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REVIEW OF SEXUAL PREDATOR PROGRAM Community Protection Research Project

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REVIEW OF SEXUAL PREDATOR PROGRAM

Summary

BACKGROUND

The 1989 Governor's Task Force on Community Protection was created principally to answer one question: What gaps in Washington State law allow the release of known dangerous offenders who are at high risk of committing very serious crimes upon their release? In response to this question, the Task Force recommended a new civil commitment procedure for sexually violent predators. The 1990 Legislature adopted this recommendation as part of the Community Protection Act.

Included in this same piece of legislation was a direction that the Washington State Institute for Public Policy evaluate the effectiveness of state programs for sex offenders and their victims. The legislature was interested in learning which interventions with sex offenders were successful, as well as in gaining knowledge of effective treatment programs for victims. In the past year, the Community Protection Research Project has completed over a dozen research projects on topics related to sex offenses in Washington State.

The sexually violent predator provisions of the law have been the subject of several television shows and newspaper articles. The law is currently under the review of the Washington State Supreme Court, where its constitutionality is being determined. To date, nine individuals have been committed to the Special Commitment Center in Monroe.

CONSULTATION BY DR. VERNON QUINSEY

The Institute recently contracted with an international expert in sex offender research, Dr. Vernon Quinsey, to review the operation of the Special Commitment Center and to make recommendations regarding programming and research. Dr. Quinsey visited the program on December 16, 1991; a summary of his recommendations follows. His full report is included as an appendix.

Legislative Framework

Under the current law, release from the program is possible only if a court finds that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large, and will not engage in acts of sexual violence if discharged (RCW 71.09.090). As the law is structured, the court must make this decision using information gained entirely from a high security environment.

Dr. Quinsey believes that conclusions about an individual's reduced risk to reoffend are best made in small steps based on a combination of two factors: 1) observation of progress

in treatment, and 2) success under gradually reduced supervision. The law, however, does not allow the second source of information. In Dr. Quinsey's view, a graduated release to the community allows decisions to be made in the context of the individual's behavior in the community, and he recommended an amendment to the law to allow graduated release.

Resident Management

The level of security within the program is extremely high, particularly in comparison to the typical security for sex offenders, who are generally cooperative prisoners. The movements of all residents are controlled within the confines of one wing of the Special Commitment Center and, in addition, the entire facility is classified as a maximum security institution. Dr. Quinsey noted that the residents have accrued a high number of disciplinary infractions, while many were infraction-free during their confinement in the Department of Corrections. He attributes these disciplinary problems to a combination of factors: resident bitterness concerning the indeterminate nature of their confinement and its imposition at the end of their sentence, excessive physical security, and inconsistent application of disciplinary rules, particularly across shifts. In terms of security, Dr. Quinsey believes that maximum perimeter security is sufficient for most of the residents.

Dr. Quinsey observed that the mixing of residents who are awaiting trial with those who have been committed for treatment is problematic. As he noted, "It would be a small miracle if the anxiety, anger, and denial of pre-trial assessment cases did not corrupt whatever treatment motivation the post-trial residents have."

In terms of program planning, Dr. Quinsey recommended that the department consider alternative programs for residents who do not make sufficient treatment progress to be released. In his view, it is not realistic to expect these individuals to engage in full-time sex offender treatment for more than two or three years. Thus, the programming must include other activities for these individuals, including education, training, and work.

Treatment

Until the constitutionality of the law is determined, Dr. Quinsey believes a cloud of uncertainty will hang over the program and the residents are not likely to seriously engage in any treatment activities.

At present, only three residents are cooperating with the treatment program. Thus, the fact that the treatment program is still being developed is not a critical flaw in Dr. Quinsey's view. He found the treatment staff to be dedicated to their jobs and eager to implement treatment programming. Their experience with the population is not extensive; however, they are supplementing their knowledge through education and training from a number of sources.

Recidivism Research

Dr. Quinsey recommends that policies regarding release of persons from the program would be assisted by research. He notes that actual estimates of risk would be most precise if they were based on follow-up research on sex offenders released to Washington State communities. By relying on recidivism data from other jurisdictions, he notes that we must settle for a comparison that does not include a similar legal culture, including the law enforcement, prosecution, and court action. Dr. Quinsey therefore recommends that Washington State conduct a recidivism study of sex offenders from this state.

Roxanne Lieb
Associate Director

APPENDIX

Report by Dr. Vernon Quinsey

REVIEW OF THE WASHINGTON STATE SPECIAL COMMITMENT CENTER
PROGRAM FOR SEXUALLY VIOLENT PREDATORS

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Recommendations

1. Continue to develop a cognitive behavioral treatment program.
2. Develop a continuum of supervision and treatment extending from the institution to the community using a relapse prevention approach.
3. Conduct followup research on released sex offenders in order to develop an actuarial method of estimating risk of recidivism.
4. Separate pre-trial from post-trial cases.
5. Develop suitable living arrangements for longterm residents not in active sex offender treatment.

REVIEW OF THE WASHINGTON STATE SPECIAL COMMITMENT CENTER
PROGRAM FOR SEXUALLY VIOLENT PREDATORS

This review is based upon interviews with most of the professional staff associated with the Sexually Violent Predator Program, community-based clinicians who have served as consultants to the program, and three of the program 'residents'. In addition, I have examined the Sexually Violent Predator Commitment Statute (Chapter 71.09, revised code of Washington) and written documentation concerning the Special Commitment Center.

Because the Sexually Violent Predator Program is very new, this review is primarily intended to facilitate future program development and to identify areas of concern.

There are both positive and negative aspects of the Sexually Violent Predator Program. On the positive side, the treatment staff appeared dedicated to their jobs and enthusiastic in their endorsement of the purpose of the sexually violent predator legislation; they are clearly eager to implement treatment programming, even under exceptionally adverse circumstances. The staff are attempting to develop a state of the art cognitive-behavioral intervention and have had both the opportunity and resources to receive education and training from a variety of knowledgeable local resources and more distant resources (the Sexual Offender Treatment Program at Atascadero State Hospital). These training efforts are important and should be continued as the staff are, in general, not very experienced with this population.

It is, of course, impossible at present to appraise the Sexually Violent Predator Treatment Program both because it is at a very early stage of development and because there are at most only three residents who are actively engaged in treatment.

It is already apparent, however, that there are at least two very serious difficulties with the program as it stands. The first pertains to the Sexually Violent Predator Legislation itself and the second involves resident management and the manner in which the legislation has been implemented.

Sexually Violent Predator Legislation

Great uncertainty is engendered by the ambiguous constitutional status of the current commitment law. Many residents are simply waiting to see if the law will be declared to be constitutional. In a sense, everything is on hold until the legal issues are addressed more definitively.

Many jurisdictions have had experience with a variety of sexual psychopath or dangerous offender statutes. I have appended an example of the Canadian Dangerous Offender Legislation as an example of an alternative approach. However, most of these

indeterminate sentencing laws are invoked at the initial trial stage instead of at the end of sentence or even after sentence expiry, as in the present case. I take it as a given that a front end disposition is better for a variety of legal, ethical, and therapeutic reasons. The Sexually Violent Predator Legislation appears to be an interim attempt to remedy past lax initial sentencing and to provide interventions for those (presumably rare) offenders who may have become more dangerous during their sentence.

A large literature attests to the difficulty in implementing indeterminate sentencing laws effectively and fairly: There have been problems of geographical disparities in their application, differential application to the poor, inappropriate application (i.e., to nondangerous offenders), and lack of effective treatment for persons so sentenced. The special commitment statutes will have to overcome these difficulties as well as those arising from its back end application.

The nature of the Sexually Violent Predator Legislation is in itself not conducive to inspiring motivation for treatment among residents. Residents perceive the law to be arbitrary and excessive. This perception certainly appears justifiable in cases where residents have actually been on the street and have been recommitted without parole violation and/or have sought treatment while serving their regular sentence and been denied it for a variety of bureaucratic reasons (e.g., length of sentence). It is, of course, extremely difficult to form a therapeutic alliance with an embittered clientele.

This lack of motivation means that many residents will not engage in treatment; many spend most of their time in their rooms, pursuing litigation about a variety of issues. Quite clearly, many residents think that the only way they can secure their release or at least, quick release, is through litigation.

Until some residents actually secure their release as a result of treatment induced changes, it will be extremely difficult to convince residents that a therapeutic release route is feasible.

The language of the commitment legislation does not induce therapeutic optimism. On the one hand, the preamble to the Special Commitment Statute asserts that persons who meet the sexual violent predator criteria require longterm treatment but are unlikely to be 'cured', and, on the other, predicates release on a jury or court finding that the committed person's mental abnormality or personality disorder has changed such that the person is safe to be at large and, if released, will not engage in acts of sexual violence. It is, unfortunately, entirely unclear how a personality disorder can be changed through treatment because most of the defining features of personality disorder diagnoses (such as in DSM III-R) are historical in nature.

However, it is possible to conclude that a resident's risk of committing a further act of sexual violence had been reduced, regardless of any change in mental abnormality or personality disorder. Such a conclusion, however, would best be arrived at in small steps from observations of progress in treatment and success under gradually reduced supervision. The present program has no provision for graduated release or post-release supervision; instead, decisions are to be made by a court on an all-or-none basis using information gained entirely from a high security (and very artificial) environment.

In my view, the lack of any provision for aftercare and community supervision is a fatal problem with the special commitment program as it stands now. It means that release decisions must be based solely on institutional behavior and that a relapse prevention approach to treatment cannot be effectively implemented. The inability to use measures of risk based on community behaviors to adjust the degree of supervision has to be rectified if treatment is to be effective and release decisions accurate.

In developing policies concerning the release of persons from the Sexually Violent Predator Program, it would be extremely helpful to be able to accurately estimate the numerical probability of their reoffending. Such actuarial estimates of risk are extremely important in assessing the degree to which risk might be reduced through treatment or managed through supervision. These measures would be most precise if they were to be developed through followup research on sex offenders who have been released to the community in the State of Washington and could build on work done in other jurisdictions. Given such research, it would be possible to assess the level of risk presented by offenders with particular histories and personal characteristics under particular conditions of supervision. I have provided some discussion of these issues in the Appendix, together with a list of research articles by my colleagues and myself on the prediction of sexual and violent recidivism among offenders held under indeterminate conditions.

Resident management

One quite worrisome observation made by both staff and residents was that a number of residents had accrued disciplinary infractions in the DSHS program who had never had disciplinary infractions while in DOC. This is likely to be a result of several factors: Resident bitterness concerning the indeterminate nature of their confinement and its imposition at the end of their sentence; excessive physical security and rule related security within the DSHS program; and inconsistent application of disciplinary rules, particularly across shifts.

It was unclear to me why the internal and external level of security was as high as it was. This is the more worrisome because

gradual reduction in security that would extend to community supervision.

It was also unclear why offenders who are awaiting trial on the issue of their meeting the sexually violent predator criteria are mixed with residents who are in the Sexually Violent Predator Program for treatment. These trials are extremely aversive and stressful experiences for these men who, naturally, argue that they do not meet the criteria. One can imagine that, following commitment, these residents would be expected to recant their defence (admit to being sexually deviant and predatory) to the same staff who just had them committed. It is, therefore, good that there are separate evaluation and treatment staff teams. These functions should be kept as separate as possible. This separation of staff functions, however, does not address the issue of mixing the pre- and post-trial offenders. It would be a small miracle if the anxiety, anger, and denial of pre-trial assessment cases did not corrupt whatever treatment motivation the post-trial residents have. Pre-trial and post-trial cases should be kept physically or, at least, programmatically separate.

Considerable thought must be given to the management of those residents who do not make sufficient progress to be released to the community. It is unrealistic to suppose that those residents will or should be engaged in fulltime sex offender treatment programming for more than two or three years. Similarly, some residents will simply not opt to enter treatment. Many of these cases will likely not require high levels of internal security. Suitable longterm living arrangements for these men are required that afford appropriate opportunities for personal development (e.g., community college courses, trades training, recreation) under the least restrictive conditions. These conditions are those that best strike a balance between freedom of the resident and community safety. For most of these men, it is likely that secure perimeter security can be combined with considerable freedom within the institution.

Appendix

1. Predicting sexual recidivism
2. Bibliography of followup studies
3. Canadian Dangerous Offender Legislation

Predicting Sexual Recidivism

There is both art and science in predicting recidivism among sex offenders. First, it must be decided exactly what negative outcomes of release or relaxation of supervision we are to be concerned about. One could be concerned about a psychiatric relapse, recidivism of any kind, violent recidivism, and/or sexual recidivism. The distinction among these is important because their likelihood for any given offender is very different. In a sample of rapists and child molesters assessed at the maximum security Oak Ridge psychiatric facility in Penetanguishene, Ontario, 28% were convicted of a new sex offence, 40% were arrested or returned for a violent or sexual offence, and 57% were arrested or returned to Oak Ridge for any offence. If we were to be concerned with minor offences or rehospitalization, for example, we would be much more conservative in our decision making than if we concerned ourselves only with more serious (and rarer) phenomena.

The scientific literature on decision making suggests that the initial step in appraising the dangerousness of an individual is to establish the base rate or the expected likelihood that that person will commit a new violent or sex offence within a specified period of time (e.g., Quinsey & Walker, in press). A reasonable time period for the prediction of violent reoffending might be about five years. Although we should not expect to be able to accurately predict offences that occur more than five years in the future, we do not want too short a followup period because of the relatively low density with which violent offences typically occur.

The initial estimate of the probability with which a sex offender will commit a new sex or violent offence can only be made by examining the results of followup studies of similar offenders. First, the relevant characteristics of the offender in question must be established and then the frequency of violent and sexual recidivists among offenders with the same characteristics can be used to generate the probability.

The initial estimate of the likelihood of recidivism is determined primarily by static or historical variables. Although variables such as offence history cannot change with time, they are vital in anchoring clinical judgment in actuarial reality. The final appraisal of dangerousness is made by adjusting the initial estimate upward or downward according to dynamic variables such as progress in treatment and type and quality of supervision. The importance of the initial estimate can be seen by considering a hypothetical treatment method that reduces recidivism by half: An offender whose expected likelihood of recidivism is 80 % will have a likelihood of 40 % after treatment, whereas one with an initial 10 % probability will have a post-treatment probability of only 5 percent.

The baserate can be even more important if it is extreme. For example, if the expected probability of recidivism is very low, say 5 percent, then an appraisal of dangerousness must be 95 percent accurate in order to equal the accuracy of making a decision to release based solely on the baserate.

Among sex offenders, a variety of historical factors, such as the number of previous sex offences, predict the likelihood of sexual and violent recidivism. Among child molesters, the sex of the victim and the relationship of the victim to the offender are also important predictors. Intrafamilial (father-daughter incest) offenders have quite low recidivism rates. Among extrafamilial offenders, those with boy victims have double the recidivism rate of heterosexual offenders.

In terms of assessment data, pretreatment phallometric deviance indices reflecting sexual interest in children, rape, or sadistic sexual activities are positively related to sexual and violent recidivism. Psychopathy, as measured by Hare's Psychopathy Checklist, is also a good predictor of sexual and violent recidivism. In general, predictors of recidivism in criminal samples (e.g., Andrews et al, 1986; Hare, 1991) are also effective in predicting recidivism in mentally disordered offender samples.

The fact that we must consider supervisory issues in making predictions means that dangerousness is inversely related to the quality and intensity of supervision. Some predictors are also relevant to supervision. Criminal versatility, one of the items on the Psychopathy Checklist, refers to the variety of different kinds of criminal acts that an individual has committed. Criminally versatile offenders are more difficult to supervise than others because there are more potential types of crimes for a supervisor to worry about. The quintessential example of a nonversatile offender is an incestuous child molester who has molested his daughter and committed no other crimes. Supervision for this person is relatively simple because it involves only his access to his daughter.

Dynamic predictors can also be monitored postrelease to good advantage (Quinsey & Walker, in press). Instability of living conditions, noncompliance with medication or supervision, increased drinking, negative affect, and procriminal attitudes are all variables that are related to recidivism or relapse. These postrelease predictors can be used to adjust the amount of supervision an offender receives.

Using theoretically relevant and empirically tested predictors, predictive accuracy can realistically be expected to be in the 80% range. This is far from perfect but it is much better than chance or relying on clinical intuition. Of course, intuition must be relied upon in the absence of empirical information; this is often the case with a variety of dynamic variables. When

clinical judgment must be used, it is best to combine the judgments made independently by several clinicians.

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Dangerous Offender Legislation

In order to be designated as a dangerous offender, a person must first be convicted of a personal injury offence. A personal injury offence is:

- a) An indictable offence for which one is liable for imprisonment for 10 or more years involving actual or attempted interpersonal violence or conduct endangering the life or safety of another person or inflicting or likely to inflict severe psychological damage on another, or
- b) The commission or attempted commission of sexual assault, sexual assault with a weapon, threats or the infliction of bodily harm, or aggravated sexual assault.

Given a conviction for a personal injury offence, a person is designated a dangerous offender if s/he constitutes a threat to the life, safety, or physical or mental well being of others. A person is judged to be such a threat if:

- 1a) There is a pattern of repetitive behavior, of which the index offence is a part, that shows a failure to restrain behavior and a likelihood of causing death or injury, or severe psychological damage through future failure to restrain his or her behavior.
- 1b) There is a pattern of persistent aggressive behavior, of which the index offence is a part, that shows indifference to reasonably foreseeable consequences to others, or
- 1c) There is any behavior associated with the index offence that is of such a brutal nature as to compel the conclusion that the offender's future behavior is unlikely to be inhibited by normal standards of behavior restraint, or
- 2a) The offender's conduct in sexual matters, including the index offence, has shown a failure to control his sexual impulses and a likelihood of causing injury, pain or other evil to others through failure to control his sexual impulses.

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