

SEX OFFENDER SENTENCING IN WASHINGTON STATE: NOTIFICATION LEVELS AND RECIDIVISM

The 2004 Legislature directed the Washington State Institute for Public Policy (Institute) to conduct a comprehensive analysis and evaluation of the impact and effectiveness of current sex offender sentencing policies.¹ Because this is an extensive topic, we are publishing a series of reports.

In 1990, the Washington State Legislature passed the Community Protection Act, an omnibus bill that included the requirement for sex offenders to register with the sheriff in their county of residence.² Public officials, for the first time in U.S. laws, were also authorized to release “necessary and relevant” information about sexual predators to the public.

In 1990, the multi-disciplinary End of Sentence Review Committee (ESRC) within the Department of Corrections began issuing three types of notifications to law enforcement: Special Bulletins (highest risk), Law Enforcement Alerts, and Teletype.³ The ESRC’s notification decision was based upon a review of the offender’s criminal history, institutional behavior, and other relevant information.

In 1997, the Legislature directed a more consistent statewide approach to notifications.⁴ The extent of disclosure was to be rationally related to: (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

The ESRC then adopted the Washington State Sex Offender Risk Level Classification Tool⁵ to determine a sex offender’s risk to the community. The ESRC notification levels are sent to local law enforcement who determine the level communicated to the public.

In a previous report, the Institute analyzed the relationship between recidivism and Washington’s passage of sex offender registration and community

SUMMARY

This report examines the relationship between recidivism and the sex offender notification levels set by Washington State’s End of Sentence Review Committee (ESRC). These notification levels are sent to local law enforcement who make the final determination of the level communicated to the public.

Starting in 1990 the ESRC’s notification risk classification was based upon a review of the offender’s criminal history, institutional behavior, and other relevant information. As a result of 1997 legislation, the ESRC adopted a more consistent approach to classification—the Washington State Sex Offender Risk Level Classification Tool.

The Classification Tool combines two factors: specific notification considerations and an offender’s risk assessment score. The result is three notification levels (I, II, III) that define the degree of risk to the community posed by convicted sex offenders.

Key Findings

- The 1997 statute increased the percentage of sex offenders who received a notification level from 50 percent in 1997 to nearly 90 percent in 1999.
- The notification levels determined by the ESRC do not classify sex offenders into groups that accurately reflect their risk for reoffending.

Future reports will address prospects for a more accurate sex offender risk assessment instrument.

notification statutes.⁶ The report concluded that recidivism rates for sex offenders have decreased since the enactment of these statutes.

This report examines how well the ESRC’s notification levels predict recidivism. A future report will examine the notification levels issued by law enforcement.

¹ ESHB 2400, Chapter 176, Laws of 2004.

² RCW 4.24.550.

³ *Policy 350.500, End of Sentence Reviews*, Olympia: Washington State Department of Corrections, May 1990.

⁴ RCW 4.24.5502.

⁵ http://www.doc.wa.gov/CPU/eosrc_index.htm.

⁶ Robert Barnoski, 2005, *Sex Offender Sentencing in Washington State: Does Community Notification Influence Recidivism Rates?* Olympia: Washington State Institute for Public Policy, Document No. 05-08-1202.

The Washington State Sex Offender Risk Level Classification Tool places sex offenders into one of three notification levels by combining a risk assessment score and a notification considerations score.

The risk assessment score is based on the original 1995 version of the Minnesota Sex Offender Screening Tool (MnSOST)—one of the earliest sex offender assessment tools. In 1998, Minnesota developed the MnSOST–R, which is a more valid predictor of sex offender recidivism.⁷

The ESRC’s notification considerations score is based on the following four items:

- The victim in a non-familial sex conviction was particularly vulnerable or incapable of resistance due to physical or mental disability or ill health.
- The sex offense was of a predatory nature, or the offender used a position of community trust (i.e., coach, teacher, group leader, or police officer) or a professional relationship to facilitate the non-familial sex offense.
- The offender continued to act out sexual deviancy during incarceration.
- The offender was an adult male with a Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) score of 4 to 6. (The RRASOR is a widely used actuarially-based assessment.)⁸

The Washington State Sex Offender Risk Level Classification Tool defines the three notification levels as follows:

- **Level I:** Low-risk offenders with an assessment score under 47 points and no notification considerations.
- **Level II:** Moderate-risk offenders with an assessment score under 47 points and one or two notification considerations.

⁷ D.L. Epperson, J.D. Kaul, S.J. Huot, D. Hesselton, W. Alexander, and R. Goldman, 1995, *Minnesota Sex Offender Screening Tool (MnSOST)*, St. Paul, MN: Minnesota Department of Corrections; D.L. Epperson, J.D. Kaul, S.J. Huot, D. Hesselton, W. Alexander, and R. Goldman, 1998, *Minnesota Sex Offender Screening Tool—Revised (MnSOST–R)*, St. Paul, MN: Minnesota Department of Corrections; D.L. Epperson, J.D. Kaul, S.J. Huot, R. Goldman, and W. Alexander, 2003, *Minnesota Sex Offender Screening Tool—Revised Technical Paper: Development, Validation, and Recommended Cut Scores*, St. Paul, MN: Minnesota Department of Corrections.

⁸ R.K. Hanson, 1997, *The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism*, Department of the Solicitor General of Canada, Public Works and Government Services Canada, cat. No. JS4-1/1997-4E.

- **Level III:** High-risk offenders with an assessment score under 47 points and three or four notification considerations, or an assessment score of 47 or more points.

Local law enforcement agencies can modify the level of risk determined by the ESRC when notifying the public about sex offenders in their community. The Washington Association of Sheriffs and Police Chiefs created a model policy for release of information.⁹

Study Design: This report focuses on two research questions:

- How well do the ESRC notification levels predict recidivism (a conviction for another crime in Washington State)?
- Did the 1997 revisions improve prediction?¹⁰

This study includes the notification level data from two time periods: the period between passage of the 1990 and 1997 statutes, and the period after the 1997 statute. To allow sufficient follow-up time, the study sample includes sex offenders released to the community before October 1999.¹¹ Three types of recidivism are measured: any felony, violent felony, and felony sex.¹²

Exhibit 1 displays the number of sex offenders released from prison during the two study periods, and the percentage with an ESRC notification level.

Exhibit 1
ESRC Notification Levels
Sex Offenders in Each Study Group

Study Group	Number	Percent With Notification Level
1990 – 1996	4,445	51%
1997 – 1999	1,304	88%

From 1990 to 1996, 51 percent of sex offenders released from prison had an ESRC notification level. During 1997 to 1999, the percentage rose to 88 percent.

The 1997 statute clearly resulted in an increased percentage of sex offenders released with an ESRC notification classification.

⁹ RCW 9A.44.130.

¹⁰ DOC began using the revised levels in October 1997.

¹¹ Robert Barnoski, 2005, *Sex Offender Sentencing in Washington State: Measuring Recidivism*. Olympia: Washington State Institute for Public Policy, Document No. 05-08-1202.

¹² Felony recidivism includes reoffending for any felony offense. Violent felony recidivism includes homicide, sex, robbery, assault, and weapon offenses. Felony sex recidivism is also included in violent felony recidivism.

Exhibit 2 shows the percentage distribution of ESRC notification levels. For the 1990 to 1996 period, we designate Special Bulletins as Level III, Law Enforcement Alerts as Level II, and Teletypes as Level I. The Level I percentage decreased from 69 percent in the 1990 to 1996 period to 58 percent in the 1997 to 1999 period, while the Level II percentages increased from 8 to 24 percent. The percentage of Level III sex offenders dropped from 23 to 17 percent.

Exhibit 2
ESRC Level Classifications
for Each Study Group

Study Group	Notification Level Distribution*		
	I	II	III
1990 – 1996	69%	8%	23%
1997 – 1999	58%	24%	17%

*Those with a recorded notification level.

The 1997 statute resulted in an increased percentage of sex offenders classified as Level II and a reduced percentage classified as Level I and III.

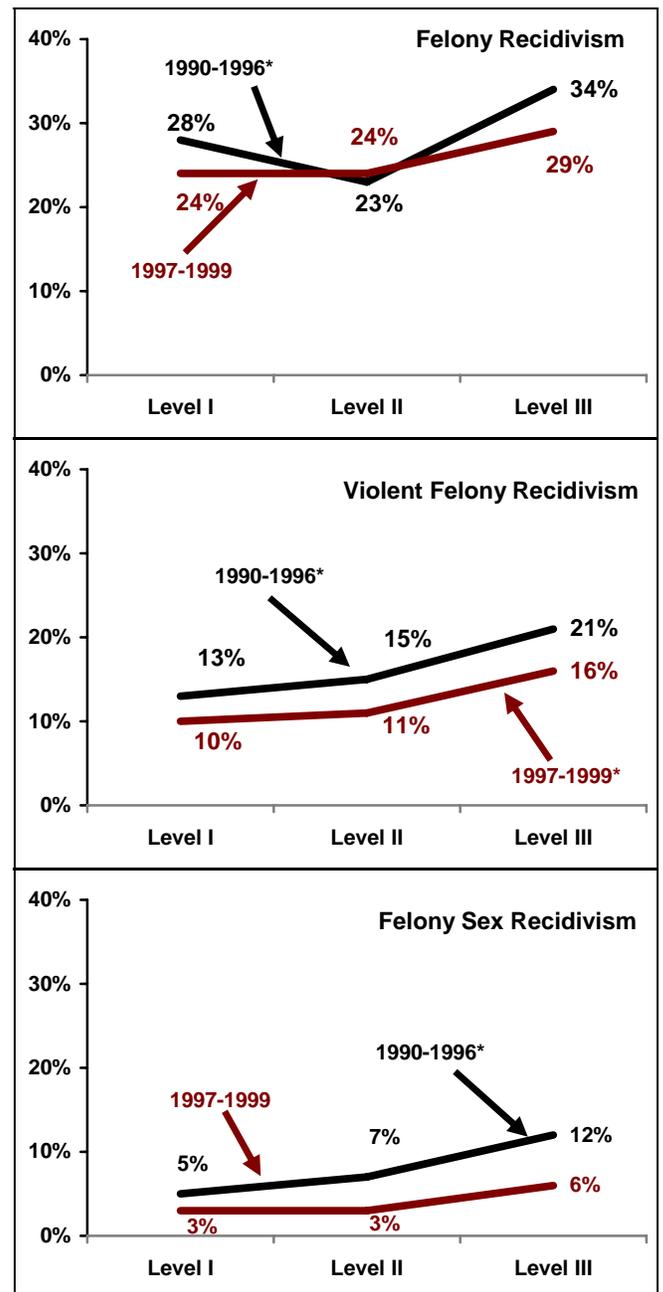
Exhibit 3 displays the three types of five-year felony recidivism rates for sex offenders with and without ESRC notification levels since 1990. During the 1990 to 1996 period, sex offenders with notification levels have higher recidivism rates than those without levels. During the 1997 to 1999 period, the differences between those with and without a level are smaller. That is, prior to the 1997 statute only higher-risk sex offenders tended to have ESRC notification levels.

Exhibit 3
Five-Year Felony Recidivism Rates:
Sex Offenders With and Without ESRC Notification
Levels for Each Study Group

Type of Recidivism	Without a Level	With a Level	Increase for Those With
1990 – 1996			
Felony	22.2%	28.1%	5.9%
Violent	9.8%	15.2%	5.4%
Sex	3.8%	6.4%	2.60%
1997 – 1999			
Felony	30.6%	26.0%	-4.6%
Violent	8.8%	11.3%	2.5%
Sex	1.3%	3.3%	2.0%

Exhibit 4 displays the three types of recidivism for offenders in the three notification levels from the two study periods. For example, the felony recidivism rates for the 1990 to 1996 period vary from 28 percent, to 23 percent, to 34 percent for notification Levels I, II and III respectively. The recidivism rates for Level III offenders are consistently higher than the rates for Level I offenders.

Exhibit 4
Five-Year Felony Recidivism Rates and
ESRC Notification Levels
(Statistically significant differences are noted by an *)



We now use two statistics to help assess how well the ESRC notification levels predict recidivism.

The first measure of predictive accuracy is statistical significance. During the 1990 to 1996 period, the ESRC notification levels have a statistically significant association with all three measures of recidivism. During the 1997 to 1999 period, only violent felony recidivism has a statistically significant association with the notification levels.

Statistical significance indicates that the recidivism rates for the three levels differ. With large samples, as in this study, even small differences in recidivism can be statistically significant. In addition to statistical significance, researchers report another measure of predictive accuracy when discussing assessment findings: the Area Under the Receiver Operating Characteristic (AUC). The AUC is the best measure of predictive accuracy between the dichotomous outcome of recidivism and the three risk-level categories.¹³ The AUC statistic varies between .500 and 1.00. AUCs in the .500s indicate little to no predictive accuracy, .600s indicate weak accuracy, .700s moderate, and those above .800 have strong predictive accuracy.¹⁴

Exhibit 5 displays the AUCs for the ESRC notification levels during the two study periods. The AUCs indicate that the notification levels have little to no predictive accuracy. The one exception is the AUC of .611 for felony sex recidivism during the 1990 to 1996 period—but this indicates only weak accuracy.

Exhibit 5
Association Between
ESRC Notification Levels and Recidivism

	AUC	
	1990 – 1996	1997 – 1999
Felony	0.522	0.518
Violent	0.558	0.552
Sex	0.611	0.560

Additional Analyses

The notification level data in this report are for offenders released six years ago; to check whether predictive accuracy is better for a more recent sample of sex offenders, we repeat the analyses using a shorter three-year follow-up period for the 2,328 sex offenders released as late as June 2001. The same results are obtained.

Our previous report on the relationship between recidivism and Washington’s passage of sex offender registration and community notification statutes¹⁵ found that recidivism rates have decreased since 1997. This is also evident in Exhibit 4 where the recidivism rates of the 1997 to 1999 study group are consistently lower than the 1990 to 1996 study group’s rates. It may be that the classification correctly identified higher-risk offenders as Levels II and III but, because of law enforcement’s community notification, they do not reoffend at a rate much higher than Level I offenders.

To test this theory, we created a matched sample of sex offenders from the pre-1990 period and assigned these offenders the notification levels of the post-1997 offenders they matched. The analyses of this matched sample did not show any decrease in recidivism for the Level II or III sex offenders relative to their matched offenders, with one exception. The felony sex recidivism rate of Level III sex offenders during the 1997 to 1999 period was slightly less than the matched sample; however, this difference was not statistically significant.

Based on the AUC statistics we conclude that the notification levels determined by the ESRC do not classify sex offenders into groups that accurately reflect their risk for reoffending.

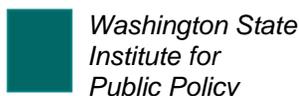
¹³ V.L. Quinsey, G.T. Harris, M.E. Rice, C.A. Cormier, 2005, *Violent Offenders: Appraising and Managing Risk, Second Edition*, Washington, DC: American Psychological Association.

¹⁴ University of Michigan, 2003, *The Area Under the ROC Curve*. See: <http://gim.unmc.edu/dxtests/roc3.htm>.

¹⁵ Robert Barnoski, 2005, *Sex Offender Sentencing in Washington State: Does Community Notification Influence Recidivism Rates?* Olympia: Washington State Institute for Public Policy, Document No. 05-08-1202.

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