are receiving.

In 1994, Minnesota passed the Sexually Dangerous Persons statute, allowing for the commitment of sex offenders without having to prove that they have an inability to control their sexual impulses and actions. From 1987 through 1998, 8,700 adults in Minnesota were convicted of a felony-level sex offense, and 3,900 of these served time in prison, with the other 4,800 managed through probation supervision in the community.

Three thousand of the original 3,900 that received prison sentences were ultimately released, and 287 of those individuals were assessed as being a high risk in the community and were referred to county attorneys for possible civil commitment. Of those 287, 135 were civilly committed. The population of civilly committed sex offenders continues to grow by about 18 per year. The current cost for managing these offenders alone is \$20 million per year.

For more information on a specific state's civil commitment law and program, see the attached information on the Texas Civil Commitment of the Sexually Violent Predator statute.

From: Minnesota Department of Corrections. (2000). Sex Offender Policy and Management Board Study. Viewed on the Minnesota Department of Corrections web site on Sept. 5, 2003 at <http://www.doc.state.mn.us>.