

Overview of Sex Offender Risk Assessments

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In the criminal justice system, risk assessment is ubiquitous. It occurs throughout the management of defendants and convicted persons alike—from early bail hearings to sentencing to parole to civil commitment. With sex offenders, in the past decade, risk assessment has taken on a formal, structured quality. Whereas in the past, mental health clinicians would have reviewed a file, interviewed an alleged or convicted sex offender, and reached an unstructured judgment regarding the individual's risk, now there exist a variety of structured, empirically guided risk assessment instruments that are in common use. Almost all research and authorities (with a few exceptions) indicate that such instruments improve one's ability to assess risk and, in turn, accurately to predict future sex offenses.

Continuum of Structure and Empirical Foundation

Risk assessment methods can be viewed as falling on a continuum of structure and empirical foundation. Each step along this continuum has specific strengths and weaknesses. (See R. Karl Hanson, "What Do We Know About Sex Offender Risk Assessment?," 4 *Psychology, Public Policy and Law* 50 (1998);

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P.H. Witt and N. Barone, "Assessing Sex Offender Risk: New Jersey's Methods," 16 *Federal Sentencing Reporter* 170 (2004).) For example:

Unstructured Clinical Method. The unstructured clinical assessment method consists of:

- Based on review of records and unstructured clinical interview;
- No explicit prediction formula;
- Rough, inexact prediction, sometimes without articulation of rationale;
- Advantage of convenience;
- May be inaccurate; and
- May have relatively low level of agreement between independent evaluators who examine the same individual (i.e., low level of interrater reliability).

Structured Clinical Method. Attributes of the structured clinical method include:

- Use of standardized list of risk criteria;
- Criteria not necessarily empirically supported;
- Criteria may be derived solely from the developer's experience and opinions;
- Unclear which criteria are best predictors of sex offending;
- Advantage of increased interrater agreement; and
- Examples include informal risk checklists used in various correctional institutions or by parole and probation authorities.

Empirically Guided Method. The empirically guided method consists of:

- Use of standardized list of risk criteria and specific formula or method for combining these criteria;
- Although the individual criteria have support in the empirical literature, the instrument as a whole does not have tested predictive validity; and
- Examples include New Jersey's official risk assessment scale, the Registrant Risk Assessment Scale (RRAS). (Glenn E. Ferguson, Roy J. Eidelson, and Philip H. Witt, "New Jersey's Sex Offender Risk Assessment Scale: Preliminary Validity Data," 26 *J. of Psychiatry and Law* 327 (1998); "Sexual Violence Risk-20 (SVR-20)" in Douglas R. Boer, Stephen D. Hart, Ran-

dall Kropp, and Christopher D. Webster, *Manual for the Sexual Violence Risk—20* (1997).)

Clinically Adjusted Actuarial Method. The following comprise this method:

- Use of actuarial scale to provide foundation for prediction;
- Adjustment of prediction based on clinical factors;
- Advantage of firm foundation in actuarial scale with flexibility of clinical adjustment; and
- Potential disadvantage if reasons for clinical adjustment are not well founded or not clearly articulated.

Actuarial Method. The actuarial method is marked by:

- Prediction based entirely on scale that has been validated with a predictive validity study (i.e., a study linking present scale scores with varying levels of future recidivism);
- Advantage of strong empirical foundation with explicit recidivism levels for different scores on scale;
- Disadvantages of inflexibility, heavy reliance on static, historical risk factors (such as age of offender, prior criminal history, sex offense history, characteristics of victims), and inability to take into account variables beyond limited set used in scale; and
- Examples include Minnesota Sex Offender Screening Tool—Revised (MnSOST-R) and Static-99. (Douglas L. Epperson, Denise Hesselton, and James D. Kaul, Minnesota Dep't of Corrections, *Minnesota Sex Offender Screen Tool-Revised (MnSOST-R): Development, Performance, and Recommended Risk Level Cut Scores* (1999); R.K. Hanson and D. Thornton, "Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales," 24 *Law and Human Behav.* 119 (2000).)

Contexts

Preadjudication. At the time of arrest, to determine bail conditions, the court must decide what risk an accused sex offender presents to the community. If the judge decides to set the defendant's bail so high as to result in his or her incarceration, it is not uncommon for the defense attorney to

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request a psychological evaluation of the defendant in an effort to persuade the court to grant a lower bail. This psychological evaluation may present difficulties in that it is unclear on what factual basis to evaluate risk. There are typically conflicting accounts of what illegal sexual acts the defendant allegedly performed. It is not possible to separate the risk an individual presents from the severity, frequency, and duration of the illegal sexual acts an individual has perpetrated. All else equal, an individual who has committed more severe or extensive illegal sexual behavior presents a greater risk than an individual who has performed less extensive behavior.

Due to the above uncertainty as to the facts, preadjudication evaluations are a matter of some debate among sex offender treatment and evaluation specialists. Some experts believe that evaluation and treatment should begin only after the court has finished its work and reached a finding-of-fact. Others believe that, despite the factual ambiguity, evaluation and treatment should begin as soon as possible, in part to help manage whatever risk the individual does present. Although this issue is to some extent unresolved, in practice, preadjudication evaluations are common (as is preadjudication treatment).

No standards exist regarding preadjudication evaluations. Private practitioners, each of whom may use different risk assessment methods, do many of these evaluations. However, slowly the field is converging on a consistent methodology. Most evaluation reports now have an explicit risk assessment section, in which the results of structured risk assessment scales (usually empirically guided, if not actuarial) are reviewed. The use of such scales provides a firm foundation for proffering an opinion on the offender's risk. Moreover, most evaluators articulate what factual assumptions they are making in assessing risk, since varying factual assumptions may well result in varying risk evaluations.

Many of the considerations that affect risk evaluations in other contexts are also present in preadjudication evaluations. The evaluator considers:

- Length of sex offending history;
- Severity of illegal sexual behavior (e.g., age of victim, use of weapon, extent of victim injury);
- Frequency of illegal sexual behavior;
- Nonsexual criminal history;
- Presence (or absence) of a personality

disorder or other mental illness;

- Presence (or absence) of a paraphilia;
- Substance abuse history; and
- Moderating factors, such as stable relationships and a productive lifestyle.

Sentencing. Prior to the advent of laws that kept sex offenders out of the community indefinitely through civil commitment, many states adopted special sentencing guidelines or statutes for sex offenders. These statutes, sometimes known as sexual psychopath laws, predate risk assessment as we think of it today. However, they served to identify those individuals who presented the greatest risk to the public. Additionally, they

necessary. In Missouri, offenders enter an assessment unit for 120 days before sentencing, where they become involved in a "treatment readiness" program. Based upon the results of various psychological tests and the Static-99, recommendations are made regarding appropriate placement.

Community Notification. Risk evaluations are also routinely employed in the context of community notification laws. All 50 states and the District of Columbia have some form of community notification. These laws are designed to increase public protection by releasing relevant information about sex offenders to the community. Some states maintain broad community notification

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provided rehabilitation for those individuals.

By the 1960s, more than half the states had sexual psychopath laws. However, over the next 10 years, many states had repealed those laws, or rarely enacted them, in favor of a retributive management of offenders. Concerns about treatment effectiveness and philosophical shifts that favored punishment over treatment contributed to changes in the management of individuals convicted of various crimes, including sex offenses.

Nonetheless, some states do maintain special sentencing guidelines for sex offenders. In each of these states, the offender must first be found guilty of specific offenses, detailed in the relevant statute. To determine which offenders are eligible for special sentencing, evaluations are necessarily conducted. Although these evaluations ultimately assess risk, legislative mandates do not necessarily direct the use of relevant risk assessment instrument. For example, in New Jersey presentencing evaluations are conducted to determine whether an offender is repetitive and compulsive. The testing protocol includes a personality test, a projective measure, a brief IQ screening, and structured questionnaires. In Nevada, only offenders with the possibility of probation are evaluated and three actuarial risk assessment scales are used, as is additional testing as deemed

tion laws in which information about sex offenders is widely released to the public. Other states allow vulnerable organizations or particular victims information about offenders, while still others make information about offenders available only to those who request it. In many states, to whom and the extent of the information disclosed are related to the level of risk posed by the offender. This risk is identified through assignment of the offender to a tier level, based on some type of risk assessment.

Again, there is variation among states in how high-risk offenders are identified. In the state of New Jersey, for example, county prosecutors place offenders in risk tiers using an empirically guided risk assessment scale called the Registrant Risk Assessment Scale (RRAS). Although there is support for the concurrent validity of the RRAS, it has not been studied with regard to the way in which particular scores are related to future recidivism. Thus, the RRAS, although empirically guided, is not an actuarial scale. (Ferguson et al. (1998).) In Minnesota, the End of Confinement Review Committee (ECRC), a group of psychologists, criminal justice professionals, and victim advocates, determines decisions regarding tier classifications relying heavily on the Minnesota scale, the MnSOST-R.

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The degree to which the public is made safer by these community notification laws depends not only on whether such notification laws assist the public in protecting themselves, but also on how accurately the high-risk offenders are identified. Necessarily, the effectiveness of the risk assessment instruments employed plays a major role.

Civil Commitment. By far the most serious context in which risk assessments are applied is that of civil commitment. Sometimes referred to as "sexually violent predator laws," many states have adopted statutes that allow indeterminate commitment of sex offenders after they would normally be eligible to return to their community (i.e., after the completion of a term of incarceration). The first of these laws was created in the state of Washington and has served as a national model, in good part because it has withstood numerous constitutional challenges. In fact, the Kansas Sexually Violent Predator Act followed the Washington law closely.

Although the motivation for all states to institute commitment statutes hinges upon community safety, their fervor typically follows community outrage after a tragic event. For example, in Washington, that tragedy involved the abduction, rape, and sexual mutilation of seven-year-old Jacob Wetterling; in New Jersey it was the rape and murder of seven-year-old Megan Kanka. To date, 16 states and the District of Columbia have sexually violent predator laws that direct the release of sex offenders from incarceration.

The process by which a sex offender is committed is typically multistaged and is initiated at a designated time prior to the offender's scheduled date of release from prison or a treatment facility. Eligibility for commitment varies from state to state but typically requires four elements, following the Supreme Court's finding in *Kansas v. Hendricks*, 521 U.S. 346 (1997):

1. A history of sexual offenses;
2. A mental abnormality;
3. Volitional impairment; and
4. As a result of mental abnormality, the individual is likely to engage in acts of sexual violence. (H.A. Miller, A.E. Amenta, and M.A. Conroy, "Sexually Violent Predator Evaluations: Empirical Evidence, Strategies for Professionals, and Research Directions," *Law and Human Behav.* (in press).)

From state to state, the language that defines the mental condition that warrants

consideration for civil commitment varies. In Florida, for example, the condition is a mental abnormality or personality disorder, whereas in Texas it is a behavioral abnormality. Minnesota's statute created two categories of offenders that could be committed: the sexual psychopathic personality and the sexually dangerous person. Additionally, the specific risk assessment instruments employed in each state vary, although as of June 2000, only two states (Texas and Massachusetts) did not use actuarial instruments in their assessments. (D. Doren, *In the Matter of the Commitment of R.S.*, 339 N.J. Super. 507 (2000).)

Risk Assessment Issues

For decades, experts have debated whether mental health experts can predict future violent events. Early research indicated that mental health experts frequently performed no better than chance or no better than untrained laypersons in predicting violence. Although the vocabulary has changed, nonetheless, risk assessment still involves making an estimate of the likelihood of a future violent (or at least illegal) event.

Accuracy of Scales. Although the field as a whole has moved from unstructured clinical assessments to the use of empirically guided and actuarial risk assessment scales, there is still debate about the utility of these scales. One such debate centers on sex offender risk assessments' heavy reliance on historical, static, actuarial risk factors divorced from any underlying theory of sex offending. (R.K. Hanson, "Who Is Dangerous and When Are They Safe? Risk Assessment With Sexual Offenders, in B.J. Winnick and J.Q. LaFond, eds., *Protecting Society From Sexually Dangerous Offenders* 63-74 (2003).) A lesson that psychological assessment professionals have learned in recent decades is that theory-guided assessment tends to lead to higher levels of validity and to more coherent research programs. Fortunately, current work has begun to correct this deficit in the sex offender risk assessment literature. Ward and Beech have recently proposed an organization of risk factors that relates these factors to broader, well-accepted psychological theory, and that includes dynamic, changeable risk factors. They suggest that developmental factors, such as a history of abuse, lead to emotional vulnerability. This vulnerability, in turn, leads to traits, currently categorized as stable dynamic risk factors, such as difficulties in sexual or general self-regulation. These traits have historical markers, which

are reflected in the static, historical risk factors, such as criminal history. However, all the above difficulties are triggered in a specific situational context reflected in acute risk factors, such as noncooperation with authorities or substance abuse. These triggering events, finally, lead to negative affective states, which are the immediate precursors to instances of sexual abuse. (T. Ward and A.R. Beech, "The Etiology of Risk: A Preliminary Model," 16 (4) *Sexual Abuse* 271-84 (Oct. 2004).)

Further Research Needed on Dynamic Risk Factors. We hope and expect that the relation of the various categories of risk factors to well-grounded psychological theory will lead to productive research, particularly in the neglected area of dynamic risk factors. Presently, considerable work remains to be done on how dynamic factors (or triggering contexts/acute dynamic factors) interact with long-standing traits to lead to instances of illegal sexual behavior. As Miller et al. note:

The field of forensic assessment has been very successful in the last decade in identifying [static, historical] variables that are related to sexual recidivism. However, the understanding of dynamic risk variables remains in its infancy. (Miller et al., 31 (in press).)

To What Degree Are Predictions Correct? Another central issue with regard to the accuracy of risk assessment instruments is the degree to which the instrument's predictions are correct. The most common method of answering this question relies on a statistic called the Receiver Operating Characteristic (ROC), which indicates the degree to which the instrument is capable of distinguishing true positives (offenders identified as high risk who do reoffend) from false positives (offenders identified as high risk who do not reoffend). Necessarily, there is a certain amount of error in these predictions. How much error is acceptable is the fodder of much debate among civil libertarians, lawmakers, and mental health experts.

If actuarial instruments are scored improperly, they are rendered useless. Scoring these instruments not only requires familiarity with the instruments and associated manuals, but also requires the ability to sift through records in search of relevant information. Perhaps most importantly, the instrument must lend itself to consistent scoring, a fact measured by interrater reliability statistics. Although some of the risk assessments currently in use have high interrater reliability, other

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instruments can be more difficult to score and can lead to individual scoring variations. Unfortunately, mistakes still happen, and frequently risk assessment reports will reflect varying scores by different examiners.

It is imperative that examiners understand the importance of maintaining strict adherence to coding rules to interpret the items being measured. Although clinical judgment is an important tool in risk assessment, it has no place in the scoring of an actuarial instrument.

Appropriate Use for Most Careful Practice

Most authorities agree that use of empirically guided risk assessment scales increases the accuracy of one's predictions, and there are considerable research data to support this assertion. (R. Hanson and M. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," 66 *J. of Consulting and Clinical Psych.* 348-64 (1998).) However, some still believe that mental health experts are not

sufficiently accurate to use their risk assessments to restrict sex offenders' liberty through civil commitments, for example. Others have indicated, to the contrary, that psychological assessment methods are well within the limits of prediction accuracy accepted in other fields, such as medicine.

This issue will continue to be argued for some time. Our opinion is that the present best practice in risk assessment involves the following:

- Use of an empirically guided or actuarial risk assessment scale (and scoring of the scale following the manual);
- If appropriate, the use of multiple scales with differing emphases (for example, varying emphases of static, historical risk factors versus changeable, dynamic risk factors);
- Clear articulation of the factual foundation for the risk assessment;
- Integration of the scale results with additional clinical information (such as the presence of a personality disorder or paraphilia);
- Assessment of current and recent

adjustment (which acts as a moderator of risk);

- If possible, an articulation of the individual precipitants of sex offenses in the individual examined (not always possible due to lack of openness or lack of articulateness of the offender); and
- Clear communication of the results, including the bases from which one is drawing one's inferences regarding risk.

Following the above guidelines will give the evaluation findings a solid foundation. The evaluator also should have an understanding of the characteristics of the scales used—which scales include a measure for seriousness of offense; which include only (or primarily) historical risk factors; which include dynamic, changeable risk factors; which scales can assist in managing the offender's current risk. A clear understanding of the scale's properties can guide the evaluator in appropriate use of the scale. Given the gravity of the recommendations evaluators make, the most careful practice is warranted. ■