

# *Sexually Violent Predators and Civil Commitment*

A Study of the Characteristics and Recidivism of  
Sex Offenders Considered for Civil Commitment  
But for Whom Proceedings Were Declined

*Prepared for the:*

Washington State Institute for Public Policy

*Prepared by:*

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## EXECUTIVE SUMMARY

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Washington State law provides for the civil commitment of extremely dangerous sex offenders. The Sexually Violent Predator statute (RCW 71.09.020) and the filing standards developed by the Washington State Association of Prosecuting Attorneys (WAPA) establish explicit requirements necessary to initiate civil commitment proceedings on an individual.

This study describes the 61 adult offenders who were referred for possible commitment as predators but for whom such petitions for civil commitment were not filed, during the first six years after the law's passage (July 1990 through June 1996). The decision not to file on these individuals occurred because the county prosecutor (or the attorney general) determined that one or more of the statutory requirements could not be proven. The subsequent criminal behavior of these 61 offenders was tracked in official records for the time period following their release from custody.

### ***Key Findings***

**Recidivism.** This study examined arrests and convictions following release from prison. A technique known as "survival analysis" was used to analyze these rates, controlling for the difference in lengths of follow-up, which varied from 5 to 70 months, with a mean of 46 months.

During this period, more than one-half of the group were rearrested. The highest percentage of offenders were rearrested for nonsexual crimes.

- 59 percent were arrested for one or more new offenses
- 28 percent were arrested for new sex offenses
- 15 percent were arrested for violent felony offenses
- 33 percent were arrested for nonviolent felony offenses
- 23 percent were arrested for misdemeanors

**Persistent Offender Statutes.** Washington's sentencing laws were amended in 1993 and 1996 to authorize lifetime commitments to prison for persistent offenders ("Three Strikes" and "Two Strikes"). All offenders in this study were confined for offenses committed before enactment of these laws. On the basis of their prior and current convictions, almost 40 percent met the statutory definition of a persistent offender and presumably could have been sentenced to life in prison without parole had they been sentenced after this legislation went into effect. Instead, all were released into the community sometime between 1990 and 1996.

The persistent offender statutes and their recent expansion to encompass persistent sex offenders may modify the types of offenders who will be referred for civil commitment in the future. This new legislation will certainly result in life sentences without parole for sex offenders with multiple convictions. These offenders will never be released and, thus, never be considered for civil commitment as sexually violent predators. As a consequence, the number of referrals may actually decline in the coming years.



## INTRODUCTION

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The 1989 Governor's Task Force on Community Protection was created to examine the shortcomings in Washington State law that permitted the release of dangerous sex offenders who were at high risk to commit violent crimes. In addition to changes in the criminal penalties, the Task Force recommended the use of civil commitment procedures to confine and provide treatment for offenders with histories of violent and predatory sexual offenses. The 1990 Legislature adopted this recommendation and enacted a statutory scheme (RCW 71.09) permitting the indefinite involuntary commitment of any person found to be, beyond a reasonable doubt, a sexually violent predator.

### ***Civil Commitment Requirements***

The Sexually Violent Predator statute (RCW 71.09.020) and the filing standards developed by the Washington State Association of Prosecuting Attorneys (WAPA) are quite specific with regard to the requirements necessary to initiate civil commitment proceedings on an individual. According to the WAPA standards (1990), the prosecuting attorney of the county where the person was convicted or charged (or the attorney general, if requested by the prosecuting attorney) must be satisfied that substantial evidence exists to establish each of the three requirements set forth in statute:

1. The person has been convicted of a sexually violent offense<sup>1</sup> or charged with a crime of sexual violence; and
2. The person suffers from either: (a) a "mental abnormality," which means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such a person a menace to the health and safety of others; or (b) a personality disorder; and
3. The mental abnormality or personality disorder makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. Predatory means acts directed toward: (a) strangers or (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization.

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<sup>1</sup> Sexually violent offense means: (a) rape first degree, rape second degree (by forcible compulsion), rape of child first or second degree, statutory rape first or second degree, indecent liberties (by forcible compulsion or involving a child under 14), child molestation first or second degree, incest against a child under age 14, or (b) prior felony offense that is comparable to a sexually violent offense, or (c) murder in the first or second degree, assault in the first or second degree, assault of a child first or second degree, or (d) an attempt, criminal solicitation, or criminal conspiracy to commit (a), (b), or (c), kidnapping in the first or second degree, burglary in the first degree, residential burglary and unlawful imprisonment, if it can be proven during commitment proceedings that the offense was "sexually motivated."

## ***End of Sentence Review Committee***

To aid in the determination of evidentiary sufficiency, the WAPA filing standards require that an End of Sentence Review Referral Subcommittee (ESRRS) gather and submit specific information to the prosecuting attorney or the attorney general prior to a decision to file a petition charging a person with being a sexually violent predator. Such information ordinarily includes authenticated copies of necessary court documents, all records of evaluation and treatment, all records of the offender's version of the offenses, full police case reports related to all prior arrests and convictions, and any institutional records relating to the offender's behavior and conduct while in custody.

If the information provided by the ESRRS is sufficient, the prosecuting attorney or the attorney general ordinarily obtains three additional types of information: (1) expert reports that the offender currently has a mental abnormality or personality disorder and the present likelihood that the person will engage in predatory acts of sexual violence, (2) written or taped statements from all material witnesses, including those in cases involving prior sexually violent offenses, and (3) written or taped statements from witnesses in the institution who were involved in the treatment or supervision of the offender.

Once the statutory requirements and evidentiary standard have been met, the WAPA guidelines identify the circumstances under which the prosecuting attorney or the attorney general may file a petition. These circumstances include consideration of the willingness of victim (or victim's family) to testify in proceedings, a provable pattern of prior predatory acts, and a determination by a qualified mental health professional that the offender currently suffers from a mental abnormality or personality disorder that renders the individual likely to engage in predatory acts of sexual violence.

Once these circumstances have been satisfied and a petition filed, an array of procedural protections are provided to the offender, including access to counsel and expert witnesses and trial by jury. If the jury or court finds, beyond a reasonable doubt, that the offender is a sexually violent predator, the offender is civilly committed for the purpose of treatment of the mental condition that produced the predatory acts of sexual violence. The commitment continues until such time as the committing court or jury determines that the offender should be released.

During the years since enactment of the statute, the law has been used very selectively to identify and civilly commit a small number of offenders who were believed to pose substantial risk of committing future acts of sexual violence. Each year from July 1990 through June 1996, members of the ESRRS have reviewed the files of more than 2,000 adult sex offenders under the jurisdiction of the Department of Corrections (DOC) prior to the release of these offenders from prison or community supervision. Each year the ESRRS has referred an average of fewer than 20 of these DOC offenders (less than 1 percent) to prosecuting attorneys or the attorney general for filing consideration. Each year the prosecuting attorneys or the attorney general have filed civil commitment petitions on an average of seven of these DOC offenders, or approximately one-third of those referred by the ESRRS.

This study examines the characteristics and recidivism of those sex offenders who were referred by the ESRRS to prosecuting attorneys or the attorney general as possible sexual predators, but for whom no civil commitment proceedings were initiated. The report also discusses the reasons that prosecutors or the attorney general declined to file petitions on these offenders and explores the implications of newly-enacted sentencing statutes.

## **Section I: METHODS**

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The primary purposes of this study are: (a) to provide a descriptive portrait of those Department of Corrections (DOC) offenders who were referred as possible sexually violent predators but for whom petitions for civil commitment were not filed ("nonfilers"), and (b) to examine the recidivism (new arrests and new convictions) of the nonfilers since their release from custody. The following is a description of the methods used in the study.

### ***Sample***

The population for the study included all offenders who were under the jurisdiction of the DOC and who were referred as possible sexual predators by the ESRRS between July 1990 and July 1996, and for whom filings were declined. Sixty-two such offenders were identified by the DOC Program Administrator for Community Protection and Program Services and the Chair of the End of Sentence Review Referral Subcommittee. One offender was eliminated from the sample because he was released to another state to complete a lengthy sentence and was never at liberty in Washington. Thus, the study sample became 61 sex offenders, all of whom were adults under the jurisdiction of the DOC at the time of their referral.

### ***Data Sources and Procedures***

Copies of the written referrals prepared by the ESRRS and sent to the prosecuting attorneys or the attorney general were used as the source of information on the characteristics of offenders. These referrals ranged from 5 to 77 pages in length and usually contained details of the offenders' previous sexual and nonsexual crimes, summaries of their previous psychological evaluations, commentaries on their participation and progress in sex offender treatment programs, and summaries of their institutional adjustment. Attached to these referrals were the letters from prosecuting attorneys or the attorney general that stated the reasons why petitions would not be filed on these offenders. Relevant information from these sources was coded and compiled.

Recidivism was measured by tracking the 61 offenders in the sample throughout a follow-up period and recording all new arrests and convictions both within and outside the state of Washington. The follow-up period was defined as the date of release from prison to December 31, 1996. (Note: In several instances, the release dates preceded the enactment of the Sexually Violent Predator statute.)

The sources of data on criminal histories, as well as new arrests and convictions, included Washington State Patrol reports, the Offender Based Tracking System maintained by the Department of Corrections, and National Crime Information Center Interstate Identification Index reports.

## **Data Analysis**

Descriptive statistics were used to summarize characteristics of the sample and the reasons for not filing petitions. Descriptive statistics were also used to analyze recidivism. The number and percentage of offenders who were arrested for new offenses were calculated by type of crime (sex, violent felony, nonviolent felony, or misdemeanor). The trial outcomes and sentences of those offenders arrested for sex offenses were extracted and examined individually.

The recidivism patterns of the "nonfilers" in the sample were analyzed using survival analysis. Survival analysis provides estimates of how long subjects "survive" before an event (such as a new offense) occurs, as well as estimates of the rate at which the event occurs. Survival analysis is particularly well suited to the treatment of recidivism data because it takes into account differential periods at risk and also accounts for "censored" cases, or those subjects who do not reoffend during an observation period.

The specific analytical tool for this effort was a *life table*. This is a non-parametric technique that has the advantage of making no assumptions about the shape of the survival curve. The basic purpose of a life table is to calculate the probability of an event occurring in a certain time interval. For each time interval, all subjects who have been observed (or are at risk) at least that long are used to calculate the probability of an event, such as a new arrest, occurring in that interval. Successive probabilities (the probability of failing during the first time interval and the probability of failure during the second time interval, given that a subject has not failed during the first, and so on) can then be used to estimate the cumulative probability of an event occurring by the end of a longer time period.

## **Section II: FINDINGS**

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### ***Identification and Referral Process***

Identification of possible sexually violent predators begins with the ESRRS. The ESRRS reviews the records of all sex offenders under the jurisdiction of the DOC approximately eight months before their anticipated date of release from prison. As each record is reviewed, subcommittee members pay particular attention to the offender's criminal history, evaluations by mental health professionals, and the pattern of sex offense behavior. An average of two offenders out of each 100 reviewed are identified and investigated more thoroughly.

After investigation, less than one sex offender in every 100 reviewed is deemed appropriate for possible civil commitment as a sexually violent predator. A referral on the offender is then prepared containing the requisite documents required by the WAPA guidelines, i.e., court documents, complete criminal history, mental health evaluations, treatment records, police case reports on prior arrests and convictions, offender's version of offense(s), if any, and institutional records. A summary of the contents of these documents and the documents themselves are usually sent to the appropriate prosecuting attorney or the attorney general several months before the offender is to be released.

### ***Referral Review and Filing Decision Process***

Letters referring offenders for possible civil commitment are sent to the prosecuting attorneys in those counties where the felony convictions were obtained on the index (most recent) felony offenses. However, because the case reviews and filing processes are so time consuming and complex, many prosecuting attorneys have requested the assistance of the attorney general. Currently, the attorney general receives and reviews the actual referral documents and makes the filing decisions in 37 of Washington's 39 counties. Only the prosecuting attorneys in King and Snohomish Counties retain these functions.

Petitions are filed on approximately one-third of the ESRRS referrals involving offenders under the jurisdiction of the DOC. The attorney general or prosecuting attorneys decline to file on the remaining referrals. Written reasons for these latter decisions are forwarded to the ESRRS, where they are reviewed and appended to the files of the referred offenders.

### ***Reasons for Not Filing on Offenders in the Study Sample***

Either prosecuting attorneys (52 percent) or the attorney general (48 percent) declined to file on the 61 offenders in the study sample. Although a variety of reasons were cited for the decline decisions, nearly all (98 percent) related to the inability to prove one or more of the three statutory criteria necessary for civil commitment. The most commonly noted reasons were: (1) insufficient *provable* pattern of sexually violent predatory acts, (2) insufficient (or no) assessment of a mental abnormality or personality disorder, (3) insufficient (or no) assessment linking a mental abnormality or personality disorder with the likelihood of committing acts of sexual violence. In one instance, a prosecutor declined to file because his office lacked the resources to pursue a civil commitment proceeding.

### ***Description of the Sample***

The sample consisted of 61 adult males under the jurisdiction of the DOC. All 61 offenders were referred by the ESRRS as possible sexually violent predators. No petitions seeking civil commitment were filed on these offenders.

The referral summaries and accompanying documents were searched to gather information regarding historical variables. These sources did not always contain information on the variables in question. The "unknown" categories on some variables were considerable and ranged from 13 to 27 percent. Table 1 presents descriptive information for the members of the sample for whom data were available.

The offenders were generally white. Although most were in their mid-thirties at the time of their release from prison, the ages at release ranged from 21 to 64 years old. At least 39 percent had been arrested for some type of offense before age 16. Most were known to abuse alcohol. More than one-half of the offenders were known to have been married, but nearly 70 percent lived alone at the time of their offense.

**TABLE 1**

#### ***Characteristics of the Sample***

<b>CHARACTERISTIC</b>	<b>MEAN/PERCENT</b>
Average age at time of release	36.5 years
Caucasian	80%
Arrested under age 16	39%
History of alcohol abuse	64%
History of drug abuse	39%
Ever married	52%
Lived alone at time of offense	69%

Nonsexual criminal history information is presented in Table 2. As shown in the table, the offenders in this study were extensively involved in crimes other than sexual offenses. Nearly one-third of the sex offenders in the sample also had prior convictions for other types of violent felony offenses, while 39 percent had convictions for nonviolent felony offenses. Approximately one-half had prior misdemeanor convictions. Less than one-third (31 percent) had no prior convictions for nonsexual offenses.

**TABLE 2**

***Criminal History of the Sample:  
Nonsexual Offenses***

<b>TYPE OF PRIOR NONSEXUAL CONVICTIONS</b>	<b>PERCENT</b>
Violent felony offenses	31%
Nonviolent felony offenses	39%
Misdemeanor offenses	49%
None	31%

Table 3 presents information on the sexual offense histories, including the referral crimes, of the offenders. Most offenders were in their mid-twenties when they committed their first sex offenses that resulted in convictions, although one offender was as young as 13 and another as old as 64. More than three-fourths of the offenders had two or more sex offense convictions. The average for the entire sample was 2.6 sex offense convictions per offender.

The sample was about evenly split between rapists and child molesters. Most of the offenders were alleged, or known, to have committed other sex offenses for which they were never convicted. More than three-fourths of the men in the sample were known to be under the influence of alcohol or drugs when they committed a sex offense. One-half of the men in the sample had used, or threatened to use, a weapon during the commission of the sex offense. Nearly two-thirds of the offenders had physically harmed a victim.

Slightly more than one-half (54 percent) of the offenders had participated in sex offender treatment at some time during their adulthood. During the period of imprisonment preceding their referral, a third of the offenders voluntarily entered the Sex Offender Treatment Program offered by the DOC at the Twin Rivers Corrections Center in Monroe. Only 30 percent of the referred offenders who entered the program actually completed it; the remainder were terminated or withdrew from the program.

**TABLE 3**

***Criminal History of the Sample:  
Sexual Offenses***

<b>CHARACTERISTIC</b>	<b>MEAN/PERCENT</b>
Average age at time of first sex offense resulting in conviction	25.7 Years
Multiple sex offense convictions	79%
Average number of sex offense convictions	2.6
Offender type: Rapist Child molester Mixed	46% 42% 12%
Victim type: Female only Male only Both male and female	70% 12% 18%
Relationship of victim(s) to offender: Known or related Stranger Mixed	46% 35% 19%
Alleged to have committed other sex offenses	95%
Ever under the influence of alcohol or drugs at the time of sex offense	78%
Ever use or threaten to use weapon during the commission of sex offense	49%
Ever cause victim injury	62%

The offenders in the sample spent an average of 5.1 years in prison for their index offense. Upon release, at least 15 percent of the men had documentation in their files that they intended to leave Washington to reside in another state or another country (Canada).

## ***"Persistent Offender" Statutes***

All of the offenders in the study committed their index offenses prior to voter approval of Initiative 593 ("Three Strikes and You're Out"). The Initiative became effective December 2, 1993, and established a penalty of life without parole for "persistent offenders."

The original law defined "persistent offender" as a person who is convicted of a most serious offense and who has at least two prior convictions (on separate occasions) for most serious offenses. The statute enumerates the crimes that constitute "most serious offenses," including all Class A offenses, most violent offenses, any class B offense committed with sexual motivation, and any felony committed with a deadly weapon.

The 1996 Legislature broadened the definition of persistent offender to include "Two Strike" sex offenders. To qualify as a persistent sex offender, the offender must have two separate convictions for rape first degree, rape second degree, indecent liberties by forcible compulsion, or a finding of sexual motivation associated with convictions for murder first degree, murder second degree, kidnapping first degree, kidnapping second degree, assault first degree, assault second degree, burglary, or an attempt to commit any of these crimes. The 1997 Legislature expanded this list of offenses to include rape of a child first degree where the offender is 16 years of age or older, rape of a child second degree where the offender is 18 years of age or older, child molestation first degree, homicide by abuse with sexual motivation, and assault of a child with sexual motivation.

Many of the offenders in the study would have met the criteria for the persistent sex offender statutes had the laws been in effect at the time they committed their last felony. On the basis of their prior and current convictions, a total of 12 offenders (20 percent) met the statutory definition of ("three strike") persistent offenders; 19 offenders (31 percent) met at least one of the statutory definitions of ("two strike") persistent sex offenders, including seven who also qualified as ("three strike") persistent offenders.

In all, a total of 39 percent of the offenders in the study met the statutory definitions of persistent offender and/or persistent sex offender. Presumably, all of these offenders could have been sentenced to life in prison without parole had they committed their last felony after enactment of the persistent offender statutes. Instead, all were released from custody sometime between 1990 and 1996.



## **Section III: RECIDIVISM OF THE MEMBERS OF THE SAMPLE**

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### ***Types of New Arrests During the Follow-up Period***

A follow-up period for each offender in the sample was calculated in terms of the number of months between his release from prison and December 31, 1996, or the date of death, whichever came first. The follow-up period ranged from 5 to 70 months with a mean time of 46.1 months.

Of the 61 sex offenders in the study, 36 (59 percent) were arrested for one or more new offenses during their follow-up period. Seventeen offenders (28 percent) were arrested for new sex offenses. In addition, nine offenders (15 percent) were arrested for violent felony offenses, and 20 (33 percent) had new arrests for nonviolent felony offenses. Fourteen offenders (23 percent) were arrested for misdemeanors. *Thus, more than one-half of the sample recidivated in some manner, but most of the new arrests were for nonsexual crimes.*

### ***Types of New Sex Offense Arrests and Convictions During the Follow-up Period***

Table 4 presents the types of arrest and conviction charges for the 17 offenders who were arrested for new sexual offenses during the follow-up period. Seven of these offenders (41 percent) had new arrests for rape or rape of a child. An additional five offenders (29 percent) were arrested for child molestation and indecent liberties, offenses that encompass a wide range of hands-on sexual misconduct with victims. Three offenders (18 percent) were arrested for the offense of communication with a minor for immoral purposes, which often involves behavior that is preliminary to child molestation. One offender was arrested for assault second degree with sexual motivation. The final offender was arrested for lewd conduct, a sexual misdemeanor offense in Washington State.

Thus, the majority (76 percent) of the new sex offense arrests were for contact crimes such as rape, indecent liberties, and assault. Most of the remaining arrests were for offenses that could be considered precursors to child molestation or consisted of less serious forms of sexual offense behavior.

**TABLE 4*****Types of New Sex Offense Arrests and Convictions  
for the Offenders in the Sample***

<b>ARREST CHARGE</b>	<b>CONVICTION CHARGE</b>
1. Rape 1	1. Robbery 1 and Kidnap 1
2. Rape 1	2. Rape 2 (2 counts)
3. Rape 1	3. Rape 1 (2 counts)
4. Rape 2	4. Rape 2
5. Rape 2	5. Rape 2
6. Rape of Child 2	6. Rape of Child 2
7. Rape of Child	7. Trial Pending
8. Child Molestation	8. Communication with Minor
9. Child Molestation	9. Child Molestation (2 counts)
10. Child Molestation 2	10. Rape of Child 2
11. Indecent Liberties without Force	11. Indecent Liberties without Force
12. Indecent Liberties without Force	12. No conviction
13. Communicating with Minor	13. Communicating with Minor (2 counts)
14. Communicating with Minor	14. Communicating with Minor (2 counts)
15. Communicating with Minor	15. Sexual Exploitation (Victim <16)
16. Assault 2 with Sexual Motivation	16. Assault 2 with Sexual Motivation
17. Lewd Conduct	17. Lewd Conduct
<b>TOTAL NEW ARRESTS = 17</b>	<b>TOTAL NEW CONVICTIONS = 15</b>

Table 4 also presents information on arrest outcomes and conviction charges. Nearly all (88 percent) of the arrests for sex offenses resulted in convictions, including six offenders who were convicted on multiple counts.

Six (40 percent) of the 15 offenders convicted of new sex offenses committed their crimes in states other than Washington. Four of these six offenders received substantial sentences in the following states: Colorado (14 years); Wyoming (9 years); Oregon (8 years); and North Carolina (2 years).

The remaining nine offenders were convicted of new sex offenses in Washington State. Three of these offenders received sentences of life in prison without the possibility of parole (persistent sex

offenders). The remaining offenders were returned to Washington prisons for terms ranging from 2 years to 14 years.

### ***Nonsex Offense Recidivism***

Nineteen offenders were arrested for new nonsexual offenses but had no new arrests for sex crimes.

Four of these offenders (21 percent) were arrested for serious violent crimes (murder first degree, assault with a deadly weapon, assault second degree, and robbery first degree), and all were convicted. Two of the four were sentenced as persistent offenders and received sentences of life in prison without parole. The other two received prison sentences of 4 years and 12 years.

Seven of the offenders (37 percent) were arrested for new nonsexual, nonviolent felonies. These new arrests included burglary, felony drug offenses, and assault third degree. Six of these offenders were convicted, and all were sentenced to new prison terms.

The remaining eight offenders were arrested for misdemeanors such as DWI and failure to register as a sex offender. Only one of these misdemeanor arrests resulted in a conviction.

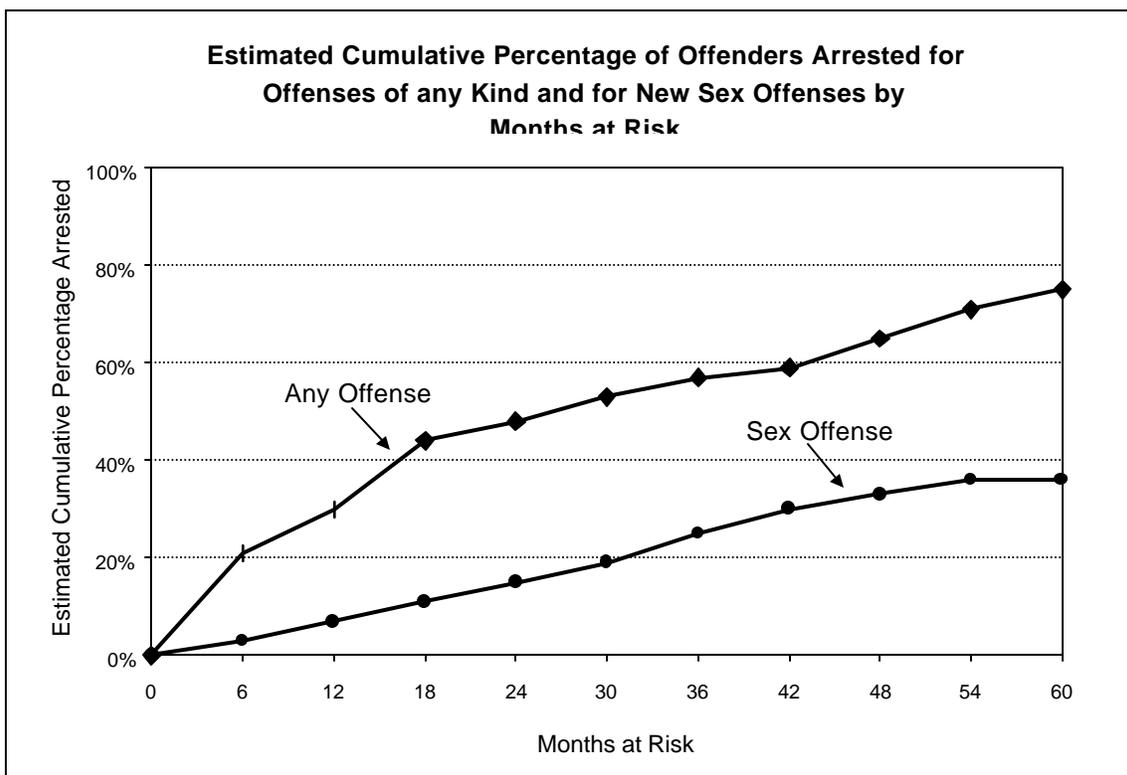
### ***Overall Recidivism Patterns***

The recidivism patterns of the offenders were estimated using survival analysis to control for differences in lengths of follow-up among the members of the sample. This procedure permitted calculations of the cumulative probability of new arrests among offenders in the sample in successive six-month intervals, thereby controlling for time at risk.

Figure 1 presents the estimated cumulative percentage of offenders who were arrested for new offenses of any kind (including sex offenses) and for new sex offenses only over a period of 60 months "at risk" in the community. The upper line illustrates the estimated percentage of offenders arrested for any kind of new offense by time to first arrest. Note that at the end of 60 months (5 years "at risk"), the offenders in the sample had high estimated rates (75 percent) of general recidivism (new arrests for any offense). Most of the general estimated recidivism occurred within 18 months after the offenders were released from prison.

The lower line in Figure 1 represents the estimated cumulative percentage of offenders arrested for new sex offenses. Note that first arrests occurred slowly but steadily throughout the months at risk. In fact, estimated arrests for new sex offenses accounted for most of the increase in estimated arrests of any kind after offenders had been at risk in the community for 18 months or more. *This finding suggests that nonsex offense recidivism occurred early after release from prison, but sex offense recidivism was spread more evenly throughout the months offenders were at risk in the community.*

**FIGURE 1**



***Status of Sample at End of Study***

The status of the 61 offenders in the sample was examined as of June 1, 1997. At that time, three members of the sample were known to have died during the follow-up period. Twelve members were in prison for new felony sex offenses, including three with sentences of life without parole. Four members were in prison for new serious violent offenses, including two with sentences of life without parole. Another five members were in prison for nonviolent felony offenses.

In all, 24 offenders (39 percent) were in prison or had died at the end of the study. The other 37 members were at liberty in the community.

## **Section IV: CONCLUSIONS**

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The members of the ESRRS appeared discerning in their selection and referral of sex offenders as possible predators requiring civil commitment. A review of criminal history information confirmed that those sex offenders under DOC jurisdiction who were referred, but for whom proceedings were declined, usually had extensive sexual or violent offense histories. Most had two or more prior convictions for offenses that typically involved molestation or rape of children or adult females who were physically harmed or threatened with harm. Most of the offenders were also alleged to have committed other sex offenses for which they had not been convicted, and many had prior convictions for nonsexual offenses.

The prosecuting attorneys and the attorney general reviewed and considered the referrals on the offenders in this study before making filing decisions. An examination of the written reasons for all of the decline decisions determined that the referrals typically failed to meet the prosecutor filing standards or that the requisite documentation necessary to support civil commitment proceedings was missing or unavailable. Even so, many of the decline letters acknowledged that the referenced offenders might be at high risk to reoffend.

Following their release, 59 percent of the offenders in the study were rearrested for one or more new offenses during the follow-up period; of these, 28 percent were rearrested for sex offenses and 15 percent were arrested for violent felony offenses. Nonsex offense recidivism occurred early after release from prison, but sex offense recidivism was spread more evenly throughout the months that offenders were at risk in the community.

The persistent offender statute ("three strikes") and its recent expansions to encompass persistent sex offenders ("two strikes") may modify the types of offenders who will be referred for civil commitment in the future. This new legislation will certainly result in life sentences without parole for sex offenders with multiple convictions. These offenders will never be released and, thus, never be considered for civil commitment as sexually violent predators. As a consequence, the number of referrals may actually decline in the coming years.