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Six-Year Follow-Up of 135 Released Sex Offenders Recommended for Commitment Under Washington's Sexually Violent Predator Law, Where No Petition Was Filed

Introduction

Washington's Sexually Violent Predator (SVP) statute¹ permits the involuntary commitment of persons found by a jury to meet the statutory definition of a sexually violent predator. In a previous report, the Institute examined the recidivism of 89 released sex offenders referred by the Department of Corrections as meeting the filing standards for civil commitment petitions, but for whom no petitions were filed.² These individuals were released into the community during the first six years after the law's passage (between July 1990 and July 1996).

This report extends the results of the previous study by adding individuals who were referred by sources other than the Department of Corrections (DOC). Also included are all individuals who were recommended for civil commitment where a petition was not filed, and who were in the community from July 1996 through June 1999. These 46 additional individuals bring the study total to 135. They represent a very small percentage of the full population of released sex offenders.

An identical follow-up period of six-year is used in this updated study. For comparative purposes, the current study reports arrest, as well as conviction, information on new felony sex and violent offenses, and includes additional data on age and sex offender treatment participation. (This information was added in response to requests from readers of the previous study.)

Summary

Washington's Sexually Violent Predator (SVP) statute permits the involuntary commitment of persons found by a jury to meet the statutory definition of a sexually violent predator. This study examines the recidivism of 135 released sex offenders referred for possible civil commitment, but for whom no petitions were filed. A uniform follow-up period of six years was used.

Findings

- One-half (50 percent) of the individuals had a new felony as their most serious new conviction, with 23 percent subsequently convicted of new felony sex offenses, and 10 percent convicted of violent (not sex) felony offenses.
- Nineteen percent of the group was convicted of the charge of failure to register as a sex offender.
- Ten percent (13 individuals) had at least one additional referral for civil commitment by the end of the follow-up period. Eight of these individuals have been tried and civilly committed, while an additional offender was admitted to the Special Commitment Center and is awaiting trial.
- Four percent of the group subsequently received sentences of life without parole after new convictions in Washington State.

¹ RCW 71.09.020

² Cheryl Milloy. (2003). *Six-year follow-up of released sex offenders recommended for commitment under Washington's sexually violent predator law, where no petition was filed*. Olympia: Washington State Institute for Public Policy, Document No. 03-12-1101.

Statutory Requirements and Procedures

In Washington, a “sexually violent predator” has the following definition:

- A person who has been convicted of a sexually violent offense or charged with a crime of sexual violence; and
- Suffers from a personality disorder or mental abnormality which is a congenital or acquired condition affecting the person’s emotional or volitional capacity and predisposes the person to commit sexual acts so that the person is a menace to the health and safety of others; and
- The mental abnormality or personality disorder makes a person, if not confined in a secure facility, likely to engage in future predatory acts of sexual violence directed towards strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists.³

The multi-disciplinary End of Sentence Review Committee (ESRC) within the Department of Corrections was established in 1990 to review each potential sexually violent predator’s case to determine whether the individual meets the criteria for civil commitment. The ESRC is composed of staff from each state agency that has jurisdiction over the release of sex offenders, as well as law enforcement. If the committee determines that an offender meets the definition of a sexually violent predator, the committee refers the case to the Attorney General’s office, or to the King County Prosecuting Attorney for offenders under its jurisdiction. The Attorney General or Prosecuting Attorney then decides whether to file the petition.

Prior to 1995, only offenders soon to be released from total confinement were referred. Since 1995, an offender may also be referred if the person meets the criminal history criteria and has committed a “recent overt act,” which is “any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.”⁴

³ The inclusion of “persons of casual acquaintance” was added to the statutory definition of “predatory” by the 2001 Legislature (Chapter 12, Laws of 2001, 2nd Sp. Sess.).

⁴ RCW 71.09.020

It is important to note that other changes in the decision-making process regarding civil commitment referrals have taken place subsequent to the time period during which the individuals in this study were selected. The most prominent are the participation of prosecutors in the “screening” process (as part of a subcommittee within the End of Sentence Review Committee), and the introduction of the Joint Forensic Unit, which is composed of a group of expert psychologists who conduct sexually violent predator risk evaluations. Since 2002, the decision to refer a case to a prosecuting agency has taken place at the subcommittee level, with prosecutor participation, and, thus, cases that do not appear viable are screened out at a different point in the process. This evolution in the referral-making process does not directly impact this study, as the last individual was referred in 1999.

Following a referral, if the Attorney General or Prosecuting Attorney decides to pursue the case for civil commitment, then a number of procedural protections are provided to the offender, including access to counsel, expert witnesses, and trial by jury. If the jury or court finds, beyond a reasonable doubt, that the individual is a sexually violent predator, then the individual is civilly committed to the state for the purpose of treating the mental condition that produced the predatory acts of sexual violence. The commitment continues until such time as the committing court or jury determines the individual is safe to be released to a less restrictive environment or unconditionally released to the community.

Methods

The previous study reported the recidivism rates of 89 released sex offenders. This study includes those individuals and adds an additional 46 to the group. Twelve of these individuals are sex offenders referred by additional sources, including law enforcement agencies and prosecuting agencies. The remaining 34 individuals represent all released sex offenders who were referred for civil commitment where a petition was not filed from July 1996 through June 1999. The final study group contains 135 released sex offenders.

Follow-up information on new criminal arrests and convictions was collected from two data sources: the Institute's criminal justice database⁵ and the National Crime Information Center (NCIC) Interstate Identification Index reports. Recidivism is measured by recording all new convictions (with initial arrest charges for select convictions) both within and outside the state of Washington. Data on subsequent civil commitment referrals and their outcomes were obtained from databases maintained by the Department of Social and Health Services, Department of Corrections, Attorney General's office, and the King County Prosecutor.

A uniform follow-up period of six years was used for all 135 individuals. This follow-up period begins at date of release for incarcerated offenders or date of referral for individuals referred for recent overt acts.

Reoffending is examined in this study in several ways:

- First, recidivism is defined as an individual's *most serious offense* committed during the follow-up period. The categories for this analysis are felony, misdemeanor, failure to register, and no new offense. Within these categories, the offense behavior is further divided into subcategories: sex, violent, and non-violent. Failure to register is reported separately, because it is a release condition that is unique to the sex offender population.
- Recidivism is then examined as the *number* who committed different types of crimes. In this case, a person can be counted more than once if convicted of more than one type of crime.
- The *specific felony sex offense arrest and conviction charges* and the states where the new offenses took place are reported.
- For those individuals with *new violent felony (not sex) convictions*, the charges are displayed with the original arrest charges.

- Descriptive statistics on *sex offender treatment participation and recidivism*, as well as *age and recidivism*, are presented. After the previous report was released in 2003, several inquiries were made to the Institute regarding age and treatment participation and how these relate to recidivism. Because of the interest in these topics, this information is included in the present study.
- Finally, the group members' *status at the end of the follow-up period* is presented. The specific information includes whether individuals had a *subsequent civil commitment referral* and the outcome of each referral, as well as whether they had received *sentences of life without parole* for new offenses during the follow-up period.

Subsequent Crimes and Referrals

Exhibit 1 presents the recidivism findings by the most serious new offense (defined as conviction) committed during the six-year follow-up period. Of the 135 released sex offenders in this study, 93 (69 percent) were convicted of at least one new offense.

Exhibit 1
Most Serious New Offense

Type of Offense	Number of Offenders	Percentage of Offenders
Felony		
Sex	31	23%
Violent (not sex)	14	10%
Violent Total	45	33%
Non-Violent	22	16%
Felony Total	67	50%
Misdemeanor		
Sex	3	2%
Violent (not sex)	5	4%
Non-Violent	13	10%
Misdemeanor Total	21	16%
Failure to Register	5	4%
Total Recidivism	93	69%

⁵ This database was created by merging databases from the Washington State Administrative Office of the Courts and the Department of Corrections.

One-half (50 percent) of the individuals had a new felony as their most serious new conviction. Within this category, 31 (23 percent) were subsequently convicted of new felony sex offenses, while 14 (10 percent) were convicted of violent (not sex) felony offenses. Thus one-third (33 percent) of the group had at least one new conviction for a violent (including sex) felony offense.

A misdemeanor offense was the most serious new conviction for 21 (16 percent) individuals. Five of the recidivists (4 percent) had a failure to register as a sex offender charge as their only new conviction.

Exhibit 2 displays the number of individuals convicted of each type of offense during the follow-up period. Note that these categories are not mutually exclusive, and that many individuals were convicted of more than one type of crime. In fact, when compared with the results from the previous exhibit, these figures demonstrate the criminal versatility of the group. Four individuals were convicted of both felony sex and violent (not sex) felony offenses. Many of those convicted of new violent felony offenses also were convicted of new non-violent felonies as well as misdemeanors. In addition, 25 (19 percent) were convicted of failure to register; this was the sole new charge for five of the individuals.

Exhibit 2
Number Convicted of Each Type of Offense

Type of Offense	Number of Offenders	Percentage of Offenders
Felony		
Sex	31	23%
Violent (not sex)	17	13%
Violent Total*	45	33%
Non-Violent	30	22%
Felony Total*	67	50%
Misdemeanor		
Sex	5	4%
Violent (not sex)	20	15%
Non-Violent	42	31%
Misdemeanor Total*	54	40%
Failure to Register	25	19%

* These categories are not the sums—they are counts of unique persons who committed any of the offenses defined by the category; i.e., when the same person committed crimes in each category, that person is only counted once in the “total” category.

Exhibit 3 presents sex offense charges and the states where these offenses took place for the 31 individuals with new felony sex offense convictions. This exhibit also displays the specific arrest charges side-by-side with the conviction charges for each individual. Twenty-one (68 percent) of the 31 individuals committed offenses which resulted in felony sex offense convictions in Washington State, while the remaining 10 were convicted in other states.

The most serious conviction charge for 14 of the recidivists (45 percent) involved rape, sodomy, or sexual assault or abuse. Two individuals (6 percent) were convicted of assault 2 with sexual motivation, while one person (3 percent) was convicted of unlawful imprisonment with sexual motivation. Another six individuals (19 percent) were convicted of indecent liberties, child molestation, or immoral acts with a child, offenses which encompass a wide range of hands-on sexual misconduct with child victims. Eight individuals (26 percent) were convicted of communication with a minor for immoral purposes, sexual exploitation of a minor, or encourage child sexual abuse/possession of child pornography, offenses which often involve behavior that is preliminary to child molestation.

Thus, 74 percent of the sexual recidivists were convicted of felony contact crimes such as rape, indecent liberties, and assault. The remaining recidivists were convicted of felony offenses that could be considered precursors to child molestation.

Using the same offense categories when examining new arrest charges yields somewhat different results. In this case, 16 of the 31 felony sexual recidivists (52 percent) had an offense that involved rape, sodomy, or sexual assault or abuse as their most serious arrest charge. One individual (3 percent) was arrested for assault 2 with sexual motivation. Nine individuals (29 percent) were arrested for indecent liberties, child molestation or immoral acts with a child. The remaining five (16 percent) were arrested for non-contact sexual offenses.

Thus, 84 percent of the offenders who were convicted of new felony sex offenses were actually arrested for felony sex contact crimes such as rape, indecent liberties, and assault.

Exhibit 3
Types of Offenses for the 31 Individuals With New Felony Sex Offense Convictions

	Arrest Charge(s) for Each Individual	Conviction Charge	Number of Conviction Charges	State Where Convicted
1.	Aggravated Sexual Abuse 2	Aggravated Sexual Abuse 2	1	IL
2.	Indecent Liberties	Assault 2 w/Sexual Motivation	1	WA
3.	Assault 2 w/Sexual Motivation	Assault 2 w/Sexual Motivation	1	WA
4.	Child Molestation 1	Child Molestation 1	3	WA
5.	Child Molestation 1	Child Molestation 1	1	WA
6.	Child Molestation 1	Child Molestation 1	1	WA
7.	Child Molestation 2	Child Molestation 2	3	WA
8.	Communication w/Minor for Immoral Purposes	Communication w/Minor for Immoral Purposes	2	WA
9.	Child Molestation 1	Communication w/Minor for Immoral Purposes	1	WA
10.	Indecent Liberties	Communication w/Minor for Immoral Purposes	1	CA
11.	Communication w/Minor for Immoral Purposes	Communication w/Minor for Immoral Purposes	1	WA
12.	Communication w/Minor for Immoral Purposes	Communication w/Minor for Immoral Purposes	1	WA
13.	Sexual Abuse 1 Sexual Abuse 2 Sexual Abuse 3 Display Child-Sexual Conduct	Encourage Child Sexual Abuse 2	2	OR
		Possession of Child Pornography 1	2	
14.	Immoral Acts w/Child	Immoral Acts w/Child	1	WY
15.	Indecent Liberties w/Child	Indecent Liberties w/Child	1	NC
16.	Rape 1	Rape 1	2	WA
17.	Rape 2	Rape 2	1	WA
18.	Rape 2	Rape 2	1	WA
19.	Rape 2 Rape of a Child 1	Rape 2	1	WA
		Rape of a Child 1	1	
20.	Rape 3	Rape 3	1	WA
21.	Rape of a Child 1 x 2 Child Molestation 1	Rape of a Child 1	2	WA
22.	Rape of a Child 1	Rape of a Child 1	1	WA
23.	Rape of a Child 1 Child Molestation 1	Rape of a Child 1	1	WA
		Child Molestation 1	1	
24.	Rape of a Child 3	Rape of a Child 3	1	WA
25.	Sexual Assault 1	Sexual Assault 1	1	CO
26.	Sexual Assault of a Child	Sexual Assault of a Child	1	CO
27.	Sexual Battery	Sexual Battery	1	CA
28.	Sexual Exploitation of Children	Sexual Exploitation of Children	3	CA
29.	Sexual Exploitation of a Minor	Sexual Exploitation of a Minor	1	WA
30.	Rape 1 x 2 Sodomy 1 x 4 Kidnapping 2 x 2	Sodomy 1	2	OR
31.	Rape 2	Unlawful Imprisonment w/Sexual Motivation	1	WA

Exhibit 4 displays arrest as well as conviction charges and the states where these offenses took place for the 17 individuals with new violent felony (not sex) convictions. Most (88 percent) of these offenses occurred within the state of Washington.

Exhibit 4
Types of Offenses for the Individuals With New Violent Felony (Not Sex) Convictions

Arrest Charge	Conviction Charge	Number of Conviction Charges	State Where Convicted
Assault w/Deadly Weapon	Assault w/Deadly Weapon	1	CA
Assault 2	Assault 2	1	WA
Assault 2 Rape 2	Assault 2	1	WA
Assault 2 Robbery 1 Rape of a Child 2	Assault 3 Robbery 1 Unlawful Imprisonment	1 1 1	WA
Murder 1 Robbery	Assault 3 Unlawful Imprisonment Intimidating a Witness Assault 3	1 1 1 1	WA
Kidnapping Rape 1 x 2 Robbery 2	Assault 3 Attempted Robbery 1	1 1	WA
Assault 3	Assault 3	1	WA
Assault 3	Assault 3	1	WA
Assault 3	Assault 3	1	WA
Assault 3	Assault 3	1	WA
Indecent Liberties	Burglary 1	1	WA
Felony Harassment	Felony Harassment	1	WA
Felony Harassment Kidnapping Rape 1 x 2	Felony Harassment Unlawful Imprisonment	1 1	WA
Kidnap 1 Rape 1 Robbery 1	Kidnap 2 Robbery 1	1 1	WA
Kidnap 2	Kidnap 2	1	WA
Murder 1	Murder 2	1	WA
Threaten Crime w/Intent to Terrorize	Threaten Crime w/Intent to Terrorize	1	CA

Of interest is the fact that of the 17 individuals who had new violent felony (not sex) convictions, six (35 percent) had been originally arrested for felony sex offenses. One of the six was also convicted on a

separate felony sex charge, so when arrest charges rather than conviction charges are examined, there were 36 individuals who were arrested for felony sex offenses. These individuals represent 27 percent of the total group of released sex offenders.

Sex Offender Treatment Participation and Recidivism

The Washington State Department of Corrections (DOC) operates a prison-based Sex Offender Treatment Program (SOTP) at the Twin Rivers Corrections Center. The program is voluntary, and offenders who volunteer and are selected enter treatment when they are within 18 months of release. According to SOTP records, 44 (33 percent) of this study's individuals participated in the program. Of these participants, 26 (59 percent) completed the program.

Of those individuals who were convicted of new felony sex offenses, 29 percent had participated in SOTP. Of those individuals convicted of new felony violent (not sex) offenses, 24 percent had participated in SOTP.

Age and Recidivism

The average age of the offenders in this study was 38 years. For the purposes of this discussion, "age" refers to age at release or, if an individual was in the community and referred for a recent overt act, age at the time of the referral.

Exhibit 5 displays the overall age breakdown of the individuals of this study.

Exhibit 5
Age of Offenders at Time of Release

Age at Release	Number of Offenders	Percentage of Offenders
18 – 24 years	9	7%
25 – 29 years	19	14%
30 – 34 years	25	19%
35 – 39 years	32	24%
40 – 44 years	23	17%
45 – 49 years	11	8%
50 – 54 years	8	6%
55 – 59 years	4	3%
60 + years	4	3%
Total	135	101%*

*Total does not add to 100% due to rounding.

Exhibit 6
Age of Offenders and New Sex and Violent Felony Convictions

Age at Release	Number Convicted of Sex Felonies	Percentage of Total Offenders in Age Group	Number Convicted of Violent (not sex) Felonies	Percentage of Total Offenders in Age Group
18 – 24 years	5	56%	0	0%
25 – 29 years	6	32%	3	16%
30 – 34 years	6	24%	5	20%
35 – 39 years	4	13%	5	16%
40 – 44 years	7	30%	2	9%
45 – 49 years	3	27%	1	9%
50+ years	0	0%	1	13%

Exhibit 6 shows the age breakdown of the individuals who were convicted of new sex felony and violent felony (not sex) offenses.

The highest rate of sexual reoffending was among the youngest age group. That is, of all released sex offenders in the study ages 18 to 24, 5 (56 percent) were convicted of new felony sex offenses. Also note that none of the offenders ages 50 and over were convicted of new felony sex offenses during the six-year follow-up period.

The highest rate of violent felony (excluding sex) reoffending was in the 30- to 34-year-old category, followed closely by the 25 to 29 and 35 to 39 age groups. In this case, one individual (13 percent of all offenders in that age category), age 50 years and older, was convicted of a new violent felony, while no offender in the 18 to 24 age group had such a new conviction during the six-year follow-up period.

Group Status at End of Follow-Up Period

For 13 (10 percent) of the individuals in this study, the initial referral for civil commitment was followed by at least one additional referral by the end of the six-year follow-up period. The outcomes of these referrals were as follows:

- One case was dismissed.
- Two were declined by the prosecuting authorities.
- One individual was admitted to the Special Commitment Center and is awaiting trial.
- One individual was acquitted and released.
- Eight were civilly committed.

Thus, eight of the released sex offenders in this study (6 percent) were re-referred and subsequently civilly committed within six years of their initial referral and release.

In addition, six individuals (4 percent) received sentences of life without parole under the “persistent offender” statutes within Washington State. Four of these offenders had been convicted of new felony sex offenses, while the remaining two were convicted of new violent (not sex) felony offenses.

Comparative Recidivism Data

Readers may be interested in knowing how the findings from this study compare with those from other sex offender recidivism studies. A 2005 study conducted by the Institute of the recidivism rates of Washington State sex offenders demonstrates that this population of released sex offenders who were referred for civil commitment is a unique subgroup with much higher recidivism rates.⁶

The Institute analyzed recidivism records of the 4,091 Washington State sex offenders placed in the community from 1994 to 1998 after release from prison, jail, or a community supervision sentence. Recidivism was defined as a conviction occurring during the first five years after release to the community. The five-year recidivism rate for sex felonies was 2.7 percent, while for violent (not sex) felonies it was 4.0 percent. The overall felony recidivism rate was 13.0 percent.

⁶ Robert Barnoski. (2005). *Sex offender sentencing in Washington State: Recidivism rates*. Olympia: Washington State Institute for Public Policy, Document No. 05-08-1203.

The six-year recidivism rate for sex felonies for the individuals in the present study was **23 percent**; it was **10 percent** for violent (not sex) felonies. The overall felony recidivism rate was **50 percent**. Thus, the distinctiveness of the select subpopulation of sex offenders in the current study is clearly illustrated by a comparison of this group's recidivism rates to those of an overall population of released Washington State sex offenders. The offenders who were referred for possible civil commitment have a much higher pattern of recidivism than the full population of released sex offenders.

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Conclusions

Of the 135 released sex offenders recommended for civil commitment where no petition was filed, the six-year follow-up study revealed:

- One-half (50 percent) of the subjects had a new felony as their most serious new conviction, with 23 percent subsequently convicted of new felony sex offenses, and 10 percent convicted of violent (not sex) felony offenses.
- Nineteen percent of the group was convicted of the charge of failure to register as a sex offender.
- Ten percent (13 individuals) of the subjects had at least one additional referral for civil commitment by the end of the follow-up period. Eight of these individuals have been tried and civilly committed, while an additional subject was admitted to the Special Commitment Center and was awaiting trial.
- Four percent of the group subsequently received sentences of life without parole after new convictions within Washington State.

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