PROTECTION AGAINST SEXUAL EXPLOITATION OF CHILDREN ACT OF 2005, AND THE PREVENTION AND DETERRENCE OF CRIMES AGAINST CHILDREN ACT OF 2005

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

H.R. 2318 and H.R. 2388

JUNE 7, 2005

Serial No. 109–33

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CONTENTS

JUNE 7, 2005

OPENING STATEMENT

WITNESSES

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PROTECTION AGAINST SEXUAL EXPLOITATION OF CHILDREN ACT OF 2005, AND THE PREVENTION AND DETERRENCE OF CRIMES AGAINST CHILDREN ACT OF 2005

TUESDAY, JUNE 7, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:05 p.m., in Room 2141, Rayburn House Office Building, the Honorable Mark Green (acting Chair of the Subcommittee) presiding.

Mr. GREEN. Good afternoon, everyone. I want to welcome everyone to this important hearing to examine the national epidemic of crimes against our Nation's children. In recent months, our country has been shocked and outraged by a series of brutal attacks against our children. Two of these recent brutal attacks were committed by criminals in Florida. Nine-year-old Jessica Lunsford was abducted, raped and buried alive and eventually died. And 13-year-old Sarah Lunde was brutally murdered. Both of these young girls were murdered by convicted sex offenders.

Just 2 weeks ago, also in Florida, a missing 8-year-old girl was found buried under rocks inside a trash bin. A 17-year-old was later charged with attempted murder and sexual battery of the young child. These tragic events in Florida occurred after a disturbing series of events in other parts of the country.

In Iowa, Jetsetta Gage, a 10-year-old girl, was abducted from her Cedar Rapids home last March and raped and murdered by a sex offender convicted of prior lascivious acts with a child. In Los Angeles, a 58-year-old suspect was charged this past April with child molestation charges and is accused of victimizing numerous young boys over a 25-year period. In that same month in California, three men were convicted of sexually assaulting an unconscious teenage girl as they videotaped the brutal sexual attack on a pool table at the home of the millionaire father of one of the offenders.

Last month, an Oregon judge sentenced a sex offender to eight additional years in prison for sexually abusing a woman when she was 4 and 5 years old. The offender was already in prison for molesting a 3-year-old boy after abducting the 3-year-old and his 1-year-old brother. The record shows that he has a history of rape, molestation and torture going back to the age of 7, attacking family members, school teachers, setting fires, and torturing animals.

Or take the case of infamous child molester, Larry Don McQuay, who was released from prison in Texas. He claimed to have molested more than 200 children and vowed to kill the next child he molested. McQuay served 8 years of a 25-year sentence when his release was mandated under Texas law, and he is now back in the community.

Sadly, these are just a few examples of the brutal acts of violence and exploitation of our children occurring each and every day. Consider these facts: Statistics show that one in five girls and one in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent of the incidents are actually reported to the authorities. According to the Department of Justice, one in five children receive unwanted sexual solicitations online, 67 percent of all victims of sexual assault were juveniles, and 34 percent were under the age of 12. One of every 7 victims of sexual assault was under the age of 6.

I have introduced two bills, which are the subject of today's hearing, H.R. 2318 and H.R. 2388, each of which addresses the problems of sexual exploitation of children and crimes of violence against children respectively. These measures include mandatory minimum penalties which reflect the seriousness of the violent crimes and sexual exploitation of children.

Mr. GREEN. Under H.R. 2388, for Federal crimes of kidnapping, maiming, or aggravated sexual abuse, a sex offender will be subject to a 30-year mandatory minimum. For assaults resulting in serious bodily injury, that is nearly killing or permanently disabling a child, sexual offenders will face a mandatory minimum of 20 years. And for all other crimes of violence against a child, offenders will face a 10-year mandatory minimum penalty. Similarly for sexual exploitation crimes, offenders will face increased mandatory minimum penalties depending on the severity of the crime, the age of the victim, and the circumstances of the offense.

In 2003, Congress enacted the PROTECT Act, which sought to restrict the ability of Federal judges to grant downward departures in cases involving sex crimes and exploitation of our children. The data shows that while in effect, the law was working and the number of unwarranted downward departures was falling. Since the Supreme Court's decision in United States versus Booker, which rendered the Federal sentencing guidelines advisory, the need for mandatory minimum penalties in certain areas has become even more critical. Congress has an institutional right to prescribe the sentencing of criminal defendants to reflect the will of the people.

Mandatory minimum penalties are favored overwhelmingly by the American public because they are not willing to entrust Federal judges to act in a consistent manner when sentencing sexual predators for sexual abuse and exploitation of our children. Some on the bench will be attempted to coddle sex offenders, to ignore the rights of the law-abiding public to live free from crime in the neighborhoods and seek to deviate from sentencing guidelines with what they feel is reasonable.

In the absence of the mandatory sentencing guideline scheme, mandatory minimum penalties are the only way in which Congress can ensure that fair and consistent sentences to these dangerous sexual predators are handed out at the Federal level. Congress

must act now and must do so to protect our Nation's youth from sexual predators in our communities and online on the Internet. We simply have no greater resource than our children. It has been said that the benevolence of a society can be judged on how well it treats its old people and how well it treats its young. Our children represent our Nation's future. I am anxious to hear from our distinguished panel of witnesses and now yield to the Ranking Minority Member of this Subcommittee, the gentleman from Virginia, Mr. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman and I appreciate you convening this hearing. But as usual, every 2 years we are pontificating about child crimes and dramatically increasing Federal sentences, and we are doing so despite the fact that crimes against children prosecuted in Federal Court constitute a miniscule percentage of such crimes and represent none of the horrendous crimes against children that have been in the media in recent months. There is no evidence that Federal prosecutions of crimes against children has any significant impact on these horrendous State crimes against children, nor do we have any evidence that either State or Federal law for crimes against children are too lenient. Indeed, we recently dramatically increased Federal sentences for crimes against children in the PROTECT Act. We have not had enough time or enough cases to determine whether or not these draconian increases in Federal sentences has had any effect on crime.

We are moving forward dramatically increasing Federal sentences, also in the worst possible way, through increased mandatory minimum sentences. Mandatory minimum sentences only affect those offenses or those offenses or those who have a role in an offense which would warrant a less severe sentence, since those who warrant the mandatory minimum or even a more serious sentence get those under the sentencing guidelines. I call attention to the recommendations released today by a group of bipartisan philosophically diverse scholars and high level current and former public policy makers, including former Attorney General Ed Meese, and former Deputy General Phil Hayman indicating that sentencing policies should provide for proportionality and sufficient flexibility to reflect differences in the role and background of the offenders.

These increases are occurring at a time when the evidence from the Department of Justice is that for sex offenders the recidivism rate is lower than other offenders in general with a 5 percent recidivism rate for new sex offenses and a 3.3 percent recidivism rate for child molesters recidivating with a new offense of that nature. I will ask this study and four others from other sources be made part of the record.

[The information referred to follows in the Appendix]

Mr. SCOTT. Also the evidence reveals that the low recidivism rate is cut in half with sexual abuse treatment. While recidivism is bad, 3 to 5 percent rates with the prospect of that being cut in half do not suggest that the situation is hopeless, yet there is nothing in any of these bills to ensure treatment for these offenders who seek treatment or are already receiving sentences and will be leaving

prison soon. The bills before us suggest that it is better to wait for the victimization to occur and then apply draconian penalties.

One of our speakers at an earlier hearing on the subject, criminologist and law professor Frank Zimmer of the Berkeley School of Law pointed out that treating all offenses and offenders the same and mandating life sentences for repeat offenders regardless of the crime, may actually endanger more children than it helps. He expressed the concern that putting the offender in the position of concluding that once a crime is completed or attempted, he is facing a minimum of a life sentence, he will more likely conclude that the best chance of avoiding detection would be to kill the victim and the witness.

Certainly, this question should be considered against the conventional justification for harsh mandatory minimum sentences of forcing co-defendants to testify against their partners in crime since these crimes are more often than not carried out by lone offenders. We also know that greatly increasing Federal sentences would disproportionately affect Native Americans simply because they are more likely to fall under Federal jurisdiction whereas those who are committing the horrendous crimes giving rise to this Federal sentencing frenzy actually fall under State jurisdiction.

We are also doing so without consulting the Native American tribal authorities as we have in the past, when we dramatically increase sentencing, such as we did with three strikes and you are out and the death penalty and the 1994 crime bill. There is no evidence that Native Americans have asked that offenders on tribal lands be treated more harshly than offenders in State courts now right next to them, and it simply appears that having politicians being able to prove how tough they are on crime in an election year is more important than giving plain fairness to Native Americans and respecting their tribal sovereignty.

Finally, Mr. Chairman, the provisions of the bill before us exacerbate the already horrendous Federal sentencing scheme. For example, under the PROTECT Act, we provided a 5-year mandatory minimum sentence to transport a minor across State lines or international lines to commit any criminal sex offense involving a minor. This bill increases that mandatory minimum to 30 years. This means that an 18-year-old high school student who transports a minor or causes a minor to travel from Washington D.C. to Virginia to engage in consensual sex, thereby committing the crime of contributing to the delinquency of a minor would be subject to a 30-year mandatory minimum sentence. One can only imagine how many times this law was violated in this area during prom season and what possible sense does it make to mandate a 30-year sentence? And if our goal, Mr. Chairman, is to reduce incidents of child abuse, we have to look at the cost effectiveness of these initiatives. If we are going to sentence somebody to a mandatory minimum of 30 years in prison, we have to look at the cost and what we could have done with that similar amount of money in child abuse prevention programs.

Under H.R. 2388 it appears that a mere fist fight between teenagers if one is under 18 and is even slightly injured would require a mandatory minimum sentence, even if the younger teen was the instigator. The provision limiting habeas corpus jurisdiction will

only increase litigation and delays and increase the risk that innocent people will be put to death.

Several of the 159 people that were exonerated of their crimes in the last 10 years, including some on death row, received exoneration more than 20 years after their conviction. I look forward to the testimony and enlightenment of our witnesses on the bills before us and thank you for convening the hearing.

Mr. GREEN. Thank you, Mr. Scott. It is the practice of the Subcommittee to swear in all witnesses appearing before it. I would ask the witnesses to stand and raise their right hands.

[Witnesses sworn.]

Mr. GREEN. Let the record show that each of the witnesses answered in the affirmative, please be seated. We have four distinguished witnesses with us today. I will introduce three of the witnesses and then turn to Mr. Keller of Florida for an introduction of our fourth. Our first witness is Laura Parsky, the deputy assistant attorney general of the criminal division at the United States Department of Justice. In addition to serving at the Department of Justice, Ms. Parsky has served as director of the international justice and contingency planning at the National Security Council. She graduated from Yale University and obtained her law degree from Bolt Hall School of Law at the University of California at Berkeley. Following law school, Ms. Parsky clerked for the Honorable D. Lowell Jenson of the United States District Court for the northern district of California.

Our second witness is Carol Fornoff. Mrs. Fornoff is a mother of seven in Mesa, Arizona. In 1984, Mrs. Fornoff's 13-year-old daughter Christy Ann was brutally murdered by a criminal who is still on death row awaiting another round of habeas review. We look forward to Mrs. Fornoff's testimony regarding this horrible tragedy before the Subcommittee today.

Our third witness will be Mr. John Rhodes, assistant Federal defender and branch chief of the Missoula branch office in Montana. Mr. Rhodes previously served a temporary duty assignment with the defender services division of the Administrative Office of the United States Courts. Prior to working at the defender services division, he served 6 months as special counsel and visiting Federal defender at the United States Sentencing Commission.

Previously, Mr. Rhodes worked as a State public defender and as an associate with Dorsey and Whitney. Mr. Rhodes is a graduate of DePauw University and Harvard Law School.

Mr. Keller.

Mr. KELLER. Thank you, Mr. Chairman. I am very pleased today to introduce to the Crime Subcommittee, my friend, Charlie Crist, the Attorney General for the State of Florida. Attorney General Crist has been a real champion in Florida when it comes to cracking down against child molesters by making sure they serve longer sentences and by using innovative technology to track their whereabouts. As a State Senator from '92 to '98, Mr. Crist sponsored the stop-turning-out-prisoners legislation, which requires criminals to serve at least 85 percent of their criminal sentence.

In November of 2002, Mr. Crist was elected Florida's first Republican Attorney General. For the past 2½ years, Attorney General Crist has led the fight to establish longer prison sentences for

criminals who sexually molest children and to require tracking devices once they do get out. Attorney General Crist understands that the best way to protect young children is to keep child predators locked up in the first place, because someone who has molested a child will do it again and again and again.

For example, earlier this year, two young Florida girls, 9-year-old Jessica Lunsford and 13-year-old Sarah Lunde were abducted, raped and killed. Both men who confessed to these horrific crimes were convicted sex offenders and career criminals. Mr. Crist takes these crimes personally and has traveled here to Washington today to help do something about this nationwide problem. Mr. Attorney General, we are honored to have you with us today. We applaud your efforts to protect the young people of Florida and we look forward to your testimony today.

Mr. GREEN. Thank you, Mr. Keller. We do have written testimony from each of our witnesses. We would ask if possible to limit their testimony to 5 minutes. And we will begin with Ms. Parsky. Welcome.

TESTIMONY OF LAURA PARSKY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. PARSKY. Thank you. Mr. Chairman, Ranking Member Scott, and distinguished Members of the Subcommittee. Thank you for inviting me to testify before you today on sexual crimes against children and two legislative proposals to address this critical topic. As we all know, crimes against children are terrible and reprehensible acts. In addition to the tragedy of violent crimes against children, the sexual abuse and exploitation of children is particularly horrific, and this horror is often exacerbated by child molesters who memorialize their repugnant crimes in photographs and videos.

We, as a Nation, must stand together to fight against these crimes and must explore every avenue for strengthening Federal laws in this area. Therefore, I commend you for holding this hearing today. One of the most prevalent manifestations of the growing problem of child exploitation and sexual abuse crimes is the escalating presence of child pornography. There has been explosive growth in the trade of child pornography due to the ease and speed of distribution and the relative anonymity afforded by the Internet. The distribution of child pornography has progressed beyond exchanges between individuals and now includes commercial ventures. We should be ever mindful that each image of what we call child pornography graphically depicts the sexual abuse of an innocent child.

Further, once on the Internet, the images are passed endlessly from offender to offender and are perhaps used to whet the appetite of a pedophile to act out the deviant fantasies of the image on yet another child thereby continuing the cycle of abuse. Child pornography offenses as well as other child exploitation offenses involving enticement of minors to engage in illegal sexual activity, travel to engage in illegal sexual activity with a minor, or transportation of a minor to engage in illegal sexual activity often implicate interstate or foreign commerce, and, therefore, are often prosecuted under Federal law. While sexual abuse of children is typically pros-

ecuted under State law, child sexual abuse on Federal lands such as a military base or an Indian territory may be prosecuted under Federal law. Accordingly, Federal laws prohibiting sexual abuse has an important role in combating these crimes.

Sexual crimes against children are a growing problem. For example, the number of Federal child pornography cases has more than tripled from fiscal year 1997 to fiscal year 2004. Child abuse and neglect cases are also increasing. Accordingly, a Federal legislative response is warranted and important. The Department of Justice is working hard to combat child exploitation and sexual abuse crimes. For example, the criminal division's child exploitation and obscenity's section already has generated more than a 445 percent increase in its caseload over the past 2 years. The Department has also made great strides in responding to the misuse of advancing technologies in child exploitation offenses. In August 2002, the Department created the high tech investigative unit comprised of computer forensic specialists equipped to ensure the Department's capacity to prosecute the most complex and advanced offenses against children committed online. In addition, the Department focuses its efforts on investigations that have the maximum deterrent impact, including nationwide child pornography operations that involve hundreds or thousands of offenders.

The Department also targets advancing Internet technologies to keep pace with the criminal exploitation of technology in the realm of crimes against children and works toward the critical goal of identifying the victims depicted in images depicted in child pornography. Several examples of these efforts are detailed in my written statement. A chilling example of the important work the Department is doing to fight child exploitation is the case of *United States versus Mariscal* prosecuted in the southern district of Florida. In that case, defendant Angel Mariscal was sentenced last September to a 100-year prison term following his conviction on seven counts involving the production of child pornography and related offenses. Mariscal traveled repeatedly over a 7-year period to Cuba and Ecuador where he produced and manufactured child pornography including videotapes of himself sexually abusing minors, some of them under the age of 12.

More than 100 victims were filmed exposing their genitals and/or engaging in sexual activity with the defendant and at least two adult female co-conspirators. Mariscal further endangered these minors by being HIV positive. Thankfully none of the identified victims has yet tested positive for HIV.

After videotaping the children using a camcorder, the defendant imported the tapes, reproduced them onto CD ROMS or VHS in Miami and distributed the CD ROMS and VHS tapes throughout the United States by mail or Federal Express. Mariscal's arrest has led to the prosecution of many of his U.S. customers through the coordinated efforts of the U.S. Postal Inspection Service. The Department of Justice deeply appreciates recent legislation that Congress has passed to combat child exploitation crimes such as the PROTECT Act. This extremely useful legislation includes provisions that imposes mandatory life imprisonment for defendants who commit two or more sex offenses against minors, permits supervised release for up to life for child exploitation crimes, and

makes it a crime to travel in foreign commerce and engage in illicit sexual conduct with a minor regardless of whether that was the purpose of the travel.

The Department is still reviewing the bills that are being discussed in today's hearing. We are grateful to the Committee for pursuing additional legislation to combat these terrible crimes and look forward to working with you on this and any other legislation that will help protect our children from violence and sexual exploitation. I thank you and the Subcommittee for the opportunity to speak to you today. And I would be happy to answer any questions.

Mr. GREEN. Thank you.

[The prepared statement of Ms. Parsky follows:]

PREPARED STATEMENT OF LAURA H. PARSKY

INTRODUCTION

Mr. Chairman, Ranking Member Scott, and distinguished Members of the Subcommittee, thank you for inviting me to testify before you today on sexual crimes against children and two legislative proposals to address this critical topic, H.R. 2388, the "Prevention and Deterrence of Crimes Against Children Act of 2005," and H.R. 2318, the "Protection Against Sexual Exploitation of Children Act of 2005." Generally, H.R. 2388 would mandate minimum sentences in all cases involving violent crimes against children, while H.R. 2318 would mandate minimum sentences in cases involving the sexual abuse and sexual exploitation of children.

As we all know, such crimes against children are terrible and reprehensible acts. In addition to the tragedy of violent crimes against children, the sexual abuse and exploitation of children is particularly horrific, and this horror is often exacerbated by child molesters who memorialize their repugnant crimes in photographs and videos. We all, as a nation, must stand together to fight against these crimes and must explore every avenue for strengthening federal laws in this area; therefore, I commend you for holding this hearing.

One of the most prevalent manifestations of the growing problem of child exploitation and sexual abuse crimes is the escalating presence of child pornography. There has been explosive growth in the trade of child pornography due to the ease and speed of distribution, and the relative anonymity, afforded by the Internet. The distribution of child pornography has progressed beyond exchanges between individuals and now includes commercial ventures. We should be ever mindful that each image of what we call child pornography graphically depicts the sexual abuse of an innocent child. Further, once on the Internet, the images are passed endlessly from offender to offender and perhaps used to whet the appetite of a pedophile to act out the deviant fantasies of the image on yet another child, thereby continuing the cycle of abuse. Child pornography offenses, as well as other child exploitation offenses involving enticement of minors to engage in illegal sexual activity, travel to engage in illegal sexual activity with a minor, or transportation of a minor to engage in illegal sexual activity often implicate interstate or foreign commerce. Accordingly, these offenses are often prosecuted under federal law. On the other hand, sexual abuse of children is typically prosecuted under state law. When a child is sexually abused on federal land such as a military base or in Indian territory, depending on the circumstances, the offense may be prosecuted under federal law. Accordingly, federal laws prohibiting sexual abuse have an important role in combating these devastating crimes, even though most sexual abuse cases are prosecuted under state statutes.

CRIMES AGAINST CHILDREN ARE A GROWING PROBLEM

Crimes against children such as child exploitation and sexual abuse are unfortunately a growing problem. For example, according to the Executive Office for United States Attorneys, in Fiscal Year 1997, 352 cases were filed by the Department of Justice charging child pornography crimes (18 U.S.C. Sections 2251–2260), and 299 convictions were obtained. In Fiscal Year 2004, child pornography charges were filed against approximately 1,486 defendants, and approximately 1,066 convictions on such charges were obtained.

Nationwide, according to the Department of Health and Human Services' 2003 report on child maltreatment, an estimated 906,000 children were victims of child abuse or neglect. Approximately 20 percent of these victims were physically abused,

and approximately 10 percent were sexually abused. Moreover, according to that report, Pacific Islander children and American Indian or Alaska Native children are among those experiencing the highest rates of victimization. As the special maritime and territorial jurisdiction of the United States may cover many of these children, a federal legislative response to violence against children and child sexual abuse is warranted and important.

THE DEPARTMENT OF JUSTICE IS AGGRESSIVELY FIGHTING CRIMES AGAINST CHILDREN

The Department of Justice is working hard to combat child exploitation and sexual abuse crimes. For example, the Criminal Division's Child Exploitation and Obscenity Section (CEOS) already has generated a more than 445% increase in its caseload, including child pornography cases and investigations, handled in the past two years. In addition to increasing the sheer number of investigations and prosecutions brought by our attorneys, the quality and import of the cases has increased substantially, with a focus on producers and commercial distributors.

The Department of Justice has also made great strides in responding to the misuse of advancing technologies in child exploitation offenses. In August 2002, the Department created within CEOS the High Tech Investigative Unit (HTIU), which consists of computer forensic specialists equipped to ensure the Department's capacity to prosecute the most complex and advanced offenses against children committed online. The HTIU renders expert forensic assistance and testimony in districts across the country in the most complex child pornography prosecutions conducted by the Department. Additionally, the HTIU currently receives and reviews an average of more than 200 tips per month from citizens and non-governmental organizations, such as the National Center for Missing and Exploited Children, and initiates investigations from these tips.

The Department focuses its efforts on investigations that have the maximum deterrent impact. For example, CEOS is currently coordinating 17 nationwide operations involving child pornography offenders. These are significant investigations of national impact. Nearly each one of the 17 involves hundreds or thousands, and in a few cases tens of thousands, of offenders. The coordination of these operations is complex, but the results can be tremendous. By way of example, the FBI is currently investigating the distribution of child pornography on various "member-only" online bulletin boards. As of March 19, 2005, the investigation had yielded 180 search warrants, 75 arrests, 130 indictments, and 61 convictions.

Quickly advancing Internet technologies present many challenges to investigators, and the Department is determined to keep pace with the criminal exploitation of technology in the realm of crimes against children. As child pornographers have started using peer-to-peer file sharing networks to distribute their images, national enforcement initiatives against peer-to-peer offenses have been launched. These initiatives encompass operations by the Federal Bureau of Investigation, the Department of Homeland Security, Immigration and Customs Enforcement (ICE), and state and local Internet Crimes Against Children task forces. Since the fall of 2003, these initiatives collectively have resulted in more than 1000 investigations, 350 searches, and at least 65 arrests.

The Department also works toward the critical goal of identifying the victims depicted in images of child pornography, so that they can be rescued and protected from further abuse. One method for achieving this goal is already underway. The FBI Endangered Child Alert Program (ECAP) was launched on February 21, 2004, by the FBI's Innocent Images Unit and is conducted in partnership with CEOS. The purpose of ECAP is to proactively identify unknown subjects depicted in images of child pornography engaging in the sexual exploitation of children. Since ECAP's inception, seven "John Doe" subjects have been profiled by *America's Most Wanted,* and with the assistance of tips from viewers, five have been identified. More importantly, 31 victims (so far) in Indiana, Montana, Texas, and Colorado have been identified as a result of this initiative. All of the victims had been sexually abused over a period of years, some since infancy. CEOS is working with the field to identify suitable targets for this program, and we will continue to ensure that this program is utilized to its maximum potential.

A chilling example of the important work the Department is doing to fight child exploitation is the case of *United States v. Mariscal,* prosecuted in the Southern District of Florida. In that case, defendant Angel Mariscal was sentenced last September to a 100-year prison term, following his conviction on seven counts relating to the production of child pornography and related offenses. Mariscal had traveled repeatedly over a seven-year period to Cuba and Ecuador, where he produced and manufactured child pornography, including videotapes of himself sexually abusing minors, some under the age of 12. More than 100 victims were filmed exposing their

genitals and/or engaging in sexual activity with the defendant and at least two adult female co-conspirators. Mariscal further endangered these minors, because he is HIV-positive; thankfully, none of the identified victims has yet tested positive for HIV. After videotaping the children using a camcorder, the defendant imported the tapes, reproduced them onto CD-ROMS or VHS tapes in Miami, and distributed the CD-ROMs and VHS tapes throughout the United States by mail or Federal Express. Mariscal would advertise these items by mail, and in 2002, the child pornography sold for anywhere from $595.00 to $995.00 per item. Customers were also given the option of writing their own fantasy script. Mariscal's arrest has led to the prosecution of many of his customers across the country due to the coordinated efforts of the U.S. Postal Inspection Service and CEOS.

RECENT LEGISLATION HAS BEEN INSTRUMENTAL IN THE DEPARTMENT'S FIGHT AGAINST CHILD EXPLOITATION CRIMES

The Department of Justice deeply appreciates recent legislation that Congress has passed to combat child abuse and child exploitation crimes, such as the PROTECT Act. We have found that legislation extremely useful and have used it effectively, as shown by the following examples.

Section 106 of the PROTECT Act, codified at 18 U.S.C. § 3559(e), imposes mandatory life imprisonment for a defendant convicted of a federal sex offense in which the victim is a minor, if the defendant has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed. In *United States v. Albert J. Kappell,* prosecuted in the Western District of Michigan, the defendant was sentenced in March 2004 to life imprisonment for his conviction on nine counts of sexual abuse of two young girls, ages six and three. The victims, who are Native Americans, are enrolled members of the Keweenaw Bay Indian Community (KBIC) in Michigan's Upper Peninsula. Kappell, a non-Indian, repeatedly abused the young girls, including with acts of penile and digital penetration, during a four-month period in which he lived with the girls' mother. Because Kappell had been previously convicted of sexual abuse against a minor in 1982, he was sentenced to a mandatory life term of imprisonment pursuant to this new sentencing provision of the PROTECT Act.

Section 101 of the PROTECT Act, codified at 18 U.S.C. § 3583(k), permits a term of supervised release of any number of years up to the life of the defendant for child exploitation crimes. In *United States v. Larry N. Cole,* prosecuted in the Southern District of Texas, the defendant was sentenced in January 2004 to more than six years in prison and court supervision for the rest of his life for possessing over 300 images of child pornography on several computers. A life term of supervised release was imposed under the PROTECT Act in recognition of the recidivist nature of Cole's conduct.

Section 105 of the PROTECT Act, codified at 18 U.S.C. § 2423(c), makes it a crime to travel in foreign commerce and engage in illicit sexual conduct with a minor, regardless of whether that was the purpose of the travel. This is a critical improvement over the previous law, under which the government had to prove that the perpetrator traveled for the purpose of engaging in a sexual act with a minor. The maximum penalty for this new offense is 30 years' imprisonment. In *United States v. Michael Lewis Clark,* prosecuted in the Western District of Washington, United States citizen Michael Lewis Clark was arrested in June 2003 in Cambodia for sexually abusing two Cambodian boys, ages 10 and 13. Clark was charged with engaging in illicit sexual conduct after travel in foreign commerce. The case was the first such prosecution under the new provision of the PROTECT Act. Clark had flown to Cambodia in May 2003, but he had also spent considerable time in Cambodia over the previous five years. The investigation revealed that Clark targeted boys ranging from 10 to 18 years of age along the river front area of Phnom Penh, Cambodia, and would pay the boys for engaging in sexual contact with him. Clark pled guilty and was sentenced to 97 months of imprisonment. He currently has an appeal pending.

H.R. 2388 AND H.R. 2318

Both H.R. 2388 and H.R. 2318 would impose additional mandatory minimum sentences for child exploitation and sexual abuse crimes. The Department of Justice supports mandatory minimum sentences in appropriate circumstances. In a way sentencing guidelines cannot, mandatory minimum statutes provide a level of uniformity and predictability in sentencing. They deter certain types of criminal behavior, determined by Congress to be sufficiently egregious as to merit these penalties, by clearly forewarning the potential offender and the public at large of the minimum potential consequences of committing such offenses. Moreover, mandatory

minimum sentences can also incapacitate dangerous offenders for long periods of time, thereby increasing public safety. In the context of sexual abuse crimes against children, this can be particularly important. Finally, in cases involving multiple offenders, mandatory minimum sentences provide an indispensable tool for prosecutors, because they provide the strongest incentive for defendants to cooperate against the others who were involved in their criminal activity.

In addition, H.R. 2318 effectively would restrict the jurisdiction of federal courts to entertain a first petition for federal habeas corpus review, in cases involving the murder of a child, to the same grounds that now govern their ability to consider second or successive petitions for federal habeas corpus review filed by any state prisoner. Thus, in state cases involving the murder of a child, federal habeas courts would no longer be able to review any exhausted federal constitutional claim; rather, federal courts would only have jurisdiction to consider habeas claims based on (1) new rules of constitutional law that have been made retroactively applicable by the Supreme Court, or (2) newly discovered evidence that clearly and convincingly establishes that, but for the existence of a constitutional error, no reasonable fact finder would have found the petitioner guilty of the underlying offense. Although we are currently analyzing this provision, we have two preliminary concerns.

First, while we agree that those who murder children should be punished without undue delay, we note that other murderers would not be covered by this provision. We ask the Subcommittee to consider whether other categories of condemned murderers should be subject to accelerated federal habeas review as well. We also ask the Subcommittee to consider whether the laudable goal of accelerating habeas corpus review for child-killers would run the risk of diverting judicial resources so that the already-long delays in providing federal habeas review for other murderers, particularly those under sentences of death, may be inadvertently lengthened.

Second, we note that this provision would only cover habeas claims under Section 2254 and not claims for post-conviction relief under Section 2255. We ask the Subcommittee to consider whether it would be appropriate to consider applying the same procedures for child killers in federal custody.

CONCLUSION

In sum, the Department of Justice shares your goals of protecting children from violence and sexual exploitation and looks forward to working with you on H.R. 2388 and H.R. 2318. We deeply appreciate the legislative tools that Congress has already provided law enforcement in our fight against these awful crimes and your commitment to consider additional measures that would aid us in our efforts.

Mr. Chairman, I again thank you and the Subcommittee for the opportunity to speak to you today, and I would be pleased to answer any questions the Subcommittee might have.

Mr. GREEN. Attorney General Crist.

TESTIMONY OF THE HONORABLE CHARLIE CRIST, ATTORNEY GENERAL, STATE OF FLORIDA

Mr. CRIST. Thank you, Mr. Chairman and Ranking Member Scott. I want to thank Congressman Keller for his kind introduction and I want to say hello to my friend Congressman Feeney. On behalf of the State of Florida and the many State Attorneys General, I thank you for the opportunity to address a problem that is as horrific as it is pervasive. The problem of sex crimes against children has been a blight on society for far too long, but it seems to have exploded onto the national consciousness as a result of a series of recent high profile cases.

Sadly, several of these cases have occurred in my own State. I believe this is more a consequence of our State's appeal to newcomers than it is an indication of any systemic problem unique to Florida, but it has made us acutely aware of the complexities of the issue. Florida is home to some 34,000 registered sex offenders, approximately 5,000 of whom are classified as sexual predators. The odds are that in every neighborhood in every city, there is a sex offender living down the street. It is highly likely that every Flo-

ridian, and probably every American, drives past the home of a sex offender on a regular basis without even knowing it.

I believe it is no accident that our founding fathers stressed the importance of safety and security by placing in the very first line of the United States Constitution the mandate that the very purpose of our Government is to, "ensure domestic tranquility." Little we do as public servants will really matter if we do not do something to prevent our most innocent citizens from falling victim to the unspeakable horrors committed by sex offenders and sex predators. The experts tell us that someone who has molested a child will do it again and again.

Child molesters are dangerous, and they will remain dangerous as long as they can roam unimpeded in our neighborhoods, our schools, our churches, our synagogues, and our playgrounds. To make a meaningful difference, I believe we will have to employ a multi-faceted strategy embracing a wide range of approaches, including prevention, education, tracking, and enforcement. Beginning with the tragic abduction and murder of 11-year-old Carlie Brucia in Sarasota only 16 months ago, Florida has taken numerous steps to protect children from the monsters who would prey upon them.

There is still much work to be done, but I believe these initiatives represent an important first start. The best way to eliminate sex crimes against children, of course, is to prevent them from happening in the first place. We may never be able to totally eliminate the predators who commit these deviant acts, so we must do what we can to keep young boys and girls from becoming their victims. In Florida, we have directed our prevention and education initiatives at both parents and children. One of our most important steps was taken 3 weeks ago with the help of an outstanding corporate citizen, Pitney Bowes. On May 17, Pitney Bowes' chairman and CEO Michael Critelli and I unveiled an enhanced State website that for the first time, it lets parents and other Floridians zero in on registered sex offenders who live nearby. The Florida Department of Law Enforcement maintains a database of 34,000 registered sex offenders and sexual predators, one of the largest of its kind in the Nation. For the past 10 years, a website maintained by that agency has allowed Floridians to search for sex offenders as well as predators. This has been an extremely useful service, but it was limited. Parents could find out which sex offender were registered to live in the same town or zipcode, but unless a parent was familiar with every street in that zipcode, it was not always possible to know just how close the offender might live.

Now thanks to user-friendly software developed by Pitney Bowes and donated to the State of Florida, parents can find that out. When we announced the new system, we did a sample search to see if any registered sexual offenders lived near our State Capitol. We found out that within 3 miles, 96 sexual offenders resided. Thanks to our new website search parents and others throughout Florida will be able to pinpoint the addresses of these registered sex offenders. Our other program for children was launched last October when we introduced the Escape School program to Florida. At hour-long programs conducted at public schools throughout the State, we have had the opportunity to better empower children as

to how to escape the possibility. As I said earlier, the case of Carlie Brucia which occurred in Sarasota 16 months ago, an 11-year-old girl being abducted from a carwash parking lot was played over and over again on national television. That was followed by a case that occurred including the Jessica Lunsford case where Congresswoman Ginny Brown-Waite has led the effort, along with Congressman Mark Foley, to try to stop those kinds of things from happening on a national level and I applaud their effort.

There was another case that got a lot less play. This occurred in Deltona, Florida, Volusia County. It affected 6 innocent Floridians who were beaten to death with baseball bats in the wee hours on August 6 of last year. Those cases involving Carlie Brucia, Jessica Lunsford, Sarah Lunde in the Tampa Bay area where my family resides, and the 6 innocent Floridians in Deltona, Volusia County, Florida, all had a common theme and a common thread. The common thread was that each and every one of these cases had somebody who had already been in prison in Florida. They had served their time and gotten out, they had been placed on probation, given a second chance, been on the privilege of probation—it is a privilege that our criminal justice extends. They all violated probation. At the time they violated, they go before a judge, and the judge has to make a determination of whether or not that person should go back to jail or stay free.

Regrettably, in each and every one of those cases, the judges decided to let them stay out. And in Sarasota, he saw Carlie Brucia, in Citrus County, Jessica Lunsford, in Hillsborough County, Sarah Lunde, and in Deltona, Volusia County, those six innocent Floridians. We must do more to make sure we lock these bad people up and protect the citizens of our State and our country.

Mr. GREEN. Thank you, General Crist.

[The prepared statement of Mr. Crist follows:]

PREPARED STATEMENT OF CHARLIE CRIST

Good afternoon Chairman Coble, Ranking Member Scott, and distinguished members of the Subcommittee.

On behalf of the State of Florida and the many state attorneys general, I thank you for this opportunity to address a problem that is as horrific as it is pervasive.

The problem of sex crimes against children has been a blight on society for far too long, but it seems to have exploded onto the national consciousness as a result of a series of recent high-profile cases. Sadly, several of these cases have occurred in my own state. I believe this is more a consequence of our state's appeal to newcomers than it is an indication of any systemic problem unique to Florida, but it has made us acutely aware of the complexities of this issue.

Florida is home to some 34,000 registered sex offenders, approximately 5,000 of whom are classified as sexual predators. The odds are that in every neighborhood, in every city, there is a sex offender living down the street. It is highly likely that every Floridian—and probably every American—drives past the home of a sex offender on a regular basis without even knowing it.

I believe it was no accident that the Founding Fathers stressed the importance of safety and security by placing in the very first line of the U.S. Constitution the mandate that the very purpose of our government is "to insure domestic tranquility." Little we do as public servants will really matter if we do not do something to prevent our most innocent citizens from falling victim to the unspeakable horrors committed by sex offenders and predators.

The experts tells us that someone who has molested a child will do it again and again. Child molesters are dangerous, and they will remain dangerous as long as they can roam unimpeded in our neighborhoods, our schools, our churches, our playgrounds.

To make a meaningful difference, I believe we will have to employ a multi-faceted strategy embracing a wide range of approaches including prevention and education, tracking and enforcement.

Beginning with the tragic abduction and murder of 11-year-old Carlie Brucia in Sarasota 16 months ago, Florida has taken numerous steps to protect children from the monsters who would prey on them. There is still much work to be done, but I believe these initiatives represent an important start.

PREVENTION AND EDUCATION

The best way to eliminate sex crimes against children, of course, is to prevent them from happening in the first place. We may never be able to totally eliminate the predators who commit these deviant acts, so we must do what we can to keep young boys and girls from becoming their victims.

In Florida, we have directed our prevention and education initiatives at both parents and children.

One of our most important steps forward was taken three weeks ago with the help of an outstanding corporate citizen, Pitney Bowes. On May 17, Pitney Bowes Chairman and CEO Michael Critelli and I unveiled an enhanced state website that for the first time lets parents and other Floridians zero in on registered sex offenders who live nearby.

The Florida Department of Law Enforcement maintains a database of 34,000 registered sex offenders and sexual predators, one of the largest of its kind in the nation. For the past 10 years, a website maintained by that agency has allowed Floridians to search for sex offenders and predators.

This has been an extremely useful service, but it was limited. Parents could find out which sex offenders were registered to live in the same town or zip code. But unless a parent was familiar with every street in the zip code, it was not always possible to know just how close the offender lived.

Now, thanks to user-friendly software developed by Pitney Bowes and donated to the State of Florida, parents can type in their home address—or, if they prefer, their child's school address, church or any other place they choose—and see how many sex offenders live within one mile. If they wish, they can expand the search up to five miles.

The new system crosses zip code and city or county lines, so it lets you know if sex offenders or sexual predators live close by, even if they live in a different zip code or county. It will tell how far away the sex offender lives, and can even produce a map so parents can figure out alternate routes for their children to travel safely. With a few more clicks, an internet user can visit our state Department of Corrections web site and pull up a mug shot, prison history and other information about any sex offender they find in their neighborhood.

When we announced the new system, we did a sample search to see whether any registered sex offenders lived near the State Capitol in Tallahassee. Much to our surprise, we found that there are 96 sex offenders living within three miles of the Capitol—with the nearest one just three-tenths of a mile away.

Thanks to our new search website, parents and others throughout Florida will be able to pinpoint the addresses of registered sex offenders and predators, virtually anywhere in our state.

Two other important elements of our prevention efforts are aimed at the children themselves.

Last year our office placed a link on our home page for NetSmartz, an interactive educational safety resource that teaches kids and teens how to stay safer on the Internet. NetSmartz was put together by the National Center for Missing and Exploited Children and the Boys & Girls Clubs of America, and is aimed at children ages 5 to 17.

As adults, we all immediately recognize the risks to children associated with the Internet. But the harsh reality is that, despite our best efforts, children will explore the online world without an adult to supervise them. That is why it is especially important that children learn that people they first "meet" on the Internet should never be considered a friend. They must learn what kinds of questions and pictures are inappropriate, and to tell a trusted adult if they are ever approached online with such information.

NetSmartz offers helpful information through age-appropriate interactive lessons. It can reach children in a way most adults cannot. This makes it another valued facet of our efforts to use a combination of prevention and education, tracking and enforcement to stop sex offenders from threatening our children.

Our other program for children was launched last October when we introduced the Escape School program to Florida. At hour-long programs conducted at public

schools throughout the state, experts teach children how to make smart, safe choices in potentially dangerous situations. We want children to know how to do whatever it takes to get away from someone who might harm them.

To date, our office has conducted 25 Escape School programs attended by some 4,669 Florida children and parents. We hope no Florida child is ever forced to rely on the skills taught at Escape School. But it is comforting to know that so many children have had the opportunity to learn the techniques, just in case.

TRACKING

The February 2004 murder of Carlie Brucia shocked the nation. Millions of Americans saw the horrifying security camera video of this precious 11-year-old girl being abducted from a parking lot, and all of Florida mourned when it was learned that Carlie had been killed.

That sadness turned to anger when it was learned that her accused killer was a man whose history showed a propensity for violent crimes. He had violated terms of his probation—but had not been reincarcerated for these violations.

The months that followed Carlie's murder brought reports of more terrible crimes against young Floridians by perpetrators who had histories of criminal violence.

These awful incidents came to a head with the murders earlier this year of 9-year-old Jessica Lunsford and 13-year-old Sarah Lunde. The men who confessed to abducting, raping and killing each girl were convicted sex offenders. The man who said he killed Jessica was a probation violator who registered with local authorities as required by law—but then moved to a mobile home 150 yards from Jessica's home without telling anyone.

Jessica's father, Mark Lunsford, is a true American hero. Just weeks after his beloved daughter was ripped from his life forever, this quiet, unassuming man was in Tallahassee promoting legislation to make sure no other Florida father had to endure the anguish he was still experiencing. The result was the Jessica Lunsford Act, which establishes longer prison sentences for criminals who sexually molest children and requires tracking devices once they do get out.

This measure could not have become law without the extraordinary efforts of Mark Lunsford, as well as "America's Most Wanted" host John Walsh—himself a Floridian whose son was abducted, sexually assaulted and murdered. Governor Jeb Bush also deserves praise for quickly signing this bill into law.

As helpful as the Jessica Lunsford Act may be, I believe it does not go far enough to stop sex offenders from violating probation and victimizing more young children. Using ankle bracelets with GPS technology to track sex offenders will let us know where they are, but it will not prevent them from committing more crimes. The only way to make sure they do not ruin the lives of more young children is to keep them locked up in the first place.

We know the people who are committing these horrible crimes. They are people who already committed crimes. They are people who, at least in Carlie and Jessica's cases, violated the terms of their probation. To stop these people, I will continue pushing the Florida Legislature to change the law in order to require that violent felons who violate probation be returned directly to jail unless a judge holds a hearing and determines that the offender does not pose a danger to the community.

Tracking bracelets are good—but prison bars are better.

ENFORCEMENT

All indications are that Jessica Lunsford and Sarah Lunde were careful, intelligent girls, yet they were still abducted from their own homes. There are some things that education programs simply will not prevent. Ultimately, our ability to limit the activities of sex offenders who prey on children will depend on enforcement and prosecution.

Just last week, my office won a conviction against a 52-year-old man who tried to use an Internet chat room to lure a 13-year-old boy to his home to engage in sexual activity and to view child pornography. Unfortunately for the man, the 13-year-old boy turned out to be an undercover officer, and now this sex offender faces up to 75 years in prison.

Local law enforcement throughout Florida, and I am sure throughout the nation, has done a remarkable job responding in the wake of so many terrible incidents. Allow me to give you an example from the small North Florida town of Green Cove Springs, population about 5,600.

Police Chief Gail Russell made a decision that sex crimes against children would be a priority. In the past 18 months, the police department has arrested 14 'travelers' in cases where a child has left home or been targeted by an adult, via the Internet, to leave home. The police department has identified and referred 10 cases

to other jurisdictions, one of which involved 20 potential child victims in other states. One computer seized through the department's efforts contained 3,000 pornographic images of children and 1,000 videos.

This is a clear example of what even a small police department can do when it makes sex crimes against children a priority. But they cannot do it alone. I am pleased that last month, the Florida Legislature agreed to establish a Cyber Crime Unit within the Attorney General's Office. This small but dedicated unit will target internet crimes against children and will work closely with local law enforcement agencies throughout the state.

We at the state level will do whatever we can to support these efforts. But in today's mobile and electronic society, sex crimes know no political boundaries. That is why we are so encouraged to see your subcommittee, and the entire Congress, giving serious consideration to national legislation to address this issue.

In the aftermath of Carlie Brucia's death, Congresswoman Katherine Harris offered a significant proposal to create a national sex offenders registry. I enthusiastically support establishment of such a system, and offer the full assistance of my office to bring this to fruition. For a state like Florida, which attracts so many from other areas, a national registry would make it much easier for local law enforcement agencies to learn when sex offenders from other places move into our state.

I am also gratified by the strong commitment shown by other members of Florida's Congressional Delegation, especially Representatives Mark Foley and Ginny Brown-Waite, to finding workable solutions to this most difficult problem.

We also support the Department of Justice's work coordinating efforts to link various state offender databases. Short of a full-fledged nationwide registry, such a system of inter-connected state databases would be a meaningful help to local and state agencies. The Department's participation in joint local-state-federal operations, including two Internet Crimes Against Children (ICAC) task forces in Florida, has been indispensable in bringing offenders to justice.

As I said earlier, we cannot rely on one single approach, or one single level of government, to successfully target sex crimes against children. We must maintain and expand prevention initiatives, tracking activities and enforcement efforts. We must fight the battle at the local level and the state level.

But in the end, the success of these efforts will depend on the overall coordination and resources that can come only through a nationwide commitment to wiping out this blight.

With the well-being of American youth at stake, no amount of commitment can be considered too much.

I commend this subcommittee for its interest in this important issue, and I look forward to working with you as we craft meaningful national legislation to protect America's children.

Again, Mr. Chairman, I am grateful for the opportunity to contribute to this hearing and to help ensure that the legacies of Carlie Brucia, Jessica Lunsford, Sarah Lunde and so many other innocent victims of sexual predators will serve to prevent other such tragedies in the future.

Thank you.

Mr. GREEN. Mrs. Fornoff, welcome.

TESTIMONY OF CAROL FORNOFF, MESA, ARIZONA, MOTHER OF A MURDERED CHILD

Mrs. FORNOFF. Thank you for inviting me to testify. My husband Roger and I are here today to tell you about our daughter Christy Ann Fornoff. Christy was our youngest daughter. She was a loving child, very gentle. She often seemed to make friends with the kids at school who weren't so popular. She was very dear to us. In 1984, our family was living in Tempe, Arizona, and Christy was 13-years-old. Christy Ann and her brother Jason both held jobs as news carriers for the *Phoenix Gazette*, a local newspaper. Roger and I believed that jobs like this would teach our children responsibility while also helping them earn a little money.

After dinner on Wednesday evening, May 9, 1984, both Christy Ann and Jason had been invited to go jumping on the trampoline. Jason went but Christy had just had a cast removed from her ankle. So instead, she went to collect on her newspaper's route at

the apartment complex near our home. Christy delivered papers at the complex everyday. It was two, just two short blocks from our house. Nevertheless, it was getting dusk, so I went with her. She rode her brother's bike while I walked alongside with our little dog. At the first apartment that Christy visited, I was stopped by a neighbor who wanted to talk about our cute dog.

Christy went on to the next apartment alone, and I followed a few minutes later. When I got there, the bike was outside, but there was no Christy. I started calling her name, but there was no answer. Our dog started to get so nervous. After a few minutes I ran home and came back with my daughter's boyfriend. We went to the apartment and asked. They said Christy had been here, but she had left about 10 minutes ago. While I knew that Christy wouldn't leave her brother's bike, I ran home again. My husband had just arrived at home and I told him that Christy was missing. He immediately called the police and then went to the apartment complex and began knocking on doors. Outside of one apartment, people standing nearby told him, don't bother knocking on that door, that is the maintenance man and he is looking for Christy.

Shortly after, the maintenance man joined Roger in the search for Christy. That night, police helicopters with search lights examined every corner of our neighborhood. Our son drove up and down everywhere in the area on his motorcycle. Christy's newspaper collection book was found over a fence by the apartment complex but no one found Christy. Two days later, a policeman knocked on our door. Christy's body had been discovered wrapped in a sheet lying behind a trash dumpster in that apartment complex. We were absolutely devastated. We had began hoping against hope and couldn't believe that our beautiful daughter was dead. Christy's body was taken to a morgue so an autopsy could be performed.

On Sunday, which was Mother's Day, we were able to view Christy's body. Mother's Day has never been the same since. 10 days after Christy's body was found, the maintenance man at the apartment complex, the same man who had been looking for her that night, was arrested for her murder. Christy had been sexually assaulted and suffocated. There was blood, semen and hair on Christy's body that was consistent with that of the maintenance man. Vomit on Christy's face matched vomit in the maintenance man's closet. Fibers on Christy's body matched the carpet and a blanket in the man's apartment. And police found Christy's hair inside of the apartment. We knew who had killed our daughter. In 1985, the maintenance man was convicted of Christy's murder and sentenced to death.

The conviction was upheld in a lengthy opinion by the Arizona Supreme Court. The killer raised many more challenges but his last State appeals were finally rejected in 1992. By that time, we already felt that the case had been going on for a long time. It had been 7 years. We couldn't imagine that the killer would have any more challenges to argue. But in 1992, the killer filed another challenge to his conviction in the United States district court. That challenge then remained in that one court for over 7 years. Finally in November 1999, the district court dismissed the case.

Few years later the Federal Court of appeals for the Ninth Circuit sent the case back to the district court for more hearings.

Today, the case remains before that same Federal district court. It has now been over 21 years since Christy was murdered. By this fall the case will have been in the Federal courts for longer than Christy was ever alive. I cannot describe to you how painful our experience with the court system has been. I cannot believe that just one court took over 7 years to decide our case. We want to know will his conviction be thrown out? Will there be another trial? I cannot imagine testifying at a trial again. And would they even be able to convict this man again?

It has been 21 years. How many witnesses are still here. Is all the evidence even still available. Could this man one day be released? Could I run into him on the street, a free man, the man who assaulted and killed our daughter. The court has turned this case into an open wound for our family, a wound that has not been allowed to heal for 21 years. Why would we want a system that forces someone like me to relive my daughter's murder again and again and again.

My daughter's killer already litigated all of the challenges to his case in the State courts. Why should we let him bring all the same legal claims again for another round of lawsuits in the Federal courts? Why should this killer get a second chance? My daughter never had a second chance.

When you and your colleagues are writing laws, Mr. Chairman, please think about people like me. Please think about the fact that every time there is another appeal, another ruling, another hearing, I am forced to think about my daughter's death. Every time I am forced to wonder if only Christy hadn't had the cast on her ankle. If only she could have gone on the trampoline that evening, she would still be alive today. Every time I hear a helicopter, I am terrified. I think of the police helicopters searching for Christy on the night that she disappeared. Every time I hear a motorcycle, I think of my son searching for Christy. Every time that the courts reopen this case, I am forced to wonder, why didn't I go with Christy to that second apartment. Why did I let that neighbor stop me to talk?

Every time I am forced to think about how scared my little girl must have been when she died. I urge you Mr. Chairman, to do what you can to fix this system. And my family and I have forgiven our daughter's murderer, but we cannot forgive a justice system that would treat us this way.

Mr. GREEN. Thank you, Mrs. Fornoff. I appreciate you coming here and the courage it took for you to tell your story.

[The prepared statement of Mrs. Fornoff follows:]

PREPARED STATEMENT OF CAROL FORNOFF

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

HEARING ON H.R. 2318 AND H.R. 2388, LEGISLATION TO PREVENT AND DETER CRIMES AGAINST CHILDREN

JUNE 7, 2005

STATEMENT OF MRS. CAROL FORNOFF:

My husband Roger and I are here today to tell you about our daughter, Christy Ann Fornoff. Christy was our youngest daughter. She was a loving child, very gentle. She often seemed to make friends with the kids at school who weren't so popular. She was very dear to us.

In 1984, our family was living in Tempe, Arizona, and Christy was 13 years old. Christy and her brother Jason both held jobs as newscarriers for the *Phoenix Gazette*, a local newspaper. Roger and I believed that jobs like this would teach our children responsibility, while also helping them earn a little money.

After dinner on Wednesday evening, May 9, 1984, both Christy and Jason had been invited to go jumping on trampolines. Jason went, but Christy had just had a cast removed from her ankle. Instead, she went to collect on newspaper subscriptions at an apartment complex near our house.

Christy delivered papers at this complex every day, it was just two short blocks from our house. Nevertheless, it was getting dusk, so I went with Christy; she rode her brother's bike while I walked alongside with our little dog.

At the first apartment that Christy visited, I was stopped by a neighbor who wanted to talk about our cute dog. Christy went on to the next apartment alone, and I followed a few minutes later. When I got there, the bike was outside, but there was no Christy. I started calling her name, but there was no answer. Our dog started to get nervous. After a few minutes, I ran home, and came back with my daughter's boyfriend. I asked the people at the apartment that Christy had gone to if they had seen her, and they said yes, ten minutes ago, and that she had left. I knew that Christy wouldn't just leave her brother's bike there.

I ran home again. My husband had just arrived at home and I told him that Christy was missing. He immediately called the police, and then he went to the apartment complex and began knocking on doors. Outside of one apartment, people standing nearby told us don't bother knocking on

that door, that is the maintenance man, and he is looking for Christy. Shortly after, the maintenance man joined Roger in the search for Christy.

That night, police helicopters with searchlights examined every corner of our neighborhood. Our son drove up and down every alley in the area on his motorcycle. Christy's newspaper-collections book was found over a fence near the apartment complex. But no one found Christy.

Two days later, a policeman knocked at our door. Christy's body had been discovered wrapped in a sheet, lying behind a trash dumpster in the apartment complex. We were absolutely devasted. We had been hoping against hope, and couldn't believe that our beautiful daughter was dead.

Christy's body was taken to a morgue so that an autopsy could be performed. On Sunday, which was Mother's day, we were finally able to view Christy's body at the funeral home. Mother's Day has never been the same for me since.

Ten days after Christy's body was found, the maintenance man at the apartment complex – the same man who supposedly had been looking for her the night that she disappeared – was arrested for her murder. Christy had been sexually assaulted and suffocated. There was blood, semen, and hair on Christy's body that was consistent with that of the maintenance man. Vomit on Christy's face matched vomit in the maintenance man's closet. Fibers on Christy's body matched the carpet and a blanket in the maintenance man's apartment. And police found Christy's hair inside of the apartment. We knew who had killed our daughter.

In 1985, the maintenance man was convicted of Christy's murder and sentenced to death. The conviction was upheld in a lengthy opinion by the Arizona Supreme Court. The killer raised many more challenges, but his last state appeals were finally rejected in 1992. By that time, we already felt like the case had been going on a long time – it had been seven years. We couldn't imagine that the killer would have any more challenges to argue.

But in 1992, the killer filed another challenge to his conviction in the United States District Court. That challenge then remained in that one court for another 7 years! Finally, in November of 1999, the district court dismissed the case. But then a few years later, the Federal Court of Appeals for the Ninth Circuit sent the case back to the district court for more hearings. Today, the case remains before that same federal district court.

It has now been over 21 years since Christy was murdered. By this fall, the case will have been in the federal courts for longer than Christy was ever alive.

I cannot describe to you how painful our experience with the court system has been. I cannot believe that just one court took over 7 years to decide our case.

Some might ask why we can't just move on, and forget about the killer's appeals. But it doesn't work that way. She was our daughter, our beautiful little girl, and he took her away. We want to know if he was properly convicted. We want to know, will his conviction be thrown out? Will there be another trial? I cannot imagine testifying at a trial again. And would they even be able to convict this man again? It has been 21 years. How many witnesses are still here, is all of the evidence even still available? Could this man one day be released? Could I run into him on the street, a free man – the man who assaulted and killed our little daughter? The courts have turned this case into an open wound for our family – a wound that has not been allowed to heal for 21 years.

I understand that the federal government has the right to create such a system. It can let the federal courts hear any challenge to a state conviction, at any time, with no limits. My question to you, Mr. Chairman, is why would we want such a system? Why would we want a system that forces someone like me to relive my daughter's murder, again and again and again? My daughter's killer already litigated all of the challenges to his case in the state courts. Why should we let him bring all of the same legal claims again, for another round of lawsuits, in the federal courts? Why should this killer get a second chance? My daughter never had a second chance.

I understand that people are concerned about innocent people being behind bars, but that is not what my daughter's killer is suing about. Right now, the issue that is being litigated in the federal courts is whether the trial court made a mistake by allowing the jury to hear that he told a prison counselor that he "didn't mean to kill the little Fornoff girl." He claims that the counselor was like his doctor, and that the statement is private, even though he said it in front of other prisoners. Earlier this year, a federal court held a hearing on whether the killer had a right to prevent the jury from hearing about this statement. But the statement is irrelevant. Whether or not he said it, the evidence of his guilt – the hairs, the fibers, the bodily fluids – is overwhelming. The issue that the killer is suing about was already resolved before by the Arizona Supreme Court – over 17 years ago. Yet here we are, 21 years after my daughter died, arguing about the same legal technicalities.

People might say that it is worth the cost to let the killer sue over every issue like this again and again. I don't think that it is worth the cost. When you and your colleagues are writing laws, Mr. Chairman, please think about people like me. Please think about the fact that every time that there is another appeal, another ruling, another hearing, I am forced to think about my daughter's death. Every time, I am forced to wonder, if only Christy hadn't had the cast on her ankle – if only she could have gone on the trampoline that evening, she would still be alive today. Every time that I hear a helicopter, I am terrified – I think of the police helicopters searching for Christy on the night that she disappeared. Every time that I hear a motorcycle, I think of my son,

searching for Christy. Every time that the courts reopen this case, I am forced to wonder, why didn't I follow Christy to that second apartment – why did I let that neighbor stop me to talk? Every time, I am forced to think about how scared my little girl must have been when she died.

I urge you, Mr. Chairman, to do what you can to fix this system. My family and I have forgiven our daughter's murderer. But we cannot forgive a justice system that would treat us this way.

I would like you to also know that our story is far from an isolated example. In the years that our case has been in the court system, I have learned about many other cases that are similar to ours from prosecutors, other victims' families, and from newspaper stories. Indeed, I recently read in a newspaper column that over 100 of the inmates on California's death row have been there for over two decades. (I will attach a copy of this column at the end of my testimony.) I can assure you that in almost every one of those cases, you will find a family like mine that is waiting for some resolution of the litigation. They are wondering if the courts will finally decide that the person who killed their loved one was properly convicted, or if that person will get a new trial, or even go free. Every one of those cases is inflicting a terrible cost on some family, which is left in anxious uncertainty as the appeals continue.

We are reaching a point in our society, especially in capital cases, where people just expect that there will be years and years of appeals – where two decades of delay is not unusual. In many cases, it is obvious that the judges simply do not like the death penalty. They will reverse a case over a minor technicality in the sentencing, for example, and force a new sentencing trial and years and years of new appeals, all when there is no real dispute over the defendant's guilt. Or they will simply take a very long time to decide a case, delaying a punishment that they oppose. That is not right. Regardless of what one thinks about capital punishment, the system should not be run in a way that is cruel to victims.

I would like to close by describing to you some of the worst cases of abuse by the system that I have learned of over the years. I don't want anyone to be able to argue that what has happened in the case of my daughter's killer is an isolated example. It is not.

Robin Samsoe, 12 years old, 1979. I first heard about this case in the 1980s. It had been in court for a long time then, and I cannot believe that it is still in court now, with no end in sight. 12-year-old Robin was kidnaped on the beach in Huntington Beach, California, and murdered in June of 1979. A friend who had been with her on the beach described a strange man who had taken pictures of her. Police produced a composite sketch of this man, who was soon recognized by his parole officer. He had a history of kidnaping and sexually assaulting young girls – he had raped and nearly killed in 8-year-old girl, for which he served just two years in prison! And he was awaiting trial for raping another girl at the time that Robin disappeared. He had taken that girl to the mountains outside Los Angeles – which is also where Robin's body was found. He

attacked a third girl near the same spot on the beach where Robin was last seen. When police tracked this man down, after the TV news began broadcasting his composite sketch, he had just cut his hair short and straightened it, and had begun making plans to leave town. A friend of Robin's family recognized him as the man who was with Robin on the beach. And in a locker that he rented, police officers found an earing that Robin had borrowed from her mother. Robin's mother recognized the earring as hers because of changes that she had made to it with a nail clipper.

Yet despite all this evidence, in June of 2003 – exactly 24 years after Robin was murdered – the Federal Court of Appeals for the Ninth Circuit granted this man a new trial! This was a terrible burden on Robin's mother. According to one newspaper story, she described the decision as "like somebody had slapped me hard in the face." I have attached that story and several other news stories about this case at the end of my testimony. I think that these stories – their description of what Robin's mother has experienced – accurately describe what most parents of murdered children go through during the endless litigation that follows the trial. Several of the things that are described in these articles I think are universal: how the continual appeals and hearings force the family to constantly relive the crime and the facts of how their child died; the frustration and sense of helplessness at the hands of this system; the people, often well-meaning, who tell you to get on with the rest of your life, not understanding that this is impossible while the case is still going, that this was your child and you need to know how the case is resolved. One quote from one of these articles I think accurately sums it all up: "When people ask parents of murdered children how they cope with the long, long years of appeals for their children's killers, this is what they say: You just don't."

In Robin Samsoe's case, at least the family can know that the killer will almost certainly never be set free. At the same time that he was granted a new trial in Robin's killing, DNA evidence linked him to a rape and murder that he committed in 1977, and police have said that they will prosecute him for that case – after his new trial in Robin's case. Nevertheless, the impact on the family of the way that this case has been handled in the courts has been horrific. One of the news stories notes that Robin's family has even lost their house because they have spent so much time away from work at the trials and hearings in the case. Today, Robin's family is preparing for another trial of the man who killed their 12-year-old daughter. If Robin had lived, she would be 37 years old today. This is simply outrageous. It is as if the courts have punished Robin's family, instead of the man who killed her.

Benjamin Brenneman, 12 years old, 1981. This case is surprisingly similar to my daughter's case. Benjamin also was a newspaper carrier, and also was kidnaped, sexually assaulted, and killed while delivering newspapers at an apartment complex. Benjamin's killer tied him up in a way that strangled him when he moved. Police began by questioning a man in the building who was a prior sex offender. They found Benjamin's special orthopedic sandals in his apartment. When they interviewed him, he admitted that he kidnaped Benjamin, but claimed that "he was

alive when I left him." Police found Benjamin's body in a nearby rural area the next day. (More information about the case is available in the court opinion for the state appeal, *People v. Thompson*, 785 P.2d 857.)

Benjamin's killer was convicted and sentenced to death. After the state courts finished their review of the case, the killer filed a habeas corpus petition in the Federal District Court in 1990. Today, 15 years later, the case is still before that same court. In 15 years, the district court still has not ruled on the case! To put the matter in perspective, so far, and with no end in sight, the litigation before that one district court has outlived Benjamin by three years. This is simply unconscionable.

Michelle and Melissa Davis, ages 7 and 2, 1982. An ex-boyfriend of the sister of Kathy Davis took revenge on the sister for breaking off their relationship by killing Kathy's husband and her two young daughters, Michelle and Melissa. The killer confessed to the crime. The state courts finished their review of the case in 1991. (*People v. Deere*, 808 P.2d 1181.) The next year, the defendant went to the Federal District Court. He remained there for the rest of the decade, until 2001. When he lost there, he appealed, and in 2003, the Federal Court of Appeals for the Ninth Circuit sent the case back to the district court for another hearing. Today, 14 years after state appeals were completed, and 23 years after Michelle and Melissa were taken from their mother, the case remains before the same district court.

Vanessa Iberri, 12 years old, 1981. Vanessa and her friend Kelly, also 12 years old, were both shot in the head while walking through a campground in 1981. Kelly survived, but Vanessa did not. The killer did not dispute that he shot the two girls. (The case is described in *People v. Edwards*, 819 P.2d 436.) The state courts finished their review of the case in 1991 – already a long time. The killer then went to federal court in 1993. The Federal District Court finally held an evidentiary hearing in December 2004, and dismissed the case in March of this year. Just now, 12 years after the case entered the federal courts, and 24 years after the murders occurred, the appeal to the Federal Court of Appeals is just beginning.

Michelle Melander, 5 months old, 1981. Michelle, who was just a five-month-old baby, and her brother Michael, then 5 years old, were kidnaped in Parker, Arizona, in July 1981. The killer dropped off Michael along the road. Michelle's body was discovered six days later at a garbage dump several miles down the same road. She had been severely beaten and sexually mutilated. The state court opinion describes the many injuries that this helpless baby suffered. The man who committed this horrific crime later attempted to kidnap and rape a 10-year-old girl.

State courts finished their review of his case in 1991. (*People v. Pensinger*, 805 P.2d 899.) The case then went to Federal District Court in 1992. The defendant raised new claims that he had never argued in state court, so the federal court sent the case back to state court. Five years later,

the case returned to federal court. Today, the case remains before the same Federal District Court where the federal appeals began in 1992. Baby Michelle would be 24 years old now if she had lived, and there is no end in sight for her killer's appeals.

Mr. Chairman, thank you for allowing me to testify here today in favor of Congressman Green's legislation. I urge you to fix our broken system of federal appeals.

ATTACHMENTS TO THE TESTIMONY OF MRS. CAROL FORNOFF

"Old Age is Main Menace on Death Row"

THE ORANGE COUNTY REGISTER

Gordon Dillow

May 18, 2005

There's been no shortage of anguish in the case of Samantha Runnion, the 5-year-old Stanton girl who was kidnapped, sexually assaulted and then murdered by a beast named Alejandro Avila. But now that Avila has been convicted and a jury has recommended the death penalty, in some ways the anguish is just beginning.

If you don't think so, just consider the appeals process timeline.

The timeline appeared in Tuesday's Register, laying out for readers just how long each step of the appeals process takes. Four to six years to appoint a lawyer qualified to handle the automatic appeal – this in a state with a quarter of a million lawyers. Two years or so to have the trial record certified. Four years or more for the defendant's lawyer and the state attorney general to file briefs. A year and a half for the state Supreme Court to schedule oral arguments, then three months before they issue a decision.

But wait. It's not over. Even if the state Supreme Court upholds the death sentence, the defendant can then file an appeal in the federal court system. If a U.S. district judge upholds the death sentence it can then be appealed to the U.S. 9th Circuit Court of Appeals – a place where many a death-penalty sentence has gone to die – and then to the U.S. Supreme Court.

If at any point along the way a court throws out the conviction or the death sentence, and if a higher court upholds that ruling, the case goes back for retrial – and after that's over, if the defendant is convicted, the entire appeals process starts all over again. It's as if the first conviction and all the years of appeals that followed it never even happened.

Consider, for example, the case of Rodney Alcala, who was convicted and sentenced to death in 1980 for the 1979 murder of 12-year-old Robin Samsoe of Huntington Beach. The California Supreme Court later threw out the conviction on grounds that evidence of Alcala's prior attacks on young girls shouldn't have been admitted at trial.

In 1986 Alcala was tried and convicted and sentenced to death yet again. The case went all the way through the state appeals process, only to have the federal U.S. 9th Circuit Court of Appeals bounce it back again two years ago, 24 years after the crime, this time on grounds that testimony from the first trial shouldn't have been admitted in the second trial.

So now Alcala is waiting for his third trial – and if he's convicted, and assuming an appeals court doesn't throw out the conviction and order a fourth trial, he's looking at another 10 to 20 years of appeals before he would have to walk into the execution chamber. By that time, he could be more than 80 years old.

(Oh, by the way, Alcala is also facing trial in the murder and rape of a woman in Los Angeles County in 1977 – which could start yet another round of appeals.)

And Alcala isn't alone. More than a hundred of the 644 inmates on California's death row have been sitting there for two decades or more, with no final resolution in sight. As I've noted before in this space, at the current rate of executions in California it would take 800 years to execute everyone currently on death row – and that's not even counting the two or three dozen new death-row inmates added each year.

"More people on (California's) death row die from old age than from lethal injection," notes Orange County district attorney spokeswoman Susan Schroeder. "It's outrageous."

Schroeder is right on the numbers. According to Department of Corrections figures, since 1978 some 45 death row inmates have died on the row without being executed – one shot by corrections officers, one stabbed by another inmate, one dead of a heart attack after being pepper-sprayed, 12 by suicide and 30 of natural causes. Meanwhile, just 11 have been executed.

And Schroeder is also right on her conclusion. It is outrageous.

Yeah, I know a lot of people oppose the death penalty. They say there's too great a danger of executing an innocent person, although as far as I know no one has proved that an innocent person has actually been executed since the death penalty was brought back in the late 1970s.

And others say the death penalty is disproportionately given to minorities – although in practice, that doesn't seem to be the case in California. Although minorities are disproportionately represented in the overall death-row population, of the 11 men executed in this state since 1978, nine were white, one was black, one was Asian and none was Hispanic. It almost seems as if white murderers are being discriminated against – not that I care.

But given the numbers, people who oppose the death penalty really don't have much to worry about. And a guy like Alejandro Avila, the vicious killer of an innocent young girl, doesn't have much to worry about, either.

The appeals process will take care of his rights. And it will make absolutely certain that he won't die anytime soon.

"A Mother's Nightmares Get Even Worse; Victims: Marianne Connelly Has Been Haunted for 21 Years since Her Daughter's Slaying. The Idea That Her Twice-convicted Killer Could Possibly Go Free Is Almost Too Much to Bear"

THE LOS ANGELES TIMES

Jerry Hicks

April 4, 2001

Driving home from shopping Monday night, Marianne Connelly's conversation with a friend turned to her 12-year-old, Robin Samsoe, murdered 21 years ago.

Sometimes she could talk only about the horror. But this conversation was about good times, and the mood was upbeat.

Five minutes after they entered her house in Norco, Connelly's world collapsed.

Rodney James Alcala, first sentenced to death two decades ago for Robin's murder, had been granted a new trial for the second time, she learned in a phone call.

"It was like somebody had just slapped me hard in the face," Connelly said.

She slept not a moment all night. Tuesday, she arrived at Riverside County Regional Medical Center. "I'm a mess," she told them, and sought medical treatment just to get through the day.

When people ask parents of murdered children how they cope with the long, long years of appeals for their children's killers, this is what they say: You just don't.

"How do you possibly put your life in order, when there is no order?" she said while at the hospital.

Alcala was sentenced to death in 1981 for murdering Robin. The blond-haired girl was last seen alive at the beach not far from her Huntington Beach home on June 20, 1979. Her body was found 12 days later in the Angeles National Forest.

Three years after his death sentence, the state Supreme Court overturned Alcala's conviction, stating prosecutors should not have been allowed to present evidence of Alcala's previous assaults on young women during the guilt phase of his trial.

Connelly and her three children relived the horror again during a new trial in 1986. A different jury brought in the same verdict – death for Alcala.

Surely, Connelly thought at the time, this will be it. They'd never have to endure such courtroom anguish again.

Unless the attorney general's office succeeds in its fight to have the latest ruling overturned, the choice won't be hers.

"I have no clue how I'll get through it," she said. "I am scared, just so very scared."

Patricia Rose, Connelly's best friend, sat by her side at the hospital Tuesday and tried to comfort her.

"We'll get through it," said Rose, who later drove her home. "I'll help you get through it."

Connelly smiled at her friend, but shook her head.

"How? This is just too much to ask. No one should have to go through this a third time."

She trembled and cried Tuesday as she talked about her daughter, but she didn't want to stop. You've heard lots about Alcala, she told a reporter, but I want you to hear about Robin.

Connelly worked two jobs and raised four children as a single mother. Two years before Robin's death, the five of them shoved everything they owned into a U-Haul and headed from Wisconsin to California.

"I drove Robin to her death," she said in tears. She can't keep herself from thinking that way.

Connelly chose Huntington Beach because it seemed like a good, clean town for raising children. All of the kids were active, but Robin most of all.

She was a ballerina and a star gymnast. The Olympics was her goal. Connelly spent $ 87 a week on dance lessons, and said it was well worth it.

Here's an idea how special Robin was, Connelly said. Every Saturday morning for more than a year, Robin fixed her mother breakfast in bed, served on a tray with a fresh daisy.

"She never called me 'Mom,'" Connelly said. "She always called me 'Pretty Lady.' She said she wanted red hair just like mine – hers was almost white. I said, 'But Robin, people spend tons of money to try to have hair like yours.' And she'd say, 'But Pretty Lady, I want to look like you.'"

And then there was the promise to God.

"Two years before she died, Robin had to have surgery on her esophagus. She promised God that if he let her get through it, she would spend one hour in church for every hour that she danced. She lived up to that promise too."

After Robin's murder, just keeping the family running became a heavy task.

"Grief is such a selfish emotion," Connelly said. "When you have that pain, you can't imagine anyone else having it. So sometimes you aren't the easiest person to live with."

She began volunteer work, helping other crime victims, thinking it was something Robin would do.

But the nightmares never stopped. And there was the guilt, for both her and one of her sons.

He was supposed to go to the beach with Robin and her friends that day, but he had begged off to go surfing. Connelly had told him, go ahead, Robin will be fine.

It's a frozen moment in time for both. One they can't get past.

Connelly tried therapy, but didn't always like what she heard.

"They said I'll never get past this until I can forgive him Alcala . But my God, how could I?"

Maybe it would help, a therapist suggested, if she wrote to Alcala in prison.

"I sat down and wrote him a seven-page letter, pouring out how he had ruined my life," she said.

It didn't help. She didn't send it to him. Nor has she ever heard from Alcala, who maintains his innocence.

There are so many ways in which Connelly's life has been deeply affected by the murder.

She watches no TV at all, and doesn't read any newspaper. During one of the trials, she had been shocked while watching TV to suddenly see her daughter's picture flashed on the screen. Same thing happened once with a newspaper.

Now, Connelly's free time is spent volunteering, antiquing with Rose, and enjoying the success of her other three children, plus her nine grandchildren.

Each of her children, she says, has a daughter that looks precisely like Robin.

Connelly, recently estranged from a second husband, says the hardest part of the 24 hours since learning about the ruling was informing her other children.

"We've all said it many times, Robin was our angel," she said. "There was always an aura of peace and tranquillity around her. And now, we're all so overwhelmed."

"Justice Slow for Family of Girl Killed 23 Years Ago"
THE ORANGE COUNTY REGISTER
Larry Welborn
February 10, 2003

Marianne Connelly wants to know when she will be able to talk about her little girl without a lump swelling up in her throat.

"It's been nearly 24 years, and I still feel that way. The healing process is never over," Connelly said last week as she stood at Good Shepherd Cemetery in Huntington Beach over a tombstone that reads: "Our Little Angel, Robin Christine Samsoe."

Robin was a 12-year-old, bright-eyed, blonde-haired would- be ballerina and gymnast whose smile and charm lighted up her mother's life. But on June 20, 1979 – nearly 24 years ago – Robin was kidnapped near the Huntington Beach Pier.

Her remains were found two weeks later in the hills of Sierra Madre.

It became, as one Orange County prosecutor once said, "one of the most notorious and horrendous crimes in the history of this county."

Nearly a quarter-century later, Connelly still attends court hearings for the man accused of killing her daughter, hoping and praying that she will see justice before she dies.

Twice, Rodney James Alcala has been convicted of first-degree murder. Twice, he's been sentenced to death. And twice, the convictions have been reversed on appeal.

Connelly, who has attended every court hearing in the Alcala case since his arraignment in July 1979, was present again Thursday at the 9th U.S. District Court of Appeal in Pasadena, with her sons Robert and Tim and daughter-in-law Teresa, as attorneys argued whether Alcala is entitled to a third trial.

"It never goes away," Connelly said, fighting back tears. "It makes me mad more than anything else."

But she keeps going back to court, despite the emotional pain, because "someone has to be there to represent Robin. . . . Everyone worries about the killer's rights, but nobody says anything about the victim.

"It will really only be over for me when I never have to think about him again," Connelly said, "when I never have to hear his name again."

Orange County Superior Court Judge Ronald Kreber, the presiding judge of the criminal bench,

said last week that he's never heard of a criminal case lasting 23 years on appeal.

"This is what upsets the public," Kreber said. "There is no finalization of these cases, and the victim's family feels beaten up by the justice system."

William Kopeny, a prominent defense appellate lawyer, said the cost to the taxpayers for Alcala's appeals "is undoubtedly more than a million, perhaps several million."

But Kopeny pointed out that the Alcala case is one of a very few old cases pending that still can be on appeal for more than 20 years. The U.S. Congress changed the death penalty law in 1996, compelling lawyers to raise their federal appeals issues within a year of a death penalty being finalized by the California Supreme Court. Alcala's case preceded that change in the law, allowing his court-appointed appellate lawyers to raise their federal appeals years later.

Alcala, a part-time photographer with a near-genius IQ and two prior prison terms, was arrested a month after Robin disappeared when Huntington Beach police learned that he had photographed her and a playmate hours before she disappeared while on her way to ballet lessons.

A seasonal firefighter later testified at Alcala's first trial that she saw Alcala "forcefully steering" a girl who looked like Robin near the ravine where her body was later discovered. At the second trial, the firefighter said she had amnesia, and her prior testimony was read to the jury.

Alcala insisted from the outset, and he continues to insist today, that he is not guilty.

He has been held on death row at San Quentin prison for more than two decades while he awaits the outcome of his appeals.

He's now 58, and his attorneys said his hair, once long and black, is turning gray.

Connelly said the appeals are constant reminders of her daughter's death. She said that for years she would dream about what Robin went though in her last hours. "This has just about destroyed me," she said.

She said she thought all appeals had been exhausted years ago and was awaiting the setting of an execution date for Alcala when she learned in 2001 – from a phone call from a news reporter – that a new trial had been ordered.

"It was so unbelievable that I almost passed out," she said. "It just floored me."

Connelly says she visits her daughter's gravesite regularly. "More so than my family knows," she said. "I sneak out for her birthday and other occasions. In the evenings, I'll take a piece of paper and write what I am feeling. I tell her what's going on and how much I miss her.

"It's not always a sad time when I'm here (at the cemetery)," Connelly added. "I feel closer to her. But sometimes I feel the need to scream about this case and how long it drags on. But I don't. I don't want to look like an idiot."

Connelly, now 59, moved from Huntington Beach to Norco after Robin's death.

"It's horrible to outlive your kids," said Connelly, who now treasures her time with her nine grandchildren, including three girls who look like Robin.

"All of my grandchildren know about their Aunt Robin," she said. "They also know not to talk with strangers and to be very careful. Their fathers are the best fathers in the world, very protective

She said both of her sons asked to name one of their daughters after Robin, who would have turned 35 in December.

"But I said I didn't want to think about what happened every time I heard her name," the mother said. "She was so special. She had such a good future in front of her."

"New Trial, New Charge in Old Cases; A Death Row Inmate's Conviction Is Voided in the 1979 Murder of an Orange County Girl, but DNA Allegedly Links Him to a 1977 Malibu Killing"
THE LOS ANGELES TIMES
Henry Weinstein
June 28, 2003

A man who has spent 22 years on California's death row got a mixed message from the criminal justice system Friday: A federal court awarded him a new trial on his 1979 murder conviction, but prosecutors revealed that DNA evidence links him to a 1977 killing.

The U.S. 9th Circuit Court of Appeals ruled 3 to 0 that Rodney J. Alcala, now 59, a onetime photographer from Monterey Park, is entitled to a new trial because his constitutional rights were violated repeatedly at a 1986 trial in Orange County.

That trial was his second in the death of Robin Samsoe, a 12-year-old girl last seen alive at the beach not far from her Huntington Beach home on June 20, 1979. The first conviction, in 1980, was also overturned.

The appeals court ruled that the judge in the 1986 trial wrongly barred testimony that would have cast doubt on the prosecution's principal witness.

The reversal of the conviction brought angry objections from prosecutors and the victim's family.

"We are incredibly disappointed," said Deputy Atty. Gen. Adrianne S. Denault, who handled the

case before the appeals court. "We think the court is wrong and that justice has not been served in this case." "I don't know if I'm ready for this," said Marianne Connelly, mother of the victim. "The first time, I don't think it was even as bad. You're in a lot of shock. The second time, you know everything and you get scared. You have to see him every day" in court . . . . "I don't know. I just don't know."

Meanwhile, however, prosecutors have brought murder charges against Alcala in the Dec. 16, 1977, killing of Georgia Wixted, 27, at her home on Pacific Coast Highway in Malibu, allegedly as Alcala was committing a burglary. Wixted was beaten to death.

State officials tested Alcala's DNA as part of a program of taking DNA samples from people in prison. "There was a cold-case hit on a 1977 murder victim," Denault said.

On June 5, the Los Angeles County district attorney's office filed a complaint against Alcala alleging that he murdered Wixted while he was engaged in the commission of two other felonies – burglary and rape.

The complaint was lodged as a "special circumstances" case, meaning that the district attorney's office may seek the death penalty, but no decision has been made yet, sources said.

In 1984, four years after Alcala's first trial, the California Supreme Court reversed the conviction. Prosecutors should not have been allowed to present evidence of his previous assaults on young women, the court said.

In 1968, Alcala attacked an 8-year-old girl, beating her with a pipe. He served a prison term for that crime and another for an attack on a 14-year-old girl.

After the reversal of his 1980 conviction, Alcala was retried, convicted and sentenced to death a second time at a Santa Ana trial in 1986. The state Supreme Court upheld that conviction. But two years ago, U.S. District Judge Stephen V. Wilson in Los Angeles ruled that, during Alcala's second trial, Orange County Superior Court Judge Donald A. McCartin had "precluded the defense from developing and presenting evidence material to significant issues in the case."

A crucial issue was the reliability of the prosecution's key witness, Dana Crappa, a former U.S. Forest Service ranger. Crappa offered the only evidence linking Alcala to Samsoe at the site where her body was found.

Crappa testified during the first trial that she believed she had seen the two together. At the second trial, however, Crappa said she had amnesia.

The prosecution was allowed to have her testimony from the first case read to the jury. McCartin did not permit testimony from psychologist Ray W. London of Irvine, who had listened to hours of taped police interviews with Crappa, and was prepared to tell jurors that her testimony had

been induced by homicide investigators – a contention they denied.

Crappa's demeanor during the first trial "was odd, if not bizarre," appeals court judge Dorothy W. Nelson wrote in the opinion released Friday.

"The record is replete with examples of Crappa behaving in a manner that calls into question her credibility, mental stability, psychiatric health and veracity as witness," Nelson concluded.

Nelson's opinion upheld virtually all of Wilson's rulings. The appeals court agreed that McCartin had wrongly barred testimony of three other potentially relevant witnesses and had incorrectly admitted evidence.

The appeals court also ruled that Alcala had received constitutionally deficient representation from his trial lawyers. The lawyers failed to introduce evidence from a possible key alibi witness and failed to investigate the crime scene, the judges wrote.

The effect of Judge McCartin's errors, coupled with the defense attorneys' lackluster performance, "goes to the heart of the prosecution's theory of the case and undermines every important element of proof offered by the prosecution against Alcala," Nelson wrote.

"Indeed, after reviewing the errors in this case, we are left with the unambiguous conviction that the verdict in this case was not the result of a fair trial," Nelson found.

Brea attorney John P. Dolan, one of Alcala's trial lawyers, and Redondo Beach lawyer Norman D. James, one of his appellate attorneys, said they were pleased that the appeals court had ruled Alcala was entitled to a new trial. Both said they thought he did not kill Samsoe. James, a former federal prosecutor, said there was no physical evidence linking Alcala to the crime. An alibi witness told investigators that Alcala had been at Knotts Berry Farm about the time Samsoe was last seen alive, he said.

"He certainly has maintained his innocence from the beginning, and I am convinced he is innocent," James said.

Connelly, who said she has experienced considerable anguish as the case has bounced around various courts for better than two decades, cried when reached by telephone at her home in Norco.

Weeks and months spent away from work in trial and at court hearings have left the Connellys financially unstable. During the last trial, their house went into foreclosure. Now they rent a house on an acre in Norco; the lease expires in October.

Over the years, they have been paraded around by politicians. Marianne Connelly campaigned to get former California Chief Justice Rose Bird out of office. The family has raised funds for

victims' rights.

"It didn't do us a damn bit of good," said Harry Connelly. "What more does society want from us?"

"There's no end to this," Marianne Connelly said. "I can't believe we have to go through this again. We've been reliving this for 23 years. It just isn't right. When are we going to be given some consideration? When is Robin going to be thought about in all of this?"

"Slain Child's Mom must Revisit Pain; Man Convicted Twice of Murdering Her 12-year-old to Go on Trial Again."
THE ORANGE COUNTY REGISTER
Larry Welborn
October 4, 2003

Well-meaning friends tell Marianne Connelly that she should just forget about it and go on with her life.

But the 59-year-old mother and grandmother says she will never forget. She says she will always be there, in court, for her daughter.

The diminutive redhead has attended nearly every minute of every court hearing over 24 years for the man who has twice been convicted of murdering her child.

And she was there again in Orange County Superior Court on Friday, standing up once more for Robin Samsoe, her 12-year-old, bright-eyed, aspiring ballerina, who was kidnapped in Huntington Beach and murdered.

Connelly sat tearfully near the back of a cavernous courtroom waiting for the third arraignment of Rodney James Alcala, the man she believes sexually assaulted and killed Robin in the hills of Sierra Madre in July 1979.

Twice, Alcala has been tried and convicted of first-degree murder in a headline-making crime that one former prosecutor called "one of the most notorious and horrendous crimes in the history of Orange County."

Twice, Alcala has been sentenced to death.

And twice, his convictions have been reversed on appeal.

He was brought back from San Quentin Prison on Friday to begin his third journey through the justice system.

With the third trial pending, People vs. Alcala has become by far the most drawn-out case in the county's history.

"Oh, my God, it's starting all over again," Connelly said before Judge Daniel Didier ordered Alcala brought out and placed in the prisoner's cage.

"Everyone says I need to go on with the rest of my life," Connelly said earlier, "but how can I when my beautiful daughter is in her grave and her killer keeps getting more trials?

"How can I not go?" she asked. "I need to know what is going on."

Alcala, a former part-time photographer with a near-genius IQ, looked calm standing in the glassed holding tank, wearing a mustard-color jail jumpsuit. His once-flowing black hair is now coated gray.

As Alcala agreed to have his arraignment continued until Tuesday, Connelly slowly walked across the courtroom to get a better look. But her gaze was blocked by the layers of glass enclosing the holding tank.

Deputy District Attorney Matt Murphy said his office is analyzing what evidence remains against Alcala after nearly two-and-a-half decades. But he said he expects to prove again, as prosecutors did twice before, that Alcala was at the Huntington Pier when Robin was kidnapped and that later he was found in possession of earrings that the girl wore on the day she died.

Alcala, 59, also faces trial later in Los Angles County in the 1977 rape-killing of Georgia Wixted in her Malibu residence. He was charged this year with killing the 28-year-old woman after detectives reopened the cold case and used DNA evidence to link him to the scene.

Connelly said she remembers her daughter's earrings to the smallest details. She said that in 1979, she was able to identify earrings recovered from Alcala's storage locker in Seattle as those Robin was wearing as she bicycled from the beach in Huntington to her ballerina lessons.

"I described the earrings to police first," she remembered as if it were yesterday. "And then when I saw them, I knew for sure that they were Robin's." She told investigators that she had altered the earrings with scissor-like fingernail clippers. Forensic experts were able to match her clippers with markings on the earrings recovered from the locker.

Connelly said she hopes she'll be able to continue to attend every court hearing.

But she worries whether she'll have the strength to see a third emotional trial through to the end.

"I hope I can do it for Robin," she said "But I'm getting a little weak. I'm getting tired."

Mr. GREEN. Mr. Rhodes, welcome.

TESTIMONY OF JOHN RHODES, ASSISTANT FEDERAL DEFENDER, FEDERAL DEFENDERS OF MONTANA

Mr. RHODES. Mr. Chairman, Ranking Member Scott, Members of the Subcommittee, thank you for inviting me to testify today. I have been a Federal public defender in the District of Montana for over 7 years. Before that I was a State public defender where I specialized in serving as a guardian for teenage rape victims. In my current job as a Federal defender, I have defended hundreds and hundreds of individuals accused of Federal crimes, including Indians from six of Montana's seven Indian reservations. I represent my clients from their initial appearances before United States magistrate judges through the conclusion of their cases, including appeals.

The Major Crimes Act brings reservation offenses normally prosecuted in State courts into Federal courts, including crimes of violence such as homicide, arson, assault, and sex offenses. My practice includes defending Indians in Major Crimes Act cases, particularly in assault and reservation sex offenses. First and most importantly, I want to emphasize that although Native Americans are not named in these bills, the bills will have the greatest impact on reservation communities. At least half of the Federal sex abuse cases arise on reservations. Indian communities believe that disparate punishment results from Federal prosecution of reservation offenses. The statistics show that they are right. Compared to punishment for the same crimes prosecuted in State courts, Indians prosecuted in Federal Court receive longer sentences. The Native American advisory group convened by the Sentencing Commission to look into the impact of the guidelines in Federal sentencing on reservations concluded that Federal sentences for sexual abuse and assault are longer than those for offenses in State court.

H.R. 2388 would impose long, mandatory minimum sentences that the affected tribal communities, including the victims, may not support. For instance, under the bill, if two teenage boys got in a fight and one of them was under 18, the person who was over 18 could end up doing at least 10 years in prison. Many of the reservation offenses are committed within the family and all of them are committed in small towns and rural areas.

The tribal communities are well aware of the offenses that happen on their reservations and the resulting Federal prosecutions. The tribes should be consulted regarding the appropriate punishment for these crimes, particularly because of the tribal emphasis on rehabilitation and community healing. I thus recommend that the Congress convene hearings in Indian country and apply what is learned from the tribes that are going to be impacted by this legislation to deter sex offenses and crimes of violence. My personal experience teaches that the current penalties and guideline calculations achieve the severe punishment that is appropriate for the most culpable defendants.

In April 2003, Congress enacted the PROTECT Act, which dramatically increased the punishment for sex offenders by imposing mandatory minimums, a two-strikes-you-are-out provision, enhancing the guidelines and limiting judicial discretion. In October 2003

the Sentencing Commission increased sex offense punishments in the guidelines consistent with the PROTECT Act. In November 2004, the Commission again dramatically increased punishment for sex offenses. These laws direct and require harsh sentences when appropriate. Even before the PROTECT Act, one of my reservation clients received a 33-year sentence in a sex offense case. Under current guidelines, his sentence would likely be longer.

At the other extreme, a child pornography client of mine prosecuted before the PROTECT Act has successfully his term—has completed his term of supervised release, graduated from sex offender treatment, and is living with his wife and two children and working. Under current law, he would still be serving a 5-year mandatory minimum sentence. Under the proposed bill, he would be serving a 25-year mandatory minimum sentence. Unnecessarily imprisoning such citizens punishes their families, their communities, and the taxpayers and erodes the respect that anchors our criminal justice system. That is the unintended consequence of otherwise well intentioned mandatory minimums.

Such measures are not necessary when severe punishments already exist. We have attached to our written testimony excerpts from five studies. The first study dated November 2003 is a report from the Bureau of Justice statistics. It studied over 270,000 prisoners released by 15 States in 1994. The study found that, compared to non-sex offenders, sex offenders had a lower overall re-arrest rate. The other four studies document that sex offender treatment reduces recidivism by more than half. We request that you direct the Bureau of Prisons to establish more than just one sex offender treatment program.

As you may know, currently, there is only one program for sex offenders in the entire Bureau of Prison system and that is in Butner, North Carolina. That is particularly problemmatic for my clients who are from small towns or rural ranch areas and certainly have not been very far from their home, let alone across the country. There is a demand for treatment that brings us here today and that is why the Bureau of Prisons should be directed by yourselves to meet that demand and establish more treatment programs. Finally, the availability of habeas corpus review exonerated 159 wrongly convicted individuals as documented by the Innocence Project. Many of those exonerated spent decades in prison.

Their life was at issue. Finality, while important, must never come at the price of certainty. Taking someone's life is a hollow virtue without certainty. That is what the great writ protects. Thank you for this opportunity to address the Committee. I and the Federal public and community defenders have a wealth of experience in Federal sentencing generally and in the sentencing of Native Americans particularly. We would be happy to answer any questions or respond to any requests for further information.

[The prepared statement of Mr. Rhodes follows:]

PREPARED STATEMENT OF JOHN RHODES

Statement of John Rhodes
Assistant Federal Defender, District of Montana

Before the
House Judiciary Committee
Subcommittee on Crime, Terrorism and Homeland Security

June 7, 2005

Protection Against Sexual Exploitation of Children Act of 2005 – H.R. 2318
Prevention and Deterrence of Crimes Against Children Act of 2005 – H.R. 2388

Chairman Coble, Ranking Member Scott, Members of the Subcommittee on Crime, Terrorism and Homeland Security, thank you for inviting me to testify today.

My name is John Rhodes, and I have been an Assistant Federal Defender in the District of Montana for over seven years. Prior to joining the Federal Defenders of Montana, I served as a state public defender in Missoula, Montana, where I specialized in serving as the legal guardian for female teenage rape victims, as well as defended sexual assault cases. As an Assistant Federal Defender, I have represented several hundred people charged with federal offenses, many of whom are Native Americans who live on one of the seven Indian reservations in Montana, six of which are subject to federal criminal jurisdiction. As is typical of many Federal Defenders, I represent my clients from their initial court appearances through trial or plea and sentencing, and on appeal. I defend all kinds of cases, many of which are prosecuted throughout the country (e.g., drug, firearm, fraud, immigration, and child pornography cases). Because I practice in the District of Montana, however, I (and everyone in my office) also represent many Indians charged with crimes of violence, including sex offenses involving minors, which in most districts are prosecuted in state courts. My federal experience defending and appealing both reservation and Internet sex offense cases brings me before this Committee.

This legislation would severely exacerbate the existing disparate impact of federal sentencing on Native Americans. Before Congress considers it further, the tribal communities should be consulted. Furthermore, the Sentencing Guidelines and current statutory penalties already provide stiff penalties for offenses against children that reflect the seriousness of these offenses and provide effective deterrence, while allowing flexibility to account for truly exceptional circumstances. The mandatory minimum provisions contained in these bills would impose punishment disproportionate to the seriousness of the offense in many cases, and, like all mandatory minimums, would create unwarranted disparity and preclude more effective individualized sentencing. Finally, the overwhelming majority of criminal justice experts have repeatedly cautioned Congress to act with restraint with respect to federal sentencing. It is unwise to add new mandatory minimum sentences and increase existing ones at a time when federal courts are adjusting to the Supreme Court's watershed opinions in United States v. Booker, 125 S. Ct. 738 (2005), and Blakely v. Washington, 124 S. Ct. 2531 (2004).

1. Native Americans already receive higher sentences under the Federal Sentencing Guidelines than non-Indians convicted of similar offenses in state court.

Under the Major Crimes Act (simply explained), any "Indian" who commits one of a list of felonies in "Indian country" is subject to prosecution and sentencing exclusively under federal law.[1] This is an "intrusion of federal power into the otherwise exclusive jurisdiction of the Indian tribes to punish Indians for crimes committed on Indian land."[2] The crimes subject to this federal power are murder, manslaughter, kidnapping, maiming, a sexual abuse felony under chapter 109A of Title 18, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against a person under the age of 16, arson, burglary, robbery, and embezzlement or theft.[3]

Though Native Americans comprise approximately 1% of the population, they comprise the largest percentage of federal offenders by race for murder, manslaughter, sexual abuse, assault, and burglary/breaking and entering.[4] Most non-Indians who commit similar offenses do so under circumstances in which there is no federal jurisdiction, and therefore are subject to prosecution and sentencing only in state court.

In June of 2002, the United States Sentencing Commission formed the Ad Hoc Advisory Group on Native American Sentencing Issues ("Advisory Group") in response to concerns raised in a report to the U.S. Commission on Civil Rights and in public meetings that Native American defendants were treated more harshly under the United States Sentencing Guidelines than similarly situated defendants prosecuted by the states.[5] The Commission directed the Advisory Group to "consider any viable methods to improve the operation of the federal sentencing guidelines in their application to Native

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[1] 18 U.S.C. §§ 1151-1153.

[2] Keeble v. United States, 412 U.S. 205, 209 (1973).

[3] 18 U.S.C. § 1153.

[4] The Sentencing Commission maintains data on the race of the offender by primary offense category, breaking it down into White, Black, Hispanic and "Other," with Native Americans included in "Other." For fiscal year 2003, "Other" was the race with the highest percentage of offenders for murder (32.9%), manslaughter (70.8%), sexual abuse (51.3%), assault (30.2%) and burglary/B&E (41.2%). See U. S. Sentencing Commission, 2003 Sourcebook of Federal Sentencing Statistics, Table 4. See also Report of the Native American Advisory Group at 1-2, 21 n.37 (Nov. 4, 2003) (over 80% of federal manslaughter cases, over 60% of sexual abuse cases overall and over 90% in some districts, and nearly half of all murders and assaults arise from Indian country jurisdiction).

[5] Native Americans in South Dakota: An Erosion of Confidence in the Justice System, South Dakota Advisory Committee to the United States Commission on Civil Rights (March 2000); Report of the Native American Advisory Group at 10-11 (Nov. 4, 2003).

Americans under the Major Crimes Act."[6] The Advisory Group confined its study to manslaughter, sexual abuse, and aggravated assault.

In a report released in November 2003, the Advisory Group concluded that sentences for sexual abuse and aggravated assault under the Federal Sentencing Guidelines were significantly longer than those imposed for the same conduct by state courts, and that because of the jurisdictional framework, there was a disparate impact on Native Americans.[7] The Advisory Group was particularly concerned that when the provisions of the PROTECT Act of 2003 were incorporated into the Guidelines, it would dramatically exacerbate the already significant disparity for sexual abuse that would otherwise be prosecuted under state or tribal law. It noted that the PROTECT Act was aimed at child pornography, Internet and transportation sex crimes, a pool of offenders from which Native Americans are all but absent, yet the PROTECT Act's "two strikes" provision applies to offenses under chapter 109A which are covered by the Major Crimes Act.[8]

The Advisory Group was particularly troubled that "Congress neither consulted with nor seems to have anticipated the consequences of the PROTECT Act on Native Americans."[9] As the Advisory Group concluded, "[t]his silence suggests that Congress has enacted legislation that will have a demonstrable impact on Native American offenders, already subject to greater sentences in federal courts, without having heard from those most impacted nor giving any thought to that impact."[10]

The Advisory Group made several recommendations to the Sentencing Commission regarding the Guidelines. The Commission adopted the Advisory Group's recommendation to increase punishment for reckless involuntary manslaughter, increased the punishment for negligent involuntary manslaughter contrary to the Group's recommendation to leave it unchanged, increased the punishment for assault contrary to the Group's recommendation to decrease it, and increased the punishment for sexual abuse contrary to the Group's recommendation to leave it unchanged.[11]

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[6] Report of the Native American Advisory Group at I (Nov. 4, 2003).

[7] Id. 21-25, 30-33. Based on a report on manslaughter, the Advisory Group found that federal sentences for manslaughter were higher than those of some states and lower than those of others. See Manslaughter Working Group Report to the Commission, Table 1 (Dec. 15, 1997).

[8] Id. at 23-25.

[9] Id. at 23-24.

[10] Id. at 24.

[11] The Commission adopted the Advisory Group's recommendation to increase the base offense level for reckless involuntary manslaughter from 14 to 18 and add 4 levels for drunk driving. Id. at 16, 36. Instead of leaving the base offense level for criminally negligent involuntary manslaughter at 10 as recommended, id. at 17, the Commission raised it to 12. Instead of leaving the base offense level for voluntary manslaughter at 25 and adding specific offense characteristics

The Advisory Group also recommended sex offender and alcohol treatment programs to address the sources of reservation crime. It thoroughly researched and highly recommended the creation of more sex offender treatment programs, with a sentence reduction as an incentive, like the successful drug abuse treatment programs mandated by Congress. Id. at 25-30. There is, however, still only one sex offender treatment program in the entire Bureau of Prisons system. It has a long waiting list, is in North Carolina far from the western states where most Native American prisoners are housed, and offers no reduction in sentence. The Advisory Group also recognized that alcoholism plays a devastating role across the board in reservation crime, and recommended that the Commission ask Congress to provide additional treatment programs. Id. at 35-37. The Indian Health Care Improvement Act Amendments of 2005, S.1057, recognizes the efficacy of treatment for Indian sex offenders, but has not been passed.[12] These proposals reflect the tribal focus on rehabilitation and treatment as the best means to address crime and improve their communities, but they have not been implemented.

The Advisory Group strongly encouraged the Sentencing Commission to consult with affected tribal communities concerning whether to make changes to the Federal Sentencing Guidelines for crimes covered by the Major Crimes Act. "Such changes invariably impact Native Americans more heavily than any other group," and "[o]nly by further consultation with the communities impacted . . . can the perceptions and realities of bias be avoided in the future."[13] The Advisory Group noted that in virtually every federal program other than criminal justice, the federal government has adopted a consultative approach with Indian tribes, and that Congress had determined that at least the federal death penalty and "three strikes" provisions could be applied only with tribal consent.[14] It pointed out that the Commission had failed to consider the special circumstances of Indian offenders and tribal concerns in implementing the Guidelines,

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as recommended, id. at 18-19, the Commission raised the base offense level for all cases to 29. The Advisory Group recommended that the sexual abuse guidelines not be increased, but the Commission raised them across the board. The Advisory Group strongly recommended a two-level decrease in the assault guidelines, id. at 33-35, but the Commission instead raised the base offense level for assault with intent to murder by 5 levels, did not lower the base offense level for aggravated assault, and increased the base offense level for minor assault by 1 level and added a 2-level increase for bodily injury.

[12] Section 712(b)(5) proposes funding to "identify and provide behavioral health treatment to Indian perpetrators and perpetrators who are members of an Indian household-- (A) making efforts to begin offender and behavioral health treatment while the perpetrator is incarcerated or at the earliest possible date if the perpetrator is not incarcerated; and (B) providing treatment after the perpetrator is released, until it is determined that the perpetrator is not a threat to children."

[13] Report of the Native American Advisory Group at iv-v.

[14] Id. at 37-39.

and, as noted above, was quite troubled that Congress did not consult with the tribes on the demonstrable impact of the PROTECT Act on Native American offenders.[15]

II. Subsection 2(a) of H.R. 2318 and Section 2 of H.R. 2388 would severely increase the disparate impact of federal sentencing on Native Americans while affecting few other cases.

H.R. 2318 and H.R. 2388 directly impact Native Americans by creating mandatory minimum penalties for crimes covered by the Major Crimes Act. I respectfully ask that Congress consult directly with the tribal communities about this legislation. A failure to do so would create at least the perception of bias toward and disrespect for Indian sovereignty.

Subsection 2(a) of H.R. 2318 would create mandatory minimum penalties of ten or thirty years for sexual abuse offenses under Title 18, chapter 109A, §§ 2241 (aggravated sexual abuse), 2244 (abusive sexual contact), and 2245 (sexual abuse resulting in death).[16] These offenses, which are covered by the Major Crimes Act, currently are not subject to mandatory minimums but to the Sentencing Guidelines, which already carry lengthy sentences and have a disparate impact on Native Americans.

Section 2 of H.R. 2388 would create mandatory minimum sentences for all "crimes of violence" against persons under the age of 18, no matter how minor, and would impose a mandatory life sentence, or death, in circumstances far broader than under current law. The changes to current law would directly and severely impact Native Americans and very few other defendants.

Title 18 U.S.C. § 3559(d) as currently written focuses on the most egregious crimes against children. Under it, a defendant convicted of a "serious violent felony" or a violation of §§ 2422 (coercion and enticement), 2423 (transportation of minors), or 2251 (sexual exploitation of children) is subject to a mandatory life sentence or death if the victim was under 14 and died as a result of the offense, and the defendant acted intentionally and either intended to kill, intended to inflict serious bodily injury, contemplated that lethal force would be used, or recklessly disregarded human life.

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[15] Id. at 9, 23-24 & nn.42-44.

[16] It would (1) increase the penalty from any term of years or life to a mandatory minimum of 30 years or life for knowingly engaging in a sexual act with a person under the age of 12, or knowingly engaging in a sexual act with a person who has attained the age of 12 but is under the age of 16 and is at least 4 years younger than the defendant, by force, threats, or rendering unconscious or substantially impaired, (2) increase the penalty for abusive sexual contact under the foregoing circumstances from not more than ten years or, if under the age of twelve, not more than twenty years, to a mandatory minimum of ten years and not more than 25 years, and (3) increase the penalty for an offense under chapter 109A that results in the death of a person under the age of 12 from death or imprisonment for any term of years or life to death or imprisonment for a mandatory minimum of 30 years or life.

A "serious violent felony" is defined under section 3559(c) as murder; voluntary manslaughter (not involuntary manslaughter); assault with intent to commit murder or rape (not other forms of assault); aggravated sexual abuse, sexual abuse and abusive sexual contact; kidnapping; aircraft piracy; robbery; carjacking; extortion; arson; firearms use or possession; or any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.

Section 2 of H.R. 2388 would create penalties escalating from a mandatory minimum of 10 years to death, depending on the circumstances, for any "crime of violence against the person" of an individual under the age of 18. Since "crime of violence" is not defined in section 3559, it presumably would be defined by 18 U.S.C. § 16:

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Under section 112 of H.R. 1279, recently passed by the House, "crime of violence" under subsection (b) would be further broadened to include not just felonies involving a risk that force may be used, but any offense punishable by imprisonment for more than one year that by its nature involves a substantial risk that "physical injury may result to the person or property of another," and drug trafficking offenses.

The broadened conduct and attached penalties under H.R. 2388 would be as follows, unless a higher mandatory minimum applied and regardless of any lower statutory maximum:

> (1) death or life in prison if the "crime of violence" "results in the death" of a person under the age of 18;
> (2) mandatory minimum of 30 years to life if the "crime of violence" is kidnapping, sexual assault or maiming, or results in "serious bodily injury," defined in 18 U.S.C. § 1365(h)(3) as involving a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss of the function of a bodily member, organ or mental faculty;
> (3) mandatory minimum of 20 years if the "crime of violence" results in "bodily injury," defined in 18 USC 1365(h)(4) as a cut, abrasion, bruise, burn, or disfigurement, physical pain, illness, impairment of a bodily member, organ, or mental faculty, or any other injury to the body, no matter how temporary;

(4) mandatory minimum of 15 years if a "dangerous weapon" was used "during and in relation to the crime of violence;"

(5) mandatory minimum of 10 years in "any other case."

In contrast to current law, these heightened penalties would apply to involuntary manslaughter, any type of assault, and burglary, and need not involve a death. An assault resulting in a bruise, momentary pain, or other temporary injury would be subject to a mandatory minimum of 20 years. An assault with a "dangerous weapon" (which is not defined in the code and therefore could be anything from a firearm to a foot to a pencil) involving no injury would be subject to a mandatory minimum of 15 years. A ten-year mandatory minimum would be required in every case. These penalties would apply to a person close in age to the victim, such as a teenager who gets involved in a scuffle with a slightly younger teenager.

These sentences would be disproportionate to the seriousness of the offense in most cases, and would apply to Native American defendants but very few others. Native Americans are far more likely to be prosecuted and sentenced for "crimes of violence" in federal court than are non-Native Americans, who are prosecuted for the same conduct under state law. State law already carries less harsh penalties, and many states are repealing mandatory minimum statutes, closing prisons, and placing greater emphasis on treatment.[17] It is highly unlikely that the states would enact comparable penalties that would narrow the disparity.

In addition to further increasing the disparity in penalties between Native Americans and others, the legislation conflicts with traditional tribal justice, which is based upon healing, unity and peacemaking.[18] The tribal governments follow a rehabilitative model which involves both modern treatment methods and traditional tribal practices. Mandatory minimum sentences, however, thwart any possibility of community rehabilitation, directly contradicting the precepts of tribal justice. Again, before Congress considers this legislation further, it should consult the tribal communities.

III. The Sentencing Guidelines reflect the seriousness of crimes against children and effectively achieve deterrence and incapacitation, while allowing for flexibility when necessary.

The PROTECT Act of 2003 and a slate of Guidelines amendments in 2004 dramatically increased punishments for the child sex offenses that would be covered by Section 2 of H.R. 2318. According to the Sentencing Commission's statistics, the mean

[17] See Michael Cooper, New York State Votes to Reduce Drug Sentences, N.Y. Times, Dec. 8, 2004, at A1; Jon Wool, Don Stemen, Changing Fortunes or Changing Attitudes? Sentencing and Corrections Reforms in 2003, Vera Institute of Justice (March 2004); Judith A. Greene, Positive Trends in State-Level Sentencing and Corrections Policy, Families Against Mandatory Minimums (November 2003).

[18] Robert Yazzie, "Life Comes From It": Navajo Justice Concepts, 24 N.M.L. Rev. 175 (1994).

and median sentences for sex abuse offenses reached an all-time high even before the impact of those changes were felt.[19]

The PROTECT Act created a new 15 year mandatory minimum sentence for a first offense of using a child to produce child pornography, see 18 U.S.C. § 2251(e), and a new 5 year mandatory minimum for the distribution or receipt of child pornography, with an enhanced range of 15 to 40 years for repeat offenders. See 18 U.S.C. § 2255A(b)(1).

The PROTECT Act also contains provisions that apply to every sex offense conviction. It enacted a "two strikes" provision mandating life imprisonment for a second sex offense conviction against a minor. See 18 U.S.C. § 3559(e). To facilitate rehabilitation and protection of the community, it enacted lifetime supervision for sex offenses. See 18 U.S.C. § 3583(k).

The PROTECT Act also amended the basic sentencing statute, 18 U.S.C. § 3553, limiting downward departures in sex offense cases to grounds "affirmatively and specifically identified" in the Sentencing Guidelines. See 18 U.S.C. § 3553(b)(2). As a corollary, the PROTECT Act amended Chapter 5 of the Guidelines to limit departures in sex offense cases, directing that the "grounds enumerated in this Part K of Chapter Five are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure." U.S.S.G. § 5K2.0(b).

Thus, in sex offense cases, downward departures are limited to: (1) victim's conduct, § 5K2.10, (2) lesser harms, § 5K2.11, (3) coercion and duress, § 5K2.12, (4) voluntary disclosure of offense, § 5K2.16, (5) age, § 5K2.22, and (6) extraordinary physical impairment, § 5K2.22. Realistically, only the latter two grounds -- age and extraordinary physical impairment -- will factually justify a downward departure, as it is most unlikely that a sex offense, particularly involving a minor, would be mitigated by the victim's conduct, as being a lesser harm, as resulting from coercion or duress, or by voluntary disclosure.

The PROTECT Act directly amended the child pornography guideline. It imposed a 4-level increase for "material that portrays sadistic or masochistic conduct or other depictions of violence," U.S.S.G. § 2G2.2(b)(4), and gradated increases for the number of images, ranging from a 2-level increase for 10-149 images, to a 5-level increase for 600 or more images. U.S.S.G. § 2G2.2(b)(7).

Finally, as detailed in Amendment 664 to the Sentencing Guidelines, the Sentencing Commission substantially increased the punishment for child sex offenses by increasing the base offense levels and existing specific offense characteristics, and adding new specific offense characteristics, to correspond to the new mandatory minimums and statutory maximums enacted by the PROTECT Act.

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[19] See U.S. Sentencing Commission, Sourcebook of Federal Sentencing Statistics, FY 1996-2003.

For these reasons, as well as the repeat and dangerous sex offender guideline, U.S.S.G. § 4B1.5, Guidelines sentences for sex offenses have dramatically increased in recent years, resulting in substantial incarceration followed by lifetime supervision.

The Guidelines sentences for first offenders under the statutes to which H.R. 2318 would apply are as follows.

- Aggravated sexual abuse of children - 97 months to life[20]
- Abusive sexual contact - 33 months to ten years[21]
- Sexual abuse of children resulting in death -life imprisonment or death penalty[22]
- Sexual exploitation of children (pornography production) -15 years (mandatory minimum) to 30 years[23]
- Sexual exploitation of children and activities relating to material involving the sexual exploitation of children (pornography trafficking/receipt) -5 years (mandatory minimum) to 20 years[24]
- Using misleading domain names to direct children to harmful material on the

[20]U.S.S.G. § 2A3.1 applies to aggravated sexual abuse of children under 18 U.S.C. § 2241. Section 2A3.1 provides for a base offense level of 30, with 97 months at the bottom of the range. If force or threats are used, a 4 level increase applies. U.S.S.G. § 2A3.1(b)(1). The base offense level is further increased by either 2 or 4 levels if the victim is under the age of 12 years or 16 years. U.S.S.G. § 2A3.1(b)(2). If the victim was in the care or custody or supervisory control of the defendant, 2 more levels are added. U.S.S.G. § 2A3.1(b)(3). In my experience, these enhancements typically apply in reservation cases.

[21]U.S.S.G. § 2A3.4 governs abusive sexual conduct under 18 U.S.C. § 2244. It provides a base offense level of 20, but importantly includes a cross reference to U.S.S.G. § 2A3.1, where the conduct qualifies as aggravated sexual abuse or attempted aggravated sexual abuse, thus raising the punishment as detailed in the immediately preceding footnote. Without the cross reference, if the victim is under 12 years old, a 4 level increase attaches, and if the victim is under 16 years of age, there is a 2 level increase. U.S.S.G. § 2A3.4(b)(1) and (2). There is an additional 2-level enhancement if the victim was in the care or custody or supervisory control of the defendant. U.S.S.G. § 2A3.4(b)(3). In my experience, these enhancements typically apply in reservation cases.

[22]The first degree murder guideline, U.S.S.G. § 2A1.1, applies to this offense.

[23]Production of child pornography, per U.S.S.G. § 2G2.1, carries a base offense level of 32. According to the Commission, that level "combined with the application of several specific offense characteristics that are expected to apply in almost all production cases (e.g., age of the victim)" ensures "that the 15 year mandatory minimum will be met in the Chapter Two calculations [in] almost every case." U.S.S.G. Amendment 664.

[24]U.S.S.G. § 2G2.2 provides a base offense level of 22. The Commission explains that "when combined with several specific offense characteristics which are expected to apply in almost every case (e.g. use of a computer, material involving children under 12 years of age, number of images), the mandatory minimum of 60 months' imprisonment will be reached or exceeded in almost every case by the Chapter Two calculations." U.S.S.G. Amendment 664.

Internet -15 months to 4 years[25]

- Production of sexually explicit depictions of children for importation into the United States - ten years[26]
- Child prostitution - five years (mandatory minimum) to 30 years

These sentences would, of course, be much higher for offenders with more than one criminal history point.

The "crimes of violence" against persons under the age of 18 to which Section 2 of H.R. 2388 would apply are subject to sentences under the Guidelines that are entirely sufficient to achieve incapacitation and deterrence commensurate with the seriousness of the offense as determined based on the particular characteristics of the offense. Guidelines sentences for various "crimes of violence" with a vulnerable victim adjustment are as follows:

- first degree murder - life[27]
- second degree murder - 292 months to life (depending on criminal history)[28]
- voluntary manslaughter - 108 to 235 months (depending on criminal history)[29]
- involuntary manslaughter - 15 to 125 months (depending on whether negligent, reckless or drunk driving, and criminal history)[30]
- kidnapping/hostage taking – 151 months to life (depending on criminal history and offense characteristics)[31]
- assault – 21 months to 262 months (depending on criminal history and offense characteristics)[32]

Thus, Guidelines sentencing imposes increasingly severe punishment depending on the characteristics of the offense. When there is a lawful, compelling reason to impose a sentence outside the guideline range, the judge may do so. This flexibility is

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[25]U.S.S.G. § 2G3.1(b)(2) provides a base offense level of 14, which includes enhancements for use of a computer and "use of a misleading domain name on the Internet with the intent to deceive a minor into viewing material on the Internet that is harmful to minors."

[26]U.S.S.G. § 2G2.1, child pornography production, applies to this offense, resulting in a guideline sentence that will typically exceed the ten-year statutory maximum. See note 21, supra.

[27] See 18 U.S.C. § 1111; U.S.S.G. § 2A1.1.

[28] See 18 U.S.C. § 1111; U.S.S.G. § 2A1.2.

[29] See 18 U.S.C. § 1112; U.S.S.G. § 2A1.3.

[30] See 18 U.S.C. § 1112; U.S.S.G. § 2A1.4.

[31] See 18 U.S.C. §§ 1201, 1203; U.S.S.G. § 2A4.1.

[32] See 18 U.S.C. § 111; U.S.S.G. 2A2.2.

essential in our system of justice, even, at times, in cases involving crimes against children.

For instance, I litigated one of the cases, United States v. Parish, 308 F.3d 1025 (9th Cir. 2002), cited in the Fact Sheet issued by the Department of Justice on April 30, 2003 in support of the PROTECT Act. Mr. Parish pled guilty to two counts of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). Based upon the facts that Mr. Parish's conduct was outside the heartland of the typical offense and his unusual susceptibility to abuse in prison, the district court departed downward to a sentence of 8 months in prison followed by 8 months of house arrest. The government appealed, and the court of appeals affirmed the sentence, noting "that Parish had not affirmatively downloaded the pornographic files, indexed the files, arranged them in a filing system, or created a search mechanism on his computer for ease of reference or retrieval." 308 F.3d at 1030. The court further relied upon expert testimony that Mr. Parish's conduct was "outside the heartland, definitely," id., in resolving the case.

The United States Probation Office has supervised Mr. Parish since his release. I have checked on his status on several occasions. He has fully complied with and has been released from supervision. He is employed, living with his wife and two children, and successfully complying with sex offender treatment. Under current law, Mr. Parish would still be serving (at least) a five year mandatory minimum sentence. Under H.R. 2318, he would be serving (at least) a 25 year sentence. He would not be living at home, working, paying his bills, paying taxes, raising his children, and being a good husband, neighbor and community member.

Similarly, in the recent case of United States v. Bailey, 2005 WL 1119770 (D. Neb. May 12, 2005), Judge Kopf departed downward to probation in a child pornography case. Mr. Bailey pled guilty to possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(b). The government agreed that the case was unique, because like Mr. Parish, Mr. Bailey only viewed the Internet images temporarily, did not consciously download most of them, and either deleted or took no steps to keep them. Id. at *2. According to an expert in whom the judge had a great deal of confidence, Mr. Bailey was not a predator or otherwise a danger to society. Id. at *4. Most important, Mr. Bailey was an essential caretaker for his daughter. Following the filing of the federal charges, custody of Mr. Bailey's daughter was transferred to her mother, resulting in her being sexually abused by the mother's friend. Id. at *4. The state court then awarded Mr. Bailey custody, while the federal child pornography charge was pending. Id. at *4-7, 9. Judge Kopf concluded that Mr. Bailey's presence "is critical to the child's continued recovery, and the defendant's presence cannot reasonably be duplicated by using other providers." Id. Under current law, the court would have had to impose a five year mandatory minimum sentence. Under H.R. 2318, the punishment would be a mandatory minimum of 25 years. In either case, a child at risk would be without a responsible parent.

IV. Mandatory minimums create unwarranted disparity, and preclude individualized sentences that are proportionate to the seriousness of the offense.

Congress in the Sentencing Reform Act established the United States Sentencing Commission to promulgate sentencing guidelines and policies that would assure that the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2) are met, and that would "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices." See 28 U.S.C. § 991(b)(1)(A), (B). Congress explicitly recognized that "[s]entences that are disproportionate to the seriousness of the offense create a disrespect for the law." Rep. No. 225, 98th Cong., 1st Sess. 46 (1983).

On January 12, 2005, the Supreme Court held in United States v. Booker, 125 S. Ct. 738, 748-50 (2005), that the Sentencing Guidelines must be imposed in an advisory manner in order to pass constitutional muster. Since then, the district courts have imposed sentences above the guideline range in 1.7% of cases, below the range for reasons advocated by the government in 22.8% of cases, and below the range for reasons identified in the Guidelines Manual or in 18 U.S.C. § 3553(a) in 12.7% of cases.[33] While the rate of sentences above the guideline range has nearly doubled since the pre-Booker era, that of sentences below the range has not significantly changed. When judges have imposed sentences below the guideline range following Booker, they have carefully explained why a different sentence was appropriate as a departure identified in the Guidelines Manual or as otherwise necessary to achieve just punishment, deterrence, incapacitation, and needed rehabilitation or treatment, and to promote respect for the law.

Thus, there does not appear to be an epidemic of judicial leniency that requires a legislative response. We are therefore concerned to see two more in a series of bills that seem designed to blanket the criminal code with mandatory minimums and thus preclude judges from imposing individualized sentences that distinguish among defendants according to the seriousness of the offense, their role in the offense, and their potential for rehabilitation. Unlike guideline sentencing, mandatory minimum statutes result in unwarranted disparity, including racial disparity, produce sentences that are unfair and disproportionate to the seriousness of the offense, and are not cost effective.[34] For these reasons, diverse institutional and policy organizations, including the Judicial

[33] U.S. Sentencing Commission Special Post-Booker Coding Project, available at http://www.ussc.gov/Blakely/PostBooker_5_26.pdf.

[34] See United States Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (August 1991); Federal Judicial Center, The Consequences of Mandatory Prison Terms (1994); Stephen J. Schulhofer, Rethinking Mandatory Minimums, 28 Wake Forest L. Rev. 199 (1993); Caulkins, Jonathan P., C. Peter Rydell, William L. Schwabe, and James Chiesa, Are Mandatory Minimum Drug Sentences Cost-Effective?, Corrections Management Quarterly, 2(1):62-73, 1998; Harris v. United States, 536 U.S. 545, 570-71 (2002) (Breyer, J., concurring in part and concurring in the judgment).

Conference,[35] the Sentencing Commission,[36] and the Sentencing Initiative of the Constitution Project,[37] have voiced strong opposition to mandatory minimum statutes and their continuing proliferation. State governments, too, are turning away from mandatory minimum sentencing laws, in recognition that these laws do not achieve the purposes of sentencing commensurate with their extraordinary fiscal and human cost.[38]

Furthermore, the mandatory minimums proposed in H.R. 2318 and H.R. 2388 would undoubtedly increase the number of trials. Mandatory minimum sentences provide no incentive for defendants to plead guilty. By eliminating the beneficial effects of plea bargaining, the bills would result in more trials. These trials would not only tax the resources of the judiciary and the executive branches, but would also require child witnesses to suffer the ordeal of courtroom testimony. That traumatic experience would negatively impact the children. Given the difficulties inherent with child witnesses, the increase in trials most likely would actually adversely impact conviction rates. These costs of mandatory minimums are not justified where the existing laws provide for ample punishments and already enable the courts to severely punish the most culpable defendants.

Judges are exercising their discretion responsibly under advisory guidelines, and the system should be given a chance to work. A proliferation of mandatory minimums is not the answer.

V. Section 3 of H.R. 2388 would generate extensive and inefficient litigation and may be unconstitutional.

Section 3 of H.R. 2388 singles out "claims" that "relate" to a judgment or sentence in an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court for a crime that involved the killing of a person under the age of 18. It appears to strip federal judges, justices, and courts of jurisdiction over this very rare class of claims, subject to an exception for a "claim that qualifies for consideration in the grounds described in subsection (e)(2)."

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[35] See April 25, 2005 Letter from the Committee on Criminal Law of the Judicial Conference of the United States to Chairman Sensenbrenner re H.R. 1528; Leter from Judicial Conference of the United States to Chairman Coble re H.R. 1279.

[36] See April 19, 2005 Letter from United States Sentencing Commission to Chairman Coble and Ranking Member Scott re H.R. 1528.

[37] The Sentencing Initiative of the Constitution Project is a bipartisan working group of current and former state and federal prosecutors, defense lawyers, judges, policymakers, and scholars. We understand that it is about to announce its principles for sentencing reform, and that among these is that sentencing guidelines systems are desirable and that mandatory minimum sentences are inconsistent with sentencing guidelines.

[38] See note 15, supra.

Subsection (e)(2) governs the availability of federal evidentiary hearings, not jurisdiction. Assuming that it could be converted to a jurisdictional requirement, there would be no jurisdiction over such claims unless they cleared a hurdle more exacting than the standard for granting the writ itself.[39] Those few claims that cleared the jurisdictional hurdle would be subjected to a complex set of truncated timetables for consideration.

The constitutional review of state cases assigned to federal courts is a serious matter calling for careful consideration. It is a hallmark of the liberty that defines America. Congress has consistently avoided jurisdiction-stripping legislation of this kind. In all of the AEDPA provisions, Congress never thought it appropriate to simply eliminate habeas jurisdiction entirely in any class of cases or claims. We are not aware of any evidence that unnecessary delays are especially problematic in such cases. This provision selects certain cases for special treatment without a rational basis and thus raises constitutional questions.

Moreover, both the incorporation of subsection (e)(2) standards and the timetable provisions would generate a great deal of inefficient litigation. Courts would have to agree on a series of uniform interpretations of each provision in this context and then apply them in individual cases. This is what has occurred with subsection (e)(2) in its intended context relating to evidentiary hearings, and with the filing deadlines established by the AEDPA. An enormous amount of time and effort would be expended on trying to make these provisions work, thus slowing the resolution of such cases, not speeding it up.

The provision that would make this amendment applicable to pending cases risks even more inefficient litigation. By changing the rules after cases have begun, this legislation would force courts to decide whether the changes have retrospective effect, and if so, to work through the complexities of applying the new rules in cases already underway.

Conclusion

Again, I am grateful for the opportunity to provide my views and those of the Federal Public and Community Defenders. The Federal Public and Community Defenders have a wealth of experience in federal sentencing generally and in the sentencing of Native Americans. We would be happy to answer any questions or respond to any requests from you or the Subcommittee staff.

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[39] Subsection (e)(2) requires a new rule of constitutional law made retroactive by the Supreme Court and not previously available, or a factual predicate that could not previously have been discovered through due diligence, coupled with facts that would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the offense. The standard for granting the writ is that the state court decision was contrary to, or involved an unreasonable application of, clearly established Federal law as determined by the Supreme Court, or was based on an unreasonable determination of the facts.

Mr. GREEN. Thank you, Mr. Rhodes, and thanks to all of our witnesses for coming here and testifying today. I will begin the questioning. Ms. Parsky, you note that mandatory minimum penalties can be an appropriate tool. Can you elaborate this in the context of child exploitation and sex abuse crimes.

Ms. PARSKY. Certainly. One of the things that is particularly useful about mandatory minimum sentences is that they serve the important purpose of deterrence and they send a very strong message not only to potential offenders, but also to the public at large that the community takes these crimes really seriously and that, if they are caught and if they commit this conduct, that they will be spending a very long time in jail. And, in addition, one other element that is important to keep in mind about mandatory minimums that is particularly pertinent to the sexual abuse crimes is that they incapacitate particularly dangerous individuals and protect our communities from those individuals being on the streets. And that is important to keep in mind when you are looking at mandatory minimums in this context.

Mr. GREEN. General Crist, can you describe how the Florida Sex Offender Registry works and what the role is that you see in coordinating in these areas with Federal law enforcement?

Mr. CRIST. I wanted to make a correction. I think when I was describing the four cases that I did I wanted to make sure I said that the perpetrator or alleged perpetrator of each of those crimes was a probation violator. The way the registry works, people have to register, and have their names attached once they are found guilty. Let me give you a more precise description. To be a subject of a Florida sexual offender registry, a person must qualify and be designated as such. There are three ways to be designated a sex offender in Florida. The first is to commit a qualified crime in the State, two, commit a crime in another jurisdiction that meets Florida sex offender criteria, or three, be designated a sex offender in another jurisdiction. Someone designated as a sex offender must register with the State within 48 hours of establishing residence. When registering, the offender must provide his or her name, Social Security number, physical characteristics, residence, employment or school information, and fingerprints.

Within 48 hours of registering, sex offenders must also register with the driver's license office, identify himself as a sex offender, and obtain a license or identification card. They must maintain this registration for life unless they receive a full pardon or the conviction is set aside.

Mr. GREEN. Mrs. Fornoff, in your written testimony, you give an interesting statistic: Nearly 100 of the death row inmates in California have been there for over 20 years. Have you been in touch with any of the families of the victims of those cases? And if so, can you tell us what you have learned from them?

Ms. FORNOFF. I have not been in touch with any of those particular victims. In fact, I wrote a letter to support the family of Jessica. I happened to be in Florida at the time and of course it knocks us out when some other little girl has been taken. And I try to write a letter to the family and tell them we have gotten through, we will never get over the death of our child. And we work with

parents of murdered children in Arizona. And so I have been supportive of them in that way.

Mr. GREEN. Ms. Parsky, you heard Mr. Rhodes' testimony, his position that these laws have a disparate impact on offenders, Native American offenders. Do you have any response to that in terms of the percentage of crimes or victims that might come from those areas?

Ms. PARSKY. I don't have particular numbers with me today, but there are a couple of points that are important to keep in mind with respect to some of his arguments. The first is that I think we need to keep in mind that the victims on Indian reservations need the same amount of protection as the victims anywhere else. And the Federal Government in its enforcement of its laws and the Federal legislature in its creation of laws sends a powerful message to the Nation about what conduct we find reprehensible. We at the Department of Justice deal with a lot of different Federal laws that protect children.

I mentioned child pornography, but also travel for the purpose of engaging in sexual acts with children, sex tourism, other laws that involve interstate or foreign commerce or Federal property. So all of those laws are something we are looking to enforce and enforce in a way that is going to send a strong deterrent message to the community.

Mr. GREEN. Mr. Scott, questions?

Mr. SCOTT. Ms. Parsky, in H.R. 2388, it talks about Federal crime of violence. What is that? What is a Federal crime of violence. Page 2, line 3 of the bill.

Ms. PARSKY. As I indicated in my written testimony, the Department is still taking a look at the legislation that has been tabled here today, and we don't have a position. This is not an Administration bill, so I can't tell you what was intended by the language that is in the bill here.

Mr. SCOTT. You are not testifying in support of H.R. 2388?

Ms. PARSKY. Our position is we are still reviewing it and we are anxious to work with the Committee to provide legislation that is going to have an important effect in this area.

Mr. SCOTT. Are you testifying in favor of H.R. 2388?

Ms. PARSKY. We don't have a position yet.

Mr. SCOTT. Federal crime of violence is not a term of art for which you know the definition?

Ms. PARSKY. I am not in a position to testify here today to as to what was the intent of the definition in the bill.

Mr. SCOTT. If it included fist fights under line 23, fist fights involving school yard fist fights in which there are no injuries, 10 years mandatory minimum isn't the kind of thing you are testifying on behalf of today?

Ms. PARSKY. The purpose of my testimony today is to let you know that we are very supportive of strong legislation in this area, that we do support mandatory minimums in appropriate circumstances, and that we are anxious to work with this Committee to craft appropriate legislation here.

Mr. SCOTT. You indicated that mandatory minimums create a deterrence?

Ms. PARSKY. That's correct.

Mr. SCOTT. Do you have any studies to support that statement?

Ms. PARSKY. I don't have studies with me, but I can tell you we would be happy to go back and look for some that would address that issue.

Mr. SCOTT. You're aware that the Judicial Conference categorizes mandatory minimums as a violation of common sense?

Ms. PARSKY. I'm not aware of that quotation.

Mr. SCOTT. Every time we consider a bill that has a mandatory minimum in it, the Federal Judicial Conference, Chief Justice Rehnquist presiding, writes us a letter to remind us that mandatory minimums—because if it is the appropriate sentence—it can be imposed, and if it doesn't make any sense at all, then it has to be imposed anyway, and, therefore, mandatory minimums often violate common sense.

Mr. GREEN. Is that a question?

Mr. SCOTT. It's a quote from the letter of the Judicial Conference. How does the child pornography part of the other bill—H.R. 2318 doesn't change substantive law, it just changes the penalties, is that right?

Ms. PARSKY. That's how I read it.

Mr. SCOTT. Mr. Crist, for these cases that you mentioned, do you have any indication that State laws are not sufficient to deal with the cases that you have recited?

Mr. CRIST. Simply by the fact that they have happened, I would answer in the affirmative.

Mr. SCOTT. Sorry.

Mr. CRIST. I said simply by the fact that they occurred, I would answer yes. They are insufficient. I think they are getting better.

Mr. SCOTT. How much more time would they get under the bill than under your Florida law?

Mr. CRIST. Under your bill?

Mr. SCOTT. Under the bill.

Mr. CRIST. I don't know what the time frame would be that would be different. We are trying to encourage even more severe legislation, more appropriate legislation in Florida and would encourage you to do the same in Washington.

Mr. SCOTT. Could you remind me what penalties were imposed on the cases that you mentioned.

Mr. CRIST. In each of those cases, the individuals that were charged with the crime were out on probation at the time. They were free.

Mr. SCOTT. And what do they get under Florida law and what would they get under the bill?

Mr. CRIST. The new Jessica Lunsford Act that we just passed does have a minimum mandatory, and that would be 25 to 50 years.

Mr. SCOTT. How many of those cases that you recited would be in Federal jurisdiction?

Mr. CRIST. I don't know that any of them.

Mr. SCOTT. So this bill wouldn't make any difference at all?

Mr. CRIST. I didn't say that either. They might.

Mr. SCOTT. Ms. Parsky, if there is Federal jurisdiction on these cases, is there concurrent State jurisdiction for prosecution in these

cases, in any cases for which there would only be Federal jurisdiction?

Ms. PARSKY. I think it is hard to answer that question, because it really is quite fact-specific. It depends on the particular statute. These two bills address a number of Federal statutes, some of which might involve conduct that crosses over State line. There would be some conduct in each State that potentially could be prosecuted by the State but there would also be an interstate travel aspect that would bring it under Federal law.

Mr. SCOTT. Does that mean that there is State jurisdiction in just about every one of those cases?

Ms. PARSKY. It is hard to say. There are several different statutes implicated. And some of the statutes may involve both State violations and Federal violations and some statutes it may be limited to Federal.

Mr. GREEN. Mr. Lungren, questions.

Mr. LUNGREN. Thank you very much, Mr. Chairman. I would like to focus on the habeas corpus aspect of this. Mr. Rhodes, you made a statement that the report you talked about exonerated a number of people. I would like to correct the record, it didn't exonerate them, which means innocence. For whatever reason, including finding technicalities in those particular situations, their particular sentences or convictions were overturned.

And I appreciate your testimony, but I am tired for the last 25 years of hearing people talk about exoneration or innocence when that is not the case. When I was attorney general of the State of California, we probably handled more habeas cases than any office in the country. Not only because we are the largest attorney general's office, but because we happen to be in the Ninth Circuit Court of Appeals, which is famous for its judicial activity and its reversal.

For one term, I remember the Supreme Court reversed 21 out of 22 cases from the Ninth Circuit. Ms. Fornoff, when we usually focus on these things, we as lawyers focus on the fact that there are specific bases that will allow the Federal Court to come in and so forth. And you heard some mention that some people were exonerated 20 years thereafter. You have brought to us the testimony of the other side of the fact, which are the family members who sit there and wait and wait and wait and wait.

In 1992, I was at San Quentin when we had the first execution in 26 years of Robert Alton Harris, who had murdered two teenagers. Wasn't sexual. It was just plain meanness. He laughed as he killed them. He told one kid to stand like a man and take it and then later on, ate their half eaten hamburgers and laughed at his brother who wasn't able to do it. Robert Alton Harris, who had gotten a short-term sentence for an earlier killing, who had raped in prison and had been out a short period of time when he murdered these individuals.

And that night, the Ninth Circuit seriatim had habeas after habeas after habeas granted for stays of execution four times, the only time in the history of the United States. It so offended the idea of justice that the United States Supreme Court withdrew jurisdiction in that case for all Federal courts except themselves.

That has only happened one time in the history of the Nation and that was that night. And the reason we have tried to reform habeas corpus is because as Mr. Rehnquist has said, the jury in our system is supposed to be the main event, not a second chance Monday morning quarterbacking by Federal courts 20 years thereafter who didn't have an opportunity to see the witnesses testify. And, if you believe in our jury system where you have juries who actually have the opportunity to see witnesses and be able to see them as they testify and make a judgment as to whether they are saying something that is honest or not, you understand what we are talking about when we have a distortion of the system.

With habeas corpus, which assumes that the Federal courts somehow have greater wisdom than the State courts. I can never understand it. We had a Federal judge in California who became the chief justice of the California Supreme Court and suddenly because he no longer had the Federal robes but had the State robes, he wasn't as wise as these Federal judges who 20 years thereafter loved to have these hearings.

I have been there and seen these evidentiary hearings when they bring psychiatrists on 20 years after the event to give us an idea of what they think the person was thinking about 20 years before when the person performed the terrible act. Let's be serious about what we're talking about here in terms of habeas reform. I'll grant you Mr. Rhodes when a case is set aside it is set aside for a reason, but that does not equal innocence. And frankly, it is in my judgment misleading to suggest that we have saved people from dire straits because they weren't guilty, when, in fact, it was set aside for various reasons.

I would just ask you, Ms. Parsky, you have raised some concern in your written statement about the habeas provisions that are contained in the bill before us, suggesting that by limiting it to those who murder children, it might run the risk of diverting judicial resources in a way that Federal habeas review for other murders might inadvertently be lengthened.

To me, that is not a criticism of the bill so much as a suggestion that maybe we ought to look at broader habeas reform. Is that the position of the Justice Department?

Ms. PARSKY. Well, as I indicated, we are still in the process of reviewing the bill, but we had hoped to at least provide some suggestions for things that the Committee might want to consider, and that was one of the points we thought should be considered; is that we certainly acknowledge that child murderers are particularly heinous offenders and that they should be looked at carefully, but that there are also other heinous offenders that are currently in custody.

And so the only point of that comment was to bring it to the attention of the Committee so that you may consider that. Likewise, with the second point that we made, was just to bring the issue to the attention of the Committee, if that in fact was——

Mr. LUNGREN. The concern I have——

Mr. GREEN. The gentleman's time has expired. He may finish his point.

Mr. LUNGREN. The concern I have is this: When my office worked with the Congress a decade ago to get the reforms of habeas cor-

pus, we got little, very little, support from the Justice Department at that time. In part because it really is a problem affecting State court convictions, and we didn't get the attention from the Justice Department at that time because that was not in their bailiwick.

All I am asking, does this Justice Department understand that even though these are not cases from Federal Court, these are cases originating in State court convictions, we need the assistance of the Justice Department in understanding the concerns people like Mr. Crist have when we are dealing with these cases? That is my only point.

Mr. GREEN. Mr. Feeney.

Mr. FEENEY. Thank you, Mr. Chairman, and I appreciate all the witnesses' testimony. The gentleman from California focused on habeas. I'd like to focus on minimum mandatories and sentencing guidelines.

I think my Attorney General put it very good, that convicted pedophiles that are a danger to their community are well covered by ankle bracelets, but we are better off if they are behind bars. In his testimony, he says that.

Mr. Rhodes talked about the guidelines as part of the PROTECT Act, and you refer, on page 7 and 8 of your testimony, to what has been referred to by Senator Kennedy and others as the Feeney amendment that talks about making it more difficult to depart downwards and give out lenient sentences for people preying on children in Federal offenses.

And by the way, I'm glad that Feeney is finally known as a noun, other than referring to a human being. I look forward to it one day being a verb, you know, like he or she got Feenied.

But the problem with Feeney is that after *Fanfan* and *Booker*, which were some of the most nonsensical opinions I have ever read by our Supreme Court, nobody knows what the status of the guidelines are. And as you point out on page 8 of your testimony, the downward departures under Feeney are limited and have to be spelled out in the guidelines. We don't know if the guidelines are anything other than mere suggestions, and we have got some courts deviating downwards on a 2 percent basis; in other courts, some Federal crimes, deviating downward as much as 62 percent of the time. So there is little or no uniformity from one jurisdiction to another, often from one court to another, and it is a big problem.

After *Booker* and *Fanfan*, where, by the way, only two of the nine Justices said the guidelines themselves were unconstitutional per se, the five justices that threw out the guidelines only had a majority because of the situation where greater sentences are given without jury involvement. Scalia and Thomas, for example, think the guidelines themselves are constitutional.

But then the court went on in the remedial phase with a different five-member majority and totally threw out the guidelines as being anything other than mere suggestions to Federal courts.

So, Mr. Rhodes, much of your argument, matter of fact the whole basis of your argument in point three, the sentencing guidelines reflect the seriousness of the crimes. To the extent that we don't know what the status of the guidelines are, how can they be a deterrence in any way, shape, or form, let alone protect people, if the Supreme Court has now said that the guidelines, specifically the

Feeney amendment, designed to protect children, are not mandatory in any way, shape, or form?

Mr. RHODES. First——

Mr. FEENEY. You don't like minimum mandatories. You like the guidelines, other defense lawyers didn't. The guidelines are now almost meaningless.

Mr. RHODES. First, the *Booker* and *Fanfan* decisions did not address the Feeney amendment or the PROTECT Act. In fact, conspicuous by its absence is there was no reference in any of the opinions to 18 USC 3553(b)2.

Mr. FEENEY. Well, that's true, but they addressed the whole issue of guidelines, which is largely what your testimony regarding the PROTECT Act and Feeney relates to, the guidelines. And the guidelines are in a state of real limbo. I think everybody would acknowledge that right now.

Mr. RHODES. The decisions addressed the guidelines for all offenses other than sex offenses. Now, there is an issue playing out in the district courts and the court of appeals as to whether *Booker* and *Fanfan* should also be applied to sex offenses and, in those cases, whether the guidelines should be advisory.

Even with the guidelines being advisory following the *Booker* and *Fanfan* decisions, I believe the impact of the Feeney amendment is still being felt and is being effective in Federal sentencing.

Mr. FEENEY. If I can, I appreciate that, and maybe you will have time to elaborate in the second round, but, Ms. Parsky, Mr. Scott, I think, is correct on two points. Number one, we don't know whether or not there is real deterrence in this type of crime. One of the reasons people don't underreport their income to the IRS is that they are deterred. But to the extent that these are crimes that people really cannot help themselves, deterrence may not work. But separation from society works, and society, in my view, has a right to retribution. So there are at least three reasons for minimum mandatories, especially if the guidelines don't work.

And with respect to Mr. Rehnquist and the Judicial Conference position that minimum mandatories defy common sense, can you tell us your opinion whether or not some of the lenient decisions handed out by our Federal judges and the effect that they have on repeat perpetrators that Attorney General Crist and Mrs. Fornoff referred to, does it make common sense to have judges be the ultimate arbiter of whether or not a pedophile should be given a second chance in society in each and every case?

Ms. PARSKY. I think there may have been a few questions in there, but I'll address a couple of points quickly. The first, with respect to what kind of impact mandatory——

Mr. FEENEY. When the clock turns yellow, you get as many questions in as possible.

Ms. PARSKY. With respect to what effect mandatory minimums have in the Federal system, I can tell you that there are many areas where, when a particular Federal district starts taking cases and making them Federal, you hear about the impact on the community, because there can be very stiff penalties because there is truth in sentencing, because there have been these sentencing guidelines that provide for determinant sentencing. And that's something that's been a very important tool in order for us to really

bring down crime rates to one of the lowest points in, I think, 20 years. And mandatory minimums are a big part of that because we need a way to assure that consistency.

Mr. FEENEY. Mr. Chairman, with unanimous consent, does that lowest crime rate in 20 years relate to offenses against children?

Ms. PARSKY. I don't know exactly what the breakdown is, but I can get that for you. I think it's a general crime rate.

Mr. GREEN. The gentleman's time has expired.

Mr. Keller.

Mr. KELLER. Thank you, Mr. Chairman. I had a question for the Attorney General, who is out of the room right now, but I will direct my question to Mrs. Fornoff, and I'll just boil it all down for you.

We have a fork in the road here in Congress. The issue is what to do about child sex-offenders who repeatedly molest children. Do we protect other kids by locking these child predators away in a prison cell for at least 30 years? Or do we coddle these criminals by providing them with more money for rehabilitation and treatment and allow a judge to have the discretion to let them out of prison after 6 months or a year?

Some of those in the lock-them-up camp, such as myself, believe that that is the only way to protect children. Under existing law, if you are convicted of aggravated sexual abuse for children, you can be sentenced from zero years to life. Under this bill, there would be a 30-year mandatory minimum. Under the new Florida law, there would be a 25-year mandatory minimum.

The other side, as articulated by Mr. Scott and one of the panelists, is that philosophically divergent scholars and liberal Berkeley law professors disagree with us.

Let me ask you: Do you have a position as to what camp you are in, as someone who has been through this tragedy?

Mrs. FORNOFF. Yes. Yes, I do.

Mr. KELLER. What is your position?

Mrs. FORNOFF. I do not believe that pedophiles can be back on our streets. I believe they need to be locked up. Because I do not believe that it has been proven that you can help them.

Mr. KELLER. Thank you.

Ms. Parsky, let me direct that question to you. I know Justice isn't taking a formal position on this. Do you have any reason to believe that, if we only spent more money on rehabilitation and treatment, that we would have repeated child molesters get out of prison and go on to lead a perfectly normal life without any risk to our young people?

Ms. PARSKY. What our approach to this problem has been is that we need to apply every available tool to try to prevent the problem. In some appropriate circumstances, preventive and rehabilitative services may be appropriate, but you also need to have very stiff penalties. And you need to have the ability to put people behind bars for long periods of time when they clearly pose a risk to the community.

So we have tried to approach this from all different angles so that we are providing the most for our communities in terms of protection, in terms of punishment, and in terms of deterrence.

Mr. KELLER. As you look at this bill and decide, as the Justice Department looks at this bill and decides what they think of the merits, do you understand the concern that Congress has that under the current penalty for aggravated sexual abuse, the crime can be sentenced at zero to life; that we're a little uncomfortable with that discretion for a judge?

Ms. PARSKY. As I've said, we are taking the entire bill into consideration, but I certainly understand the need in this area for consistency and fair but harsh punishments.

Mr. KELLER. Right.

Mr. Rhodes, you have the hardest job here today, and I am not going to get up here and prance around with any hard questions, but one of the things you mentioned is you cite some sort of recidivism statistic. And I just have to tell you, as someone from Florida who has lived through this tragedy in the past few months, I don't think those statistics are going to give any comfort to the parents of Jessica Lunsford or Sarah Lunde, who just had their children abducted, raped, and killed by people who had done it before.

Can you understand the frustration Congress has with that position?

Mr. RHODES. Certainly. That is why I mentioned at the beginning of my testimony I used to be the guardian for teenage rape victims, girls who were typically groomed by their stepfathers for sexual relations. So I know that side of the situation.

But I also know that I have many clients who are convicted sex offenders who are living successfully in the community. To me, it doesn't make sense for them or the communities to lock them up forever, because that doesn't seem to be justice. And it doesn't do them any favors, and I don't believe it does the community any favors.

And I, again, emphasize the aggravated sexual abuse and the aggravated sexual contact cases come off of reservations overwhelmingly. And I think it is imperative that Congress consult the tribes and the communities to see what they think is best.

Mr. KELLER. If you had a three-time child molester live next door to you, who had had the appropriate rehabilitation and treatment, would you be comfortable leaving your little girl alone with him?

Mr. RHODES. I can honestly say one of my clients, who was convicted of child pornography, just got out of prison. My wife is pregnant, if he moved next door to us, that would be fine by me.

I would also add, I mentioned in response to some earlier questions that the PROTECT Act provisions, many of them still are very effective in Federal sentencing, in particular the two-strikes-you're-out provision at 18 USC 3559(e). Also, in the guidelines, there is a variation of the two-strikes-you're-out-provision at section 4(b)1.5.

Mr. KELLER. Mr. Chairman, can I ask unanimous consent just to ask one question to Mr. Crist, who was not here for my questioning?

Mr. GREEN. Without objection.

Mr. KELLER. Mr. Crist, the issue before us is, what do we do with these repeated child sex offenders? Do we lock them up in a prison, or do we instead give them more money for treatment and rehabili-

tation and allow a judge to have the discretion to let them out after 6 months or 1 year?

You outlined in your testimony the tragedy of the killings of the 9-year-old girl, Jessica Lunsford, and the 13-year-old, Sarah Lunde. Can you elaborate on the criminal histories and sex offender status of the two men charged with those heinous crimes?

Mr. CRIST. Yes. In both of those cases, the perpetrator or alleged perpetrator had a history of violence. It seems to me, and what we have tried to propose in Florida, and certainly would be encouraged to do here, is along the lines of what I know both you and Congressman Feeney believe in; that is we need to do first things first, and that is to protect our citizens.

I mean, they had violent histories. They had served their time. They had, in essence, paid their debt to society and gotten out and been placed on probation, but then they violated the privilege of probation. Some would argue that it was minor, but nevertheless violated. At that point, we knew that something was going wrong. They went before the judge. The judge had the opportunity to make one of two decisions: Let them continue on that privilege and roam the neighborhoods of our State, or have the opportunity to have them reincarcerated to protect the citizens of our State.

Unfortunately, they chose the former. They decided to let them stay out. We in the Attorney General's Office this year proposed legislation that in essence would have said they had to go back to jail if they violated the second chance given to them by our criminal justice system, in order to do the first thing that is in the first line of the Constitution: To insure domestic tranquility—to protect people, to make sure that law-abiding citizens are afforded the protection that they deserve and expect. And that really is the whole purpose to have Government in the first place.

I think their backgrounds coupled with what the solutions can be in addition to the Feeney amendment, to what Congresswoman Ginny Brown-Waite has done, Congresswoman Katherine Harris and Mark Foley and so many others from Florida—because of the Florida experience, if you will, I think we have probably a heightened interest and concern about what has happened.

I appreciate the question.

Mr. GREEN. I thank the gentleman.

Ms. Waters has joined us. Questions, please.

Ms. WATERS. Thank you very much. I am sorry I could not be here earlier, but I do commend you for having this hearing. This is a problem that I think most Americans are absolutely pained about, what appears to be the growing abuse of children. And even though I am opposed to mandatory minimum sentencing, and I think we are taking all discretion away from judges to make decisions and to know all the circumstances and to take them into consideration. If I ever was to support mandatory minimum sentencing, it would be in this area.

But I want to raise a question of Ms. Parsky, and this is going to be a very sensitive question. I am concerned about those people who know about crimes against children, these sexual abuse cases, who do not seem to have a responsibility to report what they know, particularly concerned about the organized church and the fact that we are hearing over and over again that the hierarchy in the

Catholic Church. For example, have known about abuses, and they have transferred priests from one parish to another parish, and this has been going on for years.

This is a subject that people don't like to touch. They don't like to talk about it, but I do. I want to talk about it. What is the responsibility of the head of the organized religion in a supervisory or managerial role, who knows about the abuse, sexual abuse of children, and they do not report it to the authorities, they do not report it to the justice system at all, they simply transfer the abuser to another location? What do we have in law to protect young children that are in these situations?

Ms. PARSKY. Well, I appreciate your question, because I think part of what brings us here today is a sense of community responsibility; that it's a Federal responsibility; that it's a State responsibility; and that those who are in religious organizations or any other type of organization also have a responsibility to protect our children.

I can't speak to the different State laws that might apply to that kind of situation. I can point you to 18 U.S.C. Section 2258, which penalizes a failure to report a child abuse crime if there is someone who is engaged in a professional capacity or activity, be it on Federal lands or in a federally-operated facility. But in addition, I would assume that there are many States that have many other types of reporting requirements for those who are in some sort of professional capacity where they have an additional responsibility.

Ms. WATERS. So does this not cover—this law does not cover the church?

We have another case that was just revealed to us that you may know about, just a few days ago, about an operation that's been going on for some time in a church where children are being sexually abused. It was just revealed last week. I believe it was in the national media. Are you familiar with that?

Ms. PARSKY. I'm afraid I'm not familiar with that.

Ms. WATERS. Okay. Well, let me just say that the law you pointed to does not in any way cover what I am attempting to describe. The law does not cover the cases that we all heard about in the Catholic Church.

Ms. PARSKY. Since I'm not familiar with the circumstances you are describing—this is a particular Federal statute. But I would also urge you to look to State law for some of those circumstances.

Ms. WATERS. Let me ask, in addition to all of the concerns that we have, as we look at creating mandatory minimums, is there anyone else concerned about sexual abuse of children by organized religion or any other organizations that people in supervisory or managerial positions keep secret and do not report to the law? Anyone else concerned about that?

Mrs. FORNOFF. Excuse me, I am.

I'm Carol Fornoff, and I'm a parent and a grandparent. And in our State of Arizona, we have had so many of these cases. And the laws weren't written, I guess, then. But now, I know, as far as the church, the Catholic Church, they have really stepped up to the plate, and I believe that it will not happen again. But it is a sorrowful thing that it did.

Ms. WATERS. You mean that there is something that happened inside the church where they are taking responsibility. But you don't know of anything in your State? Have they produced any new State laws?

Mrs. FORNOFF. I believe they have, because our bishop was just taken out of the bishopric because of ignoring the priest that had done these things.

Ms. WATERS. Did he go to jail?

Mrs. FORNOFF. He did not. He is not in jail.

Ms. WATERS. Just stripped of the title.

Mrs. FORNOFF. Yes.

Ms. WATERS. Okay. Thank you very much.

Mr. GREEN. I thank the gentlewoman.

Again, I thank all the witnesses for coming and testifying today, as well as all those who have attended the hearing. Thank you very much.

Mr. SCOTT. Mr. Chairman?

Mr. GREEN. Yes.

Mr. SCOTT. Mr. Chairman, I understand you are not going to have another round of questions, but I would like to alert Ms. Parsky that we'll be asking for a prison impact statement on the legislation, pursuant to the code section that allows us to get a prison impact statement, and would appreciate it if she would try to conduct a cost-benefit analysis comparing the cost and benefit of the cost and benefit to the rehabilitation programs that they have at one prison on dealing with child sexual offenders.

Mr. GREEN. And to that end, let me say, in order to ensure a full record and out of consideration of the important issues that have been testified to today, the record will be left open for additional submissions for 7 days. Also, any written questions that a Member wants to submit, should be submitted within that same 7-day period.

This concludes the legislative hearing on H.R. 2318, the "Protection Against Sexual Exploitation of Children Act of 2005," and also H.R. 2388, the "Prevention and Deterrence of Crimes Against Children Act of 2005."

Again, I thank everyone for their cooperation and attention, and the Subcommittee stands adjourned.

[Whereupon, at 3:28 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF CONGRESSMAN ROBERT C. "BOBBY" SCOTT, RANKING MEMBER SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY HEARING

Thank you, Mr. Chairman. As usual, every two years, we pontificate about crimes against children and dramatically increasing federal sentences. We are doing so despite the fact that crimes against children prosecuted in federal court constitute a very small percentage of such crimes and represent none of the horrendous crimes against children that have been in the media in recent months. There is no evidence that federal prosecutions of crimes against children has a significant impact on these horrendous state crimes against children, nor that either state or federal laws for crimes against children are too lenient. Indeed, we recently dramatically increased federal sentences for crimes against children in the PROTECT Act. We have not had time for enough cases to be sentenced under these increases to even evaluate their effect, if any, before we are back again proposes more draconian increases in federal sentences.

We are moving forward in dramatically increasing federal sentences in the worst possible way - through greatly increased mandatory minimum sentences. Mandatory minimum sentences only affect those whose offense or role in an offense warrant a less severe sentence, since those who warrant more already get more under the sentencing guidelines. I call attention to the recommendations released today by a group of bi-partisan, philosophically diverse scholars and high level current and former public policy makers, led by former Attorney General Edwin Meese and former Deputy Attorney General Phillip Heymann, indicating that sentencing policies should provide for proportionality and sufficient flexibility to reflect differences in role and background of offenders.

And these increases are occurring at a time when the evidence from the Department of Justice is that sex offenders recidivate at a lower rate than other offenders, in general, with a 5% recidivism rate for a new sex offense and a 3.3% rate for child molesters recidivating with a new offense of that nature. I will ask that this study and 4 others from other sources, be made a part of the record. Also, the evidence reveals that this low recidivism rate is cut in half with sexual abuse treatment. While any recidivism is bad, 5% and 3% rates with the prospect of being cut in half certainly does not suggest the situation is hopeless. Yet, there is nothing in this bill to ensure treatment for those offenders who seek treatment or who are already serving sentences and will be leaving prison soon. The bills before us suggest that it is better to wait for the victimization to occur and then apply draconian penalties.

One of our speakers at an earlier hearing on this subject, Criminologist and professor of Law Frank Zimmer of the Berkeley School of Law, pointed out that treating all offenses and offenders the same and mandating life sentences for repeat offenders, regardless of the crime, may actually endanger more children than it helps. He expressed the concern that putting an offender in the position of concluding that once a crime is completed or attempted, he is facing a minimum of a life sentence, will likely cause him to conclude that his best chance of avoiding detection and a witness against him is to kill the victim. Certainly this question should be considered against the conventional justification for harsh mandatory minimums of forcing co-defendants to testify against their partners in crime, since these crimes are more often carried out by lone offenders.

We also know that greatly increasing federal sentences will disproportionally affect Native Americans simply because they are more likely to fall under federal jurisdiction, whereas those who are committing the horrendous crimes giving rise to this federal sentencing frenzy actually fall under state court jurisdiction. And we are doing so with no consultation with Native American tribal authorities as we have in the past when we have dramatically increased sentencing, such as we did with

the "3 strikes you're out" law and the death penalties in the 1994 Crime Bill. There is certainly no evidence that Native Americans have asked that offenders on tribal lands be treated more harshly than offenders in the state courts right next to them. It simply appears that having politicians able to prove how tough they are on crime in an election year is more important than plain fairness to Native Americans and respect for their tribal sovereignty.

Finally the provisions of the bills before us exacerbate an already horrendous federal sentencing scheme. For example, under PROTECT Act provisions, we provided a 5-year mandatory sentence to transport a minor, or to travel, across state or international lines, to commit any criminal sex offense involving a minor. This bill increases that mandatory minimum sentence to 30 years. That means that an 18 year old high school student who transports or causes a minor to travel, from DC to Virginia to engage in consensual sex, thereby committing the crime of contributing to the delinquency of a minor, would be subject to a 30-year mandatory minimum sentence. One can only imagine how many times this law is violated in this area during prom season. What possible sense does it make to mandate 30 years for this type case?

Under H.R. 2388, it appears that mere fist fights between teenagers, if one is under 18 and is even slightly injured, require a mandatory minimum sentence, even if the younger teen is the instigator.

And the provision limiting habeas jurisdiction will only increase litigation and delays and increase the risk that innocent people will be put to death. Several of the 159 people who were exonerated of their crimes over the past 10 years, including some on death row, received that exoneration after more than 20 years.

So, Mr. Chairman, I look forward to the testimony and enlightenment of our witnesses on the bills before us. Thank you.

PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

The problem of violence against children and sexual exploitation of children has been highlighted by recent events involving brutal acts of violence against children. Recent examples include: (1) the abduction, rape and killing of 9 year old Jessica Lunford (who was buried alive); (2) the slaying of 13 year old Sarah Lunde, both of whom were killed in Florida by career criminals and sex offenders. In Philadelphia, four defendants were charged with the stabbing and killing of a 15 year old girl, who they then threw into the Schuykill River. All of these tragic events have underscored the continuing epidemic of violence against children.

In addition, the sexual victimization of children is overwhelming in magnitude and largely unrecognized and underreported. Statistics show that 1 in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent of the incidents are reported to authorities. This problem is exacerbated by the number of children who are solicited online - according to the Department of Justice 1 in 5 children (10 to 17 years old) receive unwanted sexual solicitations online.

Department of Justice statistics underscore the staggering toll that violence takes on our youth (DOJ national crime surveys do not account for victims under the age of 12, but even for 12 to 18 year olds, the figures are alarming). Data from 12 States during the period of 1991 to 1996 show that 67 percent of the all victims of sexual assaults were juveniles (under the age of 18), and 34 percent were under the age of 12. One of every seven victims of sexual assault was under the age of 6.

While I strongly support the idea of protecting our children for being sexually exploited, I am not in favor of mandatory minimums. Both H.R. 2318 and H.R. 2388 impose unnecessary mandatory minimals and for this reason I can not support either bill.

CENTER FOR SEX OFFENDER MANAGEMENT, "RECIDIVISM OF SEX OFFENDERS," MAY 2001, AVAILABLE AR HTTP://WWW.CSOM.ORG/PUBS/RECIDSEXOF.PDF

Center For Sex Offender Management

Recidivism of Sex Offenders

May 2001

Introduction

The criminal justice system manages most convicted sex offenders with some combination of incarceration, community supervision, and specialized treatment (Knopp, Freeman-Longo, and Stevenson, 1992). While the likelihood and length of incarceration for sex offenders has increased in recent years,[1] the majority are released at some point on probation or parole (either immediately following sentencing or after a period of incarceration in prison or jail). About 60 percent of all sex offenders managed by the U.S. correctional system are under some form of conditional supervision in the community (Greenfeld, 1997).

While any offender's subsequent reoffending is of public concern, the prevention of sexual violence is particularly important, given the irrefutable harm that these offenses cause victims and the fear they generate in the community. With this in mind, practitioners making decisions about how to manage sex offenders must ask themselves the following questions:

- What is the likelihood that a specific offender will commit subsequent sex crimes?
- Under what circumstances is this offender least likely to reoffend?
- What can be done to reduce the likelihood of reoffense?

[1] Since 1980, the number of imprisoned sex offenders has grown by more than 7 percent per year (Greenfeld, 1997). In 1994, nearly one in ten state prisoners were incarcerated for committing a sex offense (Greenfeld, 1997).

The study of recidivism—the commission of a subsequent offense—is important to the criminal justice response to sexual offending. If sex offenders commit a wide variety of offenses, responses from both a public policy and treatment perspective may be no different than is appropriate for the general criminal population (Quinsey, 1984). However, a more specialized response is appropriate if sex offenders tend to commit principally sex offenses.

The purpose of this paper is to examine the critical issues in defining recidivism and provide a synthesis of the current research on the reoffense rates of sex offenders. The following sections summarize and discuss research findings on sex offenders, factors and conditions that appear to be associated with reduced sexual offending, and the implications that these findings have for sex offender management. Although studies on juvenile sex offender response to treatment exist, the vast majority of research has concentrated on adult males. Thus, this paper focuses primarily on adult male sex offenders.

Issues in the Measurement of Sex Offender Recidivism

Research on recidivism can be used to inform intervention strategies with sex offenders. However, the way in which recidivism is measured can have a marked difference in study results and applicability to the day-to-day management of this criminal population. The following section explores variables such as the population(s) of sex offenders studied, the criteria used to

Established in June 1997, CSOM's goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. A collaborative effort of the Office of Justice Programs, the National Institute of Corrections, and the State Justice Institute, CSOM is administered by the Center for Effective Public Policy and the American Probation and Parole Association.

measure recidivism, the types of offenses studied, and the length of time a study follows a sample. Practitioners must understand how these and other study variables can affect conclusions about sex offender recidivism, as well as decisions regarding individual cases.

Defining the Sex Offender Population Studied

Sex offenders are a highly heterogeneous mixture of individuals who have committed violent sexual assaults on strangers, offenders who have had inappropriate sexual contact with family members, individuals who have molested children, and those who have engaged in a wide range of other inappropriate and criminal sexual behaviors. If we group various types of offenders and offenses into an ostensibly homogenous category of "sex offenders," distinctions in the factors related to recidivism will be masked and differential results obtained from studies of reoffense patterns. Thus, one of the first issues to consider in reviewing any study of sex offender recidivism is how "sex offender" is defined; who is included in this category, and, as important, who is not.

Sex offenders are a highly heterogeneous mixture of individuals who have committed violent sexual assaults on strangers, offenders who have had inappropriate sexual contact with family members, individuals who have molested children, and those who have engaged in a wide range of other inappropriate and criminal sexual behaviors.

Defining Recidivism

Although there is common acceptance that recidivism is the commission of a subsequent offense, there are many operational definitions for this term. For example, recidivism may occur when there is a new arrest, new conviction, or new commitment to custody. Each of these criteria is a valid measure of recidivism, but each measures something different. While the differences may appear minor, they will lead to widely varied outcomes.

- *Subsequent Arrest*—Using new charges or arrests as the determining criteria for "recidivism" will result in a higher recidivism rate, because many individuals are arrested but for a variety of reasons, are not convicted.
- *Subsequent Conviction*—Measuring new convictions is a more restrictive criterion than new arrests, resulting in a lower recidivism rate. Generally, more confidence is placed in reconviction, since this involves a process through which the individual has been found guilty. However, given the process involved in reporting, prosecution, and conviction in sex offense cases, a number of researchers favor the use of more inclusive criteria (e.g., arrests or charges).
- *Subsequent Incarceration*—Some studies utilize return to prison as the criterion for determining recidivism. There are two ways in which individuals may be returned to a correctional institution. One is through the commission of a new offense and return to prison on a new sentence and the other is through a technical violation of parole. The former is by far the more restrictive criterion, since an offender has to have been found guilty and sentenced to prison. Technical violations typically involve violations of conditions of release, such as being alone with minor children or consuming alcohol. Thus, the use of this definition will result in the inclusion of individuals who may not have committed a subsequent criminal offense as recidivists. When one encounters the use of return to prison as the criterion for recidivism, it is imperative to determine if this includes those with new convictions, technical violations, or both.

Underestimating Recidivism

Reliance on measures of recidivism as reflected through official criminal justice system data obviously omit offenses that are not cleared through an arrest or those that are never reported to the police. This distinction is critical in the measurement of recidivism of sex offenders. For a variety of reasons, sexual assault is a vastly underreported crime. The National Crime Victimization Surveys (Bureau of Justice Statistics) conducted in 1994, 1995, and 1998 indicate that only 32 percent (one out of three) of sexual assaults against persons 12 or older are reported to law enforcement. A three-year longitudinal study (Kilpatrick, Edmunds, and Seymour, 1992) of 4,008 adult women found that 84 percent of respondents who identified themselves as rape victims did not report the crime to authorities. (No current studies indicate the rate of reporting for child sexual assault, although it is generally assumed that these assaults are equally underreported.) Many victims are afraid to report sexual assault to the police. They may fear that reporting will lead to the following:

Several studies support the hypothesis that sexual offense recidivism rates are underreported.

- further victimization by the offender;
- other forms of retribution by the offender or by the offender's friends or family;
- arrest, prosecution, and incarceration of an offender who may be a family member or friend and on whom the victim or others may depend;
- others finding out about the sexual assault (including friends, family members, media, and the public);
- not being believed; and
- being traumatized by the criminal justice system response.

These factors are compounded by the shame and guilt experienced by sexual assault victims, and, for many, a desire to put a tragic experience behind them. Incest victims who have experienced criminal justice involvement are particularly reluctant to report new incest crimes because of the disruption caused to their family. This complex of reasons makes it unlikely that reporting figures will change dramatically in the near future and bring recidivism rates closer to actual reoffense rates.

Several studies support the hypothesis that sexual offense recidivism rates are underreported. Marshall and Barbaree (1990) compared official records of a sample of sex offenders with "unofficial" sources of data. They found that the number of subsequent sex offenses revealed through unofficial sources was 2.4 times higher than the number that was recorded in official reports. In addition, research using information generated through polygraph examinations on a sample of imprisoned sex offenders with fewer than two known victims (on average), found that these offenders actually had an average of 110 victims and 318 offenses (Ahlmeyer, Heil, McKee, and English, 2000). Another polygraph study found a sample of imprisoned sex offenders to have extensive criminal histories, committing sex crimes for an average of 16 years before being caught (Ahlmeyer, English, and Simons, 1999).

Offense Type

For the purpose of their studies, researchers must determine what specific behaviors qualify sex offenders as recidivists. They must decide if only sex offenses will be considered, or if the commission of any crime is sufficient to be classified as a recidivating offense. If recidivism is determined only through the commission of a subsequent sex offense, researchers must consider if this includes felonies and misdemeanors. Answers to these fundamental questions will influence the level of observed recidivism in each study.

Length of Follow-Up

Studies often vary in the length of time they "follow-up" on a group of sex offenders in the community. There are two issues of concern with follow-up periods. Ideally, all individuals in any given study should have the same length of time "at risk"—time at large in the community—and, thus, equal opportunity to commit subsequent offenses. In practice, however, this almost never happens. For instance, in a 10-year follow-up study, some subjects will have been in the community for eight, nine, or 10 years while others may have been out for only two years. This problem is addressed by using survival analysis, a methodology that takes into account the amount of time every subject has been in the community, rather than a simple percentage.

Additionally, when researchers compare results across studies, similar time at risk should be used in each of the studies. Obviously, the longer the follow-up period, the more likely reoffense will occur and a higher rate of recidivism will be observed. Many researchers believe that recidivism studies should ideally include a follow-up period of five years or more.

Effect on Recidivism Outcomes

What are we to make of these caveats regarding recidivism—do they render recidivism a meaningless concept? On the contrary, from a public policy perspective, recidivism is an invaluable measure of the performance of various sanctions and interventions with criminal offenders. However, there is often much ambiguity surrounding what appears to be a simple statement of outcomes regarding recidivism. In comparing the results of various recidivism studies, one should not lose sight of the issues of comparable study samples, criteria for recidivism, the length of the follow-up period, information sources utilized to estimate risk of reoffense, and the likelihood that recidivism rates are underestimated.

Factors Associated with Sex Offender Recidivism

In many instances, policies and procedures for the management of sex offenders have been driven by public outcry over highly publicized sex offenses. However, criminal justice practitioners must avoid reactionary responses that are based on public fear of this population. Instead, they must strive to make management decisions that are based on the careful assessment of the likelihood of recidivism. The identification of risk factors that may be associated with recidivism of sex offenders can aid practitioners in devising management strategies that best protect the community and reduce the likelihood of further victimization.

It is crucial to keep in mind, however, that there are no absolutes or "magic bullets" in the process of identifying these risk factors. Rather, this process is an exercise in isolating factors that *tend* to be associated with specific behaviors. While this association reflects a likelihood, it does not indicate that all individuals who possess certain characteristics will behave in a certain manner. Some sex offenders will inevitably commit subsequent sex offenses, in spite of our best efforts to identify risk factors and institute management and treatment processes aimed at minimizing these conditions. Likewise, not all sex offenders who have reoffense risk characteristics will recidivate.

The identification of risk factors that may be associated with recidivism of sex offenders can aid practitioners in devising management strategies that best protect the community and reduce the likelihood of further victimization.

This section explores several important aspects in the study of recidivism and identification of risk factors associated with sex offenders' commission of subsequent crimes.

Application of Studies of General Criminal Recidivism

The identification of factors associated with criminal recidivism has been an area of significant research over the past 20 years. This work has fueled the development of countless policies and instruments to guide sentencing and release decisions throughout the criminal justice system. If one assumes that sex offenders are similar to other criminal offenders, then the preponderance of research should assist practitioners in identifying risk factors in this population as well. Gottfredson and Hirschi (1990) argued that there is little specialization among criminal offenders. In this view, robbers also commit burglary and those who commit assaults also may be drug offenders. The extensive research on recidivism among the general criminal population has identified a set of factors that are consistently associated with subsequent criminal behavior. These factors include being young, having an unstable employment history, abusing alcohol and drugs, holding pro-criminal attitudes, and associating with other criminals (Gendreau, Little, and Goggin, 1996).

However, there is some evidence that suggests that sexual offending may differ from other criminal behavior (Hanson and Bussiere, 1998). Although sex offenders may commit other types of offenses, other types of offenders rarely commit sex offenses (Bonta and Hanson, 1995; Hanson, Steffy, and Gauthier, 1995). If this is the case, then a different set of factors may be associated with the recidivism of sex offenders than for the general offender population. This statement is reinforced by the finding that many persistent sex offenders receive low risk scores on instruments designed to predict recidivism among the general offender population (Bonta and Hanson, 1995).

Identification of Static and Dynamic Factors

Characteristics of offenders can be grouped into two general categories. First, there are historical characteristics, such as age, prior offense history, and age at first sex offense arrest or conviction. Because these items typically cannot be altered, they are often referred to as *static* factors. Second are those characteristics, circumstances, and attitudes that can change throughout one's life, generally referred to as *dynamic* factors. Examples of dynamic characteristics include drug or alcohol use, poor attitude (e.g., low remorse and victim blaming), and intimacy problems. The identification of dynamic factors that are associated with reduced recidivism holds particular promise in effectively managing sex offenders because the strengthening of these factors can be encouraged through various supervision and treatment strategies.

Dynamic factors can further be divided into *stable* and *acute* categories (Hanson and Harris, 1998). *Stable dynamic factors* are those characteristics that can change over time, but are relatively lasting qualities. Examples of these characteristics include deviant sexual preferences or alcohol or drug abuse. On the other hand, Hanson and Harris (1998) suggest that *acute dynamic factors* are conditions that can change over a short period of time. Examples include sexual arousal or intoxication that may immediately precede a reoffense.

Understanding Base Rates

Understanding the concept of "base rates" is also essential when studying sex offender recidivism. A base rate is simply the overall rate of recidivism of an entire group of offenders. If the base rate for an entire group is known (e.g., 40 percent), then, without other information, practitioners

would predict that any individual in this group has approximately a 40 percent chance of recidivating. If static or dynamic factors related to recidivism are identified, error rates can be improved and this information can be used to make more accurate assessments of the likelihood of rearrest or reconviction. However, if the base rate is at one extreme or the other, additional information may not significantly improve accuracy. For instance, if the base rate were 10 percent, then practitioners would predict that 90 percent of the individuals in this group would not be arrested for a new crime. The error rate would be difficult to improve, regardless of what additional information may be available about individual offenders. In other words, if we simply predicted that no one would be rearrested, we would be wrong only 10 percent of the time. It is quite difficult to make accurate individual predictions in such extreme situations.

A base rate is simply the overall rate of recidivism of an entire group of offenders.

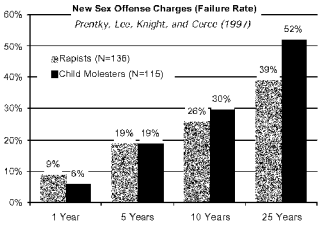
What has come to be termed as "the low base rate problem" has traditionally plagued sex offender recidivism studies (Quinsey, 1980). As noted previously, lack of reporting, or underreporting, is higher in crimes of sexual violence than general criminal violence and may contribute to the low base rate problem. The following studies have found low base rates for sex offender populations:

- Hanson and Bussiere (1998) reported an overall recidivism rate of 13 percent.
- Grumfeld and Noreik (1986) found a 10 percent recidivism rate for rapists.
- Gibbens, Soothill, and Way (1978) reported a 4 percent recidivism rate for incest offenders.

Samples of sex offenders used in some studies may have higher base rates of reoffense than other studies. Quinsey (1984) found this to be the case in his summary of sex offender recidivism studies, as have many other authors who have attempted to synthesize this research. There is wide variation in results, in both the amount of measured recidivism and the factors associated with these outcomes. To a large degree, differences can be explained by variations in the sample of sex offenders involved in the studies. Although this is a simple and somewhat obvious point, this basic fact is "responsible for the disagreements and much of the confusion in the literature" on the recidivism of sex offenders (Quinsey, 1984).

Furthermore, results from some studies indicate that there may be higher base rates among certain categories of sex offenders (Quinsey, Laumiere, Rice, and Harris, 1995; Quinsey, Rice, and Harris, 1995). For example, in their follow-up study of sex offenders released from a psychiatric facility, Quinsey, Rice, and Harris (1995) found that rapists had a considerably higher rate of rearrest/reconviction than did child molesters.

Conversely, Prentky, Lee, Knight, and Cerce (1997) found that over a 25-year period, child molesters had higher rates of reoffense than rapists. In this study, recidivism was operationalized as a failure rate and calculated as the proportion of individuals who were rearrested using survival analysis (which takes into account the amount of time each offender has been at risk in the community). Results show that over longer



periods of time, child molesters have a higher failure rate—thus, a higher rate of rearrest—than rapists (52 percent versus 39 percent over 25 years).

Making Sense of Contradictory Findings

Studies on sex offender recidivism vary widely in the quality and rigor of the research design, the sample of sex offenders and behaviors included in the study, the length of follow-up, and the criteria for success or failure. Due to these and other differences, there is often a perceived lack of consistency across studies of sex offender recidivism. For example, there have been varied results regarding whether the age of the offender at the time of institutional release is associated with subsequent criminal sexual behavior. While Beck and Shipley (1987) found that there was no relationship between these variables, Clark and Crum (1985) and Marshall and Barbaree (1990) suggested that younger offenders were more likely to commit future crimes. However, Grunfeld and Noreik (1986) argued that older sex offenders are more likely to have a more developed fixation and thus are more likely to reoffend. A study by the Delaware Statistical Analysis Center (1984) found that those serving longer periods of incarceration had a lower recidivism rate—while Roundtree, Edwards, and Parker (1984) found just the opposite.

To a large degree, the variation across individual studies can be explained by the differences in study populations. Schwartz and Cellini (1997) indicated that the use of a heterogeneous group of sex offenders in the analysis of recidivism might be responsible for this confusion:

> *"Mixing an antisocial rapist with a socially skilled fixated pedophile with a developmentally disabled exhibitionist may indeed produce a hodgepodge of results."*

Similarly, West, Roy, and Nichols (1978) noted that recidivism rates in studies of sex offenders vary by the characteristics of the offender sample. Such a situation makes the results from follow-up studies of undifferentiated sex offenders difficult to interpret (Quinsey, 1998).

One method of dealing with this problem is to examine recidivism studies of specific types of sex offenders. This approach is warranted, given the established base rate differences across types of sex offenders.[2] Marshall and Barbaree (1990) found in their review of studies that the recidivism rate for specific types of offenders varied:

- Incest offenders ranged between 4 and 10 percent.
- Rapists ranged between 7 and 35 percent.
- Child molesters with female victims ranged between 10 and 29 percent.
- Child molesters with male victims ranged between 13 and 40 percent.
- Exhibitionists ranged between 41 and 71 percent.

In summary, practitioners should recognize several key points related to research studies on sex offender recidivism. First, since sexual offending may differ from other criminal behavior, research specific to sex offender recidivism is needed to inform interventions with sex offenders. Second, researchers seek to identify static and dynamic factors associated with recidivism of sex offenders. In particular, the identification of, and support of, "positive" dynamic factors may help reduce the risk of

[2] Recent research suggests that many offenders have histories of assaulting across genders and age groups, rather than against only one specific victim population. Researchers in a 1999 study (Ahlmeyer, English, and Simons) found that, through polygraph examinations, the number offenders who "crossed over" age groups of victims is extremely high. The study revealed that before polygraph examinations, 6 percent of a sample of incarcerated sex offenders had both child and adult victims, compared to 71 percent after polygraph exams. Thus, caution must be taken in placing sex offenders in exclusive categories.

recidivism. Third, although research studies on recidivism of sex offenders often appear to have contradictory findings, variations in outcomes can typically be explained by the differences in the study populations. Finally, since base rate differences have been identified across types of sex offenses, it makes sense to study recidivism of sex offenders by offense type.

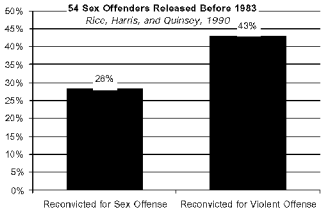
Review of Studies

The following sections present findings from various studies of the recidivism of sex offenders within offense categories of rapists and child molesters.[3] Overall recidivism findings are presented, along with results concerning the factors and characteristics associated with recidivism.

Rapists

There has been considerable research on the recidivism of rapists across various institutional and community-based settings and with varying periods of follow-up. A follow-up study of sex offenders released from a maximum-security psychiatric institution in California found that 10 of the 57 rapists (19 percent) studied were reconvicted of a rape within five years, most of which occurred during the first year of the follow-up period (Sturgeon and Taylor, 1980). These same authors reported that among 68 sex offenders not found to be mentally disordered who were paroled in 1973, 19 (28 percent) were reconvicted for a sex offense within five years.

In a study of 231 sex offenders placed on probation in Philadelphia between 1966 and 1969, 11 percent were rearrested for a sex offense and 57 percent were rearrested for any offense (Romero and Williams, 1985). Rice, Harris, and Quinsey (1990) conducted a more recent study of 54 rapists who were released from prison before 1983. After four years, 28 percent had a reconviction for a sex offense and 43 percent had a conviction for a violent offense.



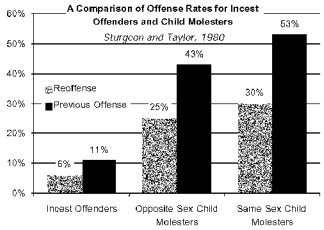
In their summary of the research on the recidivism of rapists, Quinsey, Lalumiere, Rice, and Harris (1995) noted that the significant variation in recidivism across studies of rapists is likely due to differences in the types of offenders involved (e.g., institutionalized offenders, mentally disordered offenders, or probationers) or in the length of the follow-up period. They further noted that throughout these studies, the proportion of offenders who had a prior sex offense was similar to the proportion that had a subsequent sex offense. In addition, the rates of reoffending decreased with the seriousness of the offense. That is, the occurrence of officially recorded recidivism for a nonviolent nonsexual offense was the most likely and the incidence of violent sex offenses was the least likely.

Child Molesters

Studies of the recidivism of child molesters reveal specific patterns of reoffending across victim types and offender characteristics. A study involving mentally disordered sex offenders compared same-sex and opposite-sex child molesters and incest offenders. Results of this five-year

[3] The studies included in this paper do not represent a comprehensive overview of the research on sex offender recidivism. The studies included represent a sampling of available research on these populations and are drawn from to highlight key points.

follow-up study found that same-sex child molesters had the highest rate of previous sex offenses (53 percent), as well as the highest reconviction rate for sex crimes (30 percent). In comparison, 43 percent of opposite-sex child molesters had prior sex offenses and a reconviction rate for sex crimes of 25 percent, and incest offenders had prior convictions at a rate of 11 percent and a reconviction rate of 6 percent (Sturgeon and Taylor, 1980). Interestingly, the recidivism rate for same-sex child molesters for other crimes against persons was also quite high, with 26 percent having reconvictions for these offenses. Similarly, a number of other studies have found that child molesters have relatively high rates of nonsexual offenses (Quinsey, 1984).



Several studies have involved follow-up of extra-familial child molesters. One such study (Barbaree and Marshall, 1988) included both official and unofficial measures of recidivism (reconviction, new charge, or unofficial record). Using both types of measures, researchers found that 43 percent of these offenders (convicted of sex offenses involving victims under the age of 16 years) sexually reoffended within a four-year follow-up period. Those who had a subsequent sex offense differed from those who did not by their use of force in the offense, the number of previous sexual assault victims, and their score on a sexual index that included a phallometric assessment.[4] In contrast to other studies of child molesters, this study found no difference in recidivism between opposite-sex and same-sex offenders.

In a more recent study (Rice, Quinsey, and Harris, 1991), extra-familial child molesters were followed for an average of six years. During that time, 31 percent had a reconviction for a second sexual offense. Those who committed subsequent sex offenses were more likely to have been married, have a personality disorder, and have a more serious sex offense history than those who did not recidivate sexually. In addition, recidivists were more likely to have deviant phallometrically measured sexual preferences (Quinsey, Lalumiere, Rice, and Harris, 1995).

Those who committed subsequent sex offenses were more likely to have been married, have a personality disorder, and have a more serious sex offense history than those who did not recidivate sexually.

In a study utilizing a 24-year follow-up period, victim differences (e.g., gender of the victim) were not found to be associated with the recidivism (defined as those charged with a subsequent sexual offense) of child molesters. This study of 111 extra-familial child molesters found that the number of prior sex offenses and sexual preoccupation with children were related to sex offense recidivism (Prentky, Knight, and Lee, 1997). However, the authors of this study noted that the finding of no victim differences may have been due to the fact that the offenders in this study had an average of three prior sex offenses before their prison release. Thus, this sample may have had a higher base rate of reoffense than child molesters from the general prison population.

[4] Also referred to as plethysmography: a device used to measure sexual arousal (erectile response) to both appropriate (age appropriate and consenting) and deviant sexual stimulus material.

Probationers

Research reviewed to this point has almost exclusively focused upon institutional or prison populations and therefore, presumably a more serious offender population. An important recent study concerns recidivism among a group of sex offenders placed on probation (Kruttschnitt, Uggen, and Shelton, 2000). Although the factors that were related to various types of reoffending were somewhat similar with regard to subsequent sex offenses, the only factor associated with reducing reoffending in this study was the combination of stable employment and sex offender treatment. Such findings emphasize the importance of both formal and informal social controls in holding offenders accountable for their criminal behavior. The findings also provide support for treatment services that focus on coping with inappropriate sexual impulses, fantasies, and behaviors through specific sex offender treatment.

Synthesis of Recidivism Studies

There have been several notable efforts at conducting a qualitative or narrative synthesis of studies of the recidivism of sex offenders (Quinsey, 1984; Furby, Weinrott, and Blackshaw, 1989; Quinsey, Lalumiere, Rice, and Harris, 1995; Schwartz and Cellini, 1997). Such an approach attempts to summarize findings across various studies by comparing results and searching for patterns or trends. Another technique, known as meta-analysis, relies upon a quantitative approach to synthesizing research results from similar studies. Meta-analysis involves a statistically sophisticated approach to estimating the combined effects of various studies that meet certain methodological criteria and is far from a simple lumping together of disparate studies to obtain average effects.

Meta-analyses have certain advantages over more traditional summaries in that through the inclusion of multiple studies, a reliable estimation of effects can be obtained that is generalizable across studies and samples. As noted earlier, the results obtained from individual studies of sex offenders are heavily influenced by the sample of offenders included in the research. Therefore, there is much to be gained through the use of meta-analysis in summarizing sex offender recidivism (see Quinsey, Harris, Rice, and Lalumiere, 1993).

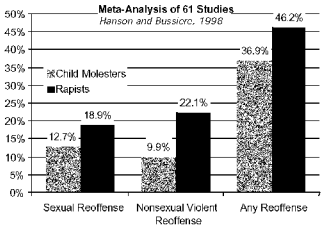
As has also previously been observed, it is imperative to distinguish between sex offense recidivism and the commission of other subsequent criminal behavior, as well as the type of current sex offense. One of the most widely recognized meta-analyses of sexual offender recidivism (Hanson and Bussiere, 1998) was structured around these dimensions.

Meta-Analysis Studies

In Hanson and Bussiere's meta-analysis, 61 research studies met the criteria for inclusion, with all utilizing a longitudinal design and a comparison group. Across all studies, the average sex offense recidivism rate (as evidenced by rearrest or reconviction) was 18.9 percent for rapists and 12.7 percent for child molesters over a four to five year period. The rate of recidivism for nonsexual violent offenses was 22.1 percent for rapists and 9.9 percent for child molesters, while the recidivism rate for any reoffense for rapists was 46.2 percent and 36.9 percent for child molesters over a four to five year period. However, as has been noted previously and as these authors warn, one should be cautious in the interpretation of the data as these studies involved a range of methods and follow-up periods.

Perhaps the greatest advantage of the meta-analysis approach is in determining the relative importance of various factors across

studies. Using this technique, one can estimate how strongly certain offender and offense characteristics are related to recidivism because they show up consistently across different studies.



In the 1998 Hanson and Bussiere study, these characteristics were grouped into demographics, criminal lifestyle, sexual criminal history, sexual deviancy, and various clinical characteristics. Regarding demographics, being young and single were consistently found to be related, albeit weakly, to subsequent sexual offending. With regard to sex offense history, sex offenders were more likely to recidivate if they had prior sex offenses, male victims, victimized strangers or extra-familial victims, begun sexually offending at an early age, and/or engaged in diverse sex crimes.

Sexual interest in children was the strongest predictor of recidivism across all studies.

The factors that were found through this analysis to have the strongest relationship with sexual offense recidivism were those in the sexual deviance category: sexual interest in children, deviant sexual preferences, and sexual interest in boys. Failure to complete treatment was also found to be a moderate predictor of sexual recidivism. Having general psychological problems was not related to sexual offense recidivism, but having a personality disorder was related. Being sexually abused as a child was not related to repeat sexual offending.

Studies that Focus on Dynamic Factors

As noted earlier, the detection of dynamic factors that are associated with sexual offending behavior is significant, because these characteristics can serve as the focus of intervention. However, many recidivism studies (including most of those previously discussed) have focused almost exclusively on static factors, since they are most readily available from case files. Static, or historical, factors help us to understand etiology and permit predictions of relative likelihood of reoffending. Dynamic factors take into account changes over time that adjust static risk and informs us about the types of interventions that are most useful in lowering risk.

In a study focused on dynamic factors, Hanson and Harris (1998) collected data on over 400 sex offenders under community supervision, approximately one-half of whom were recidivists.[5] The recidivists had committed a new sexual offense while on community supervision during a five-year period (1992-1997). A number of significant differences in stable dynamic factors were discovered between recidivists and non-recidivists. Those who committed subsequent sex offenses were more likely to be unemployed (more so for rapists) and have substance abuse problems. The non-recidivists tended to have positive social influences and were more likely to have intimacy problems. There also were considerable attitudinal differences between the recidivists and non-recidivists. Those who committed subsequent sex offenses were less likely to show remorse or concern for the victim. In addition, recidivists tended to see themselves as being at little risk for

[5] For the purposes of this study, recidivism was defined as a conviction or charge for a new sexual offense, a non-sexual criminal charge that appeared to be sexually motivated, a violation of supervision conditions for sexual reasons, and self-disclosure by the offender.

committing new offenses, were less likely to avoid high-risk situations and were more likely to report engaging in deviant sexual activities. In general, the recidivists were described as having more chaotic, antisocial lifestyles compared to the non-recidivists (Hanson and Harris, 1998).

The researchers concluded that sex offenders are:

"...at most risk of reoffending when they become sexually preoccupied, have access to victims, fail to acknowledge their recidivism risk, and show sharp mood increases, particularly anger."

In sum, because meta-analysis findings can be generalized across studies and samples, they offer the most reliable estimation of factors associated with the recidivism of sex offenders. Most meta-analysis studies, however, have focused on static factors. It is critical that more research be conducted to identify dynamic factors associated with sex offender recidivism. These factors will assuredly provide a foundation for developing more effective intervention strategies for sex offenders.

These [dynamic] factors will assuredly provide a foundation for developing more effective intervention strategies for sex offenders.

Characteristics* of recidivists include:

- multiple victims;
- diverse victims;
- stranger victims;
- juvenile sexual offenses;
- multiple paraphilias;
- history of abuse and neglect;
- long-term separations from parents;
- negative relationships with their mothers;
- diagnosed antisocial personality disorder;
- unemployed;
- substance abuse problems; and
- chaotic, antisocial lifestyles.

*It should be noted that these are not necessarily risk factors.

Impact of Interventions on Sex Offender Recidivism

Although not the primary purpose of this document, a few words regarding sex offender treatment and supervision are in order. Factors that are linked to sex offender recidivism are of direct relevance for sex offender management. If the characteristics of offenders most likely to recidivate can be isolated, they can serve to identify those who have the highest likelihood of committing subsequent sex offenses. They can also help identify offender populations that are appropriate for participation in treatment and specialized supervision and what the components of those interventions must include.

Treatment

When assessing the efficacy of sex offender treatment, it is vital to recognize that the delivery of treatment occurs within different settings. Those offenders who receive treatment in a community setting are generally assumed to be a different population than those who are treated in institutions. Thus, base rates of recidivating behavior will differ for these groups prior to treatment participation.

Sex offender treatment typically consists of three principal approaches:

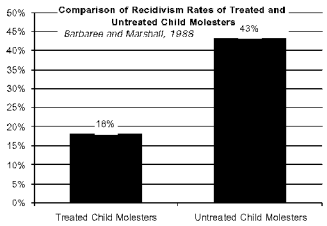
- the *cognitive-behavioral approach*, which emphasizes changing patterns of thinking that are related to sexual offending and changing deviant patterns of arousal;
- the *psycho-educational approach*, which stresses increasing the offender's concern for the victim and recognition of responsibility for their offense; and
- the *pharmacological approach*, which is based upon the use of medication to reduce sexual arousal.

In practice, these approaches are not mutually exclusive and treatment programs

are increasingly utilizing a combination of these techniques.

Although there has been a considerable amount of writing on the relative merits of these approaches and about sex offender treatment in general, there is a paucity of evaluative research regarding treatment outcomes. There have been very few studies of sufficient rigor (e.g., employing an experimental or quasi-experimental design) to compare the effects of various treatment approaches or comparing treated to untreated sex offenders (Quinsey, 1998).

Using less rigorous evaluation strategies, several studies have evaluated the outcomes of offenders receiving sex offender treatment, compared to a group of offenders not receiving treatment. The results of these studies are mixed. For example, Barbaree and Marshall (1988) found a substantial difference in the recidivism rates of extra-familial child molesters who participated in a community based cognitive-behavioral treatment program, compared to a group of similar offenders who did not receive treatment. Those who participated in treatment had a recidivism rate of 18 percent over a four-year follow-up period, compared to a 43 percent recidivism rate for the nonparticipating group of offenders.



However, no positive effect of treatment was found in several other quasi-experiments involving an institutional behavioral program (Rice, Quinsey, and Harris, 1991) or a milieu therapy approach in an institutional setting (Hanson, Steffy, and Gauthier, 1993).

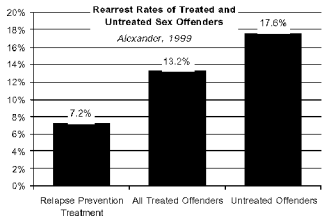
On the other hand, an evaluation of a cognitive-behavioral program that employs an experimental design presented preliminary findings that suggest that participation in this form of treatment may have a modest (though not statistically significant) effect in reducing recidivism. After a follow-up period of 34 months, 8 percent of the offenders in the treatment program had a subsequent sex offense, compared with 13 percent of the control group, who had also volunteered for the program, but were not selected through the random assignment process (Marques, Day, Nelson, and West, 1994).

Some studies present optimistic conclusions about the effectiveness of programs that are empirically based, offense-specific, and comprehensive. A 1995 meta-analysis study on sex offender treatment outcome studies found a small, yet significant, treatment effect (Hall, 1995). This meta-analysis included 12 studies with some form of control group. Despite the small number of subjects (1,313), the results indicated an 8 percent reduction in the recidivism rate for sex offenders in the treatment group.[6]

Recently, Alexander (1999) conducted an analysis of a large group of treatment outcome studies, encompassing nearly 11,000 sex offenders. In this study, data from 79 sex offender treatment studies were combined and reviewed. Results indicated that sex offenders who participated in relapse prevention treatment programs had a combined rearrest rate of 7.2 percent, compared to 17.6 percent for untreated offenders. The overall rearrest rate for

[6] For the purposes of this study, recidivism was measured by additional sexually aggressive behavior, including official legal charges as well as, in some studies, unofficial data such as self-report.

treated sex offenders in this analysis was 13.2 percent.[7]



The Association for the Treatment of Sexual Abusers (ATSA) has established a Collaborative Data Research Project with the goals of defining standards for research on treatment, summarizing existing research, and promoting high quality evaluations. As part of this project, researchers are conducting a meta-analysis of treatment studies. Included in the meta-analysis are studies that compare treatment groups with some form of a control group. Preliminary findings indicate that the overall effect of treatment shows reductions in both sexual recidivism, 10 percent of the treatment subjects to 17 percent of the control group subjects, and general recidivism, 32 percent of the treatment subjects to 51 percent of the control group subjects (Hanson, 2000).[8]

Just as it is difficult to arrive at definitive conclusions regarding factors that are related to sex offender recidivism, there are similarly no definitive results regarding the effect of interventions with these offenders. Sex offender treatment programs and the results of treatment outcome studies may vary not only due to their therapeutic approach, but also by the location of the treatment (e.g., community, prison, or psychiatric facility), the seriousness of the offender's criminal and sex offense history, the degree of self-selection (whether they chose to participate in treatment or were placed in a program), and the dropout rate of offenders from treatment.

Juvenile Treatment Research

Research on juvenile sex offender recidivism is particularly lacking. Some studies have examined the effectiveness of treatment in reducing subsequent sexual offending behavior in youth. Key findings from these studies include the following:

- Program evaluation data suggest that the sexual recidivism rate for juveniles treated in specialized programs ranges from approximately 7 to 13 percent over follow-up periods of two to five years (Becker, 1990).
- Juveniles appear to respond well to cognitive-behavioral and/or relapse prevention treatment, with rearrest rates of approximately 7 percent through follow-up periods of more than five years (Alexander, 1999).
- Studies suggest that rates of nonsexual recidivism are generally higher than sexual recidivism rates, ranging from 25 to 50 percent (Becker, 1990, Kahn and Chambers, 1991, Schram, Milloy, and Rowe, 1991).

In a recently conducted study, Hunter and Figueredo (1999) found that as many as 50 percent of youths entering a community-based treatment program were expelled during the first year of their participation. Those who failed the program had higher overall levels of sexual maladjustment, as measured on assessment instruments, and were at greater long-term risk for sexual recidivism.

Supervision

There has been little research on the effectiveness of community supervision

[7] Length of follow-up in this analysis varied from less than one year to more than five years. Most studies in this analysis indicated a three to five year follow-up period.
[8] Average length of follow-up in these studies was four to five years.

programs (exclusively) in reducing reoffense behavior in sex offenders. The majority of supervision programs for sex offenders involve treatment and other interventions to contain offenders' deviant behaviors. Therefore, it is difficult to measure the effects of supervision alone on reoffending behavior—to date, no such studies have been conducted.

Evaluating the Effects of Interventions

Identification of factors associated with recidivism of sex offenders can play an important role in determining intervention strategies with this population. Yet, the effectiveness of interventions themselves on reducing recidivism must be evaluated if the criminal justice system is to control these offenders and prevent further victimization. However, not only have there been few studies of sufficient rigor on treatment outcomes, less rigorous study results thus far have been mixed. Although one study may find a substantial difference in recidivism rates for offenders who participated in a specific type of treatment, another may find only a modest positive treatment effect, and still other studies may reveal no positive effects. There has been even less research conducted to evaluate the impact of community supervision programs in reducing recidivism. More studies measuring the effects of both treatment and supervision are necessary to truly advance efforts in the field of sex offender management.

More studies measuring the effects of both treatment and supervision are necessary to truly advance efforts in the field of sex offender management.

Implications for Sex Offender Management

This paper presented a range of issues that are critical in defining the recidivism of sex offenders. Although there are certainly large gaps in criminal justice knowledge regarding the determinants of recidivism and the characteristics of effective interventions, what is known has significant implications for policy and intervention.

The heterogeneity of sex offenders must be acknowledged. Although sex offenders are often referred to as a "type" of offender, there are a wide variety of behaviors and offender backgrounds that fall into this classification of criminals (Knight and Prentky, 1990). As mentioned earlier, many sex offenders have histories of assaulting across sex and age groups—recent research (Ahlmeyer, Heil, McKee, and English, 2000) found that these offenders may be even more heterogeneous than previously believed.

Criminal justice professionals must continue to expand their understanding of how sex offenders are different from the general criminal population. Although some sex offenders are unique from the general criminal population (e.g., many extrafamilial child molesters), others (e.g., many rapists) possess many of the same characteristics that are associated with recidivism of general criminal behavior. As criminal justice understanding of these offenders and the factors associated with their behavior increases, more refined classification needs to be developed and treatment programs need to be redesigned to accommodate these differences.

Interventions should be based on the growing body of knowledge about sex offender and general criminal recidivism. Research demonstrates that while sex offenders are much more likely to commit subsequent sexual offenses than the general

criminal population, they do not exclusively commit sexual offenses. Therefore, some aspects of intervention with the general criminal population may have implications for effective management of sex offenders. Quinsey (1998) has recommended that in the absence of definitive knowledge about effective sex offender treatment, the best approach would be to structure interventions around what is known about the treatment of offenders in general.

In the realm of interventions with general criminal offenders, there is a growing body of literature that suggests that the cognitive-behavioral approach holds considerable promise.

In the realm of interventions with general criminal offenders, there is a growing body of literature that suggests that the cognitive-behavioral approach holds considerable promise (Gendreau and Andrews, 1990). Cognitive-behavioral treatment involves a comprehensive, structured approach based on sexual learning theory using cognitive restructuring methods and behavioral techniques. Behavioral methods are primarily directed at reducing arousal and increasing pro-social skills. The cognitive behavioral approach employs peer groups and educational classes, and uses a variety of counseling theories. This approach suggests that interventions are most effective when they address the criminogenic needs of high-risk offenders (Andrews, 1982). The characteristics of programs that are more likely to be effective with this population include skill-based training, modeling of pro-social behaviors and attitudes, a directive but non-punitive orientation, a focus on modification of precursors to criminal behavior, and a supervised community component (Quinsey, 1998).

Although these program characteristics may be instructive in forming the basis for interventions with sex offenders, treatment approaches must incorporate what is known about this particular group of offenders. A number of characteristics that are typically associated with the recidivism of sex offenders were identified in this document, including: victim age, gender, and relationship to the offender; impulsive, antisocial behavior; the seriousness of the offense; and the number of previous sex offenses. Also, an influential factor in sex offender recidivism is the nature of the offender's sexual preferences and sexually deviant interests. The discovery and measurement of these interests can serve as a focus for treatment intervention.

Dynamic factors should influence individualized interventions. In addition, dynamic factors associated with recidivism should inform the structure of treatment and supervision, as these are characteristics that can be altered. These factors include the formation of positive relationships with peers, stable employment, avoidance of alcohol and drugs, prevention of depression, reduction of deviant sexual arousal, and increase in appropriate sexual preferences, when they exist.

...dynamic factors associated with recidivism should inform the structure of treatment and supervision...

Interventions that strive to facilitate development of positive dynamic factors in sex offenders are consistent with cognitive-behavioral or social learning approaches to treatment. Such approaches determine interventions based upon an individualized planning process, utilizing standard assessment instruments to determine an appropriate intervention strategy. As Quinsey (1998: 419) noted "with the exception of antiandrogenic medication or castration, this model is currently the only approach that enjoys any evidence of effectiveness in reducing sexual recidivism."

Conclusion

Although there have been many noteworthy research studies on sex offender recidivism in the last 15 to 20 years, there remains much to be learned about the factors associated with the likelihood of reoffense. Ongoing dialogue between researchers and practitioners supervising and treating sex offenders is essential to identifying research needs, gathering information about offenders and the events leading up to offenses, and ensuring that research activity can be translated into strategies to more effectively manage sex offenders in the community. Ultimately, research on sex offender recidivism must be designed and applied to practice with the goals of preventing further victimization and creating safer communities.

Practitioners must continue to look to the most up-to-date research studies on sex offender recidivism to inform their intervention strategies with individual offenders. Researchers can minimize ambiguity in study results by clearly defining measures of recidivism, comparing distinct categories of sex offenders, considering reoffense rates for both sex crimes and all other offenses, and utilizing consistent follow-up periods (preferably five years of follow-up or more). In order to reduce underestimations of the risk of recidivism, they also must strive to gather information about offenders' criminal histories from multiple sources, beyond official criminal justice data. In comparing results of various studies, practitioners should not lose sight of how these issues impact research outcomes.

Researchers must also continue to accumulate evidence about the relationship of static and dynamic factors to recidivism—such data can assist practitioners in making more accurate assessments of the likelihood of reoffending. In particular, researchers must strive to identify dynamic characteristics associated with sex offending behavior that can serve as the focus for intervention. This information can be utilized to categorize the level of risk posed by offenders, and help determine whether a particular offender is appropriate for treatment and specialized supervision. However, in order to make objective and empirically based decisions about the type of treatment and conditions of supervision that would best control the offender and protect the public, more rigorous research is needed to study the effects of various treatment approaches and community supervision on recidivism.

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DENNISE ORLANDO, 'SEX OFFENDERS," *Special Needs Bullentin* No. 3, September 1998

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Sex Offenders

by Dennise Orlando

In recent years, sex offenses have caught the attention of American legislators, the media, and the public. State legislators and Congress have passed legislation that allows for sex offender notification, provides for longer sentences for sexual crimes, or enhances enforcement of existing laws. Legislative proposals are often a reaction to the media's focus on horrific sexual crimes involving children, the outcry of the victims and their families, and the public's perception that all sex offenders are a persistent threat. The term "sex offender," however, covers a vast array of offenders and offenses and leads to a false perception of sexual crimes and the danger that emanates from this offender population. While some offenders may not be amenable to treatment and constitute a permanent threat to community safety, many sex offenders can, with specialized treatment, learn to control their sexually abusive behavior and decrease their risk of reoffending.

There are clinical and legal definitions of sex offenders, and it is not uncommon for treatment providers, researchers, and law enforcement professionals to use different terminology to define these individuals. However, for the purposes of this bulletin, sex offenders are defined as those who have a history of criminal sexually deviant behavior, such as child molesters; rapists; those charged with or convicted of incest, sexual assault, or producing or distributing child pornography; and individuals who entered the judicial system because of a paraphilia (see "Paraphilia," page 3). These offenses are illegal, and may involve a non-consenting victim or present a danger to the community.

Implications for the Federal Judiciary

Federal jurisdiction over sex crimes, as with all types of crimes, is based on constitutional grants of authority, such as Congress's authority to regulate interstate or foreign commerce, and military posts, national parks, and Native American reservations. The limited scope of federal jurisdiction is reflected in the type and number of cases prosecuted in federal court. In FY 97, 219 offenders were sentenced for sexual assault, and 287 were sentenced for pornography or prostitution. There are ten times more sex crime offenders in state correctional institutions than there are in Federal Bureau of Prisons institutions.

Because of the low caseload of sex offenders in the federal system, some probation and pretrial services officers may ask, "Are sex offenders really *my* business?" The answer is yes.

The Federal Probation and Pretrial Services mission statement directs officers to protect the public, make appropriate pretrial release decisions, and develop supervision plans that appropriately manage risk. Sex offenders pose a significant risk to the community. Sex offenders often have more than one pattern of sexual offending behavior and often have multiple victims. Researchers estimate, for example, that less than 1% of people who sexually assault

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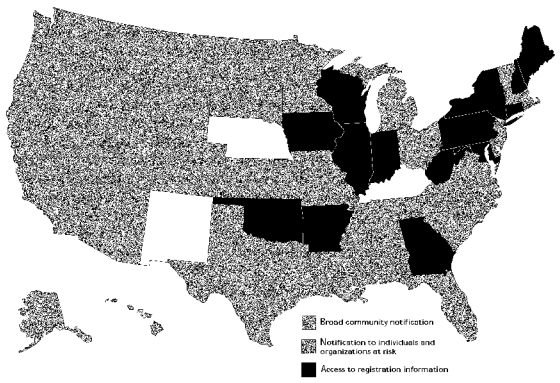
INSIDE



Notification and Registration

As of September 1997, 47 states had community notification laws or allowed access to sex offender registration information.

Source: Washington State Institute of Public Policy

(continued from page 1)

are identified by the legal system and that an untreated, undetected sex offender may accrue dozens, sometimes hundreds, of victims, over his or her lifetime.

Experienced officers also note that the small number of sex offender cases may be somewhat misleading. Some offenders, while not convicted of a sex offense, may have a history of sexual offending. For example, of the approximately 1,000 inmates in the Federal Bureau of Prisons currently serving time for sexual crimes, there are another 3,000 inmates who are sex offenders by history but who are currently serving time for nonsexual crimes. For example, someone charged with or convicted of mail fraud may also have trafficked in or received pornography. Although an offender may be charged or convicted of aggravated assault, the underlying offense may actually be sexual assault. An offender charged with or convicted of bank embezzlement may also be a child molester. These inmates have a designation of "public safety factor of sex offender" under the Bureau of Prison's classification system and also require specialized supervision upon release to the community.

Experienced officers also indicate that the number of federal cases involving child pornography and the Internet is increasing. This trend is partially due to Congress's growing interest in legislating against the production and trafficking of child pornography and the enticement of minors to engage in prostitution or other illicit sexual activity. Also, an FBI online undercover operation known as "Innocent Images" resulted in the arrest and conviction of individuals who use computers and on-line computer services to facilitate the sexual exploitation of children, including luring children into illicit sexual relationships.

The Special Needs Offenders Bulletin

Probation and pretrial services officers and their supervisors need to add a knowledge of sex offenders to their professional "tool boxes." This bulletin begins to address that need. It synthesizes information obtained from journals, research monographs, and interviews with federal probation and pretrial services officers. Officers can use this bulletin for individual study. Supervisors and managers can use it as the foundation for discussing their districts' case management strategies and procedures related to sex offenders.

The information presented here is not comprehensive. Rather, it is intended to serve as a springboard for investigation. The issue of sex offenders is complex. The population that is responsible for committing sex offenses is extremely heterogeneous; there is no single profile that describes sex offenders. Offenders with widely varying criminal histories, ages, backgrounds, personalities, psychiatric diagnoses, races, and religions are all labeled sex offenders because they have engaged in illegal sexual activity. Their offenses vary markedly with respect to location, time, sex and age of

victim, degree of planning, and level of violence. In addition, not every sex offender poses the same level of risk to the community or requires the same supervision or treatment regime (e.g., an offender convicted of pornography vs. a convicted child molester or rapist). Therefore, every sex offender case requires an individualized supervision and treatment plan, one that specifically considers the offender's sexually deviant behavior, arousal patterns, fantasies, family history, social environment, and level of risk.

An in-depth examination of the characteristics of each type of sex offender is beyond the scope of this bulletin. Rather, this bulletin focuses on the characteristics, and the investigation, treatment, and supervision issues common to many sex offenders. When reviewing this bulletin keep in mind that it is intended to serve only as a foundation for officers' ongoing efforts to learn about sex offenders. Working with experienced federal officers and sex offender treatment specialists is the best way to identify the optimal case management practices for investigating and supervising specific sex offenders. ◆

Paraphilia

According to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, the essential feature of paraphilia disorders is recurrent, intense sexual urges, fantasies, or behaviors that involve unusual objects, activities, or situations and cause clinically significant distress or impairment in social, occupational, or other important areas of life. Paraphilias include sexual fantasies and behaviors involving

- exposure of one's genitals to a stranger (exhibitionism);
- use of nonliving objects such as women's underpants and bras or shoes for arousal (fetishism);
- touching and rubbing against a non-consenting person (frotteurism);
- sexual activity with a prepubescent child, generally age 13 or younger (pedophilia);
- acts (real, not simulated) of being humiliated, beaten, bound, or otherwise made to suffer (sexual masochism);
- acts (real, not simulated) in which the psychological or physical suffering (including humiliation) of a victim induces sexual excitement (sexual sadism);
- cross-dressing (transvestite fetishism); and
- acts of observing unsuspecting persons who are naked, disrobing, or engaging in sexual activity (voyeurism).

About the Special Needs Offenders Series

The Federal Judicial Center developed the *Special Needs Offenders* series of educational products to help probation and pretrial services officers keep abreast of changes in the offender/defendant population encountered in the federal judiciary.

Each program in the series deals with a different group of offenders and defendants. An introductory *Special Needs Offenders Bulletin* outlining the characteristics of the group introduces each program. Synthesizing information from journals, research monographs, and interviews with federal probation and pretrial services officers, the bulletin can be used by officers for individual study and by supervisors and managers as a foundation for discussing district case management strategies.

The bulletin is followed up with a Center-sponsored on-line conference, satellite broadcast, or both, that enables officers to share effective case management practices and appropriate resources.

For more information about the *Special Needs Offenders* program on sex offenders or about the *Special Needs Offenders* series generally, contact Mark Maggin at (202) 273-4115.

Sex Offender Characteristics

For many, the term "sex offender" conjures up images of a sex fiend, dirty old man, or mentally deranged individual who abuses impulsively or spontaneously. According to Glen Kersch and Lydia Long in *Supervision and Treatment of Sex Offenders*, "these popular beliefs serve to make the child molester (or rapist) as different and unlike the ordinary person as possible. The appeal of this approach is that it takes a very complex behavior with multiple causes and reduces it to a stereotype with a few simple causes. The resulting stereotypes and overgeneralizations are easier to understand and accept than the reality."

Who Commits Sex Offenses?

In actuality, all kinds of people commit sex crimes. Such behavior is not unique to any one social, economic, or racial group. On the surface, sex offenders often look and act very "ordinary." Many have stable employment, a social support group of family and friends, and no criminal record. Some are prominent members of the community, successful business owners, or active in community and charity events. Underneath however, individuals who commit sexually deviant acts may do so in reaction to a complex set of psychological factors, emotional traits, and environmental conditions. These include stress, anger, lack of power and self-esteem, deviant sexual fantasies and attitudes, substance abuse, psychosis, lack of empathy, peer pressure, cognitive distortions, environmental opportunity, pathology, and the attributes of the victim.

As such, there is no single "profile" of a sex offender. However, there are certain characteristics and behavior patterns that are associated with many sex offenders. When viewed collectively, these characteristics provide officers a framework for understanding and working with this offender population.

Denial, Rationalization, and Other Characteristics of Sex Offenders

Most sex offenders exhibit denial, a form of cognitive distortion that reduces an individual's sense of responsibility for the deviant behavior. If they recognized the severity of what they were about to do and the harm they would cause, some offenders would restrain themselves. Denial is an important issue that must be continually addressed throughout therapy and supervision. There are many forms of denial, including denial of

- the offense ("I didn't do it");
- the sexual intent ("I was only trying to teach her about body parts");
- responsibility ("I was drunk");
- harm ("I touched her but didn't rape her");
- sexual gratification ("I only did it because she asked me to");
- sexual arousal ("I performed

Female Sex Offenders

As Glen Kercher and Lydia Long state in *Supervision and Treatment of Sex Offenders*, "The prevalence of sexual abuse by women is an issue of debate, and the data are inconclusive. One of the difficulties of getting good data is that the sexual offenses committed by women are more incestuous or perpetrated against acquaintances . . . [victims who] are less likely to report such incidents." Kercher and Long indicate that many female sex offenders were sexually victimized as children, come from dysfunctional families, are alienated from their family members, or suffer from feelings of inadequacy.

According to sexual and family therapist Noel Larson, female sex offenders disassociate their feelings of anxiety and fear, often commit their crimes in concert with a male, are unable to form healthy attachments with males, and are psychosexually immature. Larson states that female sex offenders can be successfully treated if the therapist can overcome his or her own feelings about women who molest.

Pedophile or Child Molester?

There is considerable debate in the field of sex offender treatment about the nature of criminal sexual behavior. Is it a choice? Does the offender sexually assault just because he or she likes to? Or are criminal and deviant sexual behavior mental illnesses, perhaps beyond the control or awareness of the person?

The *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* defines pedophilia as a mental health disorder involving "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children 13 years or younger." Pedophilia is present only if the behavior causes "clinically significant distress or impairment in social, occupational, or other important areas of functioning."

According to Steve Jensen, director of the Center for Behavioral Intervention, this diagnosis implies that individuals who molest children, even on a predatory basis, must feel distressed by their crimes to qualify as a pedophile and that members of the North American Man-Boy Love Association, whose motto is "sex before eight, or it's too late," wouldn't qualify for diagnosis. Jensen indicates that many sex offender treatment specialists believe the *DSM-IV* has serious shortcomings and prefer to categorize all child molesters as pedophiles.

Andres Hernandez, director of the Sex Offender Treatment Program at the federal correctional institution in Butner, North Carolina, states that "whether or not a person meets the diagnostic criteria for pedophilia does not imply that he [or she] is not a child molester. Thus, the presence or absence of paraphilic diagnoses cannot be used as criteria for determining a sexual offender's need for specialized treatment or supervision."

oral sex on him but never got aroused");

- planning ("It sort of just happened");
- extent or magnitude of the abuse ("In my seven years as Cub Scout leader, I have only touched two boys"); and
- likelihood of re-occurrence ("It won't happen again, I have found the Lord.")

Other characteristics associated with sex offenders are secrecy, manipulation, grooming (progressively building trust and disinhibiting resistance to sexual contact), and an inability to empathize with the harm they cause their victims.

Most sex offenders know that their behavior is illegal or looked upon unfavorably by society. Some feel shame and guilt for what they do. They often manipulate others to obtain victims or hide their behavior. As such, sex offenders are adept at lying and covering up their activities. Sometimes these offenders are very successful at convincing friends, family (even untrained officers and treatment providers) that they are not "sex offenders."

Sex offenders may also suffer from cognitive distortions. Cognitive distortions are thoughts and attitudes which allow a sexual abuser to minimize, justify, and rationalize deviant behavior, as well as reduce guilt and feelings of responsibility for the behavior. Cognitive distortions allow sex offenders to overcome inhibitions and ultimately progress from fantasy to behavior.

Deviant sexual fantasies in which offenders touch themselves and fantasize about what they will do to their victims play a central role in sexual offending.

In some cases offenders are not even aware that their fantasies are deviant; they have been having them for such a long time that they consider them normal. Often, disclosure during therapy is the first time an offender begins making a connection between their fantasies and their sexually deviant behavior. ◆

Identifying Sexual Deviancy and Dangerousness

According to Steve Jensen (see "Pedophile or Child Molester?" above), "Determining that a person has historically engaged in sexually deviant behavior is the best predictor of future behavior. A comprehensive [psychosexual] evaluation by an expert in the field of sexual deviancy is the best way to gain helpful information regarding dangerousness to the community, likelihood of other crimes, and treatability."

Sex Offender Treatment

Sexual deviance is treatable. The key word in sex offender treatment is not "cure" but "self-control." Through treatment, offenders can learn to manage their abusive behavior and minimize the risk of reoffending. Treatment for sex offenders is similar to treating others with addictive and compulsive patterns of behavior. Just as an addict learns to maintain a drug-free lifestyle, sex offenders can learn to control, if not eradicate, their deviant interests and behavior.

For treatment to work, the offender must be an active participant in identifying risky behavior and in developing coping strategies to address them. Offenders are solely responsible for controlling their sexually deviant impulses. If they choose to remain in denial or refuse to engage in treatment to reduce their deviant interests, they are a high risk to re-engage in sexually deviant behaviors.

While not all sex offenders are amenable to treatment, experienced officers and treatment providers indicate that many sex offenders can learn to manage and control their sexually deviant behaviors. For offenders amenable to community-based treatment, sex offender treatment conditions reduce future victimization and minimize risk to the community.

Treatment Goals

Effective treatment depends on thoroughly evaluating the offender, developing cognitive and behavioral treatment strategies tailored to the offender and the offense, and establishing specific and measurable goals.

Treatment goals generally include teaching the offender to accept responsibility for and modify cognitive distortions, develop victim empathy, understand the complexity of his or her arousal pattern, identify the behaviors that precede the sexually abusive behavior, develop relapse prevention skills, and control sexual arousal and deviant sexual behavior. Effective treatment regimes also help the offender enhance self esteem and self-understanding, improve communication and social skills, increase problem-solving and coping skills, and develop healthy adult sexual relationships.

Treatment Techniques

The most effective treatment programs combine behavioral-cognitive approaches with aversion conditioning, skills training, cognitive restructuring, and relapse prevention. These therapies are often supplemented with family therapy, drug or alcohol treatment, marital therapy, and individual crisis intervention. Most sex offender treatment professionals recommend group therapy, as opposed to individual therapy.

Sex offender treatment programs are confrontational and intrusive and differ from other mental health treatment programs in several ways. Sex offender programs

- work from a nontrust basis;
- consider the community as well as the perpetrator as the identified client and give priority to victim and community safety;
- focus on the client's responsibility for change, not just increased awareness;
- provide consequences for directives not followed;
- look for external verification of behavior;
- use objective measures specifically developed for evaluating and treating sex offenders, such as the plethysmograph or the Abel Screen II;
- use a polygraph to measure treatment and supervision compliance;
- include a relapse prevention component and provisions for follow-up care; and
- employ waivers of confidentiality that provide for open communication between the provider and the supervision officer, victim, victim's therapist, and other professionals involved in treating and supervising the offender.

Therapy is enhanced when officers work in conjunction with treatment providers and furnish the treatment provider information about the sex offender's outside situation and

Treatment and Supervision Tools

Based on the potential unreliability of self-reporting by sexual offenders, many officers and treatment providers use the plethysmograph and the polygraph to monitor compliance with treatment and supervision conditions. In some districts, however, use of the polygraph or plethysmograph may be limited or prohibited. Officers should check with the chief and follow district policies before using these tools.

Plethysmograph

The plethysmograph measures an individual's sexual arousal to a particular sexual stimuli. During the procedure, a male client places a gauge onto the shaft of his penis. The gauge is connected to a chart recorder. The client is presented with both deviant and nondeviant sexual stimuli on slides, audiotapes, or other media. The gauge measures and records the client's erectile response to the stimuli. Physiological changes associated with sexual arousal in women are also measured through the use of a plethysmograph. Although the plethysmograph is a valuable assessment tool for clinicians, it is not a lie detector test, nor does it predict future behavior. The Association for the Treatment of Sexual Abusers cautions it should not be used independently of other assessment instruments. Some sex offender treatment providers use the Abel Screen II, another tool that assesses arousal, in lieu of the plethysmograph.

Polygraph

Many therapists and correctional officers use the polygraph during treatment and supervision of sex offenders. The polygraph is used for reducing denial, validating self-reporting of arousal and behavior, developing treatment and supervision plans, and supervising compliance. Two basic polygraph techniques are used. The first is the discovery or disclosure test, administered either during the initial evaluation or after an offender has been in treatment for three to six months. The second is the maintenance polygraph, administered about every six months to check on supervision and treatment compliance. Since the polygraph's reliability and validity is not guaranteed, failure of the polygraph should *not* be the basis for revocation or for determining innocence or guilt. However, failure can warrant increased supervision or confrontation in the offender's treatment group.

behaviors. This communication is essential because the provider sees the offender in a clinical setting while the officer sees the offender in the community. Officers can assist treatment by holding the offender accountable for progressing in treatment and by clearly stating sanctions for lack of progress in treatment.

Psychotropic Medications

Some offenders suffer from repetitive and deviant sexual fantasies that interfere with concentration; others are unable to develop behavioral techniques that sufficiently reduce their deviant arousal. In *Ethical Standards and Principles for the Management of Sexual Abuses*, the Association for the Treatment of Sexual Abusers states that "evaluation for and use of pharmacological agents are useful and necessary for some sexual abusers. Anti-androgens, antidepressants, and other pharmacological agents, may offer the client greater control over excessive fantasies and compulsive behaviors."

For example, Depo-Provera, a synthetically produced progesterone (female hormone) reduces the level of sexual arousal. Prozac, Paxzil, and Zoloff all reduce sexual drive. Psychotropic medications, however, are not cure-alls for sexually deviant behavior, nor do they work for all offenders. Depo-Provera, like some other medications, has many serious side effects, and its use is controversial.

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Does Treatment Work?

Some question the clinical effectiveness of treatment and treatment modalities. In 1989, Furby, Weinrott, and Blackshaw reported in *Psychological Bulletin* that "there is as yet no evidence that clinical treatment reduces rates of sex offenses in general and no appropriate data for assessing whether it may be differentially effective for different types of offenders." However, the majority of evidence suggests that most sex offenders respond positively to treatment.

In 1993 Margaret Alexander analyzed sex offender outcomes from 68 recidivism studies and found that the recidivism rate of treated offenders was 10.9% versus 18.5% for untreated offenders. Her analysis also revealed that offenders treated with a combination of behavioral and group therapies had a recidivism rate of 13.4%, whereas offenders treated with the relapse prevention model combined with behavioral and/or group treatment re-offended at a rate of 5.9%. A ten-year recidivism study by the Vermont Department of Corrections found that the overall recidivism rate of 690 offenders who participated in sex offender treatment was 7.8%; the recidivism rate of offenders who successfully completed treatment was 0.6%.

Erik Lorke, Research Director for the National Center on Institutions and Alternatives, reported that "the conclusion that treatment reduces recidivism can be refined further by distinguishing between different kinds of sex offenders. The Vermont [Department of Corrections] reports offense rates after treatment as 19% for rapists, 7% for pedophiles, 3% for incest, and 3% for hands off crimes such as exhibitionism." Offenders with multiple paraphilias or sexual disorders have higher rates of recidivism than offenders with single paraphilias. One research study found that the overall recidivism rate of sex offenders one year after treatment was 12.2%, but offenders who abused both males and females and children and adolescents had a recidivism rate of 75%.

(continued from page 7)

Sexual Abuse Cycle and Relapse Prevention

Sex offenders execute a series of thoughts and behaviors before, during, and after each offense. A typical sex abuse cycle includes triggers, certain thoughts and feelings, seemingly unimportant decisions, high-risk situations, target selection, sexual fantasies, planning the offense, grooming the victim, performing the sexually deviant behavior, maintaining secrecy, remorse or fear, and evasion tactics. The components of the cycle vary from offender to offender. For example, some offenders target adolescent females; others target prepubescent males. Some offenders find that anger or low-self esteem triggers their cycle; others find their cycle is triggered by alcohol or job loss.

Working with the treatment provider, sex offenders can identify the set of circumstances, events, and emotions that happen before they commit a sexual offense and develop a relapse prevention plan. Relapse prevention is a self-control program that was developed in the field of addictive behaviors and later adapted for use with sexual abusers. It is specifically designed to help sexual abusers maintain behavioral changes by (1) identifying problems early on and (2) developing strategies to avoid or cope more effectively with these problems. Relapse prevention is most effective when the offender's support group (people with whom the offender has regular contact) are included in the plan.

Once the treatment provider identifies the offender's sexual abuse cycle and establishes a relapse prevention plan, officers should request a copy of this information and meet with the provider to discuss the plan. Officers need to familiarize themselves with the relapse

Treatment or Incarceration?

Law enforcement, treatment providers, and the public continually debate the question: should sex offenders be placed in community-based treatment or incarcerated?

Some sex offender treatment professionals warn that incarceration without treatment may only increase an offender's pathology. Isolating them in a jail cell without treatment may reinforce the offender's sense of shame, guilt, anger, or isolation, as well as encourage continuation of deviant fantasies and masturbation—some of the very factors that contributed to the sexual offense in the first place. In contrast, other sex offender treatment specialists believe that being in prison reminds the offender that his or her sexually deviant behavior is a crime, nothing that the offender may decide not to reoffend as a result of imprisonment.

Some treatment providers and law enforcement professionals disagree with the notion of making treatment or incarceration dichotomous and question whether offering community-based treatment in lieu of incarceration would only minimize the importance of the sexual offense.

For officers, the debate on treatment and incarceration boils down to an issue of risk management and protecting the community. In *Supervision of the Sex Offender*, Georgia Cumming and Maureen Buell state, "Some sex offenders are in total denial about their abusive behaviors and prove unwilling to recognize and give up the denial. If this remains the case, they cannot be treated successfully, and should be denied access to community-based treatment. For them, incarceration is the appropriate disposition.

Some sex offenders pretend to want treatment but choose not to meaningfully engage in the treatment process once they are placed in community treatment. Of course, there are sex offenders who are amenable to treatment but who pose such a high risk to the community that their treatment initially must occur within an incarcerated setting."

prevention model and with concrete examples of the risk factors and relapse behaviors associated with each sex offender on their caseloads so they can develop supervision plans that appropriately manage the offender's risk to the community.

Selecting a Treatment Provider

The evaluation and treatment of sexual deviancy is a highly specialized area of practice. As Steve Jensen and Coralie Jewell explained in an article in *The Prosecutor*, "many sex offenders are [currently] being assessed and treated by inexperienced mental health professionals . . . advanced degrees [in psychology or psychiatry] do not ensure competence in the highly specialized area of sexual offender evaluation and treatment. Therapeutic techniques utilizing trust, support, and nondirective approaches to evaluation and treatment may allow the sexual offender to exercise his well-honed skills of manipulation and deception against the practitioner. Sex offenders are far better at manipulation than many therapists can comprehend."

Officers should examine the qualifications of the treatment provider and recommend professionals skilled in evaluating and treating sex offenders. Experienced officers say that they look for a provider who

- specializes in treating sexual offenders;
- is able to discuss his or her understanding of how to intervene with a sexual offender in order to decrease the risk of reoffending;
- uses objective measures for evaluating and treating sex offenders (e.g., polygraph, plethysmograph, or Abel Screen II);
- views group therapy (with other sex offenders) as the

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Investigation Issues

Assessing the needs and risks of the sex offender prior to supervision is critical, and the ideal time for this assessment is during the presentence investigation. Although supervision officers make similar decisions, presentence and pretrial services officers are often the first to make decisions regarding the risk the offender poses to the victim and community and the conditions of probation or pretrial services release that are tailored to the offender's sexual abuse cycle. To make these determinations, experienced officers stress the importance of investigating beyond the offense of conviction. During the investigation, review all pertinent documents, obtain a detailed offense history and a personal and sexual history from the offender, ask the court to order a psychosexual evaluation, evaluate amenability to treatment, and assess risk.

Reviewing Documentation

Review all documentation before interviewing the offender. That way you can look for "holes" between the police report, the victim's statements, and the offender's version of the offense; inquire about aspects of the offender's history that the offender may choose to omit or gloss over during the interview; and plan how to conduct the interview if the offender begins denying or rationalizing his or her behavior. If all the documents are not immediately available, the initial interview may proceed, but it should be followed up with a second interview after the documents are available.

Reviewing the documentation involves examining the police reports and speaking to the investigating officer; reading the victim's statement; running an NCIC check; reviewing past pretrial, presentence, and supervision reports and interviewing the report authors; and reviewing incarceration records and contacting prison personnel.

While reading the documents, look for patterns of denial as evidenced by alibis; noting what offenses the offender did and did not admit to, as well as the offender's attitude toward the victims. Examine incidences of domestic abuse. Did the situation involve deviant sexual behavior that the offender was not charged with? Also, look beyond the instant offense. Is there something in the records that could be associated with sexually deviant behavior, such as an arrest or conviction for mail fraud or impersonating a police officer? Is there an established pattern of high-risk, sexually deviant behaviors?

Interviewing the Offender

Interviewing the offender may uncover information not found in the documentation or lead to an increased understanding

(continued from page 9)

primary treatment mode;

- provides the offender other therapies as needed (e.g., anger therapy, sex education, victim empathy, social skills training);
- incorporates a relapse prevention component in the treatment regime;
- uses outside support groups in treatment and communicates with the offender's significant other, family members, and collateral contacts;
- offers couples counseling;
- is willing to work closely with the officer, testify in court, report supervision violations, and provide monthly progress reports; and
- is a member of a professional organization that deals with sex offender treatment (e.g., Association for the Treatment of Sexual Abusers).

In rural areas where resources are limited, officers may have to look beyond traditional sources to find a provider who specializes in sex offender treatment rather than make a general referral to a county mental health center.

For example, a court may order an offender to travel to a treatment program in another locale if an officer's research indicates such a program exists. Sex offender providers and experienced officers caution against placing sex offenders in a general psychotherapy program. ❖

Questions Pertaining to the Sexual Offense

1. Where did the assault take place? Was the location selected randomly, or is the location always the same?
2. Describe in detail how you selected the victim. Were there certain characteristics about the victim that appealed to you (e.g., age, sex, physical appearance)?
3. What was the victim's reaction? Did the victim say anything, cry, submit, or fight back during the assault? Did you stop at any time during the assault because of the victim's reaction?
4. If the victim was a child, how did you know the child would cooperate? What made you think the child wouldn't tell?
5. What were you thinking and feeling during the abuse? Were you aroused during the assault? If so, what was arousing to you?
6. What did you say to the victim during the offense? Did you ask or threaten the victim not to say anything after the assault?
7. To what extent were drugs or alcohol used? Were they used to lure the victim, to reduce the victim's reaction, or to reduce your own inhibitions before the offense?
8. Did you use a weapon during the assault? If so, how was it used?
9. Have you ever tried to stop the abusive behavior? How?

Adapted from Georgia Cumming and Maureen Buell, *Supervision of the Sex Offender* (Vt.: The Safer Society Press, 1997).

of the offender's sexual attitudes and behavior. During presentence and supervision interviews, consider the following:

- Anticipate that the offender may deny or minimize the sexually deviant behavior. When dealing with denial, avoid questions that require a yes or no response. Also, ask questions that require the offender to discuss what happened, not why it happened. If the offender is providing inconsistent information, seek clarity by asking something like, "Do you remember when you said . . . ?" or saying, "Your statements are confusing me; first you said . . . , then you said . . . ." Maintain control of the interview by being direct in your questioning; do not allow the offender to interrupt or go off on tangents.
- Mix supportive comments with confrontation. Although sex offenders must be held accountable for their actions, it is helpful to acknowledge the difficulty of being honest about hidden sexual abuses and to offer supportive comments when an offender accepts responsibility for his or her behavior. Also, let the offenders know that treatment is available to help them gain control over their abusive behavior. Your objective is to show that you have some understanding of their perceived plight without endorsing or buying into their distortions.
- Ask questions about planning, selection of victims, and grooming or stalking that preceded the offense, as well as questions about the offense itself. How offenders talk about their offense indicates the degree of responsibility they are taking for their actions; how the offender chooses to offend will help you make decisions about the risk and supervision conditions (see "Questions Pertaining to the Sexual Offense," above).
- Although many officers are uncomfortable doing so, it is important to ask questions about the offender's deviant and nondeviant sexual history. For example, by asking how the offender learned about sex may uncover additional facts about the offender's upbringing. Asking offenders when they first realized they were "different" sexually provides information about the offender's developing pattern of

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Pretrial services officers should not automatically assume that denial during an interview means the defendant is denying the sexually deviant behavior. Denial could reflect the fact that the defendant did not commit the act for which he or she is charged.

Questions Pertaining to the Offender's Sexual History

1. How did you first learn about sex? What did your parents tell you about sex?
2. How often do you masturbate? How old were you when you started to masturbate? What did your parents tell you about masturbation?
3. What do you think about when you masturbate? What are your fantasies? Have they changed over time?
4. When did you start to date? Describe your first sexual experience.
5. Describe your relationship patterns with adults.
6. Describe your sexual relationships with your spouse/significant other? How often do you engage in sexual activity? Who initiates sex in the relationship?
7. Have you ever been a victim of sexual abuse? What is the first child/adolescent sexual experience you recall? Have you ever been scared or humiliated sexually?
8. Have you ever peeped in windows? Exposed yourself? Made obscene phone calls? Rubbed up against another person in public for sexual pleasure?
9. How old were you when the sexual difficulties began? How has your sexual deviancy affected your life (e.g., employment, school, family, health)?

Adapted from Georgia Cumming and Maureen Buell, *Supervision of the Sex Offender* (Vt.: The Safer Society Press, 1997).

(continued from page 11)

sexually abusive behavior (see "Questions Pertaining to the Offender's Sexual History," above).

Making Collateral Contacts

Multiple collateral contacts with employers, family, friends, clergy, the victim, support groups such as Alcoholics Anonymous, child protection agency staff, local law enforcement, and others provides additional information about the offender.

Collateral contacts also help you evaluate the offender's level of honesty and potential risk. Note, however, that sometimes family and friends—even the victim—may erroneously defend the offender. For example, be alert for statements such as, " It was the child's responsibility to stop the offender from abusing her," "The offender could not control his (her) behavior," "The abuse was the fault of perpetrator's wife for not having sex with him," and "The victim is overreacting."

Requesting a Psychosexual Evaluation

A psychosexual evaluation is essential for accurately identifying sex offenders and should only be completed by a sex offender treatment specialist. Experienced officers suggest asking the court to order a psychosexual evaluation during the presentence investigation and, when deemed appropriate, during pretrial services release. A psychosexual evaluation at this stage of the judicial process helps officers assess the risk the offender poses to the victim and community and the need for supervision conditions that specifically address the offender's sexual abuse cycle.

Supervision officers should also request a psychosexual evaluation if one was not ordered during presentence proceedings or if the offender is leaving prison and no recent evaluation is available. The information in the evaluation is helpful in determining or reviewing supervision conditions, determining the appropriate level of supervision, and developing the supervision plan.

A psychosexual evaluation focuses on both the risks and needs of the offender, as well as identifies factors from social and sexual history that may contribute to sexual deviance. Evaluation information is collected by a variety of methods, such as clinical interview of sexual history and social skills, objective physiological instruments that measure sexual arousal (e.g., plethysmograph), specialized sex offender tests (e.g., Abel Becker Cognition

Assessing Risk

Assessing risk and amenability to treatment is best seen as a process. Offenders are first evaluated during the psychosexual evaluation at the time of the presentence investigation or, when deemed appropriate, during pretrial services. Working with the treatment provider, the officer then assesses the offender's risk to the victim and the community and amenability to treatment. Assessment, however, should not end at this point. Subsequent reassessments must occur throughout pretrial services release, supervised release, probation, and even incarceration. Assessment and evaluation should be an ongoing practice in any case involving sex offenders.

Risk assessment refers to an evaluation of the offender's overall risk of sexual reoffending. Risk assessment is a crucial component in the management of sex offenders because it helps officers determine supervision plans and conditions. According to Robert McGrath, Consultant to the Vermont Department of Corrections and the National Institute of Corrections, most correctional risk tools are designed for assessing risk among the general criminal population. They rely on an offender's criminal history and lifestyle stability. These tools may not accurately identify sex offenders because sex offenders generally have neither criminal histories nor chaotic lifestyles. The few specialized sex offender instruments that have been developed have not been validated. McGrath points out that these instruments typically "examine only one dimension of sex offender risk, such as the relative likelihood that a sex offender will reoffend. Simply predicting reoffense, however, is not enough. A number of other issues must be examined in order to evaluate critically a sex offender's risk to the community."

The variety of issues involved in assessing the risk of a sex offender can make the process difficult. For example, what about the twice-convicted rapist who is taking responsibility for the offense but who has never received specialized treatment? What about the offender who has a stable job and family and no prior record but who totally denies his or her behavior? With all these variables, there is no set formula for assessing risk. Each case must be analyzed individually. No matter how carefully done, however, an assessment cannot absolutely predict whether a given offender will reoffend.

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Scale and Multiphasic Sex Inventory), standardized mental health tests (e.g., Minnesota Multiphasic Personality Inventory-2 and Millon Clinical Multiaxial Inventory-III), and the polygraph.

Providers also look at a variety of other factors during the evaluation, often in consultation with the officer. These factors include admission of the offense, offense history, substance abuse, social support system, motivation for treatment and recovery, escalating pattern of offenses, internal and external factors which control behavior, and disowning behaviors.

Officers should therefore provide the treatment provider as much information as possible, such as copies of police reports, the victim impact statement, a synopsis of any prior criminal history, child protection reports, any available risk assessment materials, prior evaluations and treatment reports, and prior supervision records. Before sharing documentation, however, check with your supervisor to ensure you are following district policies and procedures regarding disclosure and confidentiality.

The treatment provider analyzes the data collected during the evaluation to identify the nature, history, and associated conditions of the person's sexual functioning, compare the individual's sexual functioning to others considered normal, as well as those known to engage in sexual deviant behavior, evaluate the offender's risk of reoffending and amenability to treatment, and recommend interventions and a treatment plan that not only addresses the offender's sexual and social treatment needs, but helps minimize the offender's risk of reoffending. ❖

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To begin assessing risk, calculate the Risk Prediction Index (RPI) and use the RPI score in conjunction with all the data collected during investigation. The objective is to form a picture of the offender's accountability and cooperation, sexual deviancy, offense history, choice of victims, lifestyle characteristics, mental and physical health, and motivation for treatment and recovery. In addition, McGrath advises focusing the assessment on the following five factors.

- What is the probability of reoffense? Examine the offender's similarity to other types of sex offenders, including offense type, multiple paraphilias, degree of force, criminal lifestyle, and deviant sexual arousal.
- What degree of harm would most likely result from a reoffense? Examine the offender's use of force and propensity for violence. If there is no history of violent behavior, review the offender's pattern of past offenses for an increase in intrusiveness or threats of violence.
- What are the conditions under which a reoffense is most likely to occur? Consider the offender's access to victims, use of alcohol or drugs, use of sexually stimulating material, employment and residence, access to an automobile, and emotional state.
- Who would be the most likely victims of a reoffense? Review the offender's selection of past victims. Use the plethysmograph and polygraph (when appropriate) to determine other potential victims.
- When is a reoffense most likely to occur? Analyze the offender's pattern of past offenses and examine the day, season, offender age, and reoffense patterns associated with other sex offenders. For example, studies have shown that rapists were at the highest risk of reoffense during the first nine months after release from prison. Child molesters and incest offenders were found to be at their highest risk to reoffend two to three years after release. Other studies have shown that for many sex offenders, the risk of reoffense is as high in the seventh year as in the first. ❖

Sex Offender Treatment Program at FCI Butner

In 1990, an intensive, residential sex offender treatment program (SOTP) for men was established at FCI Butner in North Carolina. The program's aim is to reduce risk of recidivism by teaching offenders to manage their sexual deviance through cognitive-behavioral, self-management, and relapse prevention techniques. The voluntary program consists of a 60-day assessment period during which the inmate is evaluated and a treatment plan is formulated; group, individual, and milieu therapy, coupled with psychoeducational and psychiatric treatment, as needed; and release planning during which staff coordinate with the inmate's probation officer to identify aftercare treatment and parameters for community supervision.

If there is space, SOTP accepts referrals from other federal institutions and the federal courts. Inmates accepted in the program must:

- have been convicted of a sexual offense;
- volunteer for the program and demonstrate a commitment to abstain from abusive sexual behavior;
- have no less than 18 and no more than 36 months before prison release;
- not have a detainer or pending charge which interferes with his release;
- be literate and demonstrate sufficient intelligence to participate in psychotherapy; and
- not suffer from a serious psychiatric illness that prevents him from participating in the program.

Officers interested in referring an offender should call SOTP before the sentencing hearing. Contact SOTP Director Andres E. Hernandez at (919) 575-4541, ext. 4462.

Supervision

Because many sex offenders present a socially acceptable facade, the chaos in their lives is not readily apparent to officers who are used to dealing with more overtly criminal offenders. These offenders usually present few case management problems. They generally keep their appointments, hold jobs, have family and support systems, and complete the conditions of supervision. They may appear successful in their treatment. This is because the traits they need to be successful in their professions and with their families are often the same skills they use to practice their deviant behavior.

Although sex offenders typically present few case management problems, experienced officers caution against assigning them to an administrative caseload. Sex offenders require intensive supervision because they pose such a potentially high risk to the community and need constant monitoring to ensure they are managing their deviant behavior. Supervision therefore focuses on surveillance, control, setting firm limits, and treatment. Effective supervision involves applying external controls on the sex offender while, through intensive treatment, the offender learns to use tools and techniques to increase internal controls. Because sex crimes are crimes of secrecy, sex offender supervision is intense and intrusive.

Internal Control

Through offense-specific treatment, sex offenders are taught to identify and control their inappropriate sexual impulses, feelings, and behaviors. Some officers, however, may feel uncomfortable delving into the sexual aspects of a person's life. Nevertheless, to effectively supervise sex offenders you must become familiar with the offender's deviant sexual thoughts and behavior. In *Managing Adult Sex Offenders: A Containment Approach*, researchers at the Colorado Division of Criminal Justice explain that the "effort to promote—and monitor—internal control is an important departure from traditional criminal justice practice with sex offenders. Traditionally, deviant thinking lies outside the jurisdiction of the criminal justice system. [However,] . . . in the case of sexual offenders, deviant thinking is an integral part of the assault pattern . . . ."

> But the very planning and patterns of assault that can increase the likelihood of criminal activity can also be interrupted. Once a sexual offender reveals his or her thoughts and feelings as part of the sexual assault pattern, this information can be used by criminal justice officials to develop individual monitoring and surveillance plans.

External Control

By working closely with the treatment provider, officers can obtain information about the offender's deviant fantasies and behavior patterns and develop a system of external controls that specifically minimize the risks these fantasies and behaviors present. These controls include supervision conditions and a supervision plan that stress intensive supervision; use of the polygraph (as part of the treatment plan) for monitoring compliance; notification of those at third-party risk; sex offender registration; collateral visits with the offender's employer, family, treatment provider; unannounced and scheduled visits to the offender's home and place of employment; frequent in-person meetings with the offender; cessation of sexually deviant behavior; targeted limitations on behavior, including no-contact requirements; verification (via observation or collateral contacts) of the offender's compliance with treatment and supervision conditions; and urine analysis (as required). Behavioral monitoring should be increased when an offender is at an increased risk to reoffend; for example, when the offender is experiencing stress or visiting victims or potential victims or when the offender demonstrates an increased level of denial.

At the beginning of supervision, the officer and offender should discuss the details of the offense and the offender's high-risk behaviors, as well as the potential risk situations that precede the offender's abusive sexual behavior. Specifically

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(continued from page 15)
state what activities the offender should avoid. For example, child molesters should be prohibited from serving as Cub Scout leaders or from jogging near elementary school yards when children are present. Unless the activity is spelled out, the sex offender will interpret the "no contact" rule as "no sexual contact." When possible, include members of the offender's personal support group in the discussion, as these individuals may be able to help the offender avoid risky activities or situations.

During supervision, discuss treatment progress and issues with the offender, as well as the consequences for failing to complete treatment. In consultation with the provider, evaluate and modify (as required) treatment plans on a routine basis. Make frequent collateral contacts and communicate often with the treatment provider. These individuals provide additional information about the offender's behavior and compliance and supplement the offender's self-reporting. Actively monitor the offender's activities. Note not only risky behaviors but the offender's success in monitoring his or her behavior. Also look for changes in the offender's routine and for activities and behaviors that previously preceded sexual assault: overworking, keeping secrets, depression, alcohol or drug use, or ending a relationship, et cetera.

Duty to Warn

The third-party risk guidelines set out in *Guide to Judiciary Policies and Procedures* apply in sex offender cases in which there is a reasonably foreseeable risk of harm to an identifiable person. Generally, a duty to warn does not arise unless individual persons at risk are identified. Nevertheless, officers may, for example, want to warn an elementary school principal that

Sex Offenders and the Internet

While facilitating worldwide information exchange, the Internet has also posed risks to children using on-line services. Computer technology has enabled on-line predators to enter the homes of children who use the games and resources on the Web. Keith Durkin, assistant professor of social sciences at McNeese State University, says that pedophiles and child molesters use the Internet to traffic in child pornography, locate children to molest, engage in sexual communication with children, and interact with other pedophiles and child molesters.

In December 1996, the Parole Commission voted to approve special computer restrictions for high-risk federal parolees. These conditions require parolees to obtain written approval before using an Internet service provider or any public or private computer network. Other restrictions prohibit parolees from possessing or using data encryption programs and require parolees to agree to periodic unannounced examinations of computer equipment and to allow the parole officer to install hardware and software on the parolee's computer or to monitor computer use. Some districts have used similar conditions that prohibit or restrict offender's use of computers, modems, and the Internet.

Misuse of the Internet by child molesters and pedophiles raises new supervision issues for officers. Does the Internet offender fall into the same category as the predatory sex offender who molests children? How does one restrict access, especially if the offender requires a computer for employment? How does one monitor a person's use of the Internet? Do district officers have the training they need to detect an offender's computer misuse? How does one keep an offender from accessing the Internet at colleges, libraries, or other places?

To help law enforcement and correctional officers explore these issues, the Center will present a satellite broadcast on sex offenders and the Internet in December. Read the AO's *News and Views* or contact Mark Magagna (202) 273-4115 for more information.

students may be at risk. In addition, state sex offender registration laws may be relevant in the officer's determination of third-party risk. If the state has provided certain information to a person or persons at risk pursuant to its registration laws, that information could be a sufficient warning in a case in which an officer has determined that a third-party risk warning should be given to the person or persons.

Confidentiality

Open communication with the treatment provider and others involved in supervising the offender is essential. If necessary, officers should obtain signed waivers of confidentiality that extend to the sex offender treatment provider, victim, victim's therapist, members of the supervising team, and other providers treating the offender (e.g., mental health or substance abuse treatment providers).

Terminating Treatment

Recognizing the high level of risk associated with sex offenders, experienced officers and sex offender treatment specialists caution against terminating treatment. Most sex offenders require treatment throughout supervision, and sex offender treatment specialists note that some sex offenders require lifelong treatment.

Separating the Offender from the Offense

While sex offenders must be held accountable for their crimes, those who work with

(continued on next page)

Supervision Conditions

To restrict sex offenders from high risk situations of access to potential victims, specialized conditions are required. Researchers at the Colorado Division of Criminal Justice recently surveyed more than 700 probation and parole supervisors across the nation about their sex offender policies. Based on the survey results, the researchers developed a model program for supervising offenders in the community. As reported in *Managing Adult Sex Offenders: A Containment Approach*, this model recommends that the conditions for sex offenders be extensive and based on the offender's offense pattern.

Following is a list of some of the conditions that experienced federal officers use for sex offenders. Before implementing any new conditions in the district, check with your supervisor and follow district policies and procedures.

- Offender's employment and change of address must be approved by the officer.
- Offender must participate in a specialized sex offender treatment program that may include use of a plethysmograph and polygraph.
- Offender must maintain a driving log with details about mileage, routes traveled, and destinations.
- Offender may not possess any pornography.
- Offender may not directly or indirectly contact the victim or any child under age 18, may not reside with any child under age 18, and may not loiter near school yards, playgrounds, swimming pools, arcades, or other places frequented by children.
- Offender must register with local law enforcement. (Note: This may already be required by state law.)
- Offender may not use sexually oriented telephone numbers or services.
- Offender may not date women who have children.
- Offender may not use alcohol or illicit substances.
- Offender is required to abide by an evening curfew, as set by the probation officer.
- Offender may not have contact with devices that communicate data via modem or dedicated connection and may not have access to the Internet.
- Offender's place of residence may not be in close proximity to parks, playgrounds, public pools, or other locations frequented by children.

Changes in Registration and Notification Laws

In September 1994, President Clinton signed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act as part of the Violent Control and Law Enforcement Act. The Wetterling Act required states to pass sex offender registration laws or risk losing federal law enforcement funding. It also outlined minimum features states needed to meet in creating or revising sex offender registration laws.

New Jersey's Megan's Law, on which many states modeled their own sex offender registration and notification laws, was passed in October 1994. On May 17, 1996, the President signed the federal version of Megan's Law, amending the Wetterling Act. The federal law required states to pass legislation permitting release of sex offender registration information to the public; the Wetterling Act had left the notification issue to the states' discretion. During the past three years, legislatures in every state have passed sex offender registration and notification laws designed to monitor convicted sex offenders, protect the public, and provide an intelligence network among states to assist in investigating and prosecuting such cases. (See figure 1, page 2.)

In 1997 Congress amended several sections of Title 18, directing Federal Bureau of Prison (BOP) officials, federal probation officers, and certain federal sex offenders to participate in state sex offender registry programs. Beginning November 26, 1998, amendments to 18 USC §4042 will become effective. The amendments will direct federal probation officers to register certain sex offenders with state law enforcement authorities and to advise state officials each time a supervised sex offender changes addresses. The mandatory registration information includes the offender's name, address, criminal history (including a description of the instant offense), and conditions or restrictions placed on the offender, as well as any information to the effect that the person is subject to registration requirements as a sex offender. Also effective November 26, applicable probationers' and supervised releasee's registration responsibilities will appear as a standard condition of supervision, and BOP officials will be responsible for registering certain sex offenders with state officials prior to the offender's release from incarceration.

Recently, the Justice Department issued new guidelines for the states to follow in bringing existing state sex offender registration and notification laws into federal compliance. It is expected that these guidelines will generate additional changes in state laws and may have further implications for federal officers. Prior to the effective date of the amendment, officers should simply monitor an offender's compliance with state sex offender registration laws. Federal officers should look for memorandums from the AO's Federal Corrections and Supervision Division for guidance on their new responsibilities regarding sex offender notification and registration. ❖

(continued from page 17)
them must be humane and respectful. This does not imply coddling the offender or excusing his or her behavior. Rather, effective change occurs in an atmosphere that acknowledges and supports offenders' potential for change, thereby reducing the threat they pose to the community.

Some officers may find it hard to maintain this type of relationship. Officers must acknowledge their feelings about sex offenders and overcome any personal distaste for the bizarre and predatory quality of the sexual behavior. They must learn to separate the offender from the offending behavior so they can discuss the intimate details of the offender's sexual desires and conduct. If the offender is not seen as a person, establishing the level of communication necessary for supervision will be difficult.

Even experienced officers find working with this offender population draining due to the frequent contact and constant vigilance required. Staffing cases is one way to share the responsibility for investigating and supervising sex offenders and prevent officer burnout. In some cases, transferring the case to another officer may be an appropriate decision. ❖

Relapse, Violations, and Revocation

According to Georgia Cumming and Maureen Buell in *Supervising the Sex Offender*, "a lapse is an emotion, fantasy, thought, or behavior that is part of the offender's relapse pattern." Examples include engaging in deviant fantasies, buying pornography, using alcohol or drugs, being alone with a child, or not resolving feelings of anger or depression. Cumming and Buell indicate that lapses with sex offenders are not unusual and should be anticipated. Occurring when an offender fails to monitor warning signs or to address high-risk situations, lapses are unique to the offender and his or her deviant behavior.

Dealing with a lapse can be as straightforward as the offender recognizing the high-risk behavior and intervening. Sometimes, however, a lapse may require increased external control (e.g., increased monitoring or additional no-contact conditions). It is important, however, to set firm limits with sex offenders. When an offender's behavior indicates that he or she poses a risk, officers should consider a system of graduated sanctions. For example, officers should respond when the offender contacts a victim, continuously fails to avoid situations that reinforce deviant fantasies, fails to participate in mandated specialized treatment, or vio-

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This publication was undertaken in furtherance of the Center's statutory mission to develop and conduct education programs for judicial branch employees. The views expressed are those of the author and are not necessarily those of the Federal Judicial Center.

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(continued from page 19)
lates a condition. The challenge is to increase the sanctions, focusing on supervision versus incarceration. Some sex offenders would prefer to violate and spend time in prison than deal with intensive supervision and mandated treatment.

Assessing the seriousness of a violation is critical. Consider the offender's offense pattern, risk factors, supervision conditions, and the circumstances of the violation, such as criminal behavior involving violence or victimization of children. Some infractions, such as a conviction of a new offense, demand revocation. Others may not warrant revocation but should be addressed directly by way of a warning, increased supervision, or discussion in treatment. At the same time, for some offenders, a minor infraction may require immediate court action. For example, a child molester who repeatedly frequents places where children play should be removed from the community. ❖

Developing In-District Expertise

This bulletin serves as a self-study guide that introduces the topic of sex offenders and helps officers and managers begin exploring district case management strategies and procedures related to sex offenders. It is suggested that officers and managers continue developing expertise concerning this offender/defendant population by reading the following books, inviting local sex offender treatment specialists to speak at in-district training programs, and attending the Center's October satellite broadcast on sex offenders and December satellite broadcast on child molesters and the Internet. Additional teletraining programs on sex offenders will be available in 1999. Consult the AO's *News and Views* and the Center's *FJTN Bulletin* for program dates. Contact Mark Maggio at (202) 273-4115 for additional information about the *Special Needs Offenders Series on Sex Offenders*.

Suggested Reading

Criminal Investigation of Child Sexual Abuse, Portable Guides to Investigating Child Abuse. Office of Juvenile Justice and Delinquency Prevention, May 1997.

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Special Needs Offenders Bulletin

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DEPARTMENT OF REHABILITATION AND CORRECTION, STATE OF OHIO, "TEN-YEAR RECIDIVISM FOLLOW-UP OF 1989 SEX OFFENDER RELEASES," APRIL 2001, AVAILABLE AT HTTP://WWW.DRC.STATE.OH.US/WEB/REPORTS/TEN—YEAR—RECIDIVISM.PDF

Ten-Year Recidivism Follow-Up Of 1989 Sex Offender Releases

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State of Ohio
Department of Rehabilitation and Correction

April 2001

Ten-Year Recidivism Follow-Up Of 1989 Sex Offender Releases

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April 2001

www.drc.state.oh.us

EXECUTIVE SUMMARY

The **baseline recidivism rate of sex offenders** followed-up for **ten years** after release from prison was **34%.** This rate was comprised of:

Recommitment for a New Crime		22.3 %
Sex Offense	8.0 %	
Non-Sex Offense	14.3 %	
Recommitment for a Technical Violation		11.7 %
Sex Offense	1.3 %	
Sex Lapse	1.7 %	
Non-sex Related	8.7 %	

The total **sex-related recidivism rate**, including technical violations of supervision conditions, was **11.0%**.

Recidivism rates differed considerably based on a victim typology:

Sex offender type	**General recidivism**	**Sex recidivism**
Rapists – (adult victims)	56.6%	17.5%
Child Molester – extrafamilial	29.2%	8.7%
Child Molester – incest	13.2%	7.4%

Sex offenders who returned for a new sex related offense did so within a few years of release. Of all the sex offenders who came back to an Ohio prison for a new sex offense, one half did so **within two years**, and two-thirds **within three years**.

Paroled Sex offenders completing **basic sex offender programming** (level 1) while incarcerated appeared to have a somewhat lower recidivism rate than those who did not have programming. This was true both for recidivism of any type (33.9% with programming recidivated compared with 55.3% without programming) and sex-related recidivism (7.1% with programming recidivated compared with 16.5% without programming).

TABLE OF CONTENTS

In an effort to understand the nature of recidivism for the sex offender population, the Ohio Department of Rehabilitation and Correction (ODRC) has conducted a ten-year follow-up study of sex offenders released from Ohio prisons in 1989. The following report examined characteristics of 879 sex offenders. Information on the rate of return to Ohio prisons for any new offense including technical violations was collected, with particular interest given to the number of new sex offenses.

METHODOLOGY

This study examined the data from 14,261 offenders released from Ohio prisons in 1989. The Department maintains a database that contains records on all inmates in the state prison system. This database tracks entrance and release dates, as well as institutional transfers. It also contains sentencing, and demographics data. Data on conviction offenses allowed us to determine the number of offenders that had been incarcerated for a sex offense, based on the Ohio Criminal Code that aggregates into chapter 2907 all offenses considered sex offenses. This method of selecting sex offenders could potentially under-select, as there is always the possibility that an offender committed a sex related offense, but was convicted of a crime that is not part of the criminal code sex offense crime list. For example, an offender who committed a kidnapping and rape may have been able to plea-bargain both charges down to abduction. The abduction offense is not considered a sex offense, although a sexual assault may have occurred.

All offenders committed for crimes considered sex offenses were initially selected for this study. Details of the offense were examined and coded, resulting in some cases being eliminated. For purposes of this study, those committed for prostitution offenses were omitted. There were 879 sex offenders released from Ohio prisons in 1989, or 6% of those released.

The follow-up period for this cohort was ten years. One important consideration for most recidivism questions is the empirical finding that the longer the follow-up period, the larger the percentage of offenders who are known to have relapsed (Gibbons, Soothill, & Way, 1981). Given that many sex offenses go undetected, the number of known recidivists after ten years may well be a more accurate reflection of the number who have actually recommitted an offense than is the number of known recidivists after two years (as it may take a long time for some offenders to get caught). Because most recidivism studies seek to determine how many offenders are repeating unlawful behavior, it is generally true that the longer the follow-up period, the more accurate the results (Furby, Weinrott & Blackshaw, 1989).

Recidivism studies employ a variety of measures to determine the rate at which offenders recidivate. Re-arrest, re-conviction and re-incarceration are commonly used. The question of which measure to use is debated in criminological literature. For this study it was decided it would be most feasible to use re-incarceration data. While it was the most convenient, there are drawbacks to this measure. In looking at general recidivism (return to prison for any type of crime, or violation of supervision), there will undoubtedly be a certain number of new crimes committed by this release cohort for which the offender will not be re-

incarcerated, thus underestimating recidivism (Prentky, Lee, Knight & Cerce, 1997). Only those offenses serious enough to warrant a prison sentence will be captured. Thus the rates will be lower than re-arrest or even re-conviction measures. This will be true for new sex offense recidivism as well, however, it is likely this under-representation would be smaller, as a prior sex offender with a new sex offense charge would be unlikely to receive a non-prison sentence. No matter what measure is used, the actual re-offending behavior cannot be completely known, as some offenders are certain to commit new crimes without being caught. This may be particularly true for sex offenses because they are among the most underreported offense types and may often go undetected (Furby, Weinrott & Blackshaw, 1989).

Another issue concerning the reported recidivism rates is that offenders who were released from Ohio prisons, and subsequently incarcerated in another state were removed from this analysis. This is because the Department does not currently have access to corrections data from any state except Ohio. For these reasons, the new sex offense recidivism rate should be considered a conservative estimate of the actual level of sexual re-offending.

DEMOGRAPHICS

The sex offenders released in 1989 were compared to the other inmates released that year. The following five demographic variables were used for comparison (see Table 1).

Age at admission: It is commonly found that sex offenders tend to be older than other types of offenders (Greenfeld, 1997; State of New York, n.d.). This population shows similar findings. The sex offenders as a group were older at the time of admission to prison. The average admission age for sex offenders was 31, or three years older than the average age of all other offenders. A closer look at this population revealed that within sex offenders there are differences in the average age, based on the type of sex offender (see Table 5).

Race: This sex offender cohort once again falls in line with other studies that found that white offenders make up a higher proportion of the sex offender population than other races (Greenfeld, 1997, State of New York, n.d.).

Sex: Most sex offenders are male. This is consistently shown in studies of sex offenders, and can be clearly seen in examining jail and prison population reports (ODRC census report, 1998). Although women comprise about 12% of all other types of offenders, they make up only about 1% of the sex offenders in this study.

Region: Most criminal offenders entering Ohio prisons tend to come from urban areas (ODRC commitment report, 1999). While this holds true for sex offenders as well, a larger proportion of sex offenders (47%, versus 37% of all other offenders) were committed from rural counties.

Release Type: In this study fewer sex offenders were given a flat sentence (44%, compared with 53% of non-sex offenders) and were more likely to have been released on parole (38%, versus 28% of the non-sex offenders).

TABLE 1: OFFENDER DEMOGRAPHICS

	SEX OFFENDERS		OTHER RELEASES	
AGE AT ADMISSION	Number	Percent	Number	Percent
Below 21 yrs	109	12.4%	2153	16.1%
21 to 25	186	21.2%	3871	28.9%
26 to 30	200	22.8%	3063	22.9%
31 to 35	136	15.5%	2164	16.2%
36 to 40	112	12.7%	1161	8.7%
41 to 60	114	13.0%	883	6.6%
Over 60 yrs	22	2.5%	87	.7%
Average age	31.18		28.20	
RACE				
Black	293	33.3%	6741	50.4%
White	586	66.7%	6641	49.6%
SEX				
Male	869	98.9%	11746	87.8%
Female	10	1.1%	1636	12.2%
REGION[1]				
Urban area	462	52.5%	8442	63.1%
Rural area	417	47.5%	4940	36.9%
TYPE OF RELEASE				
Shock Probation	147	16.7%	2150	16.1%
Shock Parole			271	2.0%
Parole	339	38.6%	3748	28.0%
Sentence Expired	393	44.7%	7213	53.9%

The State of Ohio Criminal Code defines four major categories for sex offenders. Rape is defined as sexual intercourse with another, by force. Sexual Battery is a somewhat broader offense and is defined as sexual conduct by coercion. Gross Sexual Imposition is different in scope, as it applies to persons having sexual contact, (i.e. touching, or fondling) with an unwilling person. Corruption of a Minor occurs when a person who is 18 years or older engages in sexual conduct with another person who is less than sixteen but older than 13 years of age. If the offender is less than four years older than the victim, the crime is considered a misdemeanor, and the offender generally does not serve time in prison.

[1] Six Ohio counties make up 44% of the total population of Ohio, based on 1990 census figures. These six counties, Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, and Summit, average 798,000 people. The other 82 counties average a population of 73,000.

TABLE 2: SEX OFFENSE CONVICTION

OFFENSE	FREQUENCY	PERCENT
Gross Sexual Imposition	352	40.0%
Rape	247	28.1%
Sexual Battery	202	23.0%
Corruption of Minor	71	8.1%
Other sex offense*	7	.8%
TOTAL	879	100.0%

* Other sex offenses include: Disseminating material harmful to juveniles, sexual imposition, sodomy, pandering, illegal use of minor in nudity oriented material, & pandering sexual material to a minor.

Sex offenders in this study were most likely to have been incarcerated for the crime of Gross Sexual Imposition (GSI). Forty percent had been convicted of this crime. Another 28% had been convicted of Rape, followed by 23% who were imprisoned for the crime of Sexual Battery. A smaller number had been convicted of Corruption of a Minor (8.1%). These numbers help to gain insight into the number of offenders convicted of certain offenses but give us little help in understanding the nature of the sex offense or anything about the victims. An offender's conviction offense is often the product of a plea bargain (Sourcebook, 1999). It is more useful to examine victim information in order to classify sex offenders.

VICTIM INFORMATION

Information on the characteristics of the victims of sex offenders was collected by looking at departmental records for each offender. Pre-sentence investigations, containing official reports on the details of the offense, were valuable in determining the age and sex of the victim, as well as the relationship of the victim to the offender.

The majority of the victims of this sex offender population were of a young age. Almost half were under 13 years old, with another 22% being between the ages of 13 and 17. Adult victims were the targets of 26% of the sex offenders. While the number of young victims may seem unusually high, these findings are quite similar to other studies (Greenfeld, 1997). Another DRC study of sex offenders admitted to prison in 1992 reported that 26% of the victims of that group of sex offenders were adult; the remaining 74% were of children under age 18 (Pribe, 1995).

The vast majority of the victims of sex offenses are female. A national study found that 94% of rape victims were female, and the rate for other sexual assault victims was 84% female (Greenfeld, 1997). In this study, females were the victims in 86% of the cases, while males were the sole targets in 9%. Another 3% of the offenders victimized both males and females.

The offender / victim relationship was also examined, resulting in 3 different categories: Stranger, Acquaintance, and Relative. The stranger category was comprised of victims who had no previous contact with the offender (for instance, a woman abducted off the street by an unknown assailant). Acquaintances were defined as victims who had at least some level

of contact with the offender. This could be a neighbor, or even someone the victim met at a bar. The Relative category was defined as victims who were blood relatives. (For the purposes of this study, victims that were not directly related to the offender, such as stepchildren, were placed in the acquaintance category). Strangers were the victims in 17% of the cases. Relatives made up another 16%. With the exception of 3.5% of the offenders whose victims fell within more than one relationship category, the remainder of the victims (60%) were acquaintances of the offender.

TABLE 3: VICTIM CHARACTERISTICS

AGE OF VICTIM	FREQUENCY	PERCENT
Under 13 yrs	401	45.6%
Age 13 – 17	201	22.9%
Over 18	228	25.9%
Multiple ages	31	3.5%
Missing data	18	2.0%
TOTAL	879	100.0%
SEX OF VICTIM		
Male	83	9.4%
Female	760	86.5%
Both	28	3.2%
Missing data	8	.9%
TOTAL	879	100.0%
VICTIM/OFFENDER RELATIONSHIP		
Stranger	152	17.3%
Acquaintance	528	60.1%
Relative	144	16.4%
Multiple relationships	31	3.5%
Missing data	24	2.7%
TOTAL	879	100.0%

TYPOLOGY

Sex offenders are often categorized by characteristics of their victims in an effort to develop typologies. These typologies help social scientists understand the differences among sex offenders as a whole. The two general categories in which sex offenders are typically classified are Rapists and Child molesters. Rapists are those offenders who have adult victims. (Note that they need not have been convicted of the crime of rape). Child molesters are sex offenders who victimized someone who was under the age of 18. This category is divided further into extrafamilial child molesters who had a victim that was unrelated to the

offender (either acquaintance, or stranger), and incest child molesters who victimized a blood relative.[2]

TABLE 4: SEX OFFENDER TYPOLOGY

TYPE	FREQUENCY	PERCENT
Rapist (adult victim)	228	25.9%
Child molester – extrafamilial	473	53.8%
Child molester – incest	136	15.5%
Missing data	42	4.8%
TOTAL	879	100.0%

It was previously noted that sex offenders tend to be older than other types of offenders. However, by looking at the variable *offender's age at commitment*, by *type of sex offender* (Table 5) it can be seen that there are differences within the overall category of sex offenders. Rapists tended to be younger; at about 28 years old they were close to the average age of all other types of non-sex offenders. Child molesters (of both varieties) on average tended to be older. Incest offenders, on average, were almost five years older than rapists.

TABLE 5: AGE AT COMMITMENT BY SEX OFFENDER TYPOLOGY

TYPE	AVERAGE AGE	NUMBER
Rapist (adult victim)	27.93	228
Child molester – extrafamilial	31.44	473
Child molester – incest	34.73	136

Missing n 42

The race of sex offenders is markedly different depending upon the type of sex offender. A majority of those in the category of Rapist were Black (60%), while the other two child molester categories are predominantly made up of Whites (75% and 80%).

TABLE 6: RACE BY SEX OFFENDER TYPOLOGY

TYPE	RACE			
	Black		White	
Rapists	137	60.1%	91	39.9%
Child molester – extrafamilial	116	24.5%	357	75.5%
Child Molester – incest	26	19.1%	110	80.9%

Missing n=42

By looking at commitment county (Table 7) one can gain an understanding of the general type of environment from which individuals set to prison for a sex offense came. Rapists were the most likely to have come from a large urban area while child molesters were more

[2] For the purposes of this study those who victimized their step children were not considered incest child molesters, but were categorized as extrafamilial child molesters. However, an alternative typology placing step child abusers with incest perpetrators (not shown here) was developed, and the corresponding cross tabulations were similar to those reported.

likely to have been sent from a more rural area. (This effect generally remained true even after controlling for race).

TABLE 7: COMMITMENT COUNTY BY SEX OFFENDER TYPOLOGY

TYPE	COMMITMENT COUNTY			
	Large Urban County		All other counties	
Rapists (Adult victims)	168	73.7%	60	26.3%
Child Molesters – extrafamilial	216	45.7%	257	54.3%
Child Molesters – incest	53	39.0%	83	61.0%

Missing n=42

TABLE 8: VICTIM/OFFENDER RELATIONSHIP BY SEX OFFENDER TYPOLOGY

TYPE	VICTIM/OFFENDER RELATIONSHIP					
	Stranger		Acquaintance		Relative	
Rapists	108	48.4%	107	48.0%	8	3.6%
Child Molesters-extrafamilial	39	8.9%	400	91.1%		
Child Molesters-incest					136	100.0%

Missing n 56, multiple relationships n 25

One of the common misconceptions about sex offenders is that most victims are strangers to the offender. Table 8 shows that there are significant differences between the type of sex offenders, in the relationship of the offender to the victim. While many of the adult victims were strangers to the offender, few of the child victims were strangers.

TABLE 9: AVERAGE TIME SERVED (IN MONTHS) BY SEX OFFENDER TYPOLOGY

TYPE	AVERAGE TIME SERVED (IN MONTHS)
Rapist (adult victim)	60.42
Child Molester-extrafamilial	29.79
Child molester-incest	22.06

The Rapists spent an average of sixty months in prison for their offense (Table 9). Extrafamilial child molesters were incarcerated for an average of about thirty months. Offenders who victimized underage family members spent the least amount of time in prison.

RECIDIVISM

It is common for recidivism studies dealing with sex offenders to look at recidivism on two different levels. The first is general recidivism, which concerns any type of new offenses, and the second is sex offense recidivism, which focuses on crimes that are of a sexual nature.

General recidivism

Some researchers believe that limiting a sex offender recidivism study to the outcome measure of new sex offenses means that valuable information is lost (Schwartz, 1995). Due to the common practice of plea bargaining, sometimes the sex offense portion of a charge is dropped. For this reason, looking at all new crimes and technical violations of supervision can be useful.

TABLE 10: SEX OFFENDER RECIDIVISM (GENERAL)

	FREQUENCY	PERCENT
No Recidivism	580	66.0%
Recidivism	299	34.0%
Total	879	100.0%

The rate at which this group of sex offenders returned to prison, for any reason, was 34% within ten years (Table 10). This number includes return to prison for a technical violation of their release conditions, or for another crime.

TABLE 11: TYPE OF RETURN TO PRISON BY TYPE OF RELEASE FROM PRISON

RELEASE TYPE	RETURN TYPE					
	None		TPV / SSV* only		New Crime	
EDS	307	78.1%			86	21.9%
Parole	164	48.4%	84	24.8%	91	26.8%
Shock Probation	109	74.1%	19	12.9%	19	12.9%
Total	580	66.0%	103	11.7%	196	22.3%

*SSV suspended sentence violator – (violated terms of shock probation)

Table 11 considers all the sex offender returns to prison during the ten-year follow-up period. If an offender was returned for a technical violation and then released, but was subsequently returned again for a new crime, he or she is in the category of New Crime. Only offenders that returned to prison for no other reason than a technical violation are in the TPV / SSV only category. Parolees were incarcerated for new crimes at a rate of 26.8%. Flat sentence releases were returned for a new crime at a 21.9% percent rate. Those sex offenders given shock probation in 1989 were the least likely to recidivate with a new crime (only 12.9%).

TABLE 12: GENERAL RECIDIVISM BY NUMBER OF PRIOR PRISON INCARCERATIONS

Number of prior prison incarcerations (Ohio)	NO RECIDIVISM		RECIDIVISM	
None	514	69.2%	229	30.8%
One	53	49.5%	54	50.5%
Two	11	45.8%	13	54.2%
Three	2	40.0%	3	60.0%

Fifteen percent (n=136) of the sex offenders had been previously incarcerated in the Ohio prison system (Table 12). The more prior incarcerations an inmate had the higher the likelihood that he recidivated in the ten-year follow-up period.

TABLE 13: GENERAL RECIDIVISM BY SEX OFFENSE CONVICTION

SEX OFFENSE CONVICTION	NO RECIDIVISM		RECIDIVISM	
Rape	127	51.4%	120	48.6%
Sexual Battery	143	70.8%	59	29.2%
Gross Sexual Imposition	260	73.9%	92	26.1%
Corruption of a minor	43	60.6%	28	39.4%
Other sex offenses	7	100.0%		

Offenders convicted of rape were the most likely to return to prison in the ten-year follow-up period. Almost half recidivated (48.6%). The second highest offense was corruption of a minor, with a recidivism rate of 39%. Those who were convicted of sexual battery recidivated at a rate of 29%, and Gross Sexual Imposition had a rate of 26%.

TABLE 14: GENERAL RECIDIVISM BY OFFENDER / VICTIM RELATIONSHIP

OFFENDER/VICTIM RELATIONSHIP	NO RECIDIVISM		RECIDIVISM	
Stranger	61	40.1%	91	59.9%
Acquaintance	364	68.9%	164	31.1%
Relative	124	86.1%	20	13.9%

Missing N=55

Table 14 demonstrates that offenders who were related to victims were the least likely to re-offend. Offenders who victimized acquaintances returned at a rate of 31% and those offenders whose victims were strangers had the highest return rate (59.9%).

TABLE 15: GENERAL RECIDIVISM BY VICTIM AGE

VICTIM AGE	NO RECIDIVISM		RECIDIVISM	
Child (under age 18)	447	74.3%	155	25.7%
Adult	99	43.4%	129	56.6%
Both child and adult victims	11	61.1%	7	38.9%

Missing N=18

Offenders who victimized children were less likely to return to prison for any reason. More than half (56%) of the offenders who victimized adults were reincarcerated within ten years of release. Some of the literature focuses not only on age, but also on gender of victims. Some research reports have found that offenders who target boys are more likely to recidivate (Marshall & Barbaree, 1990, Song & Lieb, 1994). In this cohort, offenders who victimized adult males had the highest general recidivism rate, at 71.4% (but with only 7 total cases in this category, it is unwise to make strong conclusions regarding recidivism). Offenders who victimized young males had a low rate of return for any crime, at 22.2%

(Table 16). Offenders who victimized adult females returned at a 57.1% rate. Those who assaulted young females had a 30.8% return rate. Incest offenders had the lowest chance of returning to prison for any offense, with those who assaulted related female children returning at a rate of 13.4%. Incest offenders who assaulted males did not return to prison in 10 years.

TABLE 16: GENERAL RECIDIVISM BY VICTIM GENDER / AGE

VICTIM GENDER / AGE	NO RECIDIVISM		RECIDIVISM	
Adult female	91	42.9%	121	57.1%
Adult male	2	28.6%	5	71.4%
Female child – extrafamilial	272	69.2%	121	30.8%
Male child – extrafamilial	49	77.8%	14	22.2%
Female child – incest	116	86.6%	18	13.4%
Male child - Incest	4	100.0%		

Missing N 66

Using the established typology, it is apparent that Rapists are most likely to return to prison for any reason (Table 17). They recidivated at a rate of 56.6%. Extrafamilial child molesters returned at the rate of 29.2%. Incest child molesters were the least likely to return (13.2%) in the ten-year period.

TABLE 17: GENERAL RECIDIVISM BY SEX OFFENDER TYPOLOGY

SEX OFFENDER TYPE	NO RECIDIVISM		RECIDIVISM	
Rapists – (adult victims)	99	43.4%	129	56.6%
Child Molester – extrafamilial	335	70.8%	138	29.2%
Child Molester – incest	118	86.8%	18	13.2%

Missing N=42

Sex recidivism

While it is important to understand the nature of sex offender recidivism with respect to all types of crime, there is considerable interest in the extent to which sex offenders recidivate for new sex offenses. Along with the emergence of sex offender notification and commitment laws in many states, there is now the widespread assumption that sex offenders will repeat sexual crimes. However, there is no simple way to measure precisely how much sexual re-offending occurs. Due to the very nature of these crimes, sex offenses are often unreported. The measure used in this report is *return to prison for a sex offense*. While this is not as inclusive as, say, re-arrest, in some ways it is more extensive than other measures, like re-conviction, in that it includes returns to prison for a technical violation of parole/shock probation for sexual behavior. The technical violations of this cohort were examined in order to determine whether the reasons for revocation included sexual behavior, or indicated a relapse type of behavior (i.e. a child molester making frequent visits to a school playground, or possessing child pornography, etc.).

The ten-year sexual recidivism rate for the group of sex offenders in this study was 11%. Eight percent of the offenders returned for a new sex crime. Another 3% were revoked for a parole violation that was sexual in nature (sex crime), or a relapse behavior (sex lapse).

TABLE 18: SEX OFFENSE RECIDIVISM

	FREQUENCY	PERCENT
No Recidivism	782	89.0%
New sex offense -	97	11.0%
-New Sex Crime	(70)	(8.0%)
-Technical violation – sex crime	(12)	(1.4%)
-Technical violation – sex lapse	(15)	(1.7%)
Total	879	100.0%

This low rate of sexual re-offense is similar to other research findings:

- A study that used sex offense conviction as the outcome found a recidivism rate of 4%, with the follow-up time of twelve years after conviction (Gibbons, Soothill, and Way, found in Furby, Weinrott & Blackshaw, 1989).
- Another study done by the same group, in 1980, found that after thirteen years, 12% of their population of rapists were subsequently convicted of a new sex offense. (Gibbons, Soothill, and Way 1980, found in Furby, Weinrott & Blackshaw, 1989).
- Perhaps the largest study of sex offenders was a meta-analysis conducted by Hanson and Bussiere. This study examined the results of 61 recidivism studies, with a total of 28,972 sex offenders. The average follow-up time for all of these studies was four to five years. The average sex offense recidivism rate was 13.4% (Hanson, & Bussiere, 1996).
- A study of sex offender recidivism done by the New York Department of Corrections followed a group of sex offender releases for nine years. This study found that the rate of return to prison for committing a new sex crime was 6%, compared to the 8% new sex crime rate of this ten-year follow-up study.

When comparing individual studies, population differences should be considered before making inferences from the recidivism rates (Maltz, 1984). For example, when comparing recidivism rates from different states and countries, it is important to consider the variations in statutes and policies in sentencing, treatment, probation, and community supervision. Also, the definitions of sex crimes may vary widely between different jurisdictions. Even within the same jurisdiction, definitions of sex crimes can change over time. Furthermore, sample selection may also affect recidivism rates. Samples drawn from released prisoners usually include more serious criminals than samples drawn from official records of arrest or conviction, and thus may have higher recidivism rates. Finally, variations in research methodology (sample size, follow-up time, recidivism measures, etc.) will also influence the estimated recidivism rates (Song & Lieb, 1994).

For these reasons, few studies can be directly compared. But while direct comparisons are unwise, general trends can be determined, and an overall picture of the extent of sex offender recidivism can be developed. What is notable, then, is that in many studies the sexual recidivism rate of sex offenders was fairly low. Certainly, any instance of sexual recidivism is cause for concern, and we should not lose sight that even a 1% sexual recidivism rate represents a certain number of victims of sexual assault. However, there is a rather widespread misconception that sex offenders, as a whole, are repeat sex offenders. While this study is obviously unable to determine the actual rate of reoffense, it is clear that a sex offender returning to an Ohio prison for a new sex offense is a fairly unusual occurrence.

Table 19 displays a breakdown of the time to return to prison for a new sex crime. This table only includes those sex offenders that returned to prison for a new sex related offense. It shows that over two thirds of this group were back in prison within three years of release.

TABLE 19: TIME TO SEX RECIDIVISM

	PERCENT	CUMULATIVE PERCENT
Up to 1 year	25.8%	25.8%
1-2 years	27.8%	53.6%
2-3 years	13.4%	67.0%
3-4 years	6.2%	73.2%
4-5 years	5.2%	78.4%
5-6 years	5.2%	83.5%
6-7 years	7.2%	90.7%
7-8 years	6.2%	96.9%
8-9 years	2.1%	99.0%
9-10 years	1.0%	100.0%

This table includes only those releases with a return for a sex related offense

Table 20 shows the time from prison release to re-incarceration for a new sex related offense. This includes a sexually related technical violation of supervision. Note that this is an approximation of the time of the sex offense and does not take into account the amount of time it takes to process a case through the court system. This table only includes those releases with a return for a sex-related offense. Within two years, over half of the rapists who sexually recidivated had been returned to prison. After the two years, there are a small but steady number of rapists reincarcerated for a sex-related offense every year up to the cutoff point of 10 years. Extrafamilial child molesters that sexually recidivated were not as quick to be reincarcerated. Not until three years after release were over 60% returned to prison. Incest child molesters who sexually recidivated were most likely to be returned to prison within the first two years (70%).

TABLE 20: TIME TO NEW SEX OFFENSE BY SEX OFFENDER TYPOLOGY

	RAPISTS		CHILD MOLESTERS EXTRAFAMILIAL		CHILD MOLESTERS INCEST	
	Number	Cumulative percent	Number	Cumulative percent	Number	Cumulative percent
Up to 1 year	12	30.0%	10	24.4%	3	30.0%
1-2 years	12	60.0%	8	43.9%	4	70.0%
2-3 years	6	75.0%	7	61.0%		
3-4 years	1	77.5%	4	70.7%		
4-5 years	2	82.5%	2	75.6%		
5-6 years	1	85.0%	3	82.9%	1	80.0%
6-7 years	2	90.0%	3	90.2%	1	90.0%
7-8 years	2	95.0%	4	100.0%		
8-9 years	1	97.5%			1	100.0%
9-10 years	1	100.0%				

This table includes only those releases with a return for a sex related offense
Missing N=6

While the number of prior incarcerations demonstrated a relationship with general recidivism, with sex recidivism a relationship is not as noticeable (Table 21). Offenders with no prior incarcerations in Ohio returned to prison for a new sex related offense at the rate of 11%. Only slightly higher, at 12.1% were those offenders with one prior incarceration. Offenders with two prior incarcerations sexually recidivated at the lower rate of 8.3%, and the 5 sex offenders who had three previous Ohio incarcerations did not return to prison for a sex related offense.

TABLE 21: SEX RECIDIVISM BY NUMBER OF PRIOR PRISON INCARCERATIONS

NUMBER OF PRIOR PRISON INCARCERATIONS (OHIO)	NO SEX RECIDIVISM		SEX RECIDIVISM	
None	661	89.0%	82	11.0%
One	94	87.9%	13	12.1%
Two	22	91.7%	2	8.3%
Three	5	100.0%		

Table 22 illustrates that sex offenders convicted of the crime of Rape were the most likely to return to prison within ten years of release for a new sex related offense. They returned at a rate of 15.8%. Those convicted of Corruption of a Minor had the second highest rate, with 9.9%. Offenders convicted of Gross Sexual Imposition closely followed with a reincarceration rate for a sex-related offense being 9.4%. The crime of Sexual Battery had the lowest sexual recidivism rate (8.9%).

TABLE 22: SEX RECIDIVISM BY SEX OFFENSE CONVICTION

SEX OFFENSE CONVICTION	NO RECIDIVISM		SEX RECIDIVISM	
Rape	208	84.2%	39	15.8%
Sexual Battery	184	91.1%	18	8.9%
Gross Sexual Imposition	319	90.6%	33	9.4%
Corruption of a minor	64	90.1%	7	9.9%
Other sex offenses	7	100.0%		

Sex offenders who were complete strangers to their victims were more likely to return to prison for a sex related offense within ten years of release (see Table 23). They returned at a rate of 19.7%. Offenders who knew their victims as an acquaintance were less likely to return for a sex related offense, and offenders who victimized their own blood relatives were the least likely to return for a sex offense. This trend remained consistent even when controlling for conviction offense and victim age.

TABLE 23: SEX RECIDIVISM BY OFFENDER / VICTIM RELATIONSHIP

OFFENDER/VICTIM RELATIONSHIP	NO SEX RECIDIVISM		SEX RECIDIVISM	
Stranger	122	80.3%	30	19.7%
Acquaintance	477	90.3%	51	9.7%
Relative	134	93.1%	10	6.9%

Missing N=55

Offenders with adult victims had the highest sexual recidivism rate, at 17.5% (Table 24). The second highest sexual recidivism rate was found in the category of sex offenders who had both an adult and a child victim. These offenders returned at a rate of 16.1%. Those who victimized only children were the least likely to return for a sex offense.

TABLE 24: SEX RECIDIVISM BY VICTIM AGE

VICTIM AGE	NO RECIDIVISM		SEX RECIDIVISM	
Child (under age 18)	551	91.5%	51	8.5%
Adult	188	82.5%	40	17.5%
Both child and adult victims	26	83.9%	5	16.1%

Missing N 18

An aspect of sex offending that some research studies have identified as significantly related to sexual recidivism is the victim's sex. Specifically, some reports have found that sex offenders who molest young boys who are unrelated to the offender have a higher sexual recidivism rate than other types of offenders (Song & Lieb, 1994, Hanson, Steffy & Gauthier, 1992). In this study offenders who victimized adult females were the most likely to sexually recidivate, with offenders of non-related males having the next highest rate of 11.1% (see Table 25). Offenders who assaulted adult males and offenders who assaulted related male children had no sexual recidivism.

TABLE 25: SEX RECIDIV ISM BY VICTIM GENDER / AGE

VICTIM GENDER / AGE	NO SEX RECIDIVISM		SEX RECIDIVISM	
Adult female	172	81.1%	40	18.9%
Adult male	7	100.0%		
Female child – extrafamilial	360	91.6%	33	8.4%
Male child – extrafamilial	56	88.9%	7	11.1%
Female child – incest	126	94.0%	8	6.0%
Male child - incest	4	100.0%		

Missing N=66

In Table 26, the typology used often in this report shows that Rapists, or those who had adult victims, had the greatest chance of sexually recidivating, at 17.5%. Child molesters, both extrafamilial and incest, had a lesser chance of reincarceration for a sex related offense.

TABLE 26: SEX RECIDIVISM BY SEX OFFENDER TYPOLOGY

OFFENDER TYPE	NO SEX RECIDIVISM		SEX RECIDIVISM	
Rapists (adult victims)	188	82.5%	40	17.5%
Child Molester – extrafamilial	432	91.3%	41	8.7%
Child Molester – incest	126	92.6%	10	7.4%

Missing N 42

What can we conclude about sex offender recidivism? Sex offenders released from Ohio prisons in 1989 returned to the prison system within ten years at a rate of 34%. The percentage of offenders who returned to prison for a new crime was 22.3%. Only 8% of the offenders returned to prison for a new sex crime. And although there are reasons to believe that this is probably a conservative estimate of actual sexual reoffenses, these fairly low numbers match reasonably well with other studies of sex offender recidivism. Contrary to the popular idea that sex offenders are repeatedly returning to prison for further sex crimes, in this population a sex offender recidivating for a new sex offense within 10 years of release was a relatively rare occurrence.

SEX OFFENDER PROGRAMMING

In an effort to help prevent further sexual victimization, the Department of Rehabilitation and Correction has provided sex offender programming for a number of years. Program records were searched, as were inmate files, in an effort to determine how many of the 879 sex offenders had received some sex offender programming. The time frame relevant to this study was programming administered prior to 1989; however, this created logistical difficulties in determining program participation. Program records were often incomplete, and inmate files are routinely destroyed ten years after the offenders are released from department supervision. Because of this, some of the data were lost.

From information available, it was determined that 74 inmates had received the equivalent of level 1 sex offender programming. Level 1 programming was the first stage in the program and included basic educational material on sexual offending. While several of these 74

inmates did complete the entire programming offered, due to the data collection difficulties it was not possible to determine all levels of program completion beyond the first level. What can be said is that these 74 sex offenders participated in and completed at least the first stage of the sex offender programming that was offered in the Department prior to their release in 1989.

TABLE 27: SEX OFFENDER PROGRAM PARTICIPATION (LEVEL 1)

No sex offender programming	781	88.9%
Sex offender program – level 1	74	8.4%
Missing – records destroyed	24	2.7%
Total	879	100.0%

The following table (28) looks at both the general and sexual recidivism rates for those who had sex offender programming compared with those who did not have any sex offender programming. It seems as though there is a very small difference in general recidivism, (from 34.3% to 31.1%) and an even smaller difference in the sexual recidivism rate (from 11.0% without programming, to 10.8% with programming).

TABLE 28: RECIDIVISM BY SEX OFFENDER PROGRAMMING

	GENERAL RECIDIVISM		SEX RECIDIVISM	
No sex offender programming	268	34.3%	86	11.0%
Sex offender programming	23	31.1%	8	10.8%

This table includes recidivists only

Table 29 shows that the overwhelming majority of the 74 offenders who received sex offender programming were those released on regular parole (75.5%). The helps explain the small numbers in the shock probation and expiration of sentence release categories in Table 30.

TABLE 29: SEX OFFENDER PROGRAMMING BY TYPE OF PRISON RELEASE

RELEASE TYPE	INMATES WHO RECEIVED PROGRAMMING	
Shock Probation	3	4.1%
Parole	56	75.5%
Expiration of Sentence	15	20.3%
Total	74	100.0%

Table 30 looks at recidivism rates (both for general recidivism and sex related recidivism) by whether the inmate received sex offender programming, controlling for release type. As this table shows, parolees without programming had a general recidivism rate of 55.2%, while

those with programming had a 33.9% recidivism rate. Parolees without programming returned for a sex related offense at a rate of 16.5%, compared to the sexual recidivism rate of 7.1% for those with programming. While it is interesting to note that recividism rates were higher for those with programming that were given shock probation, or released with no supervision than for those without programming, caution should be taken in interpreting these differences due to the small numbers for those with programming.

TABLE 30: RECIDIVISM BY SEX OFFENDER PROGRAMMING CONTROLLING FOR TYPE OF PRISON RELEASE

	GENERAL RECIDIVISM		SEX RECIDIVISM	
Shock Probation				
No sex offender program	37	26.4%	13	9.3%
Level 1 sex offender program	1	33.3%	1	33.3%
Parole				
No sex offender program	152	55.2%	46	16.5%
Level 1 sex offender program	19	33.9%	4	7.1%
Expiration of sentence				
No sex offender program	77	21.3%	27	7.5%
Level 1 sex offender program	3	20.0%	3	20.0%

This table includes recidivists only

Sex offender programming in the Department has traditionally been offered in two different settings, residential and outpatient. Residential programs consist of a separate environment in the prison where sex offenders are housed and treated. Outpatient treatment programs consist of a psychology services unit that does not segregate sex offenders from the general prison population but treats offenders on a weekly basis. The difference is of the degree of interaction with other sex offenders. Residential program participants live the entire time with similar offenders, while outpatient program participants are only in contact with other sex offenders during their classes or sessions. Of the 74 sex offenders in this study who had received at least level 1 of programming, 29 (or nearly 40%) were outpatient program participants, and 45 (or 60%) attended residential programs (Table 31).

TABLE 31: TYPE OF SEX OFFENDER PROGRAMMING

PROGRAM TYPE		
Out patient program	29	39.2%
Residential program	45	60.8%

Looking at type of programming by recidivism, we can see that concerning general recidivism, residential program participants had a lower rate, at 22.2%, and outpatient program participants had a higher rate, at 44.8% (Table 32). However, when examining sex related recidivism, residential program participants had the same rate as those who had no programming (11.1%). Outpatient program participants had a slightly lower rate of 10.3%.

TABLE 32: RECIDIVISM BY TYPE OF SEX OFFENDER PROGRAM

	GENERAL RECIDIVISM		SEX RECIDIVISM	
No sex offender program (N=781)	276	34.3%	89	11.0%
Out-Patient program (N=29)	13	44.8%	3	10.3%
Residential program (N=45)	10	22.2%	5	11.1%

This table includes recidivists only
Missing N=24

Table 33 views the different types of programming by recidivism when controlling for release type. Those released on parole are what stand out in this chart. Parolees who had no participation in sex offender programming had a 55.1% general recidivism rate. Those who participated in an outpatient program had a general recidivism rate of 42.3%. And those who participated in a residential program had the lowest general recidivism rate, at 26.7%. Looking at Sex related recidivism, those with no treatment recidivated at a rate of 17.0%. Outpatient sex offender program participants had a 3.8% sex related recidivism rate, and residential program participants had a 10% recidivism rate. The other two release types had so few who participated in sex offender programming, that comparing recidivism rates across program type is unwise.

TABLE 33: RECIDIVISM BY TYPE OF PROGRAM CONTROLLING FOR RELEASE

	GENERAL RECIDIVISM		SEX RECIDIVISM	
Shock Probation				
No sex offender program (n=140)	37	26.4%	13	9.3%
Outpatient program (n=2)	1	50.0%	1	50.0%
Residential program (n=1)	0	0.0%	0	0.0%
Parole				
No sex offender program (n=279)	154	55.2%	46	16.5%
Outpatient program (n=26)	11	42.3%	1	3.8%
Residential program (n=30)	8	26.7%	3	10.0%
Expiration of sentence				
No sex offender program (n=362)	77	21.3%	28	7.5%
Outpatient program (n=1)	1	100.0%	1	100.0%
Residential program (n=14)	2	14.3%	2	14.3%

This table includes recidivists only
Missing N=24

What can we conclude about sex offender programming? Any conclusions must be limited for a number of reasons. First, the limitations in the data do not allow determining the extent of the programming received. Some of the 75 offenders that received level 1 programming may have received much more extensive treatment, including therapy and group counseling. These people would be expected to have a better success rate, however, this level of program completion could not be determined. Second, the number of offenders that received the programming is quite small. Drawing broad conclusions about programming effectiveness

based on a few cases is hazardous. Third, the programming these offenders received occurred over ten years ago. Undoubtedly these programs have changed in the past decade, some dramatically. Also, the longer that an offender has been released, and thus the longer he has been away from the treatment setting, it may be unreasonable to assume that the programming will continue to affect the sex offender (Steele, 1995). The idea that a program the offender received while imprisoned a decade ago is still having an impact on the offender's behavior may be a bit optimistic.

Also, in comparing recidivism rates between those who had programming and those without, it must be noted that the two groups are unmatched. The result of this is that any number of factors other than programming may explain the differences in recidivism rates.

With these caveats in mind, the following conclusions emerged from this data. In general, sex offenders who completed level 1 programming had a slightly lower recidivism rate than those who did not receive programming. Program participants were primarily parolees, and they had a general recidivism rate 21 percentage points lower than those parolees with no programming.

Overall, sex offenders who completed level 1 programming had about the same sex offense recidivism rate as those without programming. However, paroled sex offenders who participated in level 1 programming had less than half the sex offense recidivism rate as parolees without programming.

While outpatient programs demonstrated a slight reduction in the total recidivism rate for parolees, residential program participants showed a substantial reduction in the recidivism rate, from 55.1% (no programming) to 26.7% (with programming). Regarding sex offense recidivism, those parolees with no programming had a new sex related offense rate of 17%. Residential program participants had a 10% return rate, and outpatient program participants had a sex offense recidivism rate of 3.8%.

In actuality, there can be a number of reasons any offender does not return to an Ohio prison; the offender gets older, or he marries, he moves out of state, he dies, he simply gets better at avoiding detection, et cetera. For sex offenders the reasons are often the same. A rapist may simply 'grow up.' If the offense is incest, the victim grows up. There will always be a group of fixated sex offenders, some of whom will keep returning to prison for new sex offenses. Some will not return, for reasons listed above, as well as others unlisted. A prison sex offender program that an offender received ten years ago may be one of these reasons, but to suggest this is the only reason, or even the primary reason would be tenuous, and beyond the scope of this report.

RISK SCORES

Karl Hansen conducted a meta-analysis of several sex offender recidivism studies in order to develop a risk scale (RRASOR – the Rapid Risk Assessment for Sexual Offense Recidivism) that would identify sex offenders most likely to re-offend sexually (Hanson, 1997). The instrument that was developed contained four variables – number of prior sex offenses (both

arrests and convictions), offender's age at release from prison, victim gender, and victim relationship. Sex offenders are scored on these items, and the sum of these comprises a risk score. These variables were duplicated in this study (see Table 34), in an effort to test out the level of relationship this score holds with new sexual recidivism. Since the instrument was designed using only male sex offenders, the ten female sex offenders in this study were removed.

TABLE 34: RRASOR VARIABLES

PRIOR SEX OFFENSES[3]	FREQUENCY	PERCENT
No prior sex offenses	793	90.2%
One prior sex offense	67	7.6%
Two or Three prior sex offenses	19	2.2%
OFFENDER AGE AT RELEASE		
Under 25 yrs old	731	83.2%
Over 25 yrs old	148	16.8%
VICTIM GENDER		
Only Female victims	768	87.4%
Any Male victims	111	12.6%
OFFENDER/VICTIM RELATIONSHIP		
Only related victims	372	42.3%
Any non-related victims	507	57.7%

Table 35 shows the relationship each RRASOR variable has with sex recidivism. The variable *prior sex offenses*, and *offender/victim relationship* both show a significant positive correlation. The other two variables, *offender age* at release, and *victim gender* do not seem to be related to sex recidivism, and do not have a statistically significant correlation.

[3] The variable *prior sex offenses* in the Hanson study used both conviction and arrest data. In this study we used only prior conviction data.

TABLE 35: SEX RECIDIVISM BY RRASOR ITEMS

PRIOR SEX OFFENSES[5]	SEX RECIDIVISM
No prior sex offenses	9.9%
One prior sex offense	21.2%
Two or Three prior sex offenses	26.3%
Pearson Correlation .117**	
OFFENDER AGE AT RELEASE	
Over 25 yrs old	11.1%
Under 25 yrs old	10.8%
Pearson Correlation -.003	
VICTIM GENDER	
Only Female victims	11.3%
Any Male victims	10.3%
Pearson Correlation -.014	
OFFENDER/VICTIM RELATIONSHIP	
Only related victims	6.5%
Any non-related victims	14.6%
Pearson Correlation .125**	
RRASOR – (Hanson's study) r = .27	
RRASOR – (this study) r = .11	

**Correlation is significant at the 0.01 level

In the Hanson article, the author used two measures to describe the predictive accuracy of the RRASOR. These two measures were the correlation coefficient, or r, and the area under the receiver operating characteristic (ROC) curve. In order to test the instrument on this Ohio population, both measures were examined. When the four items were combined, to be used as a risk instrument, the total score was significantly correlated to sexual recidivism (r= .115), however two individual items scored higher than the total score. The distribution, as seen in Table 36, shows that the higher the score, the higher the sexual recidivism rate, with the exception of those in this cohort who scored the highest, or 4 points. None of these sex offenders returned for a new sex related offense. In the Hanson meta-analysis the correlation coefficient was r=.27.

TABLE 36: SEX RECIDIVISM BY TOTAL RRASOR SCORE

TOTAL RISK SCORE	SEX RECIDIVISM
0 points (n=284)	4.9%
1 point (n=371)	12.9%
2 points (n=181)	16.0%
3 points (n=34)	17.6%
4 points (n=9)	0%

Hanson reports that ROC statistics have been used to assess predictive validity because they are easily interpreted and are not influenced by base rates (Hanson, 1997). The article goes on to say "ROC curves are the plot of the number of accurately identified recidivists, against the falsely classified nonrecidivists, for each value of the prediction scale" (Hanson, 1997). This area under the curve statistic can range from .50, (chance prediction) to 1.0 (perfect prediction). In this group of sex offenders, the ROC area under the curve statistic was .614. The Hanson study reported a ROC statistic of .71, calling this "moderate predictive accuracy."

What can be said about the use of the RRASOR as a sex recidivism prediction instrument for this population? The low correlation coefficient as well as the low area under the curve ROC statistic lead to the conclusion that the predictive accuracy of this instrument on this particular group of sex offenders is slightly better than chance.

POLICY IMPLICATIONS

While the findings of this report tend to support the findings of much of the literature regarding sex offender recidivism, duplicating these findings in Ohio is important, in that it helps to validate the typologies used in the treatment of Ohio sex offenders.

Further research

While this paper provides some limited findings concerning sex offender programming further studies are necessary to help understand the current state of the department's programs. Sex offender programming has changed in the past 10 years. The department has established the Sex Offender Risk Reduction Center (SORRC) at Madison Correctional Institution. All sex offenders identified through a screening process at the department's reception centers are sent to SORRC to be assessed, and to receive a mandatory 20 hour educational program for sex offenders. The goal is to determine the level of risk of sexual reoffense for sex offenders, and place the higher risk offenders in comprehensive programming in other institutions.

Further research projects suggested by the current state of sex offender programming;

1. Study of the mandatory educational program for sex offenders at SORRC.

A thorough analysis of this program would give the department an idea as to the benefits, if any, of the mandatory program. In order to do this study correctly a look at recidivism would be required. This requires that a sufficient amount of time must have passed, so that program participants would have been released for a certain amount of years. As the creation of SORRC is relatively recent, and more importantly, the most recent iteration of the educational component is also fairly new, the follow-up period which we could use now is likely to be too short. Another difficulty with this study would be in finding an appropriate

control group. Since this is a mandatory program, it would be difficult to find a matched group of sex offenders that did not receive the program.

2. Study of the Static 99 risk instrument used at SORRC, as well as the risk instrument designed by DRC.

The department currently uses two different sex offender risk instruments. These risk instruments combined with the clinical assessment (theoretically) help to determine whether or not a sex offender gets treatment. The obvious research question would be whether these instruments have validity on an Ohio sex offender population. Can we say with certainty that offenders who score high on these risk instruments actually have a greater chance of sexual recidivism? And do those that have a low risk score have a lower rate of sexual re-offense?

The difficulty with this study once again lies in the follow-up period. The Static 99, and the ODRC risk instrument, have been completed on sex offenders since March 2000. In order to validate these risk instruments on current sex offenders, a sufficient amount of time must have elapsed, in order for the assessed inmates to have completed their sentence, and spent some years in the community. Once again the current follow-up period is likely insufficient.

3. Evaluation of comprehensive sex offender programs.

The department currently has six sex offender programs. Do these programs make a difference? Have they helped to reduce sex offender re-offending? A thorough evaluation of these programs has not been conducted. However, a department wide evaluation of programming faces the difficulty of accounting for differences in the programs. While the department struggles to standardize all programs, (and has been doing so for several years), it has yet to achieve this goal. This places the evaluator in the proverbial situation of 'comparing apples to oranges.' One possible solution would be to reduce the scope of the evaluation. A study of one or two of the "model" programs has been suggested. Some of the programs have maintained databases on program participants. If the data are sufficient, and the follow-up period adequate, an individual program evaluation may be possible. Some issues would still be problematic; e.g. recidivism data would likely be limited to reincarceration, as arrest data are not viable. Matched control groups would also be a challenge.

SUMMARY

- Sex offenders released from Ohio prisons in 1989 differed from other types of offenders released that same year. Sex offenders were more likely to be older and more likely to be white males than other offenders released. A larger proportion of sex offenders had been committed from rural areas.

- Sex offender victims tended to be young. Almost half were under the age of 13, with another 22% being between the ages of 13 and 17. The vast majority were female, and most were at least acquainted with the offender in some way. Only 17% were total strangers.

- The rate at which this group of sex offenders returned to prison, for any reason, was 34% within ten years. Rapists were most likely to return to prison for any reason. They recidivated at a rate of 56.6%. Extrafamilial child molesters returned at the rate of 29.2%. Incest child molesters were the least likely to return for any reason (13.2%) in the ten-year period.

- The ten-year sexual recidivism rate for the group of sex offenders in this study was 11%. Eight percent of the offenders returned for a new sex crime. Another 3% were revoked for a parole violation that was sexual in nature (sex crime), or a relapse behavior (sex lapse). Rapists, or those who had adult victims, had the greatest chance of sexually recidivating, at 17.5%. Child molesters, both extrafamilial and incest, had a lesser chance of reincarceration for a sex related offense.

- Sex offenders who returned for a new sex offense did so within a few years of release. Of all the sex offenders who came back to an Ohio prison for a new sex offense, one half did so within two years, and two-thirds within three years.

- In general, sex offenders who completed level 1 programming had a slightly lower general recidivism rate than those who did not receive programming. Program participants were primarily parolees, and they had a general recidivism rate 21 percentage points lower than those parolees with no programming.

- Sex offenders who completed level 1 programming had about the same sex offense recidivism rate as those without programming. However, paroled sex offenders who participated in level 1 programming had less than half the sex offense recidivism rate as parolees without programming.

- An attempt was made to use the RRASOR as a sex recidivism prediction instrument for this population. The low correlation coefficient as well as the low area under the curve ROC statistic lead to the conclusion that the predictive accuracy of this instrument on this particular group of sex offenders is slightly better than chance.

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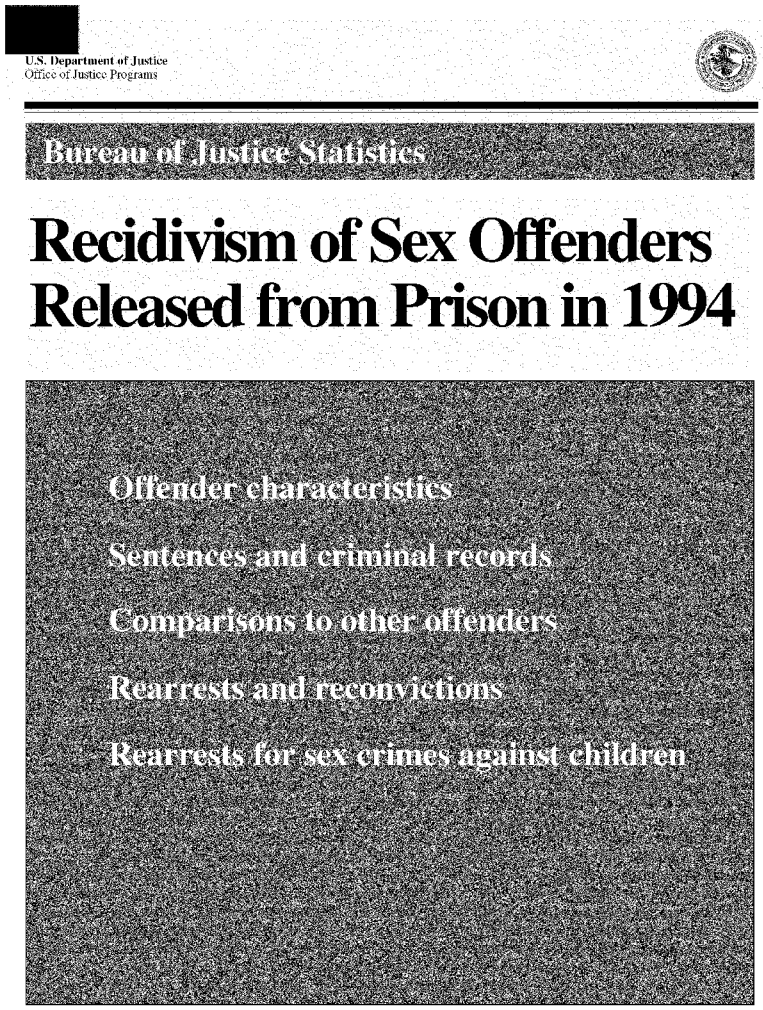

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Recidivism of Sex Offenders Released from Prison in 1994

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November 2003, NCJ 198281

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Office of Justice Programs
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Introduction

In 1994, prisons in 15 States released 9,691 male sex offenders. The 9,691 men are two-thirds of all the male sex offenders released from State prisons in the United States in 1994. This report summarizes findings from a survey that tracked the 9,691 for 3 full years after their release. The report documents their "recidivism," as measured by rates of rearrest, reconviction, and reimprisonment during the 3-year followup period.

This report gives recidivism rates for the 9,691 combined total. It also separates the 9,691 into four overlapping categories and gives recidivism rates for each category:

- 3,115 released rapists
- 6,576 released sexual assaulters
- 4,295 released child molesters
- 443 released statutory rapists.

The 9,691 sex offenders were released from State prisons in these 15 States: Arizona, Maryland, North Carolina, California, Michigan, Ohio, Delaware, Minnesota, Oregon, Florida, New Jersey, Texas, Illinois, New York, and Virginia.

Highlights

The 15 States in the study released 272,111 prisoners altogether in 1994. Among the 272,111 were 9,691 men whose crime was a sex offense (3.6% of releases).

On average the 9,691 sex offenders served 3½ years of their 8-year sentence (45% of the prison sentence) before being released in 1994.

Rearrest for a new sex crime

Compared to non-sex offenders released from State prisons, released sex offenders were 4 times more likely to be rearrested for a sex crime. Within the first 3 years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime. The rate for the 262,420 released non-sex offenders was lower, 1.3% (3,328 of 262,420).

The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders.

Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994. No clear association was found between how long they were in prison and their recidivism rate.

Before being released from prison in 1994, most of the sex offenders had been arrested several times for different types of crimes. The more prior arrests they had, the greater their likelihood of being rearrested for another sex crime after leaving prison. Released sex offenders with 1 prior arrest (the arrest for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime, about 3%; those with 2 or 3 prior arrests for some type of crime, 4%; 4 to 6 prior arrests, 6%; 7 to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.

Rearrest for a sex crime against a child

The 9,691 released sex offenders included 4,295 men who were in prison for child molesting.

Of the children these 4,295 men were imprisoned for molesting, 60% were age 13 or younger.

Half of the 4,295 child molesters were 20 or more years older than the child they were imprisoned for molesting.

On average, the 4,295 child molesters were released after serving about 3 years of their 7-year sentence (43% of the prison sentence).

Compared to the 9,691 sex offenders and to the 262,420 non-sex offenders, released child molesters were more likely to be rearrested for child molesting. Within the first 3 years following release from prison in 1994, 3.3% (141 of 4,295) of released child molesters were rearrested for another sex crime against a child. The rate for all 9,691 sex offenders (a category that includes the 4,295 child molesters) was 2.2% (209 of 9,691). The rate for all 262,420 non-sex offenders was less than half of 1% (1,042 of the 262,420).

Of the approximately 141 children allegedly molested by the child molesters after their release from prison in 1994, 79% were age 13 or younger.

[redacted]

Released child molesters with more than 1 prior arrest for child molesting were more likely to be rearrested for child molesting (7.3%) than released child molesters with no more than 1 such prior arrest (2.4%).

Rearrest for any type of crime

Compared to non-sex offenders released from State prison, sex offenders had a lower overall rearrest rate. When rearrests for any type of crime (not just sex crimes) were counted, the study found that 43% (4,163 of 9,691) of the 9,691 released sex offenders were rearrested. The overall rearrest rate for the 262,420 released non-sex offenders was higher, 68% (179,391 of 262,420).

The rearrest offense was a felony for about 75% of the 4,163 rearrested sex offenders. By comparison, 84% of the 179,391 rearrested non-sex offenders were charged by police with a felony.

Reconviction for a new sex crime

Of the 9,691 released sex offenders, 3.5% (339 of the 9,691) were reconvicted for a sex crime within the 3-year followup period.

Reconviction for any type of crime

Of the 9,691 released sex offenders, 24% (2,326 of the 9,691) were reconvicted for a new offense. The reconviction offense included all types of crimes.

Returned to prison for any reason

Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison. They were returned either because they received another prison sentence for a new crime, or because of a technical violation of their parole, such as failing a drug test, missing an appointment with their parole officer, or being arrested for another crime.

[redacted]ns

Imprisonment offense The 9,691 prisoners were men released from State prisons in 1994 after serving some portion of the sentence they received for committing a sex crime. The sex crime they committed is referred to throughout the report as their "imprisonment offense." Their imprisonment offense should not be confused with any new offense they may have committed after release.

Sex offender The 9,691 released men were all violent sex offenders. They are called "violent" because the crimes they were imprisoned for are widely defined in State statutes as "violent" sex offenses. "Violent" means the offender used or threatened force in the commission of the crime or, while not actually using force, the offender did not have the victim's "factual" or "legal" consent. Factual consent means that, for physical reasons, the victim did not give consent, such as when the offender had intercourse with a sedated hospital patient or with a woman who had fallen unconscious from excessive drug taking. "Legal" consent means that the victim willingly participated but, in the eyes of the law, the victim was not old enough or not sufficiently mentally capable (perhaps due to mental illness or mental retardation) to give his or her "legal" consent.

State statutes give many different names to violent sex offenses: "forcible rape," "statutory rape," "object rape," "sexual assault," "sexual abuse," "forcible sodomy," "sexual misconduct," "criminal sexual conduct," "lascivious conduct," "carnal abuse," "sexual contact," "unlawful sexual intercourse," "sexual battery," "unlawful sexual activity," "lewd act with minor," "indecent liberties with a child," "carnal knowledge of a child," "incest with a minor," and "child molesting."

"Violent" sex offenses are distinguished from "nonviolent" sex offenses and from "commercialized sex offenses." Nonviolent sex offenses include morals and decency offenses (for example, indecent exposure and peeping tom), bestiality and other unnatural acts, adultery, incest between adults, and bigamy. Commercialized sexual offenses include prostitution, pimping, and pornography. As used throughout this report, the terms "sex crimes" and "sex offenders" refer exclusively to violent sex offenses.

Each of the 9,691 sex offenders in this report is classified as either a rapist or a sexual assaulter. Classification was based on information about the imprisonment offense contained in prison records supplied for each sex offender released from prison in 1994. Also based on imprisonment offense information, an inmate could be categorized as a child molester and/or a statutory rapist. Classification to either of these two categories is in addition to, not separate from, classification as a rapist or sexual assaulter. For example, of the 3,115 sex offenders classified as rapists, 338 were child molesters. Or, to put it another way, the imprisonment offense for 338 of the 4,295 child molesters identified in this report was rape. Similarly, 3,957 of the 4,295 child molesters were also sexual assaulters.

	Total	Rapists	Sexual assaulters
Child molesters	4,295	338	3,957
Statutory rapists	443	21	422

The report gives statistics for all sex offenders and each of the four types — rapists, sexual assaulters, child molesters, and statutory rapists. (See *Methodology* on page 37 for details on how sex offenders were separated into categories.)

Rapist "Violent sex crimes" are separated into two categories: "rape" (short for "forcible rape") and "other sexual assault." As used throughout this report the term "rapist" refers to a released sex offender whose imprisonment offense was defined by State law as forcible intercourse (vaginal, anal, or oral) with a female or male. Rape includes "forcible sodomy" and "penetration with a foreign object." Rape excludes statutory rape or any other nonforcible sexual act with a minor or with someone unable to give legal or factual consent. As used throughout this report, "rape" always means "forcible rape." "Statutory rape" is not a type of forcible rape.

A total of 3,115 sex offenders are identified in the report as released rapists — about a third (32%) of the 9,691 released sex offenders. However, enough information to clearly distinguish rapists from other sexual assaulters was not always available in the prison records used to categorize sex offenders into different types. Consequently, the number of rapists among the 9,691 was almost certainly greater than 3,115; how much greater is unknown.

An obstacle to identifying rapists from penal code information is that the label "rape" is not used in about half the 50 States. However, released sex offenders whose imprisonment offense was rape could still be identified. To illustrate, in one State, the term criminal sexual conduct refers to all types of sex crimes. The statutory language was consulted to determine if an offender's imprisonment offense involved "intercourse" that was "forcible," in accordance with the definition of rape used in this report. If the offense was not found to involve intercourse (or penetration), then the inmate was not classified as a rapist. The same was true of force; if the statutory language did not include a reference to force (or coercion), the offense was not categorized as rape.

Sexual assaulter By definition in the report, all sex offenders are either "rapists" or "sexual assaulters." Sex offenders whose imprisonment offense could not be positively identified as "rape" were placed in the "sexual assault" category. To the extent that rapists were reliably distinguished from sexual assaulters, "sexual assaulters" identified in this report were released sex offenders whose imprisonment

offense was "sexual assault," defined as one of the following:
1. forcible sexual acts, not amounting to intercourse, with a victim of any age,
2. nonforcible sexual acts with a minor (such as statutory rape or incest with a minor or fondling), or
3. nonforcible sexual acts with someone unable to give legal or factual consent because of mental or physical reasons (for example, a mentally ill or retarded person or a sedated hospital patient).

A total of 6,576 sex offenders are identified in this report as released sexual assaulters. The 6,576 sexual assaulters made up about two-thirds (68%) of the 9,691 released sex offenders.

Child molester Many of the 9,691 sex offenders were released prisoners whose imprisonment offense was the rape or sexual assault of a child. Throughout the report, released sex offenders whose forcible or nonforcible sex crime was against a child are referred to as "child molesters." The sex crime did not have to involve intercourse to fit the definition of child molestation.

Of the 9,691 sex offenders, 4,295 were identified as child molesters based on prison records made available for the study. However, because complete information was not always supplied, not every child molester could be identified. Of the 9,691 released sex offenders, undoubtedly more than 4,295 were child molesters, but 4,295 represent all who could be identified from the information available. One reason child molesters were not easily identified from penal code information is that most States do not use the term "child molester" in their penal code. Nevertheless, all States have laws against sexual activity with children, which does facilitate identification. As a result of the uncertainty regarding the number of child molesters among the 9,691 sex offenders, the study cannot say what percentage of the victims of the 9,691 sex offenders' offenses were children, and what percentage were adults.

In short, the 4,295 released child molesters in this report were men who —
a. had forcible intercourse with a child or
b. committed "statutory rape" (meaning nonforcible intercourse with a child) or
c. with or without force, engaged in any other type of sexual contact with a child.

Of the 4,295, at least 338 (about 8%) had forcible intercourse, and at least 443 (10%) committed statutory rape.

Statutory rapist State laws define various circumstances in which intercourse between consenting partners is illegal: for example, when one of the partners is married or when the two are blood relatives or when one is a "child." Laws that criminalize consensual intercourse based solely on the marital status of the partners are called "adultery laws." Those that criminalize it based solely on blood relationship are "incest laws." Laws that prohibit consensual sexual intercourse based solely on the ages of the partners are called "statutory rape laws."

Statutory rape pertains exclusively to consensual intercourse, as opposed to other types of sexual contact with a child, such as forcible intercourse, forcible fondling, or consensual fondling. Statutory rape is one specific form of what this study calls "child molestation." The child victim of statutory rape can be male or female, and the offender can be male or female. The offender can be almost any relative ("statutory rape" includes incest with a child), an unrelated person well known to the child (such as a school teacher, neighbor, or minister), someone the child hardly knows, or a stranger.

Statutory rape laws define a "child" as a person who is below the "age of consent," meaning below the minimum age at which a person can legally consent to having intercourse. Age of consent in the 50 States ranges from 14 to 18. Most States set age of consent at 16. In those States, consensual intercourse with someone age 16 or older is usually not a criminal offense, but intercourse with someone below 16 generally is. However, all States make exceptions to their age rules. Consequently, consensual intercourse with children below the age of consent is not always a crime, and consensual intercourse with children who are old enough to give consent is not always legally permissible.

Exceptions for children below age of consent Certain statutory exceptions exist to legal prohibitions against nonforcible intercourse with children who are below the age of consent. One way exceptions are made in statutes is by specifying the minimum age the offender must be (for example, at least age 18, at least age 20) for intercourse to be unlawful. Persons below this minimum age generally cannot be prosecuted. Another common way exceptions are made (virtually every State has these provisions in its laws) is by specifying how much older than the victim the perpetrator must be for criminal prosecution to occur. For example, by law in one State where age of consent is 16, no prosecution can occur unless the age difference is at least 3 years. In that State it is legal for a 17-year-old to have consensual intercourse with a 15-year-old, even though 15 is below the age of consent; but the same act with a 15-year-old is illegal when the other is 18. That is because the 17-year-old is not 3 years older than the 15-year-old, whereas the 18-year-old is. The aim of such exceptions is to distinguish teen behavior from exploitative relationships between adults and children. Another exception is consensual intercourse between husband and wife; no prosecution can occur if one spouse is below the age of consent.

Exceptions for children old enough to give consent Certain adults can be prosecuted for having consensual intercourse with a child who has reached the age of consent. For example, in one State it is a third degree felony for a psychotherapist to have intercourse with a 17-year-old client even though 17 is over the minimum age of consent in that State. In another State, where an adult generally cannot be prosecuted for having consensual intercourse with a 16-year-old, an exception is made when the adult is the child's school teacher. In that case the teacher can be prosecuted for a "class A" misdemeanor. Exceptions are made for other professions as well (clergy, for example).

In this report, 443 of the 9,691 released sex offenders are identified as statutory rapists based on information supplied by the prisons that released them. There were more than 443 statutory rapists among the 9,691 released male sex offenders, but the 443 are all that could be positively identified with the limited information available. One reason statutory rapists are not easily identified from penal code information available on the released sex offenders is that most States do not use the term "statutory rape" in their laws.

First release Though all 9,691 sex offenders in the study were released in 1994, for a fourth of the offenders 1994 was not the first year of release since receiving their prison sentence. This group had previously served a portion of the sentence and were released, then violated parole and were returned to prison to continue serving time still left on that sentence. For the remaining 75% of sex offenders released, the 1994 release was their "first release," meaning their first discharge from prison since being convicted and sentenced to prison.

"First release" should not be confused with first ever release from a prison. "First release" pertains solely to the sentence for the imprisonment offense (as defined above). It does not pertain to any earlier prison sentences offenders may have served for some other offense.

Attention is drawn to first releases because certain statistics in the report — for example, "average time served," "percent of sentence served," "child molester's age when he committed the sex crime for which he was imprisoned" — could only be computed for those prisoners classified as first releases. For such statistics, date first admitted to prison for their imprisonment offense was needed. Since prison records made available for the study only provided this admission date on first releases, first releases necessarily formed the basis for the statistics.

Prior arrest Statistics on prior arrests were calculated using arrest dates from the official criminal records of the 9,691 released sex offenders. Only dates of arrest were counted, not the number of arrest charges associated with that arrest date. To illustrate, one man was arrested on March 5, 1970, and that one arrest resulted in 3 separate arrest charges being filed against him. In this study, that March 5 arrest is considered one prior arrest.

Prior arrests were measured two different ways in this report. The first way did not include the imprisonment offense for which the sex offender was in prison in 1994. Prior arrest statistics that did not include the imprisonment offense are found in sections of the report that describe the criminal records of the 9,691 sex offenders at the time of release from prison. In this case, any arrest that had occurred on a date prior to the sex offender's arrest for his imprisonment offense was considered a prior arrest. For example, one released sex offender was found to have four different dates of arrest prior to the date of arrest for his imprisonment offense. Those four arrests resulted in 17 different charges being brought against him. When describing this released prisoner's criminal record, he is considered to have four prior arrests.

The second way of measuring prior arrests did include the imprisonment offense of the released sex offender. Prior arrest statistics that did include the imprisonment offense are found in sections of the report that describe the recidivism rates of the 9,691 sex offenders following their release from prison. In this case, any arrest that had occurred on a date prior to the sex offender's release from prison was considered a prior arrest. By definition, all 9,691 sex offenders had at least one arrest prior to their release, which was the sex crime arrest responsible for their being in prison in 1994. This means that the sex offender who was arrested on four different dates prior to the arrest for his imprisonment offense under the first definition of prior arrest was, under this second definition, classified as having five prior arrests, once his imprisonment offense is included.

Thirteen tables in the report provide statistics on prior arrests (and, in 2 of the 13, prior convictions and prior imprisonments). In tables 15, 16, 17, 18, 27, 28, 29, 30, 31, 36, and 37, "prior arrests" includes the sex crime arrest for the imprisonment offense; these tables have the heading "prior to 1994 release." In tables 5 and 6, "prior arrests" excludes that arrest; these tables have the heading "prior to the sex crime for which imprisoned."

In all tables, the same counting rule was used: arrest dates, not arrest charges, were counted to obtain the number of prior arrests.

Rearrest Unless stated otherwise, this recidivism measure is defined as the number or percentage of released prisoners who, within the first three years following their 1994 release, were arrested either in the same State that released them (in this report those arrests are called "in-State" arrests) or in a different State (those arrests are

referred to as "out-of-State" arrests). Data on arrests came from State RAP sheets and FBI RAP sheets. RAP sheets (Records of Arrest and Prosecution) are law enforcement records intended to document a person's entire adult criminal history, including every arrest, prosecution and adjudication for a felony or serious misdemeanor offense. Arrests, prosecutions and adjudications for minor traffic offenses, public drunkenness, and other petty crimes are not as fully recorded as those for serious crimes. The "percent rearrested" is calculated by dividing the number rearrested by the number released from prison in 1994.

All measures of recidivism based on criminal records are subject to two types of errors. Type 1 errors arise when the arrest or the conviction in the released prisoner's record is for a crime that person did not commit. Type 2 errors arise when the released prisoner commits a crime but he is not arrested for it, or, even if he is, the arrest does not result in his conviction.

Some amount of type 1 and type 2 error is inevitable, however recidivism is measured. But that does not mean that all recidivism measures are equally suitable, no matter the purpose they are intended to serve. The main purpose of this recidivism study was to document the percentage of sex offenders who continued their involvement in various types of crime after their release from prison in 1994. The more suitable measure for that is the one with the fewest type 2 errors: the one, in other words, less prone to saying someone is not committing crimes when he actually is. Between rearrest and reconviction as the recidivism measure, the one less likely to make that type of error is rearrest. One reason is that the rigorous standard used to convict someone — "proof beyond a reasonable doubt" — makes it certain that guilty persons will sometimes go free. Another reason is record keeping: the justice system does better at recording arrests than convictions in RAP sheets. For such reasons, this study uses rearrest more often than reconviction as the measure of recidivism.

Rearrest forms a conservative measure of reoffending because many crimes do not result in arrest. Not all types of crime are alike in this regard. Crimes committed in nonpublic places (such as in the victim's home) by one family member against another (such as by the husband against his wife, or by the father against his own child) are a type that is less likely than many other types to be reported to police and, consequently, less likely to result in arrest. Sex crimes, particularly those against children, are a specific example of this type. While some sex offenders in this study probably committed a new sex crime after their release and were not arrested or convicted, the study cannot say how many.

As mentioned above, one reason why sex offenders are not arrested is that no one calls the police. Results from the National Crime Victimization Survey indicate that the offenses of rape/sexual assault are the least likely crimes to be reported to the police. (See *Reporting Crime to the Police, 1993-2000,* March 2003, <http://www.ojp.usdoj/bjs/abstract/rcp00.htm>.)

Reconviction Except where stated otherwise, this recidivism measure pertains to State and Federal convictions in any State (not just convictions in the State that released them) in the three years following release. Information on convictions came from State and FBI RAP sheets. RAP sheets are intended to document every conviction for a felony or serious misdemeanor, but not every conviction for a minor offense. "Percent reconvicted" is calculated by dividing the number reconvicted by the number released from prison in 1994. (It is not calculated by dividing the number reconvicted by the number rearrested.)

Return to prison Two recidivism measures are returned to prison —
- with a new sentence
- with or without a new sentence.

Recidivism defined as *Returned to prison with a new sentence* pertains exclusively to sex offenders who, within 3 years following release, were reconvicted for any new crime in any State following their release and received a new prison sentence for the new crime.

Recidivism defined as *Returned to prison with or without a new sentence* includes resentenced offenders plus any who were returned to prison within 3 years because they had violated a technical condition of their release. Technical violations include things such as failing a drug test, missing an appointment with their parole officer, or being arrested for a new crime. Offenders returning to prison for such violations are sometimes referred to as "technical violators."

Prisons should not be confused with jails. A prison is a State or Federal correctional facility reserved for convicted persons with relatively long sentences (generally over a year). A jail is a local correctional facility for convicted persons with short sentences or for persons awaiting trial. Returns to prison refer to any prison, not necessarily the same prison that released the offender in 1994.

The "percent returned to prison with a new sentence" is calculated by dividing the number returned to prison with a new sentence by the number released from prison in 1994. The "percent returned to prison with or without a new sentence " is calculated by dividing the number returned to prison with or without a new sentence by the number released from prison in 1994.

Data on returns with a new sentence are based on State and FBI RAP sheets. Data on returns with or without a new sentence are based on State and FBI RAP sheets plus prison records.

[redacted]hic characteristics

All sex offenders

Of the 9,691 released sex offenders, approximately —

- 6,503 (67.1% of the 9,691) were white males (table 1)
- 3,053 (31.5%) were black males
- 136 (1.4%) were males of other races (Asian, Pacific Islander, American Indian, and Alaska Native).

The vast majority of sex offenders were non-Hispanic males (80.1%). Half were over the age of 35 when released.

Rapists and sexual assaulters

As defined in this report, all sex offenders are either "rapists" or "sexual assaulters." Of the 9,691 released sex offenders, 3,115 were rapists and the remaining 6,576 were sexual assaulters.

Of the 3,115 rapists, 1,735 (55.7% of 3,115) were white males and 1,327 (42.6%) were black males. Of the 6,576 sexual assaulters, 4,768 (72.5% of 6,576) were white males and 1,723 (26.2%) were black males.

Rapists and sexual assaulters were close in age at time of release: over 70% were age 30 or older. Median age at time of release was about 35 years for both rapists and sexual assaulters.

Table 1. Demographic characteristics of sex offenders released from prison in 1994, by type of sex offender

Prisoner characteristic	Percent of released prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Race			
White	67.1%	55.7%	72.5%
Black	31.5	42.6	26.2
Other	1.4	1.7	1.3
Hispanic origin			
Hispanic	19.9%	22.6%	18.9%
Non-Hispanic	80.1	77.4	81.1
Age at release			
18-24*	12.2%	10.6%	13.0%
25-29	16.4	17.3	16.0
30-34	20.0	22.4	18.8
35-39	19.1	20.9	18.3
40-44	13.3	13.3	13.3
45 or older	19.0	15.5	20.6
Age at release			
Average	36.8 yrs	36.1 yrs	37.1 yrs
Median	35.3	34.9	35.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5% of 9,691 released sex offenders; Hispanic origin for 82.5%; age for virtually 100%.
*Age at release 18-24 includes the few who were under age 18 when released from prison in 1994.

Child molesters and statutory rapists

Some of the 9,691 sex offenders were men whose imprisonment offense was a sex offense against a child. Precisely how many is unknown. In this report, the 4,295 who could be identified are called "child molesters" (table 2). The 4,295 identified child molesters included some (443 out of the 4,295) whose specific sex offense against a child was non-forcible intercourse. These 443 are called "statutory rapists." There were more than 443 among the 4,295, but 443 were all that could be identified from the limited information obtained for the study.

Both the 4,295 child molesters and the 443 statutory rapists were predominantly non-Hispanic white males. Nearly three-fourths of the child molesters (73.2%) were age 30 or older. Just over half the statutory rapists (54%) were 30 or older at the time they were released from prison.

Among the released child molesters there were 3,333 white men (77.6% of 4,295) and 889 black men (20.7%). The 443 statutory rapists included 324 white men (73.2% of 443) and 110 black men (24.8%).

Table 2. Demographic characteristics of child molesters and statutory rapists released from prison in 1994

Prisoner characteristic	Percent of released prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Race		
White	77.6%	73.2%
Black	20.7	24.8
Other	1.7	2.0
Hispanic origin		
Hispanic	23.5%	15.9%
Non-Hispanic	76.5	84.1
Age at release		
18-24*	11.4%	24.8%
25-29	15.4	21.2
30-34	17.7	14.7
35-39	18.6	14.9
40-44	14.3	10.2
45 or older	22.6	14.2
Age at release		
Average	37.8 yrs	33.6 yrs
Median	36.5	31.0
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Data identifying race were reported for 99.5% of 4,295 released child molesters; Hispanic origin for 97.8%; and age for 100%.
*Age at release 18-24 includes the few who were under age 18 when released from prison in 1994.

All sex offenders

All 9,691 sex offenders selected to be in this study had a prison sentence greater than 1 year. The shortest terms were a day over 1 year; the longest were life sentences. The fact that sex offenders with a life sentence (18 offenders in the study) were among the 9,691 released in 1994 should not be surprising because only rarely do life sentences in the United States literally mean imprisonment for the remainder of a person's life. Most felons receiving a life sentence are eventually paroled (unpublished tabulation of data from the 1997 BJS Survey of Inmates in State Correctional Facilities).

On average, a sex offender released from prison in 1994 had an 8-year term and served 3½ years of that sentence (45%) before being released (table 3). Half of the released sex offenders had a sentence length of 6 years or less. Half had served no more than a third of their sentence before being released. When released, the majority (54.5%) had more than 3 years of their sentence remaining to be served.

Rapists and sexual assaulters

Rape always involves forcible intercourse, whereas sexual assault (as the term is used here) never does, although it can involve other types of forcible sexual assault. Because forcible intercourse is considered to be a more serious offense than other forms of forcible sexual assault, penalties for rape are generally more severe than those for sexual assault.

Consistent with the more serious nature of rape —

- on average a released rapist had a longer sentence (just over 11 years) than a sexual assaulter (just under 7 years)
- on average a rapist spent more time in confinement before being released (5¼ years) than a sexual assaulter (just under 3 years)
- median sentence length was longer for rapists (half of the rapists had a sentence of 9 years or more, while half of the sexual assaulters had a sentence of 5½ years or more)
- 39.2% of the 3,115 rapists were in prison for over 5 years prior to release, while 12.5% of the 6,576 sexual assaulters served 61 months or more
- rapists served 49% of their sentence before being released, compared to 43% for sexual assaulters.

Depending on the length of their sentence and the amount of time they had served before being released, some of the released sex offenders would have been on parole (or some other type of conditional release) throughout the full 3 years they were tracked in this study. For example, when released, 63.3% of rapists had more than 3 years left to serve on their sentence. In their case, any new crimes they committed during this 3-year followup period were offenses committed while still on parole. By comparison, just over half of released sexual assaulters had more than 3 years left to serve.

Table 3. Sentence length and time served for sex offenders released from prison in 1994, by type of sex offender

Characteristic	All	Rapists	Sexual assaulters
Sentence length (in months)			
Mean	97.3 mo	134.0 mo	82.5 mo
Median	72.0	108.0	66.0
Time served (in months)			
Mean	42.3 mo	62.6 mo	34.1 mo
Median	32.3	48.2	26.5
Percent of sentence served	44.9%	49.3%	43.1%
Upon release in 1994, percent who had served —			
6 months or less	4.5%	3.1%	5.0%
7-12	9.5	3.0	12.1
13-18	16.5	10.5	19.0
19-24	9.7	5.1	11.5
25-30	8.1	6.1	8.9
31-36	9.9	9.0	10.7
37-60	21.6	24.9	20.2
61 months or more	20.2	39.2	12.5
Upon release in 1994, percent with time still remaining to be served			
6 months or less	2.6%	2.4%	2.9%
7-12	5.0	5.7	4.7
13-18	8.4	6.2	9.2
19-24	12.6	9.3	14.2
25-30	8.1	6.2	8.8
31-36	8.5	6.9	9.1
37-60	25.1	22.8	26.0
61 months or more	29.4	40.5	24.9
Total first releases	6,470	1,859	5,860

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and sexual assaulters

On average, child molesters were released after serving nearly 3 years (33.7 months) of their nearly 7-year sentence (81.1 months) (table 4). Statutory rapists were released after serving a little over 2 years of their approximately 4-year sentence. Upon release, almost half of the child molesters still had at least 3 years of their sentence remaining to be served, compared to 15% of statutory rapists.

Table 4. Sentence length and time served for child molesters and statutory rapists released from prison in 1994

Characteristic	Child molesters	Statutory rapists
Sentence length (in months)		
Mean	81.1 mo	49.5 mo
Median	66.0	36.0
Time served (in months)		
Mean	33.7 mo	27.6 mo
Median	25.8	19.4
Percent of sentence served	43.3%	52.8%
Upon release in 1994, percent who had served —		
6 months or less	5.7%	9.6%
7-12	12.6	20.4
13-18	20.8	18.2
19-24	10.1	14.3
25-30	7.2	8.6
31-36	11.2	7.0
37-60	19.7	13.4
61 months or more	12.8	8.6
Upon release in 1994, percent with time still remaining to be served		
6 months or less	2.5%	10.8%
7-12	5.4	17.4
13-18	10.2	26.9
19-24	16.1	13.1
25-30	7.9	8.5
31-36	8.9	8.5
37-60	24.9	9.2
61 months or more	24.1	5.6
Total first releases	3,104	317

Note: The 3,104 child molesters were released in 13 States; the 317 statutory rapists in 10 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

[redacted]inal record

All sex offenders

Arrests and convictions for minor traffic offenses, public drunkenness, and other petty crimes are often not entered into official criminal records. Since official records formed the basis for this study's statistics on arrests and convictions, these statistics understate levels of contact with the justice system. Statistics shown throughout this report on arrests and convictions pertain mostly to arrests and convictions for felonies and serious misdemeanors.

Statistics on prior arrests in this section of the report do not include the imprisonment offense for which the sex offender was in prison in 1994.

At the time the 9,691 male sex offenders were arrested for the sex crime that resulted in their imprisonment —

- 78.5% (7,607 of the 9,691 men) had been arrested at least one earlier time (table 5)
- half had 3 or more prior arrests for some type of crime
- 58.4% (5,660 men) had at least one prior criminal conviction
- 13.9% (1,347 men) had a prior conviction for a violent sex offense
- 4.6% (446 men) had been convicted for a sex crime against a child
- nearly a quarter had served time in a State or Federal prison at least once before for some type of crime.

All 9,691 were in prison in 1994 because they had been arrested and convicted for a sex offense. For 71.5% of the 9,691 men (6,929), that arrest was their first ever for a violent sex crime. In other words, these 6,929 men had no previous arrest for a sex offense. For the remaining 28.5% (2,762 men), that arrest was not their first sex offense arrest. Some had been arrested once before for a sex crime and some two or more times before.

To illustrate, one of the 9,691 sex offenders in this study had his first arrest for a sex crime in 1966, when he was age 19; he was also arrested for sex crimes in the 1970's and 1980's, in three different States. The arrest for his imprisonment offense was in 1982. In the early part of 1983, 4 months after his arrest, he was convicted of sexual assault and began serving a 25-year prison term. Eleven years later, in 1994 at age 47, he was released.

For 75% of the 9,691 sex offenders, their 1994 release represents their first release since being sentenced for their sex offense. The remaining 25% had previously served time under the same sentence, had been released, had violated one or more conditions of their parole and, consequently, were returned to prison to continue serving time still remaining on their sentence.

Table 5. Prior criminal record of sex offenders released from prison in 1994, by type of sex offender

Prior to the sex crime for which imprisoned	All	Rapists	Sexual assaulters
Percent with at least 1 prior arrest for — [a]			
Any crime	78.5%	83.1%	76.3%
Any sex offense	28.5	28.7	28.4
Sex offense against a child	10.3	5.7	12.5
Prior arrests for any crime[a]			
Mean	4.5	5.0	4.2
Median	3	3	2
Percent with at least 1 prior conviction for — [a]			
Any crime	58.4%	62.9%	56.2%
Any sex offense	13.9	14.6	13.5
Sex offense against a child	4.6	3.4	5.2
Prior convictions for any crime[a]			
Mean	1.8	2.0	1.7
Median	1	1	1
Percent with prior prison sentence for any crime[a]	23.7%	28%	21.6%
Percent who were first releases[b]	74.9%	66.9%	78.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.

[a]"Prior" does not include the arrest, conviction, or prison sentence that was the reason the sex offenders were in prison in 1994. Persons with no prior arrest or prior convictions were coded zero and were included in the calculations of mean and median priors. Calculation of prior convictions excluded Ohio, and calculation of prior prison sentences excluded Ohio and Virginia.

[b]Data on first releases are based on releases from 13 States. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Sex offenders compared to non-sex offenders

A total of 262,420 non-sex offenders were released from State prisons in 1994 in the 15 States. Of the 262,420 non-sex offenders, 94% had at least 1 prior arrest and 82% had at least 1 prior conviction (not in a table). Overall, the 9,691 sex offenders had a shorter criminal history than the 262,420 non-sex offenders. Before the arrest that resulted in their prison sentence, sex offenders had been arrested 4.5 times, on average. This prior arrest record was about half that of non-sex offenders (8.9 prior arrests). In addition, among the 1994 prison releases, 23.7% of the sex offenders (2,297), compared to 44.3% of non-sex offenders (116,252), had served prior prison sentences.

Sex offenders were more likely to have been arrested (28.5%) or convicted (13.9%) for a sexual offense than non-sex offenders (6.5% with a prior arrest for a sex crime; 0.2% with a prior conviction for a sex crime). The same is true for child molesting — about 1 in 10 sex offenders had a prior arrest for a sex offense against a child, compared to about 1 in 100 non-sex offenders.

Rapists and sexual assaulters

For approximately 71% of the 3,115 rapists, the arrest for rape that resulted in their imprisonment was their first for a sex crime. The remaining 29% had one or more prior sex crime arrests. Likewise, for sexual assaulters, the sexual assault arrest that led to their imprisonment was the first arrest for a sex crime for 72% of the 6,576 sexual assaulters. The remaining 28% had been arrested at least once before for some type of sex crime.

Table 6. Prior criminal record of child molesters and statutory rapists released from prison in 1994

Prior to the sex crime for which imprisoned	Child molesters	Statutory rapists
Percent with at least 1 prior arrest for — [a]		
Any crime	76.8%	80.6%
Any sex offense	29.0	38.4
Sex offense against a child	18.3	19.6
Prior arrests for any crime[a]		
Mean	4.1	4.8
Median	2	3
Percent with at least 1 prior conviction for — [a]		
Any crime	54.6%	64.6%
Any sex offense	11.9	21.2
Sex offense against a child	7.3	11.5
Prior convictions for any crime[a]		
Mean	1.6	2.2
Median	1	1
Percent with prior prison sentence for any crime[a]	19.3%	23.4%
Percent who were first releases[b]	74.5%	73.7%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

[a]"Prior" does not include the arrest, conviction, or prison sentence that was the reason the sex offenders were in prison in 1994. Persons with no prior arrest or prior convictions were coded zero and were included in the calculations of mean and median priors. Calculation of prior convictions excluded Ohio, and calculation of prior prison sentences excluded Ohio and Virginia.

[b]Data on first releases are based on releases from 13 States. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and sexual assaulters

The 4,295 child molesters had at least 1 arrest for child molesting (the arrest that led to their imprisonment). For 3,509 (81.7%) of them, that arrest was their first ever arrest for child molesting (table 6). For the other 786 men (18.3% of the 4,295), that was not their first. Some had one prior arrest for a sex offense against a child, some had two, and others had three or more.

Among those with three or more priors was a man whose first arrest for child molesting was in 1966, when he was age 20. When released in 1994, he was serving an 11-year sentence for molesting a child under age 14. The prior criminal record of this serial pedophile spanned three decades, with arrests for child molesting in the 1970's, the 1980's, and the 1990's.

[redacted]sures of recidivism

This section measures recidivism four ways:

- percent rearrested for any type of crime
- percent reconvicted for any type of crime
- percent returned to prison with a new prison sentence for any type of crime
- percent returned to prison with or without a new prison sentence.

"Percent rearrested" is calculated by dividing "the number rearrested" by "the number released from prison in 1994."

"Percent reconvicted" is obtained by dividing "the number reconvicted" by "the number released from prison in 1994." (It is *not* calculated by dividing "the number reconvicted" by "the number rearrested.")

"Percent returned to prison with a new sentence" is calculated by dividing "the number returned to prison with a new sentence" by "the number released from prison in 1994." (It is *not* calculated by dividing "the number returned to prison with a new sentence" by "the number reconvicted.")

Except where stated otherwise, all four recidivism measures —

- refer to the full 3-year period following the prisoner's release in 1994
- include both "in-State" and "out-of-State" recidivism.

"In-State" recidivism refers to new offenses committed within the State that released the prisoner in 1994. "Out-of-State" recidivism is any new offenses in States other than the one that released him in 1994.

Not all 4 of the recidivism measures are based on data from 15 States —

- "Percent rearrested" is based on 15 States
- "Percent reconvicted" is based on 14 of the 15 States participating in the study
- "Percent returned to prison with a new sentence" is based on 13 of the 15 States
- "Percent returned to prison with or without a new sentence" is based on 9 of the 15.

Three of the four recidivism measures were calculated from data on fewer than 15 States because the information needed to perform the calculations was not available (or not readily available) from each of the 15 participating States. Notes at the bottom of the tables alert readers to such missing data.

Four measures

All sex offenders

The 9,691 sex offenders in this study were all released from prison in 1994.

Within the first 3 years following their release —

- 43% (4,163 of the 9,691) were rearrested for at least 1 new crime (table 7)
- 24% (2,326 of the 9,691) were reconvicted for any type of crime
- 11.2% (1,085 of the 9,691) were returned to prison with another sentence
- 38.6% (3,741 of the 9,691) were returned to prison with or without a new sentence.

For approximately three-fourths of the 4,163 men who were rearrested for some new crime, their most serious rearrest offense was a felony; for the remaining fourth, the most serious was a misdemeanor (not shown in table).

Of the 4,163 men rearrested for some new offense, nearly 9 in 10 (87%) were still on parole when taken into custody (not shown in table).

Table 7. Recidivism rate of sex offenders released from prison in 1994, by recidivism measure and type of sex offender

Recidivism measure	Percent of released prisoners		
	All	Rapists	Sexual assaulters
Within 3 years following release:			
Rearrested for any type of crime	43.0%	46.0%	41.5%
Reconvicted for any type of crime[a]	24.0%	27.3%	22.4%
Returned to prison with a new sentence for any type of crime[b]	11.2%	12.6%	10.5%
Returned to prison with or without a new sentence[c]	38.6%	43.6%	36.1%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.
[c]"With or without a new sentence" includes prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 38.6%. When California is excluded, the return-to-prison rate falls to 27.9%.

The 2,326 reconvicted for a new crime consisted of 1,672 (71.9%) whose most serious conviction offense was a felony, and 654 (28.1%) whose most serious offense was a misdemeanor (not shown in table).

Of the 2,326 reconvicted for any new crime after their release, 1,085 were resentenced to prison, and the remaining 1,241 were placed on probation or ordered to pay a fine or sentenced to short-term confinement in a local jail. The 1,241 not resentenced to prison made up a little over half (53%) of the total 2,326 reconvicted. One reason why over half were not resentenced to prison was that the new conviction offense for about 650 of the 2,326 newly convicted men (approximately 30%) was a misdemeanor rather than a felony, and State laws usually do not permit State prison sentences for misdemeanors.

Altogether, 3,741 (38.6%) of the 9,691 released sex offenders were returned to prison either because of a new sentence or a technical violation. Of the 3,741, 2,656 (71%) were returned for a technical violation, such as failing a drug test, missing an appointment with the parole officer, or being arrested for another crime; and 1,085 were returned with a new prison sentence. The 2,656 consisted of 664 who were reconvicted but not resentenced to prison, plus 1,992 not reconvicted.

As previously explained, a total of 1,241 released sex offenders were reconvicted but not resentenced to prison for their new crime. The 1,241 included 664 (described immediately above) who were returned to prison for a technical violation. The 664 were 54% of the 1,241, indicating that most of those who were reconvicted but not given a new prison sentence were, nevertheless, returned to prison.

Sex offenders compared to non-sex offenders

The 15 States in this study released 272,111 prisoners altogether in 1994. The 9,691 released sex offenders made up 3.6% of that total. The remaining 262,420 released prisoners were non-sex offenders. Of the 262,420 non-sex offenders, 68% (179,391 men and women out of the 262,420) were rearrested for a new crime within 3 years (not shown in table). The 43% overall rearrest rate of the 9,691 released sex offenders (4,163 out of 9,691) was low by comparison.

Another difference was the rearrest charge. The rearrest offense was a felony for about 3 out of 4 (75%) of the 4,163 rearrested sex offenders (not shown in table). By comparison, about 84% of the 179,391 non-sex offenders were charged by police with a felony (not shown in table).

Of the 4,163 sex offenders rearrested for a new crime, nearly 9 in 10 (87%) were on parole when taken into custody; of the 179,391 rearrested non-sex offenders, also about 9 in 10 (85%) were on parole (not shown in table).

There was a difference in reconvictions. The reconviction rate for the 9,691 released sex offenders was 24.0%, compared to 47.8% for 262,420 non-sex offenders released in 1994 (not shown in table). The 2,326 sex offenders reconvicted for any new crime included 1,672 (71.9%) whose most serious conviction offense was a felony (not shown in table). Of the 262,420 non-sex offenders, 125,437 (47.8%) were reconvicted, which included 94,078 (75.0%) whose most serious reconviction offense was a felony (not shown in table).

Rapists and sexual assaulters

Within the first 3 years following release —

- 46.0% of the 3,115 rapists (1,432 men) and 41.5% of the 6,576 sexual assaulters (2,731 men) were rearrested for all types of crimes (table 7)
- 27.3% of the 3,115 rapists (850 men) were reconvicted, compared to 22.4% of the 6,576 sexual assaulters (1,473 men) for all types of crimes
- 12.6% of the 3,115 rapists (392 men) and 10.5% of the 6,576 sexual assaulters (690 men) were resentenced to prison for their reconviction offense
- 43.6% of the 3,115 rapists (1,358 men) and 36.1% of the 6,576 sexual assaulters (2,374 men) were returned to prison either because of a new sentence or because of a technical violation of their parole.

For approximately three-fourths of the 1,432 rapists who were rearrested for a new crime, the crime was a felony; for the remainder, the most serious was a misdemeanor (not shown in table). As indicated earlier, 2,731 sexual assaulters were rearrested for a new offense after their release, and for about three-fourths, their most serious rearrest offense was a felony; for the remainder, the most serious crime was a misdemeanor (not shown in table).

The 850 rapists reconvicted for any new crime included 617 (72.6%) whose most serious reconviction offense was a felony; the 1,473 reconvicted sexual assaulters included 1,052 (71.4%) who were reconvicted for a felony (not shown in table).

Child molesters and statutory rapists

Of the child molesters and statutory rapists released from prison in 1994 —

- 1,693 of the 4,295 child molesters (39.4%) and 221 of the 443 statutory rapists (49.9%) were rearrested for a new crime (not necessarily a new sex crime) (table 8)
- 876 of the 4,295 child molesters (20.4%) and 145 of the 443 statutory rapists (32.7%) were reconvicted for any type of crime
- 9% of the 4,295 child molesters and 13% of the 443 statutory rapists were resentenced to prison for their new conviction offense
- 38% of the 4,295 child molesters and 46% of the 443 statutory rapists were back in prison within 3 years as a result of either a new prison sentence or a technical violation of their parole.

The most serious offense for three-fourths of the 1,693 child molesters who were rearrested was a felony, and a misdemeanor for the remainder (not shown in table). Following their release in 1994, 221 statutory rapists were rearrested for a new crime. The most serious offense that approximately three-fourths were charged with was a felony (not shown in table).

The 876 child molesters reconvicted for any type of crime included 643 (73.4%) whose most serious reconviction offense was a felony; the 145 reconvicted statutory rapists included 97 (66.7%) whose most serious was a felony (not shown in table).

Table 8. Recidivism rate of child molesters and statutory rapists released from prison in 1994, by recidivism measure

Recidivism measure	Percent of released prisoners	
	Child molesters	Statutory rapists
Within 3 years following release:		
Rearrested for any type of crime	39.4%	49.9%
Reconvicted for any type of crime[a]	20.4%	32.7%
Returned to prison with a new sentence for any type of crime[b]	9.1%	13.2%
Returned to prison with or without a new sentence[c]	38.2%	45.7%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.

[b]"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.

[c]"With or without a new sentence" includes prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 39.4%. When California is excluded, the return-to-prison rate falls to 23.4%.

Time to recidivism

All sex offenders

Within 6 months following their release, 16% of the 9,691 men were rearrested for a new crime (not necessarily another sex offense) (table 9). Within 1 year, altogether 24.2% were rearrested. Within 2 years the cumulative total reached 35.5%. By the end of the 3-year followup period, 43% (4,163 of the 9,691) were rearrested for some type of crime.

These statistics indicate that most recidivism within the first 3 years following release occurred in the first year (56%, since 24.2% / 43% = 56%).

While the bulk of rearrests occurred in the first year, that period did not account for the bulk of reconvictions or reimprisonments. This is largely because a sizable number of those rearrested in the first year were not reconvicted and reimprisoned until sometime in the second year, due to the additional time needed to prosecute, convict, and sentence a criminal defendant. For example, by the end of the first year, 8.6% of the 9,691 released sex offenders were reconvicted, and by the end of the third year, a cumulative total of 24% were reconvicted, indicating that the first year accounted for a relatively small percentage of all the reconvictions in the 3 years (36%, since 8.6% / 24% = 36%).

Rapists and sexual assaulters

Forty-six percent of released rapists were rearrested within 3 years, and over half of those rearrests (56%) occurred in the first year (since 25.8% / 46.0% = 56%). Similarly, 41.5% of released sexual assaulters were rearrested within the first 3 years following their 1994 release, and over half of those rearrests (56%) occurred in the first year (since 23.4% / 41.5% = 56%).

Table 9. Recidivism rate of sex offenders released from prison in 1994, by type of recidivism measure, type of sex offender, and time after release

Time after 1994 release	Cumulative percent of sex offenders released from prison in 1994		
	All	Rapists	Sexual assaulters
Rearrested for any type of crime within —			
6 months	16.0%	16.3%	15.8%
1 year	24.2	25.8	23.4
2 years	35.5	38.6	34.0
3 years	43.0	46.0	41.5
Reconvicted for any type of crime within —[a]			
6 months	3.6%	4.3%	3.3%
1 year	8.6	10.0	8.0
2 years	17.2	19.9	15.9
3 years	24.0	27.3	22.4
Returned to prison with a new sentence for any type of crime within —[b]			
6 months	1.8%	1.9%	1.8%
1 year	4.0	4.1	3.9
2 years	8.0	9.0	7.5
3 years	11.2	12.6	10.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percentage returned to prison with a new sentence.

Table 10. Recidivism rate of child molesters and statutory rapists released from prison in 1994, by type of recidivism measure and time after release

Time after 1994 release	Cumulative percent of sex offenders released from prison in 1994	
	Child molesters	Statutory rapists
Rearrested for any type of crime within —		
6 months	16.0%	18.5%
1 year	22.9	29.8
2 years	32.9	42.4
3 years	39.4	49.9
Reconvicted for any type of crime within —[a]		
6 months	3.0%	4.5%
1 year	7.1	13.6
2 years	14.5	24.4
3 years	20.4	32.7
Returned to prison with a new sentence for any type of crime within —[b]		
6 months	1.5%	0.9%
1 year	3.1	4.0
2 years	6.5	9.3
3 years	9.1	13.2
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percentage returned to prison with a new sentence.

Child molesters and statutory rapists

Of the 4,295 released child molesters, 1,693 (39.4%) were rearrested during the 3-year followup period (table 10). The majority of those charged (approximately 982 of the 1,693, or 58%) were charged in the first 12 months. While 49.9% of released statutory rapists were rearrested within 3 years, nearly three-fifths of those rearrests occurred within the first year following release (29.8% / 49.9% = 60%).

[redacted]or any type of crime

Table 11. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and demographic characteristics of released prisoners

Prisoner characteristic	Percent rearrested for any type of crime within 3 years: All	Rapists	Sexual assaulters
Race			
White	36.7%	39.1%	35.8%
Black	56.1	55.0	57.0
Other	40.4	38.5	41.7
Hispanic origin			
Hispanic	42.2%	47.7%	39.6%
Non-Hispanic	45.9	50.2	44.3
Age at release			
18-24	59.8%	58.6%	60.2%
25-29	54.2	53.8	54.3
30-34	48.8	52.6	46.7
35-39	41.4	46.1	38.9
40-44	34.7	41.2	31.6
45 or older	23.5	23.0	23.7
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5%; Hispanic origin for 82.5%; age for virtually 100%.

Table 12. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by demographic characteristics of released prisoners

Prisoner characteristic	Percent rearrested for any type of crime within 3 years: Child molesters	Statutory rapists
Race		
White	38.2%	46.0%
Black	51.7	61.5
Other	37.8	55.6
Hispanic origin		
Hispanic	37.1%	56.9%
Non-Hispanic	41.9	48.8
Age at release		
18-24	59.6%	70.0%
25-29	51.4	56.4
30-34	46.5	47.7
35-39	38.0	37.9
40-44	28.0	44.4
45 or older	23.8	23.8
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Data identifying race were reported for 98.5%; Hispanic origin for 82.5%; age for virtually 100%.

Demographic characteristics

All sex offenders

Race Black men (56.1%) released in 1994 were more likely than white men (36.7%) to be rearrested for a new crime (not limited to just a new sex crime) within the first 3 years following their release (table 11).

Hispanic origin Among released sex offenders, non-Hispanics (45.9%) were more likely than Hispanics (42.2%) to have a new arrest within the 3-year followup period.

Age The younger the prisoner when released, the higher the rate of recidivism. For example, of all the sex offenders under age 25 at the time of discharge from prison, 59.8% were rearrested for some type of crime within 3 years, or more than double the 23.5% of those age 45 or older.

Rapists and sexual assaulters

Race Among releasees whose imprisonment offense was sexual assault, 57% of black men and 35.8% of white men were rearrested for all types of crimes. A higher rearrest rate for blacks was also found among released rapists.

Hispanic origin Among released rapists, non-Hispanics (50.2%) were more likely than Hispanics (47.7%) to be rearrested within the 3-year followup period. The same was true among released prisoners whose imprisonment offense was sexual assault.

Age For both rapists and sexual assaulters, younger releasees had higher rearrest rates than older releasees.

Table 13. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and time served before release

Time served in prison before 1994 release	Percent rearrested for any type of crime within 3 years: All	Rapists	Sexual assaulters
6 months or less	45.7%	48.3%	45.0%
7-12	42.1	32.1	43.1
13-18	38.9	37.6	39.2
19-24	46.7	51.1	45.9
25-30	44.6	42.9	45.1
31-36	35.7	42.6	33.7
37-60	38.9	43.2	36.7
61 months or more	39.9	43.4	35.5
Total first releases	6,470	1,859	5,860

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and statutory rapists

Race The rearrest rate among released child molesters was 51.7% for black men and 36.2% for white men (table 12). Among statutory rapists, black men (61.5%) had a higher rearrest rate than white men (46.0%).

Hispanic origin Among released prisoners whose imprisonment offense was statutory rape, Hispanics (56.9%) were more likely than non-Hispanics (48.8%) to be rearrested within the 3-year followup period. The opposite was true of child molesters, as Hispanics had a lower rearrest rate (37.1%) than non-Hispanics (41.9%).

Age The younger the sex offender was when released, the higher was his likelihood of being rearrested. For example, the rearrest percent for statutory rapists younger than 25 was higher (70.0%) than the rearrest percent for statutory rapists ages 25 to 30 (56.4%). The same was true among child molesters.

Time served before 1994 release

All sex offenders

Sex offenders who served the shortest amount of time in prison before being released (6 months or less) had a higher rearrest rate (45.7%) than those who served the longest (over 5 years, 39.9% rate) (table 13). Similarly, prisoners who served 6 months or less had a higher rearrest rate (45.7%) than those who served 7 months to 1 year (42.1%). However, other comparisons did not indicate a connection between serving more time and lower recidivism. For example, among sex offenders who served 1 to 1½ years in prison before being released, 38.9% were rearrested for all types of crimes, compared to 46.7% of sex offenders who served a bit longer — 1½ to 2 years. Similarly, released prisoners who served between 3 and 5 years in prison had a higher rate of rearrest (38.9%) than released prisoners who served 2½ to 3 years (35.7%). Because of these mixed results, and others illustrated below, the data do not warrant any general conclusion about an association between the level of recidivism and the amount of time served.

Table 14. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by time served before being released

Time served in prison before 1994 release	Percent rearrested for any type of crime within 3 years: Child molesters	Statutory rapists
6 months or less	42.9%	56.7%
7-12	39.7	45.3
13-18	34.5	43.9
19-24	45.5	48.9
25-30	39.4	25.9
31-36	27.2	59.1
37-60	31.5	21.4
61 months or more	29.9	33.3
Total first releases	3,104	317

Note: The 3,104 child molesters were released in 13 States; the 317 statutory rapists in 10 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Rapists and sexual assaulters

Among sexual assaulters who served no more than 6 months, 45.0% were rearrested for all types of crimes. Those who served a little longer — from about 6 months to 1 year — had a lower rearrest rate, 43.1%. Those released after serving even more time — 1 to 1½ years — had an even lower rate, 39.2%. However, there are numerous instances where serving more time was not linked to lower recidivism. For example, rapists released after about 1 to 1½ years in prison had a 37.6% rearrest rate, while those imprisoned a little longer — from about 1½ to 2 years — had a higher rate, 51.1%.

Child molesters and statutory rapists

Among released statutory rapists and child molesters, the results continued to be mixed regarding an association between the rate of recidivism and the amount of time served (table 14). For example, child molesters released after serving about 2 to 2½ years had a higher rate of rearrest for all types of crimes (39.4%) than those who served somewhat longer — about 2½ to 3 years (27.2%). However, the rearrest rate rose (31.5%) among molesters who served more time — 3 to 5 years.

Table 15. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and prior arrest for any type of crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any type of crime within 3 years			
Total	43.0%	46.0%	41.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	24.8	28.3	23.6
Not their first arrest for any type of crime	47.9	49.6	47.1
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	21.5	16.9	23.7
Not their first arrest for any type of crime	78.5	83.1	76.3
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the sex crime arrest responsible for their being in prison in 1994.

Prior arrest for any type of crime

All sex offenders

For 2,084 sex offenders (21.5% of the 9,691 total), their only arrest prior to being released in 1994 was the arrest for their imprisonment offense (a sex offense) (table 15). Among these 2,084 released sex offenders with just 1 prior arrest, 24.8% were rearrested for a new crime (not necessarily a new sex crime). For the remaining 7,607 (78.5% of 9,691), their prior record showed an arrest for the sex offense responsible for their current imprisonment plus at least 1 earlier arrest for some type of crime. Of these 7,607 prisoners, 47.9% were rearrested, or about double the rate of their counterparts with 1 prior arrest (24.8%).

Rapists and sexual assaulters

Of the 3,115 released rapists, 83.1% (2,589 rapists) had more than 1 arrest for some type of crime prior to their release from prison in 1994, and 16.9% (526 rapists) had just 1 prior arrest, the arrest for the sex crime that resulted in their being in prison in 1994. The multiple prior arrests for the 2,589 rapists included the arrest for their imprisonment offense plus at least 1 other arrest for any type of crime. The 2,589 with more than 1 prior arrest had a rearrest rate (49.6%) nearly double that of the 526 with just 1 prior (28.3%).

Child molesters and statutory rapists

Of the 4,295 child molesters, 76.8% (3,299 men) had more than 1 prior arrest (table 16). These 3,299 child molesters had a rearrest rate (44.3%) nearly double the 23.3% rate of the 996 molesters with just 1 prior arrest (996 is 23.2% of 4,295). The 357 statutory rapists with more than 1 prior arrest (357 is 80.6% of 443) had a rearrest rate (55.7%) more than double the 25.6% rate of the 86 statutory rapists with 1 prior arrest (86 is 19.4% of 443).

Table 16. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by prior arrest for any type of crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any type of crime within 3 years		
Total	39.4%	49.9%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any type of crime	23.3	25.6
Not their first arrest for any type of crime	44.3	55.7
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any type of crime	23.2	19.4
Not their first arrest for any type of crime	76.8	80.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the sex crime arrest responsible for their being in prison in 1994.

Number of prior arrests for any type of crime

Statistics on prior arrests in this section of the report do include the imprisonment offense of the released sex offender.

All sex offenders

The number of times a prisoner was arrested in the past was a relatively good predictor of whether that prisoner would continue his criminality after release (table 17). Prisoners with just one prior arrest for any type of crime had a 24.8% rearrest rate for all types of crimes. With two priors, the percentage rearrested rose to 31.9%. With three, it increased to 36.9%. With four, it went up to 42.6%. With additional priors, there were further increases, ultimately reaching a rearrest rate of 67.0% for released prisoners with the longest criminal record (more than 15 prior arrests).

Rapists and sexual assaulters

Both rapists and sexual assaulters followed the pattern described immediately above: the more prior arrests they had, the more likely they were to have a new arrest for some type of crime after their release in 1994.

Table 17. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release*	All	Rapists	Sexual assaulters
Percent rearrested for any type of crime within 3 years			
1 prior arrest for any type of crime	24.8%	28.3%	23.6%
2	31.9	36.4	29.9
3	36.9	36.3	37.1
4	42.6	47.2	40.4
5	50.5	48.6	51.6
6	49.7	47.3	50.9
7-10	59.0	59.6	58.6
11-15	65.1	63.7	66.0
16 or more	67.0	66.1	67.5
Percent of released prisoners			
All sex offenders	100%	100%	100%
1 prior arrest for any type of crime	21.5	16.9	23.7
2	16.0	15.2	16.3
3	11.9	12.1	11.8
4	9.0	9.2	8.9
5	7.2	8.0	6.8
6	6.3	6.6	6.1
7-10	14.4	15.8	13.8
11-15	7.9	8.9	7.4
16 or more	5.8	7.2	5.2
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. In this table, that arrest is counted as 1 prior arrest.

Child molesters and statutory rapists

Among released prisoners with the smallest number of prior arrests (1 prior arrest), 23.3% of child molesters and 25.6% of statutory rapists were rearrested for all types of crimes within 3 years (table 18). Rearrest rates generally rose with each increase in the number of prior arrests. Among released prisoners with the largest number of prior arrests (more than 15), 62.0% of child molesters and 76.2% of statutory rapists had at least 1 new arrest after being released in 1994.

State where rearrested for any type of crime

The State where the rearrest occurred was not always the State that released the prisoner. In some cases, the released sex offender left the State where he was imprisoned and was rearrested for a new crime in a different State. For example, a sex offender released from prison in California may have traveled to Nevada, where he was arrested for committing another crime.

Sex offenders

A total of 4,163 sex offenders were rearrested for some type of new crime after their 1994 release. Of the 4,163 arrests, 16.0% — or 1 in 6 — were outside the State where the prisoner was released (table 19). The rest (84.0%) were made in the State that released them.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 179,391 were rearrested for a new crime within 3 years (not shown in table). Of the 179,391 arrests for any type of crime, 11.2%, or 20,092 arrests, were arrests that occurred outside the State that released them.

Table 18. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release*	Child molesters	Statutory rapists
Percent rearrested for any type of crime within 3 years		
1 prior arrest for any type of crime	23.3%	25.6%
2	28.0	29.3
3	32.4	46.9
4	39.2	41.0
5	47.4	60.6
6	50.2	53.8
7-10	58.1	65.1
11-15	62.9	81.3
16 or more	62.0	76.2
Percent of released prisoners		
All sex offenders	100%	100%
1 prior arrest for any type of crime	23.2	19.4
2	17.2	13.1
3	12.1	11.1
4	8.5	8.8
5	7.0	7.4
6	6.4	5.9
7-10	13.6	18.7
11-15	7.3	10.8
16 or more	4.8	4.7
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least one arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. In this table, that arrest is counted as 1 prior arrest.

Rearrested sex offenders had a higher percentage: 1 in 6 of their rearrests for any type of crime were in a State other than the one that released them.

Rapists and sexual assaulters

Following their 1994 release, 1,432 rapists and 2,731 sexual assaulters were rearrested for any new crime (table 19). For 17.4% of the 1,432 rearrested rapists, and 15.2% of the 2,731 rearrested sexual assaulters, the place where the arrest occurred was in a different State than the one that released them.

Table 19. Where sex offenders were rearrested for any new crime following release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	84.0	82.6	84.8
Another State	16.0	17.4	15.2
Total rearrested for any new crime	4,163	1,432	2,731

Note: The 4,163 rearrested sex offenders were released in 15 States, but table percentages are based on 14 States.

Child molesters and statutory rapists

Out of the 4,295 child molesters, 1,693 were rearrested for any new crime after being released from prison in 1994 (table 20). The 1,693 recidivists consisted of 84.8% whose new arrest was in the same State that released them in 1994, and 15.2% whose alleged violation occurred in a different State.

About half of all statutory rapists were not rearrested for any type of crime after their release. Of the 221 who were, 16.6% were rearrested outside the State where they were released.

Table 20. Where child molesters and statutory rapists were rearrested for any new crime following release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners: Child molesters	Statutory rapists
Total	100%	100%
Same State where released	84.8	83.4
Another State	15.2	16.6
Total rearrested for any new crime	1,693	221

Note: The 1,693 rearrested child molesters were released in 15 States, but table percentages are based on 14 States. The 221 rearrested statutory rapists were released in 11 States, but table percentages are based on 10 States.

Rearrest and reconviction

All sex offenders

Based on official arrest records, 517 of the 9,691 released sex offenders (5.3%) were rearrested for a new sex crime within the first 3 years following their release (table 21). The new sex crimes for which these 517 men were arrested were forcible rapes and sexual assaults. For virtually all of the 517, the most serious sex crime for which they were rearrested was a felony. Their victims were children and adults. The study cannot say what percentage were children and what percentage were adults because arrest files did not record the victim's age.

Of the total 9,691 released sex, 3.5% (339 of the 9,691) were reconvicted for a sex crime (a forcible rape or a sexual assault) within 3 years.

Sex offenders compared to non-sex offenders

The 15 States in this study released a total of 272,111 prisoners in 1994. The 9,691 released sex offenders made up less than 4% of that total. Of the remaining 262,420 non-sex offenders, 3,328 (1.3%) were rearrested for a new sex crime within 3 years (not shown in table). By comparison, the 5.3% rearrest rate for the 9,691 released sex offenders was 4 times higher.

Assuming that the 517 sex offenders who were rearrested for another sex crime each victimized no more than one victim, the number of sex crimes they committed after their prison release totaled 517. Assuming that the 3,328 non-sex offenders rearrested for a sex crime after their release also victimized one victim each, the number of sex crimes they committed was 3,328. The combined total number of sex crimes is 3,845 (517 plus 3,328 = 3,845). Released sex offenders accounted for 13% and released non-sex offenders accounted for 87% of the 3,845 sex crimes committed by all the prisoners released in 1994 (517 / 3,845 = 13% and 3,328 / 3,845 = 87%).

Rapists and sexual assaulters

Of the 3,115 rapists, 5.0% (155 men) had a new arrest for a sex crime (either a sexual assault or another forcible rape) after being released. Of the 6,576 released sexual assaulters, 5.5% (362 men) were rearrested for a new sex crime (either a forcible rape or another sexual assault).

A total of 100 released rapists were reconvicted for a sex crime. The 100 men were 3.2% of the 3,115 rapists released in 1994. Among the 6,576 released sexual assaulters, 3.7% (243 men) were reconvicted for a sex crime.

Child molesters and statutory rapists

After their release, 5.1% (221 men) of the child molesters and 5.0% (22 men) of the statutory rapists were rearrested for a new sex crime (table 22). Not all of the new sex crimes were against children. The new sex crimes were forcible rapes and various types of sexual assaults.

Following their release, 3.5% (150 men) of the 4,295 released child molesters were convicted for a new sex crime against a child or an adult. The sex crime reconviction rate for the 443 statutory rapists was 3.6% (16 reconvicted men).

Table 21. Of sex offenders released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime, by type of sex offender

	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years	5.3%	5.0%	5.5%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.2%	3.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Table 22. Of child molesters and statutory rapists released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime

	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years	5.1%	5.0%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.6%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Time to rearrest

All sex offenders

Within 6 months following their release, 1.4% of the 9,691 men were rearrested for a new sex crime (table 23). Within 1 year the cumulative total grew to 2.1% rearrested. By the end of the 3-year followup period, altogether 5.3% had been rearrested for another sex crime. The first year was the period when 40% of the new sex crimes were committed (since 2.1% / 5.3% = 40%).

Rapists and sexual assaulters

The first year following release accounted for 40% of the new sex crimes committed by both released rapists (since 2.0% / 5.0% = 40%) and released sexual assaulters (since 2.2% / 5.5% = 40%).

Child molesters and statutory rapists

For child molesters and statutory rapists, the first year following their release was the period when the largest number of recidivists were rearrested. Similar to rapists and sexual assaulters, about 40% of the arrests for new sex crimes committed by child molesters and statutory rapists occurred during the first year (table 24).

Demographic characteristics

All sex offenders

Race Among sex offenders released from prison in 1994, black men (5.6%) and white men (5.3%) were about equally likely to be rearrested for another sex crime (table 25).

Hispanic origin Among released sex offenders, non-Hispanics were more likely to be rearrested for a new sex offense (6.4%) than Hispanics (4.1%). One reason for the lower rearrest rate for Hispanics may be that some were deported immediately following their release.

Age Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

Table 23. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and time after release

Time after 1994 release	Cumulative percent rearrested for any new sex crime within specified time: All	Rapists	Sexual assaulters
6 months	1.4%	1.3%	1.4%
1 year	2.1	2.0	2.2
2 years	3.9	3.7	4.1
3 years	5.3	5.0	5.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.

Table 24. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by time after release

Time after 1994 release	Cumulative percent rearrested for any new sex crime within specified time: Child molesters	Statutory rapists
6 months	1.3%	1.4%
1 year	2.2	2.0
2 years	3.9	3.2
3 years	5.1	5.0
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

Table 25. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by demographic characteristics of released prisoners

Prisoner characteristic	Percent of released sex offenders rearrested for any new sex crime within 3 years
Total released	5.3%
Race	
White	5.3%
Black	5.6
Other	4.4
Hispanic origin	
Hispanic	4.1%
Non-Hispanic	6.4
Age at release	
18-24	6.1%
25-29	5.5
30-34	5.8
35-39	6.1
40-44	5.6
45 or older	3.3
Total released	9,691

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5% of 9,691 released sex offenders; Hispanic origin for 82.5%; age for virtually 100%.

Time served before 1994 release

All sex offenders

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994. No clear association was found between how long they were in prison and their recidivism rate (table 26). For example, those sex offenders who served from 7 to 12 months were rearrested for a new sex crime at a higher rate (5.2%) than those who served slightly less time (3.8%), which seemed to suggest that serving more time raised the recidivism rate. But other comparisons suggested the opposite. Compared to men who were confined for 7 to 12 months (5.2% rearrest rate), those who served more time (13 to 18 months) were less likely to be rearrested for any new sex crime (4.1%).

Prior arrest for any type of crime

All sex offenders

Of the 9,691 released sex offenders, 21.5% (2,084 of the 9,691) had only 1 arrest in their criminal record up to the time they were released (table 27). That one arrest was the arrest for the sex crime that resulted in a prison term. The remaining 78.5% (7,607 men) had the arrest for their imprisonment offense in their record, and they also had at least 1 earlier arrest for some type of crime. For example, some had an earlier arrest for theft or a drug offense. Most of them did not have an earlier arrest for a sex crime.

Compared to the 2,084 sex offenders with the 1 arrest in their criminal record, the 7,607 with a longer prior arrest record were more likely to be rearrested for another sex crime (5.9% compared to 3.3%).

Rapists and sexual assaulters

Of the 3,115 released rapists, the majority (83.1% of the 3,115, or 2,589 men) had more than 1 arrest (for any type of crime) prior to release from prison in 1994. Of these 2,589 released rapists, 5.4% (140) had a new arrest for a sex crime. The rate was lower (3.0%) for the 526 released rapists with no prior arrest.

Results for sexual assaulters followed the same pattern: the 5,017 sexual assaulters with more than 1 prior arrest (76.3% of 6,576 is 5,017) were more likely to be rearrested for a new sex crime (6.2%) than the 1,559 with just the 1 prior arrest (23.7% of 6,576 is 1,559).

Table 26. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by time served before being released

Time served in prison before 1994 release	Percent of released sex offenders rearrested for any new sex crime within 3 years
6 months or less	3.8%
7-12	5.2
13-18	4.1
19-24	6.4
25-30	5.2
31-36	3.3
37-60	5.2
61 months or more	4.9
Total first releases	6,470

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Table 27. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and prior arrest for any type of crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years			
Total	5.3%	5.0%	5.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	3.3	3.0	3.4
Not their first arrest for any type of crime	5.9	5.4	6.2
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	21.5	16.9	23.7
Not their first arrest for any type of crime	78.5	83.1	76.3
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any type of crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Child molesters and statutory rapists

Released child molesters with more than one prior arrest were more likely than those with only one arrest in their criminal record to be rearrested for a new sex crime (5.7% compared to 3.2%) (table 28). The same was true of statutory rapists (5.3% compared to 3.5%).

Number of prior arrests for any type of crime

All sex offenders

The more arrests (for any type of crime) the sex offender had in his criminal record, the more likely he was to be rearrested for another sex crime after his release from prison (table 29). Sex offenders with one prior arrest (the arrest for the sex crime for which they had been imprisoned) had the lowest rate, about 3%; those with 2 or 3 prior arrests for some type of crime, 4%; 4 to 6 prior arrests, 6%; 7 to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.

Table 28. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by prior arrest for any type of crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years		
Total	5.1%	5.0%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any type of crime	3.2	3.5
Not their first arrest for any type of crime	5.7	5.3
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any type of crime	23.2	19.4
Not their first arrest for any type of crime	76.8	80.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any type of crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Table 29. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release	Percent rearrested for any new sex crime within 3 years
All sex offenders	5.3%
1 prior arrest for any type of crime	3.3
2	4.3
3	4.4
4	5.8
5	6.3
6	6.1
7-10	6.9
11-15	7.8
16 or more	7.4
	Percent of released prisoners
All sex offenders	100%
1 prior arrest for any type of crime	21.5
2	16.0
3	11.9
4	9.0
5	7.2
6	6.3
7-10	14.4
11-15	7.9
16 or more	5.8
Total released	9,691

Note: The 9,691 sex offenders were released in 15 States. By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. In this table, that arrest is counted as one prior arrest.

Prior arrest for a sex crime

All sex offenders

Prior to their release in 1994, 2,762 of the sex offenders (28.5% of the total 9,691) had 2 or more arrests for a sex offense in their criminal record: the arrest for the sex offense that resulted in their imprisonment, plus at least 1 earlier arrest for a sex crime (table 30). For the remaining 6,929 (71.5% of the total 9,691), their only prior arrest for a sex crime was the arrest that brought them into prison. (Any other prior arrests the 6,929 may have had were for non-sex crimes.) Following their release, the 2,762 with more than 1 sex crime in their criminal background were about twice as likely to be rearrested for another sex crime (8.3%) as the 6,929 with a single prior arrest (4.2%).

Rapists and sexual assaulters

Rapists (4.0%) and sexual assaulters (4.2%) with one prior arrest for a sex crime were less likely to be rearrested for another sex crime than rapists (7.4%) and sexual assaulters (8.7%) who had been arrested two or more times for a sex crime prior to release from prison in 1994.

Child molesters and statutory rapists

By definition, all 4,295 child molesters had been arrested for a sex offense at least once prior to their release in 1994 — the sex offense that landed them in prison. For 3,049 of them (71% of 4,295), that arrest was their only prior arrest for a sex offense (table 31). The remaining 1,246 child molesters (29% of 4,295) had at least 2 prior arrests for a sex crime: the arrest for their imprisonment offense plus at least 1 other prior arrest for a sex offense (not necessarily one against a child). Of the 1,246 child molesters with multiple sex crimes in their past, 8.4% (105 of the 1,246) were rearrested for another sex crime (not necessarily another sex crime against a child), or more than double the 3.8% rate for the 3,049 released child molesters with just 1 prior arrest for a sex crime.

Similar results were found for released statutory rapists. Those with a more extensive record of prior arrests for sex crimes were more likely to be rearrested for another sex crime (8.8%) than those with just one past arrest (2.6%).

Table 30. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and prior arrest for any sex crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years			
Total	5.3%	5.0%	5.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any sex crime	4.2	4.0	4.2
Not their first arrest for any sex crime	8.3	7.4	8.7
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any sex crime	71.5	71.3	71.6
Not their first arrest for any sex crime	28.5	28.7	28.4
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any sex crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Table 31. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by prior arrest for any sex crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years		
Total	5.1%	5.0%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any sex crime	3.8	2.6
Not their first arrest for any sex crime	8.4	8.8
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any sex crime	71.0	61.6
Not their first arrest for any sex crime	29.0	38.4
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists, 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any sex crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

State where rearrested for a sex crime

When sex offenders were arrested for new sex crimes after their release, the new arrest typically occurred in the same State that released them. Those arrests are referred to as "in-State" arrests. When released sex offenders left the State where they were incarcerated and were charged by police with new sex crimes, those arrests are referred to as "out-of-State" arrests.

All sex offenders

Of the 9,691 released sex offenders, 517 were rearrested for a new sex crime within 3 years. Most of those sex crime arrests (85.2% of the 517, or 440 men) were in the same State that released them (table 32). Seventy-seven of them (14.8% of the 517) were arrests in a different State.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 3,328 were rearrested for a new sex crime within 3 years (not shown in table). Of the 3,328 non-sex offenders arrested for a new sex crime, an estimated 10% were men rearrested outside the State that released them. The 15% figure for released sex offenders was high by comparison (table 32).

Rapists and sexual assaulters

A total of 155 released rapists and 362 released sexual assaulters were rearrested for a new sex crime within the 3-year followup period. In-State arrests for new sex crimes accounted for 85% of the rearrested rapists and 85% of the rearrested sexual assaulters. Out-of-State arrests accounted for the rest.

Child molesters and statutory rapists

A total of 221 child molesters were rearrested for a new sex crime (not necessarily against a child) after their release (table 33). Among the 221 were 191 (86.6%) whose new sex crime arrest was in the same State that released them in 1994. For the remaining 13.4%, the arrest was elsewhere.

Of all statutory rapists, 5% (22) were rearrested for a new sex crime after their release. Of these 22, none had the new arrest outside the State that released them.

Table 32. Where sex offenders were rearrested for a new sex crime following their release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	85.2	85.2	85.2
Another State	14.8	14.8	14.8
Total rearrested for a new sex crime	517	155	362

Note: The 517 rearrested sex offenders were released in 15 States, but table percentages are based on 14 States.

Table 33. Where child molesters and statutory rapists were rearrested for a new sex crime following their release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	86.6	100
Another State	13.4	0
Total rearrested for a new sex crime	221	22

Note: The 221 rearrested child molesters were released in 14 States, but table percentages are based on 13 States. The 22 rearrested statutory rapists were released in 6 States, but table percentages are based on 5 States.

Undercounts of sex crimes against children

This section documents percentages of men who were arrested for a sex crime against a child after their release from prison in 1994. To some unknown extent, these recidivism rates undercount actual rearrest rates. That is because the arrest records that the study used to document sex crime arrests did not always contain enough information to identify those sex crime arrests in which the victim of the crime was a child. Some sense of the potential size of the undercount can be gained by comparing rearrests for any sex crime and rearrests for any sex crime against a child. Rates of rearrest for a sex crime (tables 21 and 22) are from 2 to 3½ percentage points higher than rates of rearrest for a sex crime against a child (tables 34 and 35), suggesting that rates of rearrest for a sex crime against a child could be, at most, a few percentage points below actual rates.

No data on precise ages of molested children

This section also documents the ages of the children that the men were alleged to have molested after their release from prison. Sex crime statutes contained in the arrest records of the released prisoners were used to obtain ages. The first step was to identify those sex crime statutes that were applicable just to children. Among those that were, some were found to apply just to children whose age fell within a certain range (for example, under 12, or 13 to 15, or 16 to 17). Those statutes applicable to children within specified age ranges became the source of information on the approximate ages of the allegedly molested children. Information on precise ages could not be determined because statutes applicable just to children of a specific age (for example, just to 12-year-olds, or just to age 15-year-olds) do not exist.

Rearrest

All sex offenders

Following their release in 1994, 209 of the total 9,691 released sex offenders (2.2%) were rearrested for a sex offense against a child (table 34). For virtually all 209, the rearrest offense was a felony. For the reason given earlier, the 2.2% figure undercounts the percentage rearrested for a sex offense against a child. It seems unlikely that the correct figure could be as high as 5.3% (table 21), which is the percentage rearrested for a sex crime against a person of any age. The only way it could be that high is if none of the sex crime arrests after release were crimes in which the victim was an adult, an unlikely possibility. The more likely possibility is that the 2.2% figure undercounts the rate by a maximum of 1 or 2 percentage points.

An estimated 76% of the children allegedly molested by the 209 men after their prison release were age 13 or younger, 12% were 14- or 15-years-old, and the remaining 12% were 16- or 17-years-old.

Sex offenders compared to non-sex offenders

Prisons in the 15 States in the study released 272,111 prisoners altogether in 1994, 9,691 of whom were the sex offenders in this report. As previously stated, 2.2% of the 9,691 sex offenders were rearrested for a child sex crime after their release. That rate is high compared to the rate for the remaining 262,420 non-sex offenders. Of the 262,420 non-sex offenders, less than half of 1 percent (1,042 of the 262,420) were rearrested for a sex offense against a child within the 3-year followup period (not shown in table).

Since each of the 1,042 was charged at arrest with molesting at least 1 child, the total number they allegedly molested was conservatively estimated at 1,042. Of the conservatively estimated 1,042 children, 65% were age 13 or younger, 11% were 14- or 15-years-old, and 24% were 16- or 17-years-old (not shown in table). (These percentages were based on the 554 cases out of the 1,042 in which the approximate age of the child could be determined.)

Table 34. Of sex offenders released from prison in 1994, percent rearrested for a sex crime against a child, and percent of their alleged victims, by age of victim and type of sex offender

	Percent rearrested for a sex crime against a child within 3 years		
	All	Rapists	Sexual assaulters
Total	2.2%	1.4%	2.5%
Number released	9,691	3,115	6,576
Age of child that sex offender was charged with molesting after release	Percent of allegedly molested children		
13 or younger	76.2%	69.3%	72.3%
14-15	11.5	0.0*	14.9
16-17	12.3	10.7*	12.8
Number of molested children	209	44	165

Note: The 9,691 sex offenders were released in 15 States. The approximate ages of the children allegedly molested by the 209 prisoners after their release were available for 58.4% of the 209. "Number of molested children" was set to equal the number of released sex offenders rearrested for child molesting.
*Percentage based on 10 or fewer cases.

Assuming that the 209 sex offenders who were rearrested for a sex crime against a child each victimized no more than one child, the number of sex crimes they committed against children after their prison release totaled 209. Assuming that the 1,042 non-sex offenders rearrested for a sex crime against a child after their release also victimized only one child, the number of sex crimes against a child that they committed was 1,042. The combined total number of sex crimes is 1,251 (209 plus 1,042 = 1,251). Released sex offenders accounted for 17% and released non-sex offenders accounted for 83% of the 1,251 sex crimes against children committed by all the prisoners released in 1994 (209 / 1,251 = 17% and 1,042 / 1,251 = 83%).

Rapists and sexual assaulters

Following their 1994 release, 1.4% of the 3,115 rapists (44 men) and 2.5% of the 6,576 sexual assaulters (165 men) were rearrested for molesting a child (table 34).

Child molesters and statutory rapists

Within 3 years following their release from prison in 1994, 141 (3.3%) of the released 4,295 child molesters and 11 (2.5%) of the 443 released statutory rapists were rearrested for molesting another child (table 35). For the reasons outlined earlier, these percentages undercount actual rearrest rates by a few percentage points at most.

Each of the 141 released molesters rearrested for repeating their crime represented at least 1 child victim. Of the conservatively estimated 141 children allegedly molested by released child molesters, 79% were age 13 or younger, 9% were 14 or 15 years of age, and 12% were ages 16 or 17.

Table 35. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for a sex crime against a child, and percent of their alleged victims, by age of victim

	Percent rearrested for a sex crime against a child within 3 years	
	Child molesters	Statutory rapists
Total	3.3%	2.5%
Number released	4,295	443
Age of child that sex offender was charged with molesting after release	Percent of allegedly molested children	
13 or younger	79.2%	30.0*%
14-15	9.1	10.0*
16-17	11.7	60.0*
Number of molested children	141	11

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." The approximate ages of the children allegedly molested by the 141 prisoners after their release were available for 54.6% of the 141. "Number of molested children" was set to equal the number of released sex offenders rearrested for child molesting.
*Percentage based on 10 or fewer cases.

Prior arrest for a sex crime against a child

All sex offenders

After their 1994 release from prison, sex offenders with a prior arrest for child molesting were more likely to be arrested for child molesting (6.4%) than those who had no arrest record for sex with a child (1.7%) (table 36).

Table 36. Of sex offenders released from prison in 1994, percent rearrested for a sex crime against a child, by prior arrest for a sex crime against a child and type of sex offender

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for a sex crime against a child within 3 years			
Total	2.2%	1.4%	2.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for a sex crime against a child	1.7	1.3	1.9
Not their first arrest for a sex crime against a child	6.4	4.0	6.9
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for a sex crime against a child	89.7	94.3	87.5
Not their first arrest for a sex crime against a child	10.3	5.7	12.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for a sex crime against a child" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Rapists and sexual assaulters

After being released in 1994, 4.0% of rapists with a prior arrest record for child molesting and 1.3% of those without were arrested for child molesting. The same pattern — having a history of alleged child molesting was associated with a greater likelihood of arrest for child molesting — was found for sexual assaulters. Those with a prior arrest had a 6.9% rate; those without, 1.9%.

Child molesters and statutory rapists

The 4,295 released child molesters fell into 2 categories: 1) 3,509 (81.7% of the 4,295) whose criminal record prior to their 1994 release contained no more than 1 arrest for a sex offense against a child (this was the offense for which they were imprisoned); and 2) 786 (18.3%) whose record showed the arrest for their imprisonment offense plus at least one earlier arrest for a sex offense against a child (table 37). After release, 7.3% of the 786 and 2.4% of the 3,509 were rearrested for molesting another child, indicating that child molesters with multiple arrests for child molesting in their record posed a greater risk of repeating their crime than their counterparts.

Similarly, the 443 statutory rapists consisted of —
- 356 (80.4%) whose first arrest for a sex offense against a child was the arrest that resulted in their current imprisonment
- 87 (19.6%) with more than 1 prior arrest for a sex offense against a child.

The 87 were more likely to be rearrested for child molesting (6.9%) than the 356 (1.4%).

Molester's and child's ages at time of imprisonment offense

Child molesters

The released child molesters were all men who were arrested, convicted, and

Table 37. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for a sex crime against a child, by prior arrest for a sex crime against a child

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for a sex crime against a child within 3 years	3.3%	2.5%
The arrest responsible for their being in prison in 1994 was —[a]		
Their first arrest for a sex crime against a child	2.4	1.4
Not their first arrest for a sex crime against a child	7.3	6.9
Percent of released prisoners	100%	100%
The arrest responsible for their being in prison in 1994 was —[a]		
Their first arrest for a sex crime against a child	81.7	80.4
Not their first arrest for a sex crime against a child	18.3	19.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
[a]By definition, all sex offenders had at least 1 arrest prior to their release the arrest responsible for their being in prison in 1994. "First arrest for a sex crime against a child" pertains exclusively to those released prisoners whose first arrest was responsible for their being in prison in 1994.

Table 38. Among child molesters released from prison in 1994, the molester's age when he committed the crime that resulted in his imprisonment, the child's age, and percent rearrested for a sex crime against a child

Age characteristic	Percent of total	Percent of released child molesters rearrested for a sex crime against a child within 3 years
Child molester's age when he committed the sex crime for which imprisoned[a]		
18-24	19.7%	4.1%
25-29	17.4	3.1
30-34	18.7	3.3
35-39	16.3	1.2
40-44	11.5	2.8
45 or older	16.4	3.0
Age of child he was imprisoned for molesting[b]		
13 or younger	60.3%	2.8%
14-15	30.5	3.7
16-17	9.2	1.2
How much older he was than the child he was imprisoned for molesting		
Up to 5 years older	3.9%	4.9*%
5 to 9 years older	13.6	3.6
10 to 19 years older	34.1	3.2
20 or more years older	48.4	2.5
Total first releases	3,104	3,104

Note: The 3,104 child molesters were released in 13 States. Figures are based on first releases only, those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release. Data identifying the child molester's age were reported for 100% of the released child molesters. Data identifying the approximate age of the child were reported for 88.1%.
[a]The molester's age at the time of the crime for which imprisoned was estimated by subtracting 6 months (the approximate average time from arrest to sentencing) from his age at admission.
[b]The approximate age of the child "he was imprisoned for molesting" was usually obtained from the State statute the molester was convicted of violating.
*Percentage based on 10 or fewer cases.

sentenced to prison for a sex crime against a child. At the time they committed their imprisonment offense, most (62.9%) were age 30 and older, and most (60.3%) molested a child who was age 13 or younger (table 38). Some of the victims were below age 7. Nearly half of the men (48.4%) were 20 years or more older than the child they were imprisoned for molesting.

Among the men who were in prison for molesting a child age 13 or younger and who were released in 1994 for that crime, 2.8% were subsequently arrested for molesting another child. Of those whose imprisonment offense was against a 14- or 15-year-old, 3.7% had a new arrest for child molesting after their release. Of the men who were in prison for molesting a 16- or 17-year-old, 1.2% were arrested by police for molesting another child after leaving prison in 1994.

Among the men who were 20 years or more older than the child they were imprisoned for molesting, 2.5% were rearrested for another sex offense against a child within the first 3 years following their release. That is a lower rate than the 3.2% rate for men who were 10 to 19 years older than the child victim in their imprisonment offense, and compared to the 3.6% for those 5 to 9 years older than the victim in their imprisonment offense.

State where rearrested for a sex crime against a child

When sex offenders were arrested for new sex crimes against children after their release, the new arrest typically occurred in the same State that released them. Those arrests are referred to as "in-State" arrests. When arrests occurred in a different State, they are referred to as "out-of-State."

All sex offenders

Of the 9,691 sex offenders, 209 were rearrested for child molesting after their release from prison in 1994 (table 39). In 180 cases (86.3%), the alleged crime took place in the State that released him. In the 29 others (13.7%), it occurred elsewhere.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 1,042 were rearrested for a sex crime against a child (not shown in table). Of the 1,042 arrests, 11% were out-of-State rearrests. The comparable figure for released sex offenders was higher: 14% (table 39).

Rapists and sexual assaulters

Forty-four released rapists and 165 released sexual assaulters were rearrested for a sex crime against a child within 3 years. Out-of-State arrests for child molesting accounted for 13.5% of the 44 rearrested rapists and 13.7% of the 165 rearrested sexual assaulters.

Child molesters and statutory rapists

Police arrested 141 of the 4,295 released child molesters for repeating their crime (table 40). For 126 of them (89.2%), the new arrest for child molesting was in the same State that released them. For 15 (10.8%), the new charges for child molesting were filed in a different State.

Of the 443 statutory rapists released from prison in 1994, 11 were rearrested for child molesting. All 11 of the arrests were in the same State that released the men.

Table 39. Where sex offenders were rearrested for a sex crime against a child following their release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	86.3	86.5	86.3
Another State	13.7	13.5	13.7
Total rearrested for a new sex crime against a child	209	44	165

Note: The 209 rearrested sex offenders were released in 10 States, but table percentages are based on 9 States.

Table 40. Where child molesters and statutory rapists were rearrested for a sex crime against a child following their release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	89.2	100
Another State	10.8	0
Total rearrested for a new sex crime against a child	141	11

Note: The 141 rearrested child molesters were released in 9 States, but table percentages are based on 8 States. The 11 rearrested statutory rapists were released in 3 States, but table percentages are based on 2 States.

Rearrest for other types of crime

All sex offenders

Of the 9,691 male sex offenders released from prison in 1994 —

- 43% (4,163 men) were rearrested for a crime of any kind (table 41)
- 5.3% (517 men) were rearrested for a sex offense
- 17.1% (1,658 men) were rearrested for a violent crime
- 13.3% (1,285 men) were rearrested for a property crime of some kind.

Of the 9,691 released men, 168 (1.7%) were rearrested for rape and 396 (4.1%) were rearrested for sexual assault. The 168 rearrested for rape plus the 396 rearrested for sexual assault totals 564, which is 47 greater than the total 517 who were rearrested for a sex crime. The reason is that 47 men were rearrested for both rape and sexual assault.

The category of violent crime for which a prisoner was most likely to be rearrested was assault (8.8%, or 848 of the 9,691); the category least likely was homicide (0.5%, or 45 of the 9,691 men).

Just over 1 in 5 sex offenders (2,045 out of 9,691) were rearrested for a public-order offense, such as a parole violation or traffic offense.

Rapists and sexual assaulters

Among the 3,115 released rapists —

- 46% (1,432) were rearrested for a crime of any kind
- 18.7% (582) were rearrested for a violent crime
- 0.7% (22) were rearrested for homicide
- 14.7% (459) were rearrested for a property offense.

A relatively small percentage of rapists (2.5%, or 78 of the 3,115) were charged with repeating the crime for which they were imprisoned.

Among the 6,576 released sexual assaulters —

- 41.5% (2,731) were rearrested for a crime of any kind
- 16.4% (1,076) were rearrested for a violent crime
- 0.3% (23) were rearrested for killing someone
- 12.6% (826) were rearrested for a property offense.

Nearly 1 in 20 released sexual assaulters (4.7%, or 308 of the 6,576) were charged with committing the same type of crime for which had just served time in prison.

Table 41. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and charge at rearrest

	Percent rearrested for specified offense within 3 years		
Rearrest charge	All	Rapists	Sexual assaulters
All charges[a]	43.0%	46.0%	41.5%
Violent offenses[b]	17.1%	18.7%	16.4%
Homicide[c]	0.5	0.7	0.3
Sex offense[d]	5.3	5.0	5.5
Rape	1.7	2.5	1.4
Sexual assault	4.1	2.8	4.7
Robbery	2.7	3.9	2.1
Assault	8.8	8.7	8.8
Property offenses[e]	13.3%	14.7%	12.6%
Burglary	3.8	4.4	3.5
Larceny/theft	5.7	6.1	5.6
Motor vehicle theft	1.7	2.3	1.4
Fraud	2.1	1.8	2.2
Drug offenses[f]	10.0%	11.2%	9.4%
Public-order offenses[g]	21.1%	20.4%	21.4%
Other offenses	5.9%	5.0%	6.3%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Detail may not add to totals because persons may be rearrested for more than one type of charge.
[a]All offenses include any offense type listed in footnotes *b* through *f* plus "other" and "unknown" offenses.
[b]Total violent offenses include homicide, kidnaping, rape, other sexual assault, robbery, assaults, and other violence.
[c]Homicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide.
[d]Includes both rape and sexual assault.
[e]Total property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses.
[f]Drug offenses include drug trafficking, drug possession, and other forms of drug offenses.
[g]Public-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses.

Child molesters and statutory rapists

Of the 4,295 child molesters released from prison in 1994 —

- 39.4% (1,693) were rearrested for a crime of any kind (table 42)
- 0.4% (17) were rearrested for intentionally or negligently killing someone.

Child molesters were less likely to be rearrested for a property crime (10.6%, 456 of 4,295) than a violent crime (14.1%, 607 of 4,295).

Of the 443 statutory rapists released in 1994 —

- 49.9% (221) were rearrested for some new crime
- 0.7% (3) were rearrested for homicide
- 22.6% (100) were rearrested for a property crime
- 21.2% (94) were rearrested for a violent crime.

Table 42. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by charge at rearrest

Rearrest charge	Percent rearrested for specified offense within 3 years: Child molesters	Statutory rapists
All charges[a]	39.4%	49.9%
Violent offenses[b]	14.1%	21.2%
Homicide[c]	0.4	0.7
Sex offense[d]	5.1	5.0
Rape	1.3	1.6
Sexual assault	4.4	3.6
Robbery	1.7	4.3
Assault	7.1	12.6
Property offenses[e]	10.6%	22.6%
Burglary	2.8	4.3
Larceny/theft	4.6	10.8
Motor vehicle theft	1.5	3.8
Fraud	1.9	3.6
Drug offenses[f]	8.6%	12.0%
Public-order offenses[g]	20.0%	27.1%
Other offenses	7.8%	4.3%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Detail may not add to totals because of rounding.
[a]All offenses include any offense type listed in footnotes *b* through *f* plus "other" and "unknown" offenses.
[b]Total violent offenses include homicide, kidnaping, rape, other sexual assault, robbery, assaults, and other violence.
[c]Homicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide.
[d]Includes both rape and sexual assault.
[e]Total property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses.
[f]Drug offenses include drug trafficking, drug possession, and other forms of drug offenses.
[g]Public-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses.

Survey of State inmates

The 9,691 prisoners in this study were all men sentenced to prison for sex crimes. Characteristics of the victims of these sex crimes were largely unavailable for the study. For information on imprisoned sex offenders and their victims, data were drawn from a survey covering the approximately 73,000 male sex offenders in State prisons nationwide in 1997.

Of the 73,000 victims of their sex crimes —
- about 90% were female
- nearly 75% were white
- 89% were non-Hispanic
- 36% were below age 13
- altogether, 70% were under age 18.

Child victims of sex crimes were more likely than adult victims to be male (11% versus 3%). Whites made up 76% of child victims and 66% of adult victims.

The biggest difference between child victims and adult victims was their relationship to the man who committed the sex crime:

Among cases where the victim was under 18, the boy or girl was the prisoner's own child (16%), stepchild (16%), sibling or stepsibling (2%), or other relative (13%) in nearly half of all child victim cases (46%). Among cases where the victim was an adult, the victim was a relative less often (11%).

Among inmates who were in prison for a sex crime against a child, the child was the prisoner's own child or stepchild in a third of the cases. Seven percent of the inmates reported their child victims to have been strangers. Among adult victims, 34% were strangers to their attacker.

Characteristics of victims of rape or sexual assault, for which male inmates were serving a sentence in State prisons, 1997

	Percent of victims of rape or sexual assault		
		Victim age	
Victim characteristic	All	18 years or older	Under 18 years
Total	100%	100%	100%
Gender			
Male	8.8%	2.8%	11.1%
Female	91.2	97.2	88.9
Race			
White	73.2%	66.0%	76.4%
Black	22.8	30.2	19.4
Other	4.0	3.8	4.2
Hispanic origin			
Hispanic	11.3%	9.9%	12.1%
Non-Hispanic	88.7	90.1	87.9
Age			
12 or under	36.4%	--	51.6%
13-17	34.1	--	48.4
18-24	10.8	36.7%	--
25-34	11.2	37.9	--
35-34	7.0	23.8	--
55 or over	0.5	1.6	--
Victim was the prisoner's —			
Spouse	1.1%	3.8%	0%
Ex-spouse	0.6	2.0	0
Parent/stepparent	0.6	0.4	0.6
Own child	11.5	1.4	15.7
Stepchild	11.2	0.4	15.8
Sibling/stepsibling	1.3	0.4	1.7
Other relative	9.4	2.1	12.7
Boy/girlfriend	5.5	8.2	4.4
Ex-boy/girlfriend	1.1	2.0	0.8
Friend/ex-friend	22.7	24.8	22.0
Acquaintance/other	19.4	20.1	19.6
Stranger	15.6	34.4	6.7
Total estimated number	73,116	20,958	50,027

Note: Data are from the BJS Survey of Inmates in State Correctional Facilities, 1997. This table is based on 73,116 prisoners who reported having one victim in the crime for which they were sentenced to prison. (They accounted for approximately 84% of all incarcerated male sex offenders in 1997.) Data identifying victim's sex were reported for 99.8% of the 73,116 males incarcerated for sex crimes; victim's race were reported for 98.9%; Hispanic origin for 98.2%; victim's age for 97.1%; victim's relationship to prisoner for 98.3%. Detail may not sum to total due to missing data for age of victim.
--Not applicable.

3-year followup period

For analytic purposes, "3 years" was defined as 1,096 days from the day of release from prison. Any rearrest, reconviction, or re-imprisonment occurring after 1,096 days from the 1994 release was not included. A conviction after 1,096 days was not counted even if it resulted from an arrest within the period.

Separating sex offenders into four types

The report gives statistics for four types of sex offenders. Separating sex offenders into the four types was done using information — in particular, the statute number for the imprisonment offense, the literal version of the statute, a numeric FBI code (called the "NCIC" code, short for "National Crime Information Center") indicating what the imprisonment offense was, and miscellaneous other information — available in the prison records on the 9,691 men. However, the prison records obtained for the study did not always contain all four pieces of information on the imprisonment offense. Moreover, the available offense information was not always detailed enough to reliably distinguish different types of sex offenders.

The process of sorting sex offenders into different types involved first creating the study's definitions of the four types, and then determining which State statute numbers, which literal versions of those statutes, and which NCIC codes conformed to the definitions. Each inmate was next classified into one of the types (or possibly into more than one type, since the four are not mutually exclusive) depending on whether the imprisonment offense information available on him fit the study's definition.

An obstacle to classifying sex offenders into types was that the labels "rape," "sexual assault," "child molestation," "statutory rape" were not widely used in State statutes, and when they were used they did not always conform to the study's definitions of them. In deciding which type of sex offender to classify the prisoner as, importance was attached not to the label the law gave to his conviction offense, but to how well the law's definition of the offense fit the study's definition of the type.

Sex offenders compared to non-sex offenders

In 1994, prisons in 15 States released 272,111 prisoners, representing two-thirds of all prisoners released in the United States that year. Among the 272,111 were 262,420 released prisoners whose imprisonment offense was not a sex offense. Non-sex offenders include inmates, both male and female, who were in prison for violent crimes (such as murder or robbery), property crimes (such as burglary or motor vehicle theft), drug crimes, and public order offenses. Like the 9,691 male sex offenders examined in this report, all non-sex offenders were serving prison terms of one year or more in State prison when they were released in 1994.

At various places, this report compares 9,691 released male sex offenders to 262,420 released non-sex offenders. While labeled "non-sex offenders," the 262,420 actually includes a small number- 87- who are sex offenders. The 87 are all the female sex offenders released from prisons in the 15 States in 1994.

Ages of molested and allegedly molested children

Information on the ages of molested children was needed for two calculations: 1) age of the child the released sex offender was sent to prison for molesting, and 2) age of the child allegedly molested by the released sex offender during the 3-year follow-up period. The most frequent source of both was a sex statute: either the sex statute the offender was imprisoned for violating, or the statute the released prisoner was charged with violating when he was rearrested for a sex crime. The former was obtained from the prison records assembled for the study; the latter, from the assembled arrest records.

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The aim of these rules was to count people, not events. The only tables in the report that do not follow the rule are tables 41 and 42.

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The 302,309 total released consisted of 10,546 released sex offenders plus 291,763 released non-sex offenders. The 38,624 sample consisted of 10,546 released sex offenders plus 28,078 released non-sex offenders. The number of sex offenders in the sample was the same as the number in the 302,309 total because all sex offenders released in 1994 in the 15 States were selected for the study, not a sample of them.

Because no sampling was used to select sex offenders, numbers and percentages in this report for sex offenders were not subject to sampling error. However, comparisons in the report between sex offenders and non-sex offenders were subject to sampling error because sampling was used to select non-sex offenders. Where sex offenders were compared to all non-sex offenders released in 1994, sampling error was taken into account. All differences discussed were statistically significant at the .05 level.

Not all 10,546 sex offenders in the sample were used in the report. To be in the report, the sex offender had to be male and meet all 4 of the following criteria:

1. A RAP sheet on the prisoner was found in the State criminal history repository.
2. The released prisoner was alive throughout the entire 3-year followup period. (This requirement resulted in 21 sex offenders' being excluded.)
3. The prisoner's sentence was greater than 1 year (missing sentences were treated as greater than 1 year).
4. The State department of corrections that released the prisoner in 1994 did not designate him as any of the following release types: release to custody/detainer/warrant, absent without leave, escape, transfer, administrative release, or release on appeal.

A total of 9,691 released male sex offenders met the selection criteria. The number of them released in each State is shown in the appendix table.

Other methodological details

To help the reader understand the percentages provided in the report, both the numerator and denominator were often given. In most cases, the reader could then reproduce the percentages. For example, the report indicates 38.6% (3,741) of the 9,691 sex offenders were returned to prison.

Appendix table. Number of sex offenders released from State prisons in 1994 and number selected for this report, by State

	Sex offenders released from prison in 1994	
State	Total	Selected to be in this report
Total	10,546	9,691
Arizona	156	122
California	3,503	3,395
Delaware	53	45
Florida	1,053	965
Illinois	775	710
Maryland	277	243
Michigan	477	444
Minnesota	249	239
New Jersey	449	429
New York	799	692
North Carolina	508	441
Ohio	824	606
Oregon	452	408
Texas	708	682
Virginia	263	260

Note: "Total released" includes both male and female sex offenders; "Total selected to be in this report" includes only male sex offenders.

Using the 3,741 and the 9,691, the reader could exactly reproduce the results. However, the reader should be aware that in a few places, the calculated percentages will differ slightly from the percentages found in the report. This is due to rounding. For example, 43.0%, or 4,163, of the 9,691 sex offenders were rearrested; however, 4,163 / 9,691 is 42.96%, which was rounded to 43.0%.

Offense definitions and other methodological details are available in the BJS publication *Recidivism of Prisoners Released in 1994*, NCJ 193427, June 2002.

3-year followup period

For analytic purposes, "3 years" was defined as 1,096 days from the day of release from prison. Any rearrest, reconviction, or re-imprisonment occurring after 1,096 days from the 1994 release was not included. A conviction after 1,096 days was not counted even if it resulted from an arrest within the period.

Separating sex offenders into four types

The report gives statistics for four types of sex offenders. Separating sex offenders into the four types was done using information — in particular, the statute number for the imprisonment offense, the literal version of the statute, a numeric FBI code (called the "NCIC" code, short for "National Crime Information Center") indicating what the imprisonment offense was, and miscellaneous other information — available in the prison records on the 9,691 men. However, the prison records obtained for the study did not always contain all four pieces of information on the imprisonment offense. Moreover, the available offense information was not always detailed enough to reliably distinguish different types of sex offenders.

The process of sorting sex offenders into different types involved first creating the study's definitions of the four types, and then determining which State statute numbers, which literal versions of those statutes, and which NCIC codes conformed to the definitions. Each inmate was next classified into one of the types (or possibly into more than one type, since the four are not mutually exclusive) depending on whether the imprisonment offense information available on him fit the study's definition.

An obstacle to classifying sex offenders into types was that the labels "rape," "sexual assault," "child molestation," "statutory rape" were not widely used in State statutes, and when they were used they did not always conform to the study's definitions of them. In deciding which type of sex offender to classify the prisoner as, importance was attached not to the label the law gave to his conviction offense, but to how well the law's definition of the offense fit the study's definition of the type.

Sex offenders compared to non-sex offenders

In 1994, prisons in 15 States released 272,111 prisoners, representing two-thirds of all prisoners released in the United States that year. Among the 272,111 were 262,420 released prisoners whose imprisonment offense was not a sex offense. Non-sex offenders include inmates, both male and female, who were in prison for violent crimes (such as murder or robbery), property crimes (such as burglary or motor vehicle theft), drug crimes, and public order offenses. Like the 9,691 male sex offenders examined in this report, all non-sex offenders were serving prison terms of one year or more in State prison when they were released in 1994.

At various places, this report compares 9,691 released male sex offenders to 262,420 released non-sex offenders. While labeled "non-sex offenders," the 262,420 actually includes a small number- 87- who are sex offenders. The 87 are all the female sex offenders released from prisons in the 15 States in 1994.

Ages of molested and allegedly molested children

Information on the ages of molested children was needed for two calculations: 1) age of the child the released sex offender was sent to prison for molesting, and 2) age of the child allegedly molested by the released sex offender during the 3-year follow-up period. The most frequent source of both was a sex statute: either the sex statute the offender was imprisoned for violating, or the statute the released prisoner was charged with violating when he was rearrested for a sex crime. The former was obtained from the prison records assembled for the study; the latter, from the assembled arrest records.

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U.S. SENTENCING COMMISSION, "REPORT OF THE NATIVE AMERICAN ADVISORY GROUP," NOVEMBER 4, 2003, AVAILABLE AT HTTP://WWW.USSC.GOV/NAAG/NATIVEAMER.PDF

REPORT OF THE NATIVE AMERICAN ADVISORY GROUP

NOVEMBER 4, 2003

TABLE OF CONTENTS

REPORT OF THE AD HOC ADVISORY GROUP ON NATIVE AMERICAN SENTENCING ISSUES – NOVEMBER 4, 2003

I. EXECUTIVE SUMMARY

A. OVERVIEW

This Advisory Group was formed in response to concerns raised that Native American defendants are treated more harshly by the federal sentencing system, than if they were prosecuted by their respective states. The Advisory Group was charged by the Sentencing Commission to "consider any viable methods to improve the operation of the federal sentencing guidelines in their application to Native Americans under the Major Crimes Act."

Given this charge, the Advisory Group focused on two primary questions: 1) whether Native Americans are unfairly sentenced by the operation of the federal sentencing guidelines under the Major Crimes Act; and 2) if so, how can that unfairness be redressed. To answer these questions, the Advisory Group focused on jurisdictions with large Native American populations. The Advisory Group compared the sentences received by Native American defendants charged under the Major Crimes Act and sentenced pursuant the federal sentencing guidelines with those defendants sentenced in their respective state courts for analogous crimes. Specifically, the Advisory Group considered the offenses of manslaughter, sexual abuse, and aggravated assault. This review revealed that the impact on Native Americans by federal criminal jurisdiction and the application of the federal sentencing guidelines varies both from offense to offense and between jurisdictions. Thus, for each offense, the Advisory Group makes the following recommendations to address these differing effects.

B. MANSLAUGHTER

The Advisory Group's recommendations relating to manslaughter were determined before the most recent changes to the sentencing guidelines. However, as this Advisory Group believes these proposed changes will best improve the operation of the federal sentencing guidelines in their application to Native Americans, the Advisory Group stands by its conclusions and recommendations.

The Advisory Group urges the Sentencing Commission to consider revising the involuntary manslaughter guidelines so that the base offense level for reckless conduct is a level 18. The Advisory Group also recommends the addition of specific offense characteristics. The Advisory Group recommends that the Commission include: (1) a four level increase if the death occurred while driving intoxicated or under the influence of alcohol or drugs; (2) a two level offense increase if the actions of the defendant resulted in multiple homicides; and (3) a two level increase if the use of a weapon was involved in the offense.

The Advisory Group sees no reason to justify any increase in the base offense level for involuntary manslaughter arising from criminally negligent conduct. Thus, it recommends that this base offense level remain at level 10.

Under the recommendations of the Advisory Group, a defendant pleading guilty to involuntary manslaughter for drunk driving, with a criminal history of category I, would face an offense level of 22, which would be reduced by three levels for acceptance of responsibility, to an offense level of 19. This level would result in a sentence range of 30 to 37 months, which is more than double the range previously set for such cases. The high end of 37 months would be midrange of the statutory maximum.

C. SEXUAL ABUSE OFFENSES

Based on the data reviewed by the Advisory Group, it seems clear that federal sentences for sexual abuse are longer than those for like offenses in state courts. Because of the jurisdictional framework which results in Native Americans being prosecuted by the federal government rather than the states for these offenses, Native Americans receive longer sentences than if the federal government did not have such jurisdiction. However, it seems equally clear to the Advisory Group that sexual abuse is a major concern on the reservations covered by federal jurisdiction. There is also evidence that these longer sentences were at least in part motivated by a desire to appropriately respond to these very serious cases arising on reservations.

Given these conclusions, the Advisory Group makes no recommendation to lower the sexual abuse guidelines themselves. However, the Advisory Group recommends that the Commission (1) consider the intent of Congress when determining whether to amend the guidelines for sexual abuse offenses in the future to avoid increasing the sentencing disparity for Native Americans convicted of these offenses, (2) separate out "travel" offenses, under proposed U.S.S.G. § 2G1.2, from other sexual abuse offenses to prevent any additional unintended disparity, and (3) encourage the formation of a sexual abuse treatment program modeled on the highly successful Drug and Alcohol Program (DAP), presently utilized for drug offenders.

D. AGGRAVATED ASSAULT OFFENSES

Perhaps more than any of the other offenses included within the Major Crimes Act, it was the sentences for aggravated assault that gave rise to the perception of unfairness in the treatment of Native Americans under the federal sentencing guidelines, which led to the formation of this Advisory Group.

This perception is well-founded based on the data reviewed by this Advisory Group. Federal sentences for aggravated assault are indeed longer than state sentences. Because Native Americans are prosecuted federally for assaults, they receive longer sentences than their non-Native counterparts in state court.

To address this disparity, the Advisory Group strongly recommends that the Sentencing Commission reduce the base offense level for aggravated assault by two levels. This reduction is a conservative approach to the disparity found by the Advisory Group between state and federal sentences. It would impact all offenders convicted of aggravated assault, the majority of whom are Native Americans. This change would address both the perception and the reality of unfairness in the application of the federal sentencing guidelines to Native Americans.

E. ALCOHOL

Data on all offenses reviewed by the Advisory Group confirms the devastating role that alcohol addiction plays in reservation crime. Because of the limited resources devoted to addressing this issue, the Advisory Group strongly recommends that, other than the enhancement noted above relating to involuntary manslaughter, no enhancements be added to the Guidelines for alcohol use during a criminal offense. Data confirms that such an enhancement would disproportionately impact Native Americans.

F. TRIBAL INVOLVEMENT

The Advisory Group strongly encourages the Sentencing Commission to continue what it has begun in forming this Advisory Group. The Advisory Group encourages the Commission to formalize mechanisms for consulting with affected tribal communities concerning whether to make changes to the federal sentencing guidelines for crimes covered by the Major Crimes Act. Such changes invariably

impact Native Americans more heavily than any other group. The Advisory Group strongly urges the Commission to consult on an on-going basis with national Indian organizations and the affected Indian communities.

G. CONCLUSION

The changes proposed in this report begin to address some of the concerns raised and identified regarding the application of the federal sentencing guidelines to Native Americans. Only by further consultation with the communities impacted by the application of the federal sentencing guidelines under the Major Crimes Act can the perceptions and realities of bias be avoided in the future.

II. INDIAN CRIMES AND FEDERAL SENTENCING

A. Background

Federal criminal jurisdiction is an important fact of life for Indian people on Indian reservations in a way far different than for other Americans. For most Americans, routine felony offenses are prosecuted primarily by state governments; federal prosecutions occur only if there is a particular federal interest or a problem with national or international scope, such as terrorism or narcotics. Until 1885, a similar model existed in Indian country. Indian tribal governments handled tribal offenses, and the United States undertook cases only rarely and usually pursuant to specific terms in Indian treaties. At that time, most Indians were not even citizens of the United States, and tribes exercised substantial rights of self-government.[1]

In 1885, however, Congress fundamentally changed this regime by enacting the Major Crimes Act, 18 U.S.C. § 1153, a statute that federalized six felony offenses involving Indians in Indian country. The Act has since been expanded to include more than 20 felonies. Under this law and its amendments, as well as other federal statutes, the United States has displaced Indian tribal governments for purposes of felony criminal justice. Although misdemeanor offenses continue to be prosecuted by tribal prosecutors in tribal courts, felonies are exclusively a federal responsibility.

The effect of the federal Indian country jurisdiction is reflected in federal case statistics. While Indian offenses amount to less than five percent of the overall federal caseload, they constitute a significant portion of the violent crime in federal court. Over eighty percent of manslaughter cases and over sixty percent of sexual abuse cases arise from Indian jurisdiction.

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[1] *Ex Parte Crow Dog*, 109 U.S. 556 (1883).

Nearly half of all the murders and assaults arise from Indian jurisdiction.[2] In a geographical sense, Indian offenses are a major part of the practice of federal criminal law in several very large federal districts, such as Arizona, New Mexico, South Dakota and Montana, and a significant part in others, such as Minnesota, Nevada and Washington.[3]

Indian jurisdiction involves two components: one is a political classification, and the other is a geographical consideration. In order for a case to qualify for such jurisdiction, in addition to the traditional elements of the criminal offense, the government must prove that the defendant is an "Indian"[4] and that the offense occurred in "Indian country."[5] The classification that a defendant is an "Indian" is a political, as opposed to racial, classification.[6]

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[2] *See generally* U.S. Sentencing Commission, *2001 Sourcebook of Federal Sentencing Statistics*; U.S. Sentencing Commission, *Manslaughter Working Group Report to the Commission* (1997).

[3] *Id.*

[4] There is no statute that defines the term "Indian" as it is used in the Major Crimes Act. Because it has been held to be a political designation, it is most often proven by tribal membership or enrollment.

[5] 18 U.S.C. § 1151 defines "Indian country" as follows:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights- of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

While "reservations" are a subset of "Indian country," the terms are both used in this report to denote "Indian country."

[6] *United States v. Antelope*, 430 U.S. 641 (1977).

In cases brought under the Major Crimes Act, the federal sentencing guidelines control sentencing. The Major Crimes Act applies only to Native Americans, and only when they commit crimes on Indian lands, as defined by 18 U.S.C. § 1151. In singling out particular communities defined by tribal membership and geography and by displacing tribal governments that handle many of the other important governmental responsibilities in these communities, the United States has undertaken a substantial responsibility for public safety and criminal justice in Indian communities.

It is with this responsibility in mind that the United States Sentencing Commission formed an advisory group to consider issues regarding the sentencing of Native Americans under the Major Crimes Act. A public forum sponsored by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights was held in December 1999, in Rapid City, South Dakota. Concerned members of the Native American community testified about issues affecting the administration of justice and Native Americans in South Dakota. The Sentencing Commission convened its own hearing on this issue in Rapid City on June 19, 2001.

In response to the recommendations of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights report and the testimony at the Sentencing Commission hearing, the Sentencing Commission established the Native American Ad Hoc Advisory Group.[7] The Sentencing Commission charged this Ad Hoc Advisory Group to "consider any viable methods to improve the operation of the federal sentencing guidelines in their application to Native Americans under the Major Crimes Act." The Ad Hoc Advisory Group held its first meeting in June of 2002. This Report seeks to provide a brief description of the federal criminal

[7] This Group was later renamed the Ad Hoc Advisory Group on Native American Sentencing Issues.

jurisdictional provisions that are relevant in the context of the Major Crimes Act, to explain the methodologies in identifying and assessing the problems related to sentencing Indians under the Major Crimes Act, and to explain the Ad Hoc Advisory Group's findings and recommendations.

III. OVERVIEW OF FEDERAL AUTHORITY AND THE MAJOR CRIMES ACT

A. The Historical Context

Federal authority over Indian Country is derived from a basic doctrine of federal Indian law: the sovereign status of Indian tribes. In *Cherokee Nation v. Georgia*,[8] one of the earliest cases examining the tribal/federal relationship, the U.S. Supreme Court characterized the Indian tribes as "domestic dependent nations" because their rights as independent nations had been diminished and they occupied the Reservations at the sufferance of the United States.[9]

Although the *source* of federal power has often been unclear and at times has even been thought to reside outside the Constitution,[10] the *existence* of Congress' legislative power over

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[8] 30 U.S. (5 Pet.) 1 (1831).

[9] In later cases, the Supreme Court has consistently affirmed that the Indian tribes are subject to the jurisdiction of the federal government. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *United States v. Rogers*, 45 U.S. (4 How.) 567 (1846); *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823). *See generally* Felix Cohen, HANDBOOK OF FEDERAL INDIAN LAW (1982); William Canby, AMERICAN INDIAN LAW (1988); Jon M. Sands, *Indian Jurisdiction in Federal Court in* DEFENDING A FEDERAL CRIMINAL CASE Ch. 20 (1998); Jon M. Sands, *Indian Crimes and Federal Courts*, 11 FED. SENT. R. 153 (1998); Vanessa J. Jimenez and Soo C. Song, *Concurrent Tribal and State Jurisdiction Under Public Law 280*, 47 AM. UNIV. L. REV. 1627 (1998); Robert Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through A Jurisdictional Maze*, 18 ARIZ. L. REV. 521 (1976).

[10] *Ex Parte Crow Dog*, 109 U.S. 556 (1883).

criminal offenses on Indian lands has been upheld consistently since it was firmly established in the Nineteenth Century in *United States v. Rogers*[11] and *United States v. Kagama.*[12]

The defendant in *Rogers*, a White man, had sought to avoid federal prosecution for the murder of another White man in Indian territory by claiming Indian status for himself and the victim, through marriage and adoption into the Cherokee Tribe. The Court rejected the assertion, holding that "Congress may by law punish any offense there, no matter whether the offender be a White man or an Indian."[13] Likewise, in *Kagama*, an Indian challenged the constitutionality of the Major Crimes Act, arguing that Congress lacked the power to extend federal laws to an Indian in Indian country, at least when the victim was another Indian. The Supreme Court found the Act to be within Congress' constitutional authority because the federal government owed a duty of protection to the Indian tribes. As the Court has stressed far more recently, "Congress had undoubted constitutional power to prescribe a criminal code applicable in Indian Country."[14]

B. The Major Crimes Act

The Major Crimes Act is an intrusion into the otherwise exclusive criminal jurisdiction of Indian tribes.[15] Under the Major Crimes Act, federal felony jurisdiction is generally exclusive

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[11] 45 U.S. (4 How.) 567 (1846).

[12] 118 U.S. 375 (1886).

[13] *Rogers*, 45 U.S. (4 How.) at 572.

[14] *United States v. Antelope*, 430 U.S. 641, 648 (1977).

[15] *See Keeble v. United States*, 412 U.S. 205 (1973); *United States v. Young*, 936 F.2d 1050 (9th Cir. 1991); *United States v. Center*, 750 F.2d 724 (8th Cir. 1984).

under the Major Crimes Act, and thus, state jurisdiction is precluded.[16] In several states, Congress has affirmatively departed from the federal Indian country criminal justice model by extending state criminal jurisdiction and, as a practical matter, disclaiming most of the federal responsibility for public safety and criminal justice within Indian country.[17]

While neither the language in the federal statutes nor legislative history prohibits tribal governments from exercising concurrent jurisdiction over criminal acts, tribal courts have been limited in the sentences that they may impose to one year of imprisonment and/or a fine of $5,000. Tribal courts have the power to bring such prosecutions independently of the federal government. Thus, a defendant may face prosecution from the tribal court and then face prosecution from a federal court for the same offense. Because Indian tribes are separate sovereigns with inherent powers predating the existence of the United States, the Supreme Court held in *United States v. Wheeler*[18] that dual prosecutions for the same offense under these circumstances do not violate the double jeopardy clause of the United States Constitution. Dual

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[16] 18 U.S.C. § 1153. The specific offenses under the Major Crimes Act are murder, manslaughter, kidnaping, maiming, felony child sex abuse, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against a person under 16, arson, burglary, robbery, and felony theft.

[17] A number of states were transferred criminal jurisdiction over reservations within their borders by Public Law 280 (1953), now codified at 18 U.S.C. § 1162(a). These states include Alaska, California, much of Minnesota, Nebraska, much of Oregon and Wisconsin. Florida, Idaho, Iowa, and Nevada, as well as a handful of other states, also took over some aspects of jurisdiction in Indian country pursuant to this law. Some have also retroceded jurisdiction back to the tribes. Tribal consent is now required for any assumption of jurisdiction by a state.

[18] 435 U.S. 313 (1970).

prosecutions are rare, though not unheard of, because of limitations in tribal prosecutorial and court resources and the limited nature of tribal jurisdiction.[19]

Because criminal jurisdiction under the Major Crimes Act and other federal statutes and case law is so fragmented,[20] different participants in the same or similar crimes may be subject to prosecutions by different sovereigns under different laws, depending on whether they are Indian or non-Indian.[21] This result has been held not to violate principles of equal protection. In *United States v. Antelope*, the Supreme Court found federal legislation with respect to Indian tribes "not based on impermissible (racial) classifications" because it is "rooted in the unique status of Indians as 'separate people' with their own political institutions."[22] Therefore, "Indian," as construed by the Court, is a political, as opposed to racial, classification.

While some acts are federal crimes no matter where in the United States they are committed or by whom, the Major Crimes Act enumerates particular Indian Country offenses that can be tried in federal court. The list of offenses, in the Major Crimes Act includes manslaughter, sexual abuse offenses and aggravated assaults. This list has been judicially extended to include such things as firearm and conspiracy counts. Courts have held that even

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[19] *See, e.g., United States v. Billy Joe Lara*, 324 F. 3d 635 (8th Cir. 2003), *cert. granted* (September 30, 2003). The case involves whether 25 U.S.C. § 1301, which gives tribes the authority to prosecute non-member Indians in Indian country, is a restoration of sovereign tribal authority or a delegation of federal authority. The Court's decision will likely clarify the nature and source of federal authority in Indian country.

[20] *See* 25 U.S.C. §§ 1152 and 1153 and *United States. v. McBratney*, 104 U.S. 621 (1882).

[21] For example, if Indian-1 and non-Indian-2 assault non-Indian-3 in Indian Country, the Indian-1 will be prosecuted by the federal government and the non-Indian-2, if prosecuted, will be prosecuted by the state.

[22] 430 U.S. 641, 648 (1977).

though firearm offenses are not listed in the Major Crimes Act, federal jurisdiction exists. Jurisdiction lies under 18 U.S.C. § 924(c) when the underlying felony, e.g., murder, is listed in the Major Crimes Act since the Act provides that the laws and penalties of the United States apply to its offenses.[23] Conspiracy also has been held to be a general law of the United States and therefore applies to Indians as well as others notwithstanding the location of the crime.[24] Thus, as a practical matter, a prosecution under the Major Crimes Act may produce a conviction for an offense not specifically listed in the Act, but which is nonetheless subject to sentencing under the federal sentencing guidelines.[25]

The federal sentencing guidelines apply to crimes under the Major Crimes Act. Courts were initially split on the issue of what sentencing law applies to those offenses (notably

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[23] *See United States v. Laughing*, 855 F.2d 659 (9th Cir. 1988); *United States v. Goodface*, 835 F.2d 1233 (8th Cir. 1987).

[24] *See, e.g., United States v. Dodge*, 538 F.2d 770, 776 (8th Cir. 1976), *cert. denied*, 429 U.S. 1099 (1977). *Compare United States v. Markiewicz*, 978 F.2d 786, 799-800 (2nd Cir. 1992), *cert. denied*, 506 U.S. 1083 (1993) (not all federal statutes with general applicability apply to Indian territories but only those that involve a peculiarly federal interest, to which include firearm offenses and conspiracies aimed at obstruction of federal law enforcement interests) *with United States v. Begay*, 482 F.3d 486, 499 (9th Cir. 1994) (declining "peculiar federal interest" approach of the 2nd Circuit since conspiracy is a crime of nationwide applicability and the objects of the conspiracy were listed substantive offenses under the Major Crimes Act).

[25] In *Keeble v. United States*, 412 U.S. 205 (1973), the Supreme Court explained that if the crime is not one of the offenses listed under the Major Crimes Act, the case cannot initially be brought in federal court. However, the Court further explained that a defendant can be convicted of a lesser included offense not listed in the Major Crimes Act. It held that, because Indians are entitled to be tried under the Act "in the same manner" as non-Indians committing the same crimes, an Indian charged with committing a felony against an Indian victim under the Act was entitled to a lesser included offense instruction despite the absence of any independent federal jurisdiction over the lesser offense.

The Ad Hoc Advisory Group limited its discussion to three areas of substantive offenses: manslaughter, sexual abuse, and assault. The Ad Hoc Advisory Group so limited its discussions to these areas as they form the bulk of cases arising under the Major Crimes Act.

burglary) that are to be "defined and punished" according to state law. In 1990, Congress amended 18 U.S.C. § 3551(c) to make the guidelines applicable to the Major Crimes Act offenses and other offenses arising in Indian country.

During the development of the guidelines the Commission was urged, at public hearings and in written submissions, to consider the special circumstances of Indian offenders and to be sensitive to the concerns of tribal governments.[26] When the guidelines were finally issued however, with the exception of prior tribal offenses,[27] special considerations of Indians and their communities were not addressed in the guidelines.

In districts that regularly deal with Indian defendants, federal courts have recognized the unique sentencing considerations that are present in prosecutions arising under the Major Crimes Act. In *United States v. Big Crow*, for example, the Eighth Circuit upheld the appropriateness of a downward departure, from four to two years imprisonment, in an Indian assault case.[28] The departure was based on the high rate of unemployment, alcohol abuse and socio-economic deprivations on an Indian Reservation. The Eighth Circuit, in affirming the departure, found that

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[26] *See, e.g.*, Tova Indritz, Testimony before U.S. Sentencing Commission, Denver, CO (Nov. 5, 1986); Letter from Fredric F. Kay, Federal Public Defender, Dist. of Arizona, to the Hon. William W. Wilkins, Chair, U.S.S.C. (Aug. 9, 1989). *See generally* Jon M. Sands, *Departure Reform and Indian Crimes: Reading the Commission's Staff Paper With "Reservations"*, 9 FED. SENT. R. 144, 145 (1996).

[27] U.S.S.G. § 4A1.2 (2003) states that while tribal court convictions will not be counted for purposes of criminal history calculations, they may be considered under § 4A1.2 "Adequacy of Criminal History Category."

[28] 898 F.2d 1326 (8th Cir. 1990).

the Commission had not considered the tribal culture and the devastating socio-economic difficulties found on the Reservations.[29]

IV. THE AD HOC ADVISORY GROUP'S FORMATION AND METHODOLOGY

The United States Sentencing Commission formed the Ad Hoc Advisory Group in June 2002. The decision to form the group was based in large part on testimony presented before the Commission at a public meeting held in Rapid City, South Dakota on June 19, 2001. The Sentencing Commission convened the June 2001 meeting in response to a recommendation contained in a March 2000 report by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights stating that "[t]he discriminatory impacts of Federal sentencing guidelines must be rigorously scrutinized."[30] The Sentencing Commission heard concern voiced from a wide range of individuals about the administration of justice and the impact of the Federal Sentencing Guidelines on offenses arising from Indian Country. This testimony, along with concerns expressed by various groups regarding the impact of the Federal Sentencing Guidelines on offenses arising from Indian Country, prompted the Sentencing Commission to form the Ad Hoc Advisory Group. Specifically, testimony revealed that there was a perception among

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[29] Departure on this basis was reaffirmed in the case of *United States v. One Star*, 9 F.3d 60 (8th Cir. 1993).

[30] *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, South Dakota Advisory Committee to the United States Commission on Civil Rights (March 2000).

members of the Native American community that they are sentenced more harshly under the Federal Sentencing Guidelines than they would be if prosecuted by their states.[31]

In forming this Ad Hoc Advisory Group, the United States Sentencing Commission charged it to "[c]onsider any viable methods to improve the operation of the Federal Sentencing Guidelines in their application to Native Americans under the Major Crimes Act." The members of the Ad Hoc Advisory Group were drawn from those with experience in federal prosecution of Indian crimes on the various Indian Reservations. Members of the Ad Hoc Advisory Group include federal judges, Assistant United States Attorneys, United States Probation Officers, representatives from the Department of Justice, the Department of Interior, the United States Commission on Civil Rights, Victim/Witness specialists, private practitioners, academics, and Federal Public Defenders. Staff support was provided by the United States Sentencing Commission. The Ad Hoc Advisory Group members also brought with them a diversity of geography and tribal affiliation.

The Ad Hoc Advisory Group has met several times. The meetings took place at the U.S. Sentencing Commission in Washington, D.C. and in Phoenix, Arizona. The Ad Hoc Advisory Group, as charged, limited its study to those federal offenses most often prosecuted under the Major Crimes Act, 18 U.S.C. § 1153, and thus subject to the operation of the Federal Sentencing Guidelines. It drew from past reports of the Commission, past and current research and data on

[31] Perceptions of racial bias are troubling in and of themselves. Such perceptions foster disrespect for and lack of confidence in the criminal justice system. It is important to note that many of the perceptions of those who testified were, as noted in this report, an accurate assessment of the impact of federal criminal jurisdiction and the operation of the federal sentencing guidelines on Native Americans convicted under the Major Crimes Act.

federal offenses, and a review of data and statistics from state courts with a high percentage of Indian defendants, where the statistics were readily available.

The Ad Hoc Advisory Group broke itself down into various Sub-Committees to review specific issues. The Sub-Committees were charged with the following issues: assault, murder and manslaughter, sexual offenses, and report drafting. The membership on the Sub-Committees was structured to be diverse and reflective of the Ad Hoc Advisory Group as a whole. Topics selected were those offenses that had a significant percentage of Indian offenders and were areas that the United States Sentencing Commission and the Department of Justice had targeted for review and examination.

The Sub-Committees examined the relevant data from the United States Sentencing Commission on their offenses, state data and sources, and literature in the field. The Sub-Committees drafted reports, which were then submitted to the Ad Hoc Advisory Group as a whole, and revised. Data was ultimately used from three states with large Native American populations: Minnesota, South Dakota, and New Mexico. Despite the efforts of Commission staff to obtain sentencing data from other states with large Indian populations, such as Arizona and Montana, that data was unavailable for consideration, as it is not collected centrally in those states. Though there was a continuing concern on the part of the Ad Hoc Advisory Group, because of the limitations of the data set upon which it could base its analysis and from which it could draw conclusions, the Ad Hoc Advisory Group believes the conclusions contained in this report are supported by the best available data.[32]

In addition to the topics addressed by the Sub-committees, there were a number of

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[32] The Ad Hoc Advisory Group wishes to thank the Sentencing Commission staff for their assistance obtaining data and information.

additional topics discussed and considered by the Ad Hoc Advisory Group. Some of those topics are referred to in this Report. In some instances, where the Ad Hoc Advisory Group determined that a proposal was not a viable method to improve the operation of the federal sentencing guidelines in their application to Native Americans under the Major Crimes Act, this Report does not discuss it in detail. For example, there was a proposal to recommend that the Commission amend Chapter 4 to include tribal convictions in the computation of criminal history scores. After some consideration, the Ad Hoc Advisory Group ultimately decided against pursuing this proposal. The discussion among the Ad Hoc Advisory Group members revealed that there was concern that such an amendment would raise significant constitutional and logistical problems. Thus, the Ad Hoc Advisory Group is not recommending that such a change be implemented. Other issues, upon which the Ad Hoc Advisory Group has chosen not to make specific recommendations, likewise are not addressed in this Report.

In producing this Report, the Drafting Sub-Committee drew upon the Sub-committee reports and the data presented to the Ad Hoc Advisory Group as a whole. This Report represents all recommendations of the entire Ad Hoc Advisory Group membership.

V. MURDER AND MANSLAUGHTER

A. Second Degree Murder (18 U.S.C. § 1111)

The Ad Hoc Advisory Group decided not to address second degree murder. Many second degree murder defendants are Native Americans. However, Native Americans do not constitute the overwhelming percentage of defendants convicted of this offense. This situation stands in contrast to the percentages of Native Americans convicted for other homicide offenses (i.e., voluntary and involuntary manslaughter). As such, the Ad Hoc Advisory Group concluded

that the appropriateness of punishment for second degree murder fell outside its charge.

B. Manslaughter (18 U.S.C. § 1112)

1. Involuntary Manslaughter

The statutory penalty for involuntary manslaughter is not more than six years and a $250,000 fine. The Sentencing Guidelines assign the base offense level of 10 for criminal negligence and 14 for recklessness. *See* U.S.S.G. § 2A1.4. Guideline commentary defines "reckless" as referring to "a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation." U.S.S.G. § 2A1.4, App. Note 1. The commentary further states that this includes nearly all convictions for involuntary manslaughter under 18 U.S.C. § 1112. The commentary notes that a "homicide resulting from driving, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless." Application Note 2 defines "criminally negligent" as "conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes." *Id.* at App. Note 2.

The Ad Hoc Advisory Group benefitted from the findings and recommendations of the Manslaughter Working Group Report to the Commission (December 15, 1997). The Ad Hoc Advisory Group has also benefitted from the updating of the report by Commission staff. In reviewing the data, it is apparent that involuntary manslaughter is overwhelmingly an offense that involves Native Americans. Close to 75% of the cases involved defendants who were Indian, and the "heartland" of Indian country cases involved alcohol-related vehicular

homicides. It should be stressed, however, that these cases represent a relatively small number of cases in comparison with the total number of offenders in the federal criminal justice system. There were, for example, a total of approximately 30 cases of involuntary manslaughter in 2001 (reckless) while there were less than 5 involuntary manslaughters that were criminally negligent in the same year. The total number of involuntary manslaughter cases for 2000 and 2001 were less than 80.

The U.S. Sentencing Commission has charged the Ad Hoc Advisory Group to specifically examine this area. The Ad Hoc Advisory Group was aware of the request by certain U.S. Senators to amend the Guideline to "raise the sentencing range of imprisonment to impose harsher penalties for committing homicides while driving drunk." This request was made in October 2002. The Commission's interest in this issue led to a proposal published for comment, to possibly raise the base offense level for involuntary manslaughter found to be reckless from a level 14 to either level 16, 18, or 20; and for involuntary manslaughter found to be criminally negligent, from base offense level 12 to base offense level 16. In a comment submitted to the Commission on February 18, 2003, the Department of Justice proposed raising the base offense level for reckless conduct to a base offense level 20 and criminal negligence to a base offense level 16, plus adding specific offense characteristics. The Federal Defenders, in a comment submitted the same day, proposed raising the base offense level for reckless conduct to 16 and adding a two level increase for specific offense characteristics.

The Commission held a hearing on this matter in November 2002. At that hearing, the Chair of this Ad Hoc Advisory Group presented recommendations regarding proposed changes to the sentencing guidelines for manslaughter. On May 1, 2003, the Commission submitted to Congress amendments to the Guidelines to become effective November 1, 2003. Those amendments included changes to the involuntary manslaughter guideline found at U.S.S.G. § 2A1.4. Specifically, the amendment increases the base offense level in § 2A1.4(a)(2) for reckless involuntary manslaughter offenses from level 14 to level 18. Further, the amendment also increases the base offense level in § 2A4.1(a)(1) for criminally negligent involuntary manslaughter offenses from level 10 to level 12. However, that decision does not change the recommendations made by the Ad Hoc Advisory Group to improve the functioning of the Sentencing Guidelines in Indian Country.

2. Recommendations Relating to Involuntary Manslaughter

The Ad Hoc Advisory Group studied the mandatory maximum sentences of other jurisdictions for the offense of vehicular manslaughter, as well as the median sentences imposed, and compared these with federal sentences. In light of this, the Ad Hoc Advisory Group would propose that:

> The base offense level for involuntary manslaughter be raised to level 18. The Ad Hoc Advisory Group would also recommend the addition of specific offense characteristics. There would be (1) a four level increase if the death occurred while driving intoxicated or under the influence of alcohol or drugs; (2) a two level increase if the actions of the defendant resulted in multiple homicides; and (3) a two level increase if the offense involved use of a weapon in the offense.[33]

[33] These recommendations are based on a statutory maximum of six years.

In recommending these adjustments, the Ad Hoc Advisory Group wished to address cases involving vehicular manslaughter while intoxicated, most of which involve Native American defendants. A four level increase targets the harm of drunk driving, while distinguishing it from other involuntary homicide offenses. A two level adjustment for use of a weapon targets the increased harm when weapons are used. The research of the Ad Hoc Advisory Group and the Commission also revealed that 9% of the convictions for vehicular manslaughter involved multiple deaths. The Ad Hoc Advisory Group was concerned, however, that commentary be added that indicates that a vehicle could only be considered a weapon if it was so specifically used. An example would be if a defendant deliberately drove a car into a crowd, as opposed to a death resulting from drunk driving.

The Ad Hoc Advisory Group recommends no change in the base offense level for criminally negligent homicide, which is set at level 10. There are very few of these cases, and they involve conduct that is usually not alcohol-related. There appears to be no need or call for the raising of this base offense level.

Under the recommendations of the Ad Hoc Advisory Group, a defendant pleading guilty to involuntary manslaughter for drunk driving, with a criminal history of category I, would face an offense level of 22, which would be reduced by three levels for acceptance of responsibility, to an offense level of 19. This would have a sentence range of 30 to 37 months, which is more than double the range previously set for such cases. The high end of 37 months would be midrange of the statutory maximum. The Ad Hoc Advisory Group feels that this addresses specific concerns expressed by some senators and the Department of Justice regarding drunk driving.

The Ad Hoc Advisory Group does not feel that specific offense characteristics related to prior offenses of driving while intoxicated convictions or driving status are appropriate. Such concerns are better left, the Ad Hoc Advisory Group feels, to the criminal history calculations and specifically as a basis for possible departure upward for adequacy of criminal history.

3. Voluntary Manslaughter

Presently, voluntary manslaughter has a statutory penalty of not more than ten years and a $250,000 fine. The base offense level for voluntary manslaughter is 25. There are no specific offense characteristics.

The Ad Hoc Advisory Group again referred to the working group report of the Commission discussed above. It adopts a recommendation, which the U.S. Sentencing Commission proposed to Congress, that the statutory maximum be increased from ten years to 20 years to reflect the severity of the conduct, and to bring it into line with the continuum of the involuntary manslaughter recommendations and second degree murder. In addition, such an increase would allow increased sentencing flexibility at the higher end.

Voluntary manslaughter, like involuntary manslaughter, is primarily an offense involving Native American defendants. The numbers of voluntary manslaughter cases, however, are even less than for involuntary manslaughter. In 2001, for example, there were less than 20 voluntary manslaughter cases subject to federal jurisdiction; in 2000, there were less than 10.

4. Recommendations Relating to Voluntary Manslaughter

In reviewing the data and the recommendations from the manslaughter working group, the Ad Hoc Advisory Group recommends that the base offense level stay the same. It recommends, however, that there be a two level increase for use of a weapon and a four level increase for use of a firearm. Such an increase would address the use of weapons and firearms in

such situations which, by their nature, arise from quarrel or heat of passion.

Other factors that arise in voluntary manslaughter offenses, such as domestic violence, criminal history, and so forth can be addressed in the appropriate chapters that deal with those subjects. For example, criminal history conduct that is assaultive in nature will either be assessed criminal history points, or receive an adjustment for prior restraining orders, or be a basis for an upward departure. Similarly, if the victim has a vulnerability, an adjustment under vulnerable victim may be appropriate.

The Ad Hoc Advisory Group recognizes that the nature of voluntary manslaughter is an intentional killing which is mitigated by an emotion, passion or quarrel, that lessens the culpability of the defendant. For this reason, extensive amendment of voluntary manslaughter was not deemed necessary aside from the above recommendations.

VI. SEXUAL ABUSE OFFENSES

Adequately improving the application of the federal sentencing guidelines to sexual abuse offenses committed by Native Americans presented one of the greatest challenges for the Ad Hoc Advisory Group. These challenges arose from data[34] relied upon by the Ad Hoc Advisory Group, which demonstrated that sexual abuse is a serious problem in Indian Country and that a disparity exists between sexual abuse offense sentences in the federal courts and those in state courts. This disparity, although not racially motivated, disproportionately affects Native

[34] Federal sentence data for FY 2001 was provided by the Commission staff. Late in the Advisory Group's tenure, some data was also made available for FY 2002. Unless otherwise noted, FY 2001 data is used in this section. Finally, data was obtained by the Commission staff on "expected time to be served" from Minnesota, New Mexico, and South Dakota, and this data was broken down by offense.

Americans because of the jurisdictional framework that places a far higher proportion of Native Americans in federal court. However, information available to the Ad Hoc Advisory Group also showed that some of this sentencing disparity was by design, for these sentences had been set at their present levels to address egregious sexual abuse cases that arose in Indian Country. Compounding this was the state of research into these offenses, which produces unclear or conflicting conclusions on how to effectively treat these types of offenders. As such, the Ad Hoc Advisory Group has limited its recommendations to two areas.

The Ad Hoc Advisory Group recommends, consistent with a proposal currently under consideration within the Commission, that the "travel"[35] sex offenses be addressed in a new Guideline, U.S.S.G. § 2G1.3, and segregated from the other crimes currently addressed in U.S.S.G. § 2A3.2. Over time, this separation may help limit unintended increases in the disparity in sentences for Native Americans if Congress continues to target the travel offenses for increased sentences. The Ad Hoc Advisory Group also recommends that, similar to the statutorily mandated Drug and Alcohol Program ("DAP"), sex offenders who complete the Sex Offender Treatment Program through the Federal Bureau of Prisons be eligible to receive a modest reduction in their sentences.

A. Sexual Abuse is a Serious Problem

The Ad Hoc Advisory Group cannot state strenuously enough that sexual offenses are a serious problem in Indian country. Native Americans twelve and older are more than three times as likely to be victims of sexual assault or rape than any other group identified by the Bureau of

[35] "Travel" offenses as used in this document refers to those offenses in which a defendant travels to meet or transports a minor for prohibited sexual activity.

Justice Statistics in its 1999 report on "American Indians and Crime."[36]

The Ad Hoc Advisory Group urges more study of sex offenses in Indian country generally. The Advisory Group encourages the Commission, and indirectly the Congress and relevant federal agencies, to do what they can to explore and ultimately ameliorate issues of sexual abuse in Indian country. If any eventual reforms also diminish or eradicate the disparity for Native Americans between federal and state sentences as discussed below, a further purpose would be served.

B. Longer Federal Sentences For Sexual Abuse Affect Native Americans Disproportionately

Native Americans are far more likely to be sentenced for sexual abuse under federal law than are non-Native Americans.[37] This is because of the jurisdictional framework under which sexual abuse offenses by Native Americans on Indian reservations generally are prosecuted under federal law and thus sentenced under the Sentencing Guidelines. This is of great significance because sentences for sexual abuse offenses in the federal courts are more severe than state sentences. In South Dakota, for example, the mean sentence for all state sexual offenses was 81 months, while the mean sentence for federal offenders was 96 months. The

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[36] This figure is computed from the data in Tables 1 and 4, on pages 2 and 3 of that report respectively. Note, however, that the BJS also concluded that Native Americans are more likely than any other group to be victimized by someone from another racial group. This fact alone, therefore, does not support a conclusion that Native Americans are more likely to *commit* sexual assaults and rape. Also note that the BJS study only addressed victims over the age of 12.

[37] The 2000 Census reports that Native Americans compose roughly 1.5 percent of the population of the United States, but Native Americans were the offenders in over half (132 of 240) of the sexual abuse convictions in federal courts in Fiscal Year 2001. In the states examined by the Advisory Group, Native Americans comprised only 6 percent of the sexual abuse offenders in state courts, but over 90 percent of the sexual abuse offenders in federal courts.

corresponding numbers for New Mexico were 25 months and 86 months, respectively.[38] If only the more severe class 1 and 2 felony offenses in New Mexico are considered, the state mean sentence is 43 months.[39]

There is no evidence that Native Americans are sentenced differently in material respects than non-Native Americans either in state or in federal courts. The sentences received by Native Americans in both state and federal court were very similar to those received by non-Native Americans.[40] The disparity noted above arises from a comparison of sentences received in the respective courts. It is the jurisdictional framework that places more Native American offenders in federal court, and when coupled with the longer federal sentences, it results in a disparate impact on Native Americans.

Multiple factors may contribute to this difference between state and federal court sentences, but the Ad Hoc Advisory Group notes that federal sentences for non-Native Americans are also more severe than state sentences. The Ad Hoc Advisory Group therefore concludes that federal sentences are more severe than state sentences for sexual abuse offenses.

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[38] Data from Minnesota is not discussed here. It is of very limited use because there was only one federal sex offender in Minnesota in the data set. For reference, the mean sentence for state offenders in Minnesota was 53 months.

[39] This mean also excludes exploitation offenses.

[40] Thus, there currently is no compelling evidence that racial prejudice plays any role in sentencing of Native American sex offenders. Native American sex offenders may be sentenced to longer terms than non-Native Americans in South Dakota state courts. *South Dakota Criminal Justice: A Study of Racial Disparities* by Richard Braunstein, South Dakota Law Review, Volume 48, Issue 2, pgs 171-207 (2003). However, the Advisory Group has concluded that the data and methodology used in that study are not suited for comparison to the available federal data.

The perception among some Native Americans that they as a group receive harsher penalties for sexual abuse offenses than non-Native Americans is accurate.

The recently enacted PROTECT Act of 2003 will increase the disparate impact of federal sentences on Native Americans. Given the timing of this Act, the Ad Hoc Advisory Group did not have an opportunity to fully consider and analyze all of its implications on Indian country. However, two implications stand out immediately. Section 106 of that Act, the "two strikes you're out" provision, imposes a mandatory life sentence on anyone convicted in the federal courts of a second sex crime in which a minor is a victim. Additionally, section 401(i)(1)(A) of Public Law 108–21 directly amended Application Note 4(b)(I) to U.S.S.G. § 4B1.5, so that any sexual offender who engages in "prohibited sexual conduct" with a minor on two or more occasions demonstrates a "pattern of activity" and is subjected to a five level increase in the offense level, with a minimum of 22.[41] The Ad Hoc Advisory Group is very concerned about the effect of these provisions on Native American defendants. These provisions will increase the average federal sex offense sentence overall, thus increasing the disparity between federal and state sentences for these offenses. In addition, data provided to the Ad Hoc Advisory Group by Commission staff confirms that the statutory guideline amendment will dramatically affect Native Americans more than other persons. In combination, these changes are certain to increase dramatically the existing disparity between state and federal sentences.

Also troubling is the fact that Congress neither consulted with nor seems to have

[41] The previous version of the Application Note required, in addition, at least two different victims.

anticipated the consequences of the PROTECT Act on Native Americans.[42] Native Americans and their special place in the jurisdictional framework are not mentioned.[43] This silence suggests that Congress has enacted legislation that will have a demonstrable impact on Native American offenders, already subject to greater sentences in federal courts, without having heard from those most impacted nor giving any thought to that impact.[44] In considering this impact, it is important to note that, based on FY 2002 data, Native Americans were are all but absent from the pool of

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[42] As stated in the Senate Report on the bill, "[the purpose of S. 151, the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act or 'PROTECT Act of 2003,' ***is to restore the government's ability to prosecute child pornography offenses successfully***." S.Rep. 108-2, at 1 (emphasis added). Neither the Senate Report nor the House Conference Report, H.R.Rep. 108-66, discusses the impact of the Act's provisions on Indian country, where there are very few pornography convictions.

[43] Several provisions do identify tribes as potential recipients of funding and assistance, and "Indian country" is included in the jurisdictional provision for the "two strikes you're out provision." But the *impact* on Native Americans goes without notice.

[44] The PROTECT Act also affects the term of supervised release for Native Americans, and other, sex offenders. As the Ad Hoc Advisory Group began work in 2002, the longest period of supervised release (post-incarceration) available to the federal courts was five years, even for the most severe offense. The PROTECT Act substantially extended the possible term of supervised release for serious sex offenses. Subsection (k) was added to 18 U.S.C. § 3583 which provides:

> Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 2241, 2242, 2244(a)(1), 2244(a)(2), 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, ***is any term of years or life***.

(emphasis added.) In its April 30, 2003, supplement to the Guidelines, the Commission recommended that maximum supervised release term for offenders subject to Guideline §4B1.5. Application Note 5(A). Because of the time of this change, the Ad Hoc Advisory Group has not had adequate time to consider its implications for Indian Country. However, it notes that, given the jurisdictional framework, this change along with other provisions of the PROTECT Act will disproportionately affect Native Americans.

pornography and "travel" offenders.

The Ad Hoc Advisory Group has elected not to recommend any specific changes to the Guidelines that would directly reduce or eliminate the sentencing disparity identified. However, the following recommendations (1) reduce the probability that Native American offenders will inadvertently be targeted by future legislation regarding pornography and "travel" offenses, (2) may indirectly reduce the sentencing disparity, and (3) are intended also to ameliorate the harms caused by sex offenders in Indian country.

C. Recommendations Relating to Sexual Abuse Offenses

1. Create New U.S.S.G. § 2G1.3 To Separate "Travel Offenses" from Heartland Native American Offenses in Guidelines

The Ad Hoc Advisory Group understands that the Commission is currently considering the creation of a new U.S.S.G. § 2G1.3, that would remove the so-called "travel" offenses from U.S.S.G. § 2A3.2. The Ad Hoc Advisory Group strongly endorses such a Guideline, and any similar measures that may be identified in the future that would separate crimes normally addressed by state law from those falling under Congress' interstate jurisdiction.

Fiscal Year 2002 data demonstrates that virtually no Native Americans are sentenced for child pornography, internet, or similar sex crimes. And yet, as mentioned above, the efforts of Congress to combat those very crimes will likely increase the disparity between federal and state courts for the sex crimes for which Native Americans form the largest pool of federal offenders–crimes that would generally be sentenced under state (or tribal) law but for the unique jurisdictional characteristics of Indian country. Wherever possible, the Guidelines should attempt to delineate between these groups of offenses to increase the likelihood that Native American offenders will not inadvertently be swept in by future acts of Congress or the

Commission.[45] While such separations will not decrease the present disparity between federal and state sentences, they may prevent growth in the disparity.

2. Establish a Sex Offender Treatment Program Modeled on the Successful Drug and Alcohol Program (DAP) Model.

The DAP program is a creation of Congress. Congress mandated that Federal Bureau of Prisons (BOP) make available substance abuse treatment to all inmates who have a "treatable condition of substance addiction or abuse."[46] One of the components of this program allows the BOP to reduce by up to one year the sentence of any nonviolent offender who successfully completes a residential substance abuse program. The Ad Hoc Advisory Group believes that a similar incentive program, tailored to the unique needs and challenges of sex offenders, could have significant benefits in Indian country while incidentally countering a portion of the disparity in sentences.

Correctional treatment is one of the statutorily recognized purposes of sentencing.[47] The Commission likewise has recognized the importance of treatment.[48] There is a growing body of literature and studies that support the effectiveness of sex offender treatment in reducing

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[45] The PROTECT Act of 2003 increases the penalties under 18 U.S.C. § 2421 for interstate transportation of an individual for certain sexual purposes. It is apparent that Congress included the provision requiring interstate transportation to satisfy constitutional requirements. Certain Indian reservations span state boundaries. The Ad Hoc Advisory Group questions whether Congress intended to categorically subject on-reservation offenses that happen to involve transportation across a state boundary to increased penalties. The Ad Hoc Advisory Group recommends that, if feasible, on-reservation offenses not be treated as "travel" offenses under new bifurcated Guidelines.

[46] 18 U.S.C. § 3621(a)(5).

[47] 18 U.S.C. § 3553.

[48] U.S.S.G. § 4B1.5, App. Note 5.

recidivism of sex offenders.[49] It is with this background in mind that the Ad Hoc Advisory Group recommends establishing a sex offender treatment program modeled on the DAP program, including a sentence reduction for successful completion of treatment.[50]

The Advisory Group examined the available and forthcoming in-custody treatment options to provide guidance in setting up the proposed DAP-type program. The BOP presently has a Sex Offender Treatment Program (SOTP) at the Federal Correctional Institution (FCI) in Butner, North Carolina. It is an intensive, residential treatment program for male sex offenders. Inmates voluntarily participate in the program, which is aimed at reducing the risk of recidivism by teaching sex offenders to manage their sexual deviance through cognitive-behavioral and relapse prevention techniques.[51] There are three program components: assessment, treatment, and release planning. Currently, only one percent of sex offenders in the federal prisons receive

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[49] *See e.g.*, Orlando, Dennise, "Sex Offenders," *Special Needs Offenders Bulletin, a publication of the Federal Judicial Center*, No.3, Sept. 1998, at 8 (available at http://www.fjc.gov/public/pdf.nsf/lookup/SNOBull3.pdf/$file/SNOBull3.pdf); Alexander, M.A., "Sexual Offender Treatment Efficacy Revisited," 11 *Sexual Abuse: A Journal of Research and Treatment* 2, at 101-117 (*cited in* Center for Sex Offender Management, "Recidivism of Sex Offenders," 13-14 (May 2001) (available at www.csom.org/pubs/)); Looman, Jan *et al.*, "Recidivism Among Treated Sexual Offenders and Matched Controls: Data from the Regional Treatment Center (Ontario)," 15 *JOURNAL OF INTERPERSONAL VIOLENCE* 3, at 279-290 (Mar. 2000) (showing reduction from 51.7 percent to 23.6 percent with treatment).

[50] It is not clear to the Advisory Group whether additional statutory authority would be required or if a DAP-style program could be adopted through the Guidelines. The Advisory Group defers to the Commission and its staff regarding how best to implement any sentence reduction program.

[51] *See*, Orlando, "Sex Offenders," supra note 49, at 14.

treatment.[52]

The SOTP seeks to select the most motivated and treatment appropriate inmates. To be accepted, among other criteria, an inmate must: volunteer to participate in the program, demonstrate a commitment to change, have 18-36 months remaining to serve, not have a pending charge or detainer that interferes with release to the community, be literate and demonstrate sufficient intelligence to participate in psychotherapy, not be psychotic or suffer from a psychiatric illness that would prevent him from participating in the program fully, and not have a history of violence or of inflicting serious physical injury to victims, a history of failed sex offender treatment, or any other element in his background indicating he would not be a good candidate for the SOTP.

Members of the Ad Hoc Advisory Group spoke with BOP personnel at the Butner facility, including Dr. Andres E. Hernandez, Director of the SOTP.[53] BOP information demonstrates that Native Americans who have participated in the SOTP have done well and that their treatment outcomes are no different than any other group of sex offenders. However, there are obstacles which can impede their entry into the program. These obstacles include

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[52] Dr. Andres E. Hernandez, BOP Director of the Sex Offender Treatment Facility at Butner, North Carolina. The BOP intends to create additional SOTP sites in the next several years. While the SOTP is currently turning inmates away, the additional capacity should also help to accommodate additional inmates encouraged to participate in treatment through the institution of any DAP-style program.

[53] Dr. Hernandez was authorized to speak on behalf of the Federal Bureau of Prisons regarding the SOTP, Native American participation in the program, and related issues. Other BOP personnel informed the Ad Hoc Advisory Group that because the BOP's SOTP program is still quite new, it will be a number of years before significant recidivism data is available regarding the program's participants. BOP personnel confirmed the Ad Hoc Advisory Group's general conclusions regarding the current state of recidivism research in the literature.

geography,[54] a general distrust of government, a strong sense of self-reliance,[55] and the shame and embarrassment associated with a conviction for a sexual abuse offense. The Advisory Group believes that the creation of a DAP-type program would help overcome these obstacles to treatment for Native Americans.

Information obtained from the BOP confirms that the added incentives created by such a program would encourage participation in the SOTP, and thus would be positive for a number of reasons. As noted above, full acceptance of responsibility and commitment to change is a prerequisite for admission into the SOTP.[56] Dr. Hernandez stated that a modest reduction in sentence could provide a very useful incentive to encourage sex offenders to fully accept responsibility for their crimes *and* successfully complete the SOTP.

The incentive to participation provided by a modest sentencing reduction for those who successfully complete the SOTP is also warranted given the disparity between federal and state sentences. The disparity indicates that there is some latitude for a reduction, the reduction would be a reward for engaging in treatment that is likely to reduce recidivism, and the accompanying acceptance of responsibility may be of tremendous benefit to the victim and, if relevant, the

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[54] Geography is a major barrier because the vast majority of Native American sex offenders prosecuted in the federal courts are from western states far from North Carolina.

[55] This creates a barrier to any treatment and is not limited to sexual abuse.

[56] "Acceptance of responsibility" in this context is different from the acceptance required by the Sentencing Guidelines for a reduction in sentence at the outset. Acceptance of responsibility and commitment to change in the treatment context involves a much fuller understanding and internalization of the effects of one's actions. The phrase is used herein in its fuller, treatment-oriented sense.

While it might facially seem that offenders who admit responsibility and engage in treatment for an external purpose might not truly benefit from treatment, Dr. Hernandez stated that it would be very difficult for someone who did not truly accept responsibility and sincerely desire treatment to successfully complete the program.

victim's family. As such, the Ad Hoc Advisory Group strongly recommends that a program allowing sentence reductions of up to twelve months, similar to the DAP program, be instituted for sexual offenders who successfully complete the SOTP. In place of or in addition to the requirements for the SOTP listed above, elements of the sentence reduction program would include:

- Successful completion of a residential treatment in the final years of incarceration.
- Like the DAP program, those completing the residential treatment program would be eligible for a sentence reduction of up to 12 months.[57]
- Offenders who use a gun in the commission of their offense should not be eligible for any sentence reduction, even if they are otherwise eligible for admission into the SOTP.

VII. AGGRAVATED ASSAULTS

The Major Crimes Act provides for federal jurisdiction over the most serious assault offenses when Indians commit them within Indian country. Assaults comprise the greatest percentage of offenses prosecuted under the Major Crimes Act. As a result of federal jurisdiction, Commission data shows Indians are more likely than any other ethnic group to be

[57] Dr. Hernandez explained that the longer a sex offender denies his (or her) responsibility, the more difficult it can be to ultimately accept responsibility and successfully complete treatment. Thus, early acceptance is likely to benefit the offender and in turn potential future victims who would benefit from reductions in recidivism. Early acceptance likely would also benefit to past victims. Dr. Hernandez stated that it is the common understanding among his peers that early acceptance of responsibility would often aid in the healing of those victims. Victims often feel some combination of shame or responsibility that can be alleviated, at least in part, by their attacker or abuser fully accepting responsibility. This is especially true in cases of incest, in which family members often support the offender and ostracize the victim. In short, Dr. Hernandez indicated that early acceptance of responsibility could prevent significant harm to the victim and, where relevant, the victim's family. As such, the Ad Hoc Advisory Group recommends that this DAP-style sentence reduction be designed to give the BOP the flexibility to incorporate such potential benefits.

incarcerated federally for assault. While Indians represent less than 2% of the U.S. population, they represent about 34% of individuals in federal custody for assault.[58]

Given this, it is not surprising that this offense, more than any other, was the focus of concern during the Rapid City hearing that led to the formation of this Ad Hoc Advisory Group. Many of those who testified expressed their concern that the sentences for federal assault offenses were more severe than those meted out by state courts for the same offense. As such, the Ad Hoc Advisory Group was particularly sensitive to this issue. To address this issue, the Ad Hoc Advisory Group determined whether those perceptions were supported by the sentencing data available and what steps could be taken to alleviate any disparity found.

The perceptions of those who testified are accurate, based on the data reviewed by the Ad Hoc Advisory Group. Federal sentences for assaults are longer than state sentences for assaults.

The Ad Hoc Advisory Group reviewed data from two states with significant Indian populations, New Mexico and South Dakota. Data from other states with significant Indian populations such as Arizona, Montana, and North Dakota were not available. While data on Indian sentencing in these States might further improve the understanding of the issue, the strong data from New Mexico and South Dakota was sufficient to allow the Ad Hoc Advisory Group to draw conclusions and make recommendations.

As a preliminary matter, the Ad Hoc Advisory Group, sought to establish a standard by which to gauge potential disparity. The Ad Hoc Advisory Group determined that disparity exists between state and federal aggravated assault sentences when the average state sentence falls

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[58] Commission data provided to the Ad Hoc Advisory Group shows about 34% of those convicted of assault in the federal system are Indian, 27% are White, 20% are African American, 17% are Hispanic, and 2% are classified as other.

outside the sentencing discretion for a comparable guideline range under the Sentencing Guidelines.[59] Anything less could be accounted for by flexibility intentionally established as part of the Sentencing Guidelines scheme. Anything more than this range, would appear to be a disparity not inherent in the flexibility built into the extensive structure of the Guidelines.

An issue evaluated and dispensed with early in the process, was the question of potential disparity within the federal sentencing structure. The average sentence received by an Indian offender nationally in Federal court for assault is 34 months. The average sentence received by a non-Indian offender is 30 months. As noted earlier, the Ad Hoc Advisory Group established that the threshold for prima facie disparity exists when the difference in sentences between two groups exceeds the range of a single Guidelines offense level. An enumerated offense level under the Federal Sentencing Tables is 30-37 months. The disparity between Indian and non-Indian offenders falls within the sentencing discretion of this single offense level. Thus, the Ad Hoc Advisory Group concluded that this difference was unlikely to be the result of racial bias.

The Ad Hoc Advisory Group primarily relied upon sentencing data drawn from South Dakota and New Mexico. It was clear from the first review that a disparity in sentencing exists between the federal and state systems in both cases.

For example, the average sentence received by an Indian person convicted of assault in South Dakota state court is 29 months.[60] The average assault sentence received in South Dakota

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[59] Comparable guideline range as used in this document refers to those guideline ranges within which a particular sentence could fall. For example, a 30-month sentence could fall within ranges 24-30, 27-33, or 30-37. Thus, these would be the comparable guideline ranges.

[60] See also *South Dakota Criminal Justice: A Study of Racial Disparities* by Richard Braunstein, S. D. L. REV., Volume 48, Issue 2, pgs 171-207 (2003). Though compiled using slightly different parameters than the Commission data, Braunstein's research would indicate an even slightly greater disparity exists. (The average state sentence for Indians committing assault

federal court is 39 months. With a difference of ten months, the federal assault sentence is about 34% higher than the average state assault sentence. In terms of sentencing ranges contained within the Guidelines manual, in order to account for this ten month difference, one must go down two levels.[61] Under the Ad Hoc Advisory Group's established standard, there is a substantial disparity between assault sentences received by Indians in South Dakota state courts and sentences received by Indians in South Dakota federal court. When one considers the data from New Mexico, the disparity between state and federal sentences for assault is even more dramatic. The average sentence received by an Indian person convicted of assault in New Mexico state court is six months. The average for an Indian convicted of assault in federal court in New Mexico is 54 months. While the New Mexico statistics are based in part on low level offenses which would generally not be prosecuted in federal court, the difference in sentence length is so great even the elimination of these offenses does not negate the significance of the disparity. The six month versus 54 month difference covers a number of offense levels (15), and thus easily it meets the prima facie disparity test.

A. Recommendations Relating to Aggravated Assault

It is clear to the Ad Hoc Advisory Group that disparity exists between the sentences of Indians convicted of assault in the state systems and those convicted of similar offenses in the federal courts. As with sex abuse, this disparity is driven by the jurisdictional framework under which Native Americans are prosecuted federally and not under the state criminal system. However, that is where the similarities between sexual abuse and assault end. Unlike some types

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in Braunstein's study was 22 months.)

[61] The three Federal Sentencing Table offense levels encompassing the average of the State and Federal sentences in South Dakota are 24-30, 30-37, and 37-46 months.

of sexual abuse, jurisdiction and sentencing of Native Americans for assault does not appear to be the result of an intentional effort by Congress to target assault because of a unique federal interest or tribal concern. The assault statutes are among the earliest federal laws, and they were apparently intended to provide for law and order in areas not policed by the various states. Generally, states oversee the administration of criminal law dealing with assault, and the sentences states hand down for assault are much less severe than federal assault sentences. For states analyzed by Commission staff, federal assault sentences are, for the most part, higher than state sentences. The inclusion of Indian Country under federal assault jurisdiction, which has resulted in a disproportionate percentage of Indian offenders incarcerated for federal assault, would appear to be an accident of history and geography. As such, the disparate impact does not appear to have been borne of racial animus. Irrespective of this motivation, disparity exists.

Given this, the Ad Hoc Advisory Group strongly recommends that the Commission lower the base offense level for assault to lessen the disparity between federal and state sentences, thus diminishing the impact on Indian defendants. To accomplish this, the Ad Hoc Advisory Group recommends a two-level reduction in the base offense level. This represents a conservative approach to the disparity found by the Ad Hoc Advisory Group. In reaching this recommendation, the Ad Hoc Advisory Group chose to be guided by the South Dakota data. This was done because there was some concern that the sentences in New Mexico were not representative of those in other states. By lowering the base offense level for assault by two levels, federal sentences would more closely reflect state sentences. As a result, Indians, who are disproportionately convicted of federal assault, would receive sentences closer to those received

by non-Indians convicted of similar crimes off the Reservation (and thus outside of federal jurisdiction).

VIII. THE ROLE OF ALCOHOL IN MAJOR CRIMES ACT CASES

The Ad Hoc Advisory Group noted that across the board, alcohol plays a significant role in all violent crime arising in Indian Country. As reported in "Childhood Sexual Abuse in a Southwestern Tribe," alcoholism contributed to "major changes in Indian life with erosion of traditional family networks, a change in parental roles and a growing sense of isolation and disconnection from the past" and "has become a 'way of life' for some American Indian families, resulting in 'severe and permanent family disintegration and chaos.'"[62] As with many of the social, and therefore criminal, problems on our nation's reservations, alcohol is apparently a significant and destructive factor.

The devastating effect of alcohol addiction on the reservations is compounded by the lack of adequate resources to treat this addiction. To the extent that the Commission can recommend that Congress provide funding for additional treatment programs in Indian Country, the Ad Hoc Advisory Group would strongly support such encouragement.

To improve the operation of the federal sentencing guidelines in their application to Native Americans under the Major Crimes Act, the Ad Hoc Advisory Group has two specific recommendations to deal with the role alcohol plays in offenses under the Major Crimes Act.

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[62] Robin, R.W., Chester, B., Rasmussen, J.K., Jaranson, J.M., & Goldman, D., *Prevalence, characteristics, and impact of childhood sexual abuse in an Southwestern American Indians tribe,* 21 CHILD ABUSE AND NEGLET 769-787 (1997)(Internal quoted omitted).

These recommendations recognize that the role and the effect of alcohol abuse varies from offense to offense.

In certain offenses, the Ad Hoc Advisory Group believes alcohol plays its historical legal role in that it mitigates the culpability of an offender. However this was not always the case. For example, as discuss above, the Ad Hoc Advisory Group determined that because of the role alcohol plays in involuntary manslaughter cases arising from drunk driving, an additional special offense characteristic should be added to the Guidelines for that.[63]

The Ad Hoc Advisory Group was not unmindful that such an increase would impact Native Americans heavily. Indeed, the Ad Hoc Advisory Group considered information that confirms that such a special offense characteristic will most heavily impact Native Americans in that over 80% of those convicted of involuntary manslaughter in the federal system were Native Americans. In spite of this fact, the Ad Hoc Advisory Group believed such an enhancement was appropriate due to a number of factors. For example, many such vehicular homicides are committed by offenders with prior opportunities for treatment. Additionally, some Ad Hoc Advisory Group members believe that effective information campaigns about the dangers of drinking and driving have heightened awareness that people should not drink and drive.

With this notable exception, the Ad Hoc Advisory Group strongly recommends against the Commission adding any enhancements for alcohol into the Guidelines because of their unquestionable impact on Indian Country. Given the lack of resources devoted to meaningful treatment on reservations, the extent of the problem on reservations, and the impact alcohol has

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[63] *See* infra § V.B.2. "Recommendations Relating to Involuntary Manslaughter".

on mens rea, the Ad Hoc Advisory Group believes such an enhancement would unjustifiably increase the disparity already present in the sentencing of Native Americans.

IX. TRIBAL CONSULTATION

Given the Major Crimes Act's exclusive applicability to sovereign Indian communities defined in federal law by tribal status and tribal territory, the federal Indian country criminal justice framework, of which the Major Crimes Act is the centerpiece, lacks a clear analogue in the federal criminal justice system. Yet this regime is not peculiar; it is mirrored by numerous federal programs outside the criminal justice system in which the government of the United States possesses a range of responsibilities to Indian tribes, including in such traditional areas of governance as schools and education, health services, and even law enforcement. In meeting these other responsibilities and indeed in virtually every federal program outside the criminal justice area, federal government agencies have adopted a consultative approach toward Indian tribes.[64] Like myriad other government agencies, the Sentencing Commission should consult

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[64] Every President since Richard Nixon had endorsed the notion that tribes should be partners in the development of policy in federal programs affecting Indians. *See generally* President Nixon's Special Message to the Congress on Indian Affairs, PUB. PAPERS 564 (1970) (stating that "[s]elf-determination among the Indian people can and must be encouraged"); President Reagan's Statement on Indian Policy, 1 PUB. PAPERS 96, 99 (1983) (asserting that "[t]his administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to State and local governments but also to federally recognized American Indian Tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes"); President George Bush's Statement Reaffirming the Government-to-Government Relationship Between the Federal Government and Indian Tribal Governments, PUB. PAPERS 662 (1991) (noting the "administration's policy of fostering tribal self-government and self-determination."); President Clinton's Memorandum of Government-to-Government Relations with Native American Tribal Governments, 59 FED. REG. 22951 (1994) (stating that "I am strongly committed to building a more effective day-to-day working relationship

with Indian tribes in creating policy applicable to such offenses.

Consultations should occur, not only nationally, but also on a tribe-by-tribe basis. While some tribes may desire a strong federal criminal justice presence, other tribes may wish to prosecute and punish offenders within their own criminal justice framework. Indeed, for tribes such as the Navajo Nation that have a sophisticated police force and criminal justice system, federal policy makers should consider tailoring federal policy to the wishes of the tribe. One policy cannot and should not indiscriminately bind all of the numerous individual Indian tribes which range dramatically in size of population and physical jurisdiction.

Since 1994, it has been the official policy of the United States to consult with Indian tribes individually on important issues of sentencing under the Major Crimes Act. Congress explicitly recognized the importance of working on a tribe-by-tribe basis in federal sentencing policy when it enacted the federal "three strikes" provision and the federal death penalty. In both of these provisions of federal sentencing law, Congress determined that these provisions should be applied on a tribe-by-tribe basis and only with tribal consent.[65] Thus, for Indian defendants prosecuted under the Major Crimes Act, these provisions apply only if the relevant tribe has "opted" to allow these federal provisions to apply.

The Commission, as seen by forming this Ad Hoc Advisory Group, has begun to take seriously the unique obligations of the United States to Indian tribes under the Major Crimes Act

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reflecting respect for the rights of self-government due to the sovereign tribal governments"); President George W. Bush's National American Indian Heritage Month 2002, A Proclamation, Exec. Procl. 7620, 67 Fed. Reg. 67773 (2002).

[65] See 18 U.S.C. §§ 3598 (death penalty) & 3559(c)(6) ("three strikes" provision). Congress also created a tribal option for the provision that lowered the minimum age from fifteen years to thirteen years for juveniles to be transferred to adult status for violent felonies. 18 U.S.C. § 5032.

and important statutes that make up federal Indian policy. As the Commission considers the proposals contained in this report, the Ad Hoc Advisory Group strongly urges the Commission to follow the practice of Congress and of other federal agencies and consult specially with national Indian organizations and with the affected Indian communities as it considers and crafts the important federal programs that uniquely affect them.

X. CONCLUSION

In order to accomplish the mission of improving the application of the federal sentencing guidelines to Native Americans under the Major Crimes Act, the Ad Hoc Advisory Group recommends changes to particular guideline sections. Perhaps more importantly, it also recommends that the Commission establish formal mechanisms for continuing to consult with the Native American communities most directly impacted by changes to the federal sentencing guidelines sections covered by the Major Crimes Act. It is only through meaningful participation can the perceptions of bias expressed at the Rapid City hearings be prevented in the future.

APPENDIX A

Native American Advisory Group Members

The Honorable Lawrence L. Piersol, Chair, Native American Advisory Group

- Chief Judge, U.S. District Court, District of South Dakota, 1999-present
- U.S. Army, JAG Corps, 1965-1968
- Private practice, Sioux Falls, South Dakota, 1968-1993

Robert Ecoffey

- Director, Office of Law Enforcement Services, Bureau of Indian Affairs
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- Director, National Indian Gaming Commission
- Former Associate Solicitor for Indian Affairs, U.S. Department of the Interior
- Former U.S. Attorney, South Dakota
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- Senior Litigation Counsel, District of Arizona
- Tribal Liaison and Victim Witness Program Supervisor for the U.S. Attorney's Office, District of Arizona
- Former Deputy Majority Counsel, Senate Indian Affairs Committee
- Member, Hopi Tribe
- Hopi Tribe Appellate Court Judge

Magdeline Jensen

- Chief U.S. Probation Officer, District of Arizona
- Former Probation Administrator, Office of Probation and Pretrial Services, Administrative Office of the U.S. Courts
- Former U.S. Probation Officer, Southern District of California

Thomas L. LeClaire

- President, The MGU Companies
- Former Director, Office of Tribal Justice, U.S. Department of Justice
- Former Assistant United States Attorney, 1989-2000
- Member, Mohawk Nation

Elsie Meeks

- Vice Chair, U.S. Commission on Civil Rights
- Testified at Rapid City, South Dakota hearing, June 2001
- Member, Oglala Sioux Tribe

The Honorable Donald W. Molloy

- Chief Judge, U.S. District Court, District of Montana, 2001-present
- U.S. Navy, Naval Aviation, 1968-1973
- Law clerk, Hon. James Battin, U.S. District Court, District of Montana, 1976-1978
- Private practice, Billings, Montana, 1978-1995

Tom Peckham

- Partner, Nordhaus Law Firm, Albuquerque, New Mexico
- Indian law specialist
- Panel moderator at Rapid City, South Dakota hearing, June, 2001

Marlys Pecora

- Victim Witness Specialist, U.S. Attorney's Office, South Dakota
- Former criminal investigator for Crow Creek Sioux Tribe
- Member, Crow Creek Sioux Tribe
- Testified at Rapid City, South Dakota hearing, June 2001

Celia Rumann

- Assistant Professor of Law, University of St. Thomas School of Law, Minneapolis, Minnesota
- Former Assistant Federal Public Defender

Jon Sands

- Assistant Federal Public Defender, Arizona
- Chair, Federal Defender Committee on the Sentencing Guidelines

Tracy Toulou

- Director, Office of Tribal Justice, U.S. Department of Justice
- Former Assistant U.S. Attorney in Montana
- Descendent, Colville Confederated Tribes

Kevin Washburn

- Associate Professor, University of Minnesota Law School
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JAN LOOMAN, JEFFREY ABRACEN, AND TERRY P. NICHOLAICHUK, "RECIDIVISM AMONG TREATED SEXUAL OFFENDERS AND MATCHED CONTROLS," *Journal of Interpersonal Violence,* Vol. 15 No. 3, March 2000

Follow-up data are reported on 89 sexual offenders treated at the Regional Treatment Centre (Ontario) and 89 untreated sexual offenders matched for pretreatment risk. The average time at risk was 9.9 years. It was found that the treated group had a sexual recidivism rate of 23.6%, whereas the untreated group had a sexual recidivism rate of 51.7% (p < .0001). The groups also differed significantly on nonsexual recidivism. Data on a new analytic technique, the Criminal Career Profile, are also reported. Results are discussed with reference to the recent outcome study of Quinsey, Khanna, and Malcolm.

Recidivism Among Treated Sexual Offenders and Matched Controls

Data From the Regional Treatment Centre (Ontario)

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There appears to be little consensus in the literature as to whether treatment specifically geared toward sexual offenders is effective. Some authors have argued that treatment is effective (e.g., Hall, 1995; Marshall, Jones, Ward, Johnston, & Barbaree, 1991; Marshall & Pithers, 1994), whereas others have adopted the opposite position, claiming that there is no clear evidence of treatment efficacy (e.g., Furby, Weinrott, & Blackshaw, 1989; Quinsey, Harris, Rice, & Lalumiere, 1993). What all of the reviews cited above have in common are legitimate concerns regarding the methodological shortcomings of the existing literature.

One of the main concerns relates to the lack of adequate comparison groups in much of the research. Some have argued that for ethical reasons it is difficult to deny sexual offenders treatment (Marshall & Pithers, 1994), whereas others have argued that psychologists have an ethical obligation to

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JOURNAL OF INTERPERSONAL VIOLENCE, Vol. 15 No. 3, March 2000 279-290

reduce the ambiguity regarding outcomes for sexual offender treatment and that this may well include the use of nontreatment comparison participants (Quinsey et al., 1993).

Marshall et al. (1991) argued that a reasonable alternative to a controlled group study, in most circumstances, is to compare treatment outcome against an estimate of the likely untreated offense rate. These authors criticized Furby et al. (1989) for not distinguishing among different types of treatment. They argue that given that some forms of treatment may be more or less effective than others, it is important to distinguish between various approaches to therapy. Based on their review of the research, Marshall et al. concluded that cognitive and/or behavioral approaches to treatment are effective with sexual offenders but that success tended to be greater for child molesters than rapists.

Quinsey et al. (1993) have criticized Marshall et al. (1991) regarding the strength of the conclusions that can be drawn from studies that do not employ control groups. Quinsey et al. (1993) note that a significant limitation of the method employed by Marshall et al. is that due to numerous variations in sexual offender legislation and police and/or prosecutor behavior, recidivism rates are only useful if groups are explicitly sampled from the same jurisdiction or cohort. Furthermore, groups should be matched for level of risk. They conclude that using an estimated rate of recidivism gleaned from the literature is therefore no solution to the problem.

Meta-analytic procedures have recently been used in attempts to answer questions regarding treatment efficacy. Such procedures combine the results of several studies to determine if treatment is effective. This procedure is more powerful than examining the results of individual studies. Hall (1995) performed a meta-analysis on 12 studies (N = 1,313) that were published since the Furby et al. (1989) review and that included some form of comparison group. A small but significant overall effect size was found for treatment versus comparison conditions (r = .12). The overall recidivism rate for treated offenders was .19 versus .27 for untreated sexual offenders. Cognitive-behavioral and hormonal treatments were found to be particularly effective. It should be noted, however, that Quinsey, Harris, Rice, and Cormier (1998) point out that although there was an overall effect size in favor of treatment, the effect size approximated zero for those programs that used randomization or matching designs. In addition, there were confounds in terms of the control groups that were employed. Specifically, whereas the behavioral programs did not use treatment refusers or dropouts as comparison groups, the hormonal and some of the cognitive-behavioral programs did (Quinsey et al., 1998).

Marques, Day, Nelson, and West (1994) have reported one of the most rigorous outcome studies published to date. These authors randomly assigned sexual offenders who volunteered for treatment to either treatment or nontreatment (control) conditions. The authors also included a third comparison group consisting of nonvolunteers. Initial results of this longitudinal follow-up study indicated some degree of benefit for treated participants. Survival analysis indicated that treated participants were at significantly lower risk to reoffend than were nonvolunteers but that the differences between treated and untreated volunteers did not reach acceptable levels of significance.

Regional Treatment Centre Outcome Studies

There have been several outcome studies published using data collected at the Regional Treatment Centre (Ontario) (RTC). Davidson (1979, 1984) reported an evaluation (based on police data) comparing treated sexual offenders with a matched sample of untreated sexual offenders who had been released prior to the commencement of the sexual offender program. Results indicated that individuals in the treated group were more likely to be arrested but less likely to be convicted of a new sexual offense.

Quinsey, Khanna, and Malcolm (1998) reported the most recent evaluation of clients treated at the RTC. These authors followed 213 men who completed the treatment program and 183 men assessed as not needing treatment, 52 who refused to be assessed, 27 who were assessed but judged to be unsuitable, and 9 who were considered to require treatment but who did not receive it. All participants were assessed and/or treated between 1976 and 1989 and were released prior to 1992. Of the treated sample, 35% were convicted of either a new sexual or violent offense, whereas 25% were convicted of a new sexual offense. The corresponding percentage for the participants assessed as not requiring treatment was 6%.

Due to the differing levels of risk on assessment, the treated and untreated groups could not be compared directly. However, Quinsey et al. (1998) attempted to control for the differences in risk by means of a regression analysis. They developed an equation that included childhood and adolescent predictors, preadmission adult predictors, and assessment data that accounted for about 15% of the risk to reoffend. When the groups were compared with risk controlled in this manner, the treated group still reoffended sexually at a significantly higher rate than the untreated group. The data were interpreted by the authors as indicating that treatment had a negative impact on sexual recidivism.

The conclusion that treatment had a negative impact on recidivism is rather strong given that the statistical procedure Quinsey et al. (1998) used to control for pretreatment levels of risk is not the same as using a matched comparison group, as the authors imply. The regression procedure only accounts for variables used in the equation, and thus the groups will differ on many other unknown dimensions.

The Criminal Career Profile

Nicholaichuk, Gordon, Andre, Gu, and Wong (1998) have suggested the use of the criminal career profile (CCP) in recidivism research with sexual offenders. The CCP was first described by Wong, Templeman, Gu, Andre, and Leis (1996) and is a graphic representation of the time (in years) that an offender has spent incarcerated plotted against time spent in the community. The steeper the slope of the CCP, the longer is the time the offender has spent incarcerated versus being in the community; thus, the more serious an offender's criminal career, the steeper is the slope of the CCP. Wong et al. (1996) report that the CCP was very highly correlated with Psychopathy Checklist-Revised (PCL-R) scores and was more highly correlated with number of past violent convictions than PCL-R scores.

There are a number of important benefits to the use of the CCP. First, it is easy to obtain the necessary information as the data are based on official documentation related to convictions. As Quinsey et al. (1993) note, such data are less subject to bias than any other available outcome measure. Second, the CCP allows for participants to be compared with reference to the severity of their offenses. Presumably, the more serious the offense, the longer will be the sentence that the offender receives and the steeper will be the slope of the corresponding CCP.

Nicholaichuk et al. (1998) compared 296 treated and 283 untreated sexual offenders for an average of 6 years following their release from prison. The comparison group was drawn from a sample of 2,600 sexual offenders incarcerated in the Prairie region of Correctional Service of Canada (CSC) from 1983 to 1996. An untreated match was created for each treated offender on three dimensions: age at index offense, date of index offense, and prior criminal history. Time series comparisons of treated and comparison samples showed that the treated men survived at significantly higher rates after 6 years. The CCP data indicated that both the severity and the number of new sexual and nonsexual offenses were reduced as a result of treatment. The sole exceptions to this were incest offenders for whom the pre- and posttreatment slopes did not differ significantly from one another. The authors attributed

the lack of significance with reference to this group of offenders as relating to the fact that this group presented a very low risk of recidivism even prior to treatment.

This study aims to replicate the findings of Nicholaichuk et al. (1998) on a sample of offenders treated at the RTC in the Ontario region of CSC. The RTC is a residential psychiatric treatment facility located on the grounds of a maximum security Canadian federal penitentiary. The RTC sexual offender program is the oldest continuously run sexual offender treatment program offered by CSC. Although the program has undergone a number of significant changes in terms of the type of treatment that has been offered, the early version of the program could be described as primarily behavioral in orientation. Prior to 1989 when relapse prevention was formally added to the treatment manual, the program consisted of sexual education and training designed to increase heterosocial skills, assertiveness, and anger management. Deviant arousal was addressed by aversion therapy, covert sensitization, and biofeedback procedures.

Among the more common therapeutic techniques used were confrontation, role playing, and supportive psychotherapy. Specific treatment techniques geared toward empathy enhancement were added in 1986. Although the length of the program has changed over time (each treatment program now lasts approximately 6 months), earlier versions of the program lasted 3 to 4 months. Treatment personnel consisted of both psychologists and nursing staff. Treatment was delivered in both group and individual therapy formats or a combination of the two. The program was only offered to sexual offenders or offenders whose crimes included a sexual component. The target groups for the program were those offenders who were identified as being high risk to reoffend, presented with high-treatment needs, or both. For a number of institutional reasons, offenders who presented a more moderate risk to reoffend or moderate treatment needs have been accepted into treatment as well.

The same procedure as that employed by Nicholaichuk et al. (1998) was used in this investigation. Treatment participants were matched with a sample of untreated sexual offenders from the Prairie region. It was predicted that treated participants would evidence lower rates of both sexual and nonsexual criminal behavior. Furthermore, it was predicted that the slope of the CCP for sexual offenders would be less steep posttreatment (indicating that they will have spent more time in the community relative to being incarcerated) as compared to pretreatment. It was also predicted that the relative slope of the CCP for comparison participants would remain unchanged over time.

METHOD

Participants

The treated group for this study is a subset of the treated sample used by Quinsey et al. (1998). This group consisted of sexual offenders assessed as presenting a high risk of recidivism, significant treatment needs, or both. As reported in Quinsey et al. (1998), all inmates who were referred to the RTC sexual offender program for assessment or treatment between 1976 and 1989 and who were released before 1992 were eligible to be included in the study. The follow-up period for this study ended on November 26, 1996. It should be noted that this represents a follow-up period of approximately 4 more years than that included in the Quinsey et al. (1998) study.

Coding for treatment status for the sample used by Quinsey et al. (1998) was redone for this study. Recoding of the classification resulted in 152 men being coded as receiving treatment in the RTC sexual offender program. This is a reduction from the 213 men identified as treated in the Quinsey et al. (1998) study. In recoding, it was discovered that 27 of the men included in the Quinsey et al. (1998) study were treated by the RTC sexual offender program staff, but this treatment was delivered outside of the residential program setting. These men were not included in this study. For 36 additional men, we were unable to determine, based on a review of the files, what manner of treatment (e.g., group, individual, outpatient) the person received; thus, they were excluded from the analysis. A further 12 did not receive treatment within the period of the study, and 9 more received treatment in another institution. A research assistant examined sexual offender treatment file information regarding each participant on the original list of participants coded by Quinsey et al. (1998). Independent coding of every 15th participant was conducted by another staff member at RTC. Of the 33 cases examined by both raters, agreement was obtained for 29 (88% accuracy). For the four cases in which the two independent raters did not reach an identical conclusion, agreement was reached with the aid of the first author of this study.

As discussed above, a comparison archive was created by choosing untreated sexual offenders from an archive of more than 3,000 offenders in the Prairie region of CSC ($n = 89$). An attempt was made to provide an exact match for each treated offender on three dimensions: age at index offense (within 1 year), date of index offense (within the same calendar year), and prior criminal history (number of criminal convictions plus or minus two). For the treated group, the index offense referred to the offense for which the

offender was referred to treatment. For the comparison sample, the sexual offense identified through the matching process (i.e., the sexual offense that occurred in the match year) was taken as the analog of the index offense for men in the treated group. Due to the serious nature of the treated group's offending history, it was not possible to obtain a match for 63 participants in the treatment group. Therefore, data reported here refer only to the matched participants.

Procedure

Treatment and comparison groups were compared with reference to sexual offense category. Participants were coded, based on sexual offending histories, as rapists (victims 16 years of age or older), pedophiles (victims 12 years of age or younger), hebephiles (victims aged 13 to 15 years), or incest offenders. Official documentation with reference to each offender in the comparison group and available on the offender management system (OMS), a computer-based system containing official documentation regarding individuals who have come to the attention of CSC, was accessed. This documentation contains a detailed description of an individual's offense history, including information such as the age and gender of victims. Unfortunately, as OMS is a relatively new system, electronically encoded descriptions were not available to classify all participants as to type of sexual offense. However, offender categories were established for 46 of the 89 men in the comparison sample.

For the treatment group, sexual offender program files were searched for the offense information. Information was available for 88 of the 89 men in the treated group. Of those offenders for whom offense-specific information could be located, 69.3% of the treated participants were classified as rapists. The corresponding percentages for incest, pedophilia, and hebephilia were 12.5%, 5.7%, and 12.5%, respectively. With reference to the comparison sample, 54.3% were classified as rapists. The corresponding percentages for incest, pedophilia, and hebephilia were 6.5%, 28.3%, and 8.7%, respectively. Only the number of child molesters differed significantly between groups.

Information regarding recidivism for both the treated and untreated groups was gleaned from official police documentation. Royal Canadian Mounted Police Finger Print Service records were obtained for all men in the sample as of November 26, 1996. Outcomes were coded based on whether there were new sexual offenses or nonsexual offenses. All offenses were coded based on Canadian Criminal Code classifications.

TABLE 1: Demographic Statistics

	Treated (n = 89)		*Untreated (n = 89)*		
	M	SD	M	SD	t
Age at first conviction	20.9	6.7	20.7	5.8	0.17
Age at index offense	27.7	7.6	28.1	7.6	−0.43
Pretreatment nonsexual offense	6.3	6.9	7.3	7.8	−0.92
Pretreatment sexual offense	1.81	1.3	1.31	0.5	3.29**
Repeat sexual offender (%)	51.7		29.2		$\Psi^2 = 9.33$**
Follow-up period (in years)	10.3	3.7	9.7	4.4	0.99

**$p < .001$.

RESULTS

Matching Variables

As noted, men were matched on the basis of a number of historical variables related to criminal history. The results of the match are shown in Table 1. There are no significant differences on any of the pretreatment variables with the exception of pretreatment number of sexual offenses. The difference here is such that the treated group had more offenses (1.8 vs. 1.3); thus, the treated group may be considered to be at slightly higher risk for sexual recidivism than the matched sample.

Outcome

At follow-up, the untreated group had more postrelease sexual offenses, $\chi^2 = 14.7$ ($df = 1$), $p < .0001$. Of the treated group, 23.6% were convicted for new sexual offenses, whereas 51.7% of the untreated group reoffended sexually. Effect size was calculated for postrelease sexual offenses; a moderate effect size was observed ($d = .48$). Similarly, for nonsexual reoffenders, the treated group had a lower recidivism rate, although the difference only approached significance. Of the treated group, 61.8% reoffended nonsexually compared to 74.2% of the untreated group, $\chi^1 = 3.12$ ($df = 1$), $p < .07$. For the purpose of this analysis, all offenses not classified as sexual according to the Criminal Code of Canada were grouped together under the heading of nonsexual offenses.

Analyses were also conducted separately on outcome for men who had previous sexual convictions (46 of the treated men, 26 of the untreated men)

and for those who had no previous sexual convictions (43 of the treated and 63 of the untreated). Of those with no sexual offense history, 20.9% of the treated men sexually reoffended compared to 42.9% of the untreated men, $\chi^2 = 25.51(1)$, $p < .02$. Once again, a moderate effect size of $d = .51$ was observed. For the men with previous sexual offenses, 26.1% of the treated group sexually reoffended compared to 73.1% of the untreated men, $\chi^2 = 214.9(1)$, $p < .0001$, with an obsverved effect size of $d = .59$.

CCP Changes

At pretreatment, the CCP angle for the treated group was 33.8°, whereas that of the untreated group was 29.8°, $t(176) = .91$, *ns*. At posttreatment, the CCP for the treated group was 5.7°, whereas that of the untreated group was 11.8°, $t(176) = -2.83$, $p < .005$. For both groups, the differences between pre- and posttreatment were significant: treated group, $t(88) = 8.36$, $p < .000$, and untreated group, $t(88) = 4.89$, $p < .000$. The reader is reminded that the steeper the CCP angle, the more time the offender has spent incarcerated relative to in the community.

Posttreatment Variables

The treated and untreated groups were compared on variables related to posttreatment outcomes (see Table 2). Although when examining outcome in terms of percentage of participants who reoffended, the difference between treated and untreated participants only approached significance for nonsexual recidivism. The untreated group had more conviction dates for nonsexual and sexual offenses as well as more actual convictions for both nonsexual and sexual offenses.

DISCUSSION

Quinsey et al. (1998) have recently argued (see also Marshall, 1998, for a discussion on Quinsey's perspective) that treatment with sexual offenders is largely ineffective. As evidence for this assertion, they list data from the RTC. Unfortunately, as noted above, there are some serious shortcomings with the study reported by Quinsey et al. (1998). This investigation represents an attempt to improve on this methodology. The use of matched controls is more desirable than the attempt by Quinsey et al. (1998) to statistically equate groups that were inherently different in terms of pretreatment risk (untreated

TABLE 2: Posttreatment Comparisons

	Treated		*Untreated*		
	M	SD	M	SD	t
Posttreatment nonsexual events	2.0	2.6	3.6	4.4**	−2.88
Posttreatment nonsexual offenses	2.70	3.73	5.30	7.0*	−3.09
Sexual events	0.4	0.9	0.8	1.0**	−3.37
Posttreatment sexual offense	0.41	1.20	1.03	1.40*	−3.30

*$p < .01$. **$p < .001$.

participants were at much lower risk for recidivism than treated participants). Furthermore, the use of the CCP is a method that allows for the quantification of the severity of the offense as well as the more traditional indicators of recidivism, such as number and type of offenses. Regardless of the dependent measure selected, however, this investigation clearly indicates that the RTC program was effective in terms of reducing the risk of future recidivism. This applied to both sexual and nonsexual crimes, although the difference only approached significance for nonsexual recidivism. Furthermore, the data indicate that treatment was most effective for the highest risk offenders (i.e., those who were recidivist sexual offenders prior to entering treatment; see Hanson & Bussière, 1998, for a discussion of risk and number of previous sexual offenses). These are exactly the participants one would wish to treat effectively, as their elevated risk represents a significant threat to society.

The importance of using matched controls in this study is demonstrated by the fact that both groups of participants demonstrated improvement. However, the results indicated that the nature of such change was much more significant among the treated participants. It should be emphasized that these differences were observed in spite of the fact that the treated group was at higher risk for sexual recidivism than the matched comparison group at pretreatment.

A possible criticism that may be raised regarding this investigation relates to the fact that the treatment and comparison groups were selected from different regions of CSC. This raises a potential problem in that there is variation in the type of offenders found in the different regions. Of particular concern is the fact that the Prairie region of CSC (where the comparison group was obtained) has a much larger proportion of aboriginal offenders than the Ontario region (38.3% vs. 4.9%, Solicitor General of Canada, 1997). However, Nicholaichuk (1996) has found that aboriginal offenders do not recidivate at a different rate than other participants. This finding suggests that the

recidivism rates observed in this investigation are not the result of different types of offenders comprising the two samples.

With reference to the CCP data, it is interesting to note that at pretreatment, the treated and untreated groups were relatively similar in terms of the proportion of time spent incarcerated relative to in the community (although the treated group had a nonsignificantly steeper slope, indicating that they had spent slightly more time incarcerated than untreated participants). However, at follow-up, the treated participants had a significantly flatter slope relative to untreated participants. The treated participants were less likely to be convicted for either sexual or nonsexual offenses (as indicated in the more conventional analyses), and those who were reconvicted spent significantly less time incarcerated than did the untreated participants at follow-up. These data suggest not only that treatment resulted in fewer incarcerations but also that when the treated participants were convicted, they tended to get shorter sentences than the untreated group. If shorter sentences reflect less severe offenses, than treatment had an impact not only on the number of offenses but also on the severity of these offenses. The data concerning the actual number of offenses (as opposed to simple percentages of participants who committed new offenses) also indicate that treatment was effective in reducing the number of new offenses when offenders do reoffend.

In summary, it seems odd that sexual offenders are treated as somehow fundamentally different than other groups of offenders in terms of the impact of cognitive-behavioral treatment. Andrews and Bonta (1994) have demonstrated that cognitive-behavioral treatment specifically geared to the risk and/or need principle is effective with other groups of offenders. Given this scenario, the outcome of this study, and the results of Hall's (1995) recent meta-analysis, it seems that a certain degree of guarded optimism is warranted.

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LETTER FROM THE HONORABLE JON KYL TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (JUNE 9, 2005)

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June 9, 2005

The Honorable F. James Sensenbrenner
United States House of Representatives
Chairman, Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I understand that Mrs. Carol Fornoff of Mesa, Arizona testified on June 7 before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security regarding the delays in federal courts' review of habeas-corpus petitions. First of all, thank you for taking the time to address this important but oft-neglected matter. Delays in habeas review have been a problem for many years now. These delays are grossly unfair to the victims of serious, violent crimes, who often are forced to wait literally for decades to learn if their attacker was properly convicted. For victims and their families, this endless litigation and uncertainty makes closure impossible – it is grossly cruel to those who already have suffered so much.

Attached for your consideration please find a copy of a bill that I recently introduced that addresses this same issue. The Streamlined Procedures Act of 2005, S. 1088, would reduce delays in habeas-corpus proceedings by, among other things, imposing reasonable but firm time limits on courts of appeals' review of habeas petitions; expanding and improving the special expedited habeas-corpus procedures authorized in chapter 154 of title 18; creating a uniform standard for review of procedurally improper claims; applying the 1996 reforms to all currently pending habeas-corpus petitions; and limiting review of minor sentencing errors.

I hope that you might consider this proposal as you advance your legislative agenda. To that end, I also have enclosed a detailed section-by-section analysis of the Streamlined Procedures Act, and a copy of my speech introducing the bill. The attached speech describes how the SPA would have reduced federal-habeas delays in another horrific murder case: the June 4, 1983 slayings of Doug and Peggy Ryen and their daughter Jessica, age 10, and houseguest Christopher Hughes, age 11, and the attempted murder of 8-year-old Joshua Ryen.

Twenty-two years after the Ryens and Chris Hughes were murdered, the killer's case remains before the federal courts on habeas-corpus review. My speech notes several ways in which the SPA would have reduced delays in this case. For example, the Act would have eliminated the need to return to state court during the federal litigation in order to exhaust new legal claims, thereby reducing the delay in the federal proceedings by three years; it would have

simplified the litigation by applying the deferential review standard of the 1996 reforms to this case; and it would have precluded the court of appeals from evading current law's bar on petitions for rehearing of the denial of a successive-petition application via the practice of granting such rehearing sua sponte.

Also, attached at the end of my speech, please find the April 22, 2005 in-court statement of Joshua Ryen, the only surviving member of the Ryen family. Joshua, 8 years old at the time of the murders, is now 30 years old. His statement sharply illustrates the heavy psychological and emotional burdens imposed on surviving victims and their families by the decades-long litigation and appeals that often are allowed in these types of cases.

Finally, I would note that the Streamlined Procedures Act would address a concern expressed by the Justice Department about the special expedited habeas-corpus procedures for murderers of children created by section 3 of H.R. 2388. In her testimony before the subcommittee, the Department's representative stated:

> We ask the Subcommittee to consider whether other categories of condemned murderers should be subject to accelerated federal habeas review as well. We also ask the Subcommittee to consider whether the laudable goal of accelerating habeas corpus review for child-killers would run the risk of diverting judicial resources so that the already-long delays in providing federal habeas review for other murderers, particularly those under sentences of death, may be inadvertently lengthened.

The Streamlined Procedures Act would help with both of these issues. Section 9 of the Act would extend a legal regime substantially similar to that of H.R. 2388's section 3 to all capital-murder cases, regardless of the status of the victim, in any state that provides reasonably competent counsel to capital defendants. And the remainder of the SPA applies to and would reduce delays in all habeas-corpus cases, treating all victims and their families equally, and mitigating any delays that might incidentally be caused in non-child-murder cases as a result of the operation of H.R. 2388.

I thank you for your consideration of this bill. Please let me know if I can be of assistance to you in your ongoing efforts to reduce delays in federal habeas-corpus litigation.

Sincerely,

JON KYL
United States Senator

JK:jm

SENATOR JON KYL, INTRODUCTION OF THE STREAMLINED PROCEDURES ACT, CONGRESSIONAL RECORD, PAGES S5540-S5543

SENATOR KYL
INTRODUCTION OF THE STREAMLINED PROCEDURES ACT
CONGRESSIONAL RECORD PAGES S5540-S5543
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Mr. KYL. Mr. President, I rise today to introduce the Streamlined Procedures Act. This legislation will reduce delays in federal courts' review of habeas corpus petitions filed by state prisoners.

Currently, many Federal habeas corpus cases require 10, 15, or even 20 years to complete. These delays burden the courts and deny justice to defendants with meritorious claims. They also are deeply unfair to victims of serious, violent crimes. A parent whose child has been murdered, or someone who has been the victim of a violent assault, cannot be expected to "move on" without knowing how the case against the attacker has been resolved. Endless litigation, and the uncertainty that it brings, is unnecessarily cruel to these victims and their families. As President Clinton noted of the 1996 habeas-corpus reforms, "it should not take eight or nine years and three trips to the Supreme Court to finalize whether a person in fact was properly convicted or not." For the sake of all parties, we should minimize these delays.

The 1996 habeas corpus reforms were supposed to prevent delays in Federal collateral review. Unfortunately, as the Justice Department noted in testimony before the House Crime Subcommittee in March 2003, there still are "significant gaps [in the habeas corpus statutes] * * * which can result in highly protracted litigation, and some of the reforms that Congress did adopt in 1996 have been substantially undermined in judicial application."

The Streamlined Procedures Act is designed to fill some of these gaps. First, the SPA imposes reasonable but firm time limits on court of appeals' review of Federal habeas petitions. It requires a court of appeals to decide a habeas appeal within 300 days of the completion of briefing, to rule on a petition for rehearing within 90 days, and to decide a case on rehearing within 120 days before the same panel, or 180 days before an en banc court.

As generous as these time limits are, they would make a real difference in some cases. In *Morales v. Woodford*, 336 F.3d 1136 (9th Cir. 2003), for example, the Ninth Circuit took three years to decide the case after briefing was completed. And after issuing its decision, the court took another 16 months to reject a petition for rehearing. Similarly, in *Williams v. Woodford*, 306 F.3d 665 (9th Cir. 2002), the court waited 25 months to decide the case – and then waited another 27 months to reject a petition for rehearing, for a total delay of almost four and a half years after appellate briefing had been completed. This is too long for either defendants or victims to have to wait.

The SPA also bars courts of appeals from rehearing successive-petition applications on their own motion – current law bars petitions for rehearing or certiorari for such applications, but some courts have interpreted this restriction to not preclude rehearing by the court of appeals sua sponte. The SPA also bars federal courts from tolling the current one-year deadline on filing

habeas claims for reasons other than those authorized by the statute, and clarifies when a state appeal is pending for purposes of tolling the deadline.

In addition, the SPA creates uniform, clear procedures for review of procedurally improper claims. Current judicial caselaw creates a series of different standards for addressing claims in a federal petition that were not exhausted in state court, that were presented in a late amendment, or that were procedurally defaulted. The SPA sets a uniform standard, allowing procedurally improper claims to go forward only if they present meaningful evidence that the defendant did not commit the crime, with all other improper claims barred.

The SPA also expands and improves the special expedited habeas procedures authorized in chapter 154 of the U.S. Code. These procedures are available to states that establish a system for providing high-quality legal representation to capital defendants. Chapter 154 sets strict time limits on federal court action and places limits on claims. Currently, however, the court that decides whether a State is eligible for chapter 154 is the same court that would be subject to its time limits. Unsurprisingly, these courts have proven resistant to chapter 154. The SPA would place the eligibility decision in the hands of a neutral party – the U.S. Attorney General, with review of his decision in the D.C. Circuit, which does not hear habeas appeals. The SPA also makes chapter 154's deadlines more practical by limiting the claims that can be raised under its provisions to those presenting meaningful evidence that the defendant did not commit the crime, and by extending the time for a district court to review and rule on a chapter 154 petition from 6 months to 15 months.

The SPA also eliminates duplicative Federal review of minor sentencing errors that already have been judged by state courts to be harmless or not prejudicial. It limits Federal courts to asking only whether the type of sentencing error at issue is one that could not have been harmless.

The SPA also applies the deferential review standard enacted in the 1996 reforms to all pending cases. Remarkably, some current habeas petitions still are not governed by the 1996 reforms. The SPA corrects this oversight, ending the need to apply the pre-1996 legal regime to any cases that still are being litigated today.

And finally, the SPA limits judicial review of state clemency and pardon decisions, guaranteeing that a State won't be sued for formalizing and regularizing its pardon procedures; it limits defendants' ability to ask federal courts for investigatory funds without allowing prosecutors to be present and rebut defense allegations; and it guarantees a crime victim's right to be notified of, to be present at, and to speak at a criminal defendant's Federal habeas hearing.

To many people, the issues addressed by the SPA – petitions for rehearing, state remedies exhaustion, procedural default, chapter 154, AEDPA deference – may seem abstract and remote. For surviving crime victims, however, these matters can be very concrete.

A case recently in the news illustrates the importance of these concerns: that of the man who murdered three member of the Ryen family and Christopher Hughes in Chino Hills, California in June 1983. The killer in that case was an escaped convict from a nearby prison. He has since admitted that he spent two days hiding in a vacant house next to the home of the Ryen family. After several unsuccessful telephone calls to friends asking them to give him a ride, the killer took a hatchet and buck knife from the vacant house and set out to find a vehicle. The California Supreme Court describes the rest of what occurred (53 Cal.3d 771, 794-95):

> On Saturday, June 4, 1983, the Ryens and Chris Hughes attended a barbecue in Los Serranos, a few miles from the Ryen home in Chino. Chris had received permission to spend the night with the Ryens. Between 9 and 9:30 p.m., they left to drive to the Ryen home. Except for Josh [the Ryen's 8-year-old son], they were never seen alive again.
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> The next morning, June 5, Chris's mother, Mary Hughes, became concerned when he did not come home. A number of telephone calls to the Ryen residence received only busy signals. [Mary's husband] William went to the Ryen home to investigate.
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> William observed the Ryen truck at the home, but not the family station wagon. Although the Ryens normally did not lock the house when they were home, it was locked on this occasion. William walked around the house trying to look inside. When he reached the sliding glass doors leading to the master bedroom, he could see inside. William saw the bodies of his son and Doug and Peggy Ryen on the bedroom floor. Josh was lying between Peggy and Chris. Only Josh appeared alive.
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> William frantically tried to open the sliding door; in his emotional state, he pushed against the fixed portion of the doors, not the sliding door. He rushed to the kitchen door, kicked it in, and entered. As he approached the master bedroom, he found Jessica on the floor, also apparently dead. In the bedroom, William touched the body of his son. It was cold and stiff. William asked Josh who had done it. Josh appeared stunned; he tried to talk but could only make unintelligible sounds.
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> William tried to use a telephone in the house but it did not work. He drove to a neighbor's house seeking help. The police arrived shortly. Doug, Peggy, Chris, and Jessica were dead, the first three in the master bedroom, Jessica in the hallway leading to that bedroom. Josh was alive but in shock, suffering from an obvious neck wound. He was flown by helicopter to Loma Linda University Hospital.
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> The victims died from numerous chopping and stabbing injuries. Doug Ryen had at least 37 separate wounds, Peggy 32, Jessica 46, and Chris 25. The chopping

wounds were inflicted by a sharp, heavy object such as a hatchet or axe, the stabbing wounds by a weapon such as a knife.

The escaped prisoner who committed this crime was caught two months later. Again, he admitted that he stayed in the house next door, but denied any involvement in the murders. According to the California Supreme Court, however, the evidence of defendant's guilt was "overwhelming." Not only had the defendant stayed at the vacant house right next door at the time of the murders; the hatchet used in the murders was taken from the vacant house; shoe prints in the Ryen house matched those in the vacant house and were from a type of shoe issued to prisoners; bloody items, including a prison-issue button, were found in the vacant house; prison-issue tobacco was found in the Ryen station wagon, which was recovered in Long Beach; and defendant's blood type and hair matched that found in the Ryen house. Defendant was convicted of the murders and sentenced to death in 1985, and the California Supreme Court upheld the defendant's conviction and sentence in 1991.

The defendant's federal habeas proceedings began shortly thereafter, and they continue to this day – 22 years after the murders. In 2000, the defendant asked the courts for DNA testing of a blood spot in the Ryen house, a t-shirt near the crime scene, and the tobacco found in the car. Despite the overwhelming evidence of his guilt, the courts allowed more testing. All three tests found that the blood and saliva matched defendant, to a degree of certainty of one in 320 billion. Blood on the t-shirt matched both the defendant and one of the victims.

One might have thought that this would end the case. Not so. In February 2004, the en banc Ninth Circuit sua sponte authorized defendant to file a second habeas petition to pursue theories that police had planted this DNA evidence. Since the evidence had been in court custody since 1983, the Ninth Circuit's theory not only required police to plan and execute a vast conspiracy to plant the evidence – it also required them to foresee the future invention of the DNA technology that would make that evidence useful in future habeas proceedings.

The Streamlined Procedures Act would have made a difference in this case. For example, it would have eliminated the need to return to state court to exhaust new claims, reducing the delay in the federal proceedings by nearly three years. It would have applied the 1996 reforms to this case, allowing deferential review of state factual findings and legal analysis. It would have placed time limits on federal appeals court decision-making and grants of rehearing. And it would have prevented the court of appeals from ordering rehearing of the defendant's successive-petition application on its own motion, thereby barring the current round of O.J. Simpson-style conspiracy-theory litigation. The SPA could have brought this case to closure a long time ago.

And this case deserves to be brought to closure. One cannot underestimate the grievous impact that crimes like these have on the families of the victims. Mary Hughes, the mother of 11-year-old Christopher Hughes, who was sleeping over at the Ryen house on the night of the murders, has spoken movingly of the loss of her son:

Christopher Hughes loved his bicycle, swimming and showing off for his mom and dad.

The 11-year-old's bedroom was filled with swimming trophies and Star Wars collectibles. He was a handsome kid who was chased by a lot of fifth-grade girls on the playground during recess at Our Lady of the Assumption in Claremont.

He wasn't short on friends, either.

Christopher really liked Joshua Ryen, an 8-year-old boy who lived up the street from him. They would trick-or-treat together on Halloween, play together, and their parents were good friends.

On the night of June 4 1983, Christopher asked his parents if he could spend the night at the Ryen house.

It was a decision that would change the Hughes family forever.

[Mary Hughes'] son Christopher would have been 32 today. She sometimes wonders who he would have been, what he would've looked like, and even during her most solemn moments, she wonders what life would've been like if Cooper had never gone to the Ryens' house.

"It never really ever gets better," she said. "Kevin Cooper robbed him of the chance to be a child, to attend his first dance, to have a girlfriend, and to one day get married and have kids of his own. He robbed me of my child."

Mary Ann Hughes does have one special memory of her son she holds close to her heart. A week before his death, she took him to see the movie "Return of the Jedi."

"He was so happy. It was such a great day," she said. "It seems like such a small thing, but it's the best memory I have of both of us." (Sara Carter, "He Was at the Beginning of His Life When He Died," INLAND VALLEY DAILY BULLETIN, February 9, 2004.)

In light of how much the surviving family already has suffered, one might expect that all participants in the criminal proceedings would take great concern and care for the feelings of the family. Unfortunately, that has not been the case. The Ninth Circuit has proved willing to turn the appeals into a three-ring circus, allowing continual pursuit of the most frivolous conspiracy theories. The impact of these now 22 years of trial and appeals on the victims' families has been predictable: they feel that they and the victims have become irrelevant to the entire process.

Shortly after the Ninth Circuit authorized an additional round of appeals in this case, a local newspaper described what the families have experienced:

> For nearly 20 years, since convicted murderer Kevin Cooper was sentenced to death for the 1983 slayings of a Chino Hills family and their young houseguest, families of the victims have waited silently for the day the hand of justice would grant them peace.
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> For those families, the last two decades have seemed like an eternity.
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> "I lived through a nightmare," said Herbert Ryen, whose brother Douglas Ryen was among those killed, along with Douglas' wife Peggy, their 11-year-old daughter Jessica, and her 10-year-old friend Christopher Hughes.
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> [O]n the morning of Feb. 9, [2004,] the day of Cooper's scheduled death by lethal injection, word came down that the 9th U.S. Circuit Court of Appeals had decided to block the execution.
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> [T]o the Ryen and Hughes families, the stay just hours before Cooper's scheduled execution at San Quentin State Prison was nearly incomprehensible. The indefinite delay has left them in a sort of emotional limbo, questioning whether the legal system had abandoned them.
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> "The bottom line is that this whole issue is not about Kevin Cooper . . . it is about the death penalty," said Mary Ann Hughes, the mother of Christoper Hughes. "We're so mad – mad because we feel as though the courts turned their back on my son."
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> "They (Court of Appeals) are holding us hostage," Hughes said.
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> For Herbert Ryen and his wife Sue, waiting for justice has taken an equally destructive toll on their lives. The torment their family experienced following the murders, and the subsequent years lost to depression, could never be replaced, he said from his home in Arizona.
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> Mary Ann Hughes said the pain her family suffers is only amplified by the seemingly continuous bombardment of celebrities campaigning against Cooper's execution. She wonders who will cry out in anger for the victims.
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> One former television star and anti-death penalty activist, Mike Farrell of the popular series MASH, spoke of the case on a recent news program.

"He claimed that we must feel relieved since the stay of execution was granted," Hughes said. "How can (Farrell) have the audacity to say he knows what we are feeling?"

Farrell could not be reached for comment.

Since Christopher's death, the Hughes family has chosen to remain out of the media spotlight. And until recently, their efforts were successful, due largely to the support of their surviving children, family members and a strong network of close friends, Hughes said.

The court's decision Feb. 9 has re-opened the case, forcing the families to re-live the nightmare they have fought so hard to leave behind, they say.

Mary Ann Hughes is left wondering about other families who have had loved ones taken from them, about the legal battles they have had to endure in their own quests for justice.

She thinks of the parents of Samantha Runion, the 5-year-old Orange County girl who was murdered in 2003, and of what her family could face in the next 20 years.

For Bill Hughes, the anguish is intensified – he will forever know the pain of walking into the Ryens' home the morning after the murders, and finding his son, dead and covered in blood near the Ryens' bedroom door. He was also the first to discover Joshua Ryen, also drenched in blood, clinging to life.

"It is a memory he will always have to live with," Mary Ann Hughes said.

Indeed, time has been no friend to the victims' families, as California's recent appellate court ruling has further denied them closure, she added.

"What this decision has done to our legal system in California is unthinkable," she said. "Somewhere along the line, the courts have got to uphold the law, and we will wait it out until they do." (Sara Carter, "Families of Murder Victims Wait for Justice in Cooper Case," INLAND VALLEY DAILY BULLETIN, February 24, 2004.)

Mary Hughes' story demonstrates why the use of federal judicial power must be measured and fair – it illustrates the heavy cost imposed by judicial excess.

No statement, however, better explains the gross cruelty caused by allowing endless litigation and appeals in a case like this than that given by one of the surviving victims of the 1983 attack. Josh Ryen was 8 years old when he was stabbed in his parents' bedroom and his

parents and sister were murdered. He is now 30 years old. On April 22, 2005, he gave a statement pursuant to the recently enacted Crime Victims' Rights Act in the federal habeas corpus hearing for his parents and sister's killer. I will close my remarks by asking unanimous consent that Josh Ryen's statement be printed in the RECORD.

STATEMENT OF JOSHUA RYEN
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SAN DIEGO
APRIL 22, 2005

The first time I met Kevin Cooper I was 8 years old and he slit my throat. He hit me with a hatchet and put a hole in my skull. He stabbed me twice, which broke my ribs and collapsed one lung. I lived only because I stuck four fingers in my neck to slow the bleeding, but I was too weak to move. I laid there 11 hours looking at my mother who was right beside me.

I know now he came through the sliding glass door and attacked my dad first. He was lying on the bed and was struck in the dark without warning with the hatchet and knife. He was hit many times because there is a lot of blood on the wall on his side of the bed.

My mother screamed and Cooper came around the bed and started hitting her. Somehow my dad was able to struggle between the bed and the closet but Cooper bludgeoned my father to death with the knife and hatchet, stabbing him 26 times and axing him 11. One of the blows severed his finger and it landed in the closet. My mother tried to get away but he caught her at the bottom of the bed and he stabbed her 25 times and axed her 7.

All of us kids were drawn to the room by mom's screams. Jessica was killed in the doorway with 5 ax blows and 46 stabs. I won't say how many times my best friend Chris was stabbed and axed, not because it isn't important, but because I don't want to hurt his family in any way, and they are here.

After Cooper killed everyone, and thought he had killed me, he went over to my sister and lifted her shirt and drew things on her stomach with the knife. Then he walked down the hallway, opened the refrigerator, and had a beer. I guess killing so many people can make a man thirsty.

I don't want to be here. I came because I owe it to my family, who can't speak for themselves. But by coming I am acknowledging and validating the existence of Kevin Cooper, who should have been blotted from the face of the earth a long time ago. By coming here it shows that he still controls me. I will be free, my life will start, the day Kevin Cooper dies. I want to be rid of him, but he won't go away.

I've been trying to get away from him since I was 8 years and I can't escape. He haunts me and follows me. For over 20 years all I've heard is Kevin Cooper this and Kevin Cooper that. Kevin Cooper says he is innocent, Kevin Cooper says he was framed, Kevin Cooper says DNA will clear him, Kevin Cooper says blood was planted, Kevin Cooper says the tennis shoes aren't his, Kevin Cooper says three guys did it, Kevin Cooper says police planted evidence, Kevin Cooper gets

another stay from another court and sends everyone off on another wild goose chase.

The courts say there isn't any harm when Kevin Cooper gets another stay and another hearing. This just shows they don't care about me, because every time he gets another delay I am harmed and have to relive the murders all over again. Every time Kevin Cooper opens his mouth everyone wants to know what I think, what I have to say, how I'm feeling, and the whole nightmare floods all over me again: the barbecue, me begging to let Chris spend the night, me in my bed and him on the floor beside me, my mother's screams, Chris gone, dark house, hallway, bushy hair, everything black, mom cut to pieces saturated in blood, the nauseating smell of blood, eleven hours unable to move, light filtering in, Chris' father at the window, the horror of his face, sound of the front door splintering, my pajamas being cut off, people trying to save me, the whap whap of the helicopter blades, shouted questions, everything fading to black.

Every time Cooper claims he's innocent and sends people scurrying off on another wild goose chase, I have to relive the murders all over again. It runs like a horror movie, over and over again and never stops because he never shuts up. He puts PR people on national television who say outrageous things and then the press wants to know what I think. What I think is that I would like to be rid of Kevin Cooper. I would like for him to go away. I would like to never hear from Kevin Cooper again. I would like Kevin Cooper to pay for what he did.

I dread happy times like Christmas and Thanksgiving. If I go to a friend's house on holidays I look at all the mothers and fathers and children and grandchildren and get sad because I have no one. Kevin Cooper took them from me.

I get terrified when I go into any place dark, like a house before the lights are on. I hear screams and see flashbacks and shadows. Even with lights on I see terrible things. After I was stabbed and axed I was too weak to move and stared at my mother all night. I smelled this overpowering smell of fresh blood and knew everyone had been slaughtered.

Every day when I comb my hair I feel the hole where he buried the hatchet in my head, and when I look in the mirror I see the scar where he cut my throat from ear to ear and I put four fingers in it to stop the bleeding which, they say, saved my life. Every year I lose hearing in my left ear where he buried the knife.

Helicopters give me flashbacks of life flight and my Incredible Hulks being cut off by paramedics. Bushy hair reminds me of the killer. Silence reminds me of the quiet before the screams. Cooper is everywhere. There is no escape from him.

I feel very guilty and responsible to the Hughes family because I begged them to let Chris spend the night. If I hadn't done that he wouldn't have died. I apologize to them and especially to Mr. Hughes for having to find us and see his son cut and stabbed to death.

I thank the judge who gave my grandma custody of me because she took good care of me and loves me very much.

I'm grateful to the ocean for giving me peace because when I go there I know my mother and father and sister's ashes are sprinkled there.

Kevin Cooper has movie stars and Jesse Jackson holding rallies for him, people carrying signs, lighting candles, saying prayers. To them and you I say:

I was 8 when he slit my throat,
It was dark and I couldn't see.
Through the night and day I laid there,
trying to get up and flee.
He killed my mother, father, sister, friend,
And started stalking me.
I try to run and flee from him but cannot get away,
While he demands petitions and claims, some fresh absurdity.
Justice has no ear for me nor cares about my plight,
while crowds pray for the killer and light candles in the night.
To those who long for justice and love truth which sets men free, When you pray your prayers tonight, please remember me.

THE STREAMLINED PROCEDURES ACT SECTION-BY-SECTION ANALYSIS, SUBMITTED BY THE HONORABLE JON SENATOR JON KYL

THE STREAMLINED PROCEDURES ACT

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE.

The short title of this bill is the "Streamlined Procedures Act of 2005."

SECTION 2. MIXED PETITIONS.

This section eliminates the need to stay Federal proceedings and return to State court for further litigation when a defendant files a "mixed petition" that includes claims that were not exhausted in State court. Under this section, unexhausted claims that present meaningful evidence that the defendant did not commit the crime will remain in the Federal petition and will be considered promptly by the Federal district court; other unexhausted claims will be dismissed. This provision prevents the delays created today by mixed petitions. There will be no need to stay the Federal proceedings and return to State court for another full round of State litigation – instead, all claims either will be considered immediately or dismissed.

A typical example of the problems in the current system is the case of *Ford v. Hubbard*, 330 F.3d 1086 (9th Cir. 2002). In that case the Ninth Circuit allowed a petitioner to raise a new claim, never previously raised in State court, for the first time on Federal habeas review. The petitioner was then allowed to stop the Federal habeas process in order to return to State court and exhaust a full additional round of State review for that new claim. When he returned to Federal court, although he previously had consented to dismissal of his Federal petition, he was allowed to amend his new claims to the dismissed petition. This allowed the filing date of his new claims to relate back to the filing date of the dismissed petition, thereby satisfying the current law's one-year deadline on the filing of Federal claims.

It hardly needs mention that the practice of cases such as *Ford* makes the current statute's one-year deadline meaningless. If the petitioner can stay all Federal proceedings simply by adding a new, unexhausted claim to his first Federal petition, and have all Federal claims held in abeyance during the time that he exhausts another round of State review and appeals, the one-year limit on commencing Federal proceedings becomes little more than a formality. A petitioner need only file an incomplete petition in order to stop the clock for the length of time that it takes to again exhaust the entire State review procedure.

The Supreme Court partially restricted such stays – while creating new problems – in its recent decision in *Rhines v. Weber*, 125 S.Ct. 1528 (March 30, 2005). *Rhines* holds that it "likely would be an abuse of discretion for a district court to deny a stay and dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." *Id.* at 1535. Not only does *Rhines* still allow petitioners to stay Federal proceedings for the entire length of time that it takes to exhaust another round of State appeals; it

also creates a test for deciding which claims deserve a stay that inevitably will become its own source of litigation. *See id.* at 1536 (Souter, J., concurring) ("I fear that threshold inquiries into good cause will give the district court too much trouble to be worth the time.").

Section 2 will eliminate these delays and unnecessary litigation, adopting a simple, clear standard for allowing all claims to either go forward in federal court or be dismissed, without the need for additional years of litigation in State court.

Section 2 also clarifies requirements for pleading exhaustion of State remedies. Its new 2254(b)(1)(A)(i) makes clear that a prisoner must present and make in State court the specific Federal argument that he later intends to present in Federal court. Today, some courts deem a claim "exhausted" if the prisoner simply cited to the relevant constitutional amendment in State court. Given the large number of arguments that can be made based on one constitutional amendment, this simply is not sufficient to actually present a claim to the State court. In addition, the new 2254(b)(1)(A)(ii) also requires the prisoner to identify in his Federal application where the claim was exhausted in State court.

SECTION 3. AMENDMENTS TO PETITIONS.

This section of the Act conforms the rule for filing late amendments to a Federal habeas petition to the standard for allowing unexhausted claims to be heard that is set in section 2. Under this subsection, a petition may be amended once as a matter of course before the State files its answer and the one-year deadline in section 2244(d) expires. Afterward that deadline, additional amendments only will be allowed if they present meaningful evidence that the defendant did not commit the crime. This will help guarantee that the one-year deadline for filing petitions remains a real and meaningful limit, with exceptions allowed only for truly important claims.

SECTION 4. PROCEDURALLY DEFAULTED CLAIMS.

This section creates one clear rule for evaluating claims in a Federal petition that have been procedurally defaulted in State court: claims of actual innocence would be included in the petition and considered, and all other defaulted claims would be barred. This change would ensure that Federal rules do not deter State courts from recognizing exceptions to their timeliness rules in order to hear important claims. It also ensures that prisoners always will be able to bring actual-innocence claims in Federal court, even if they were procedurally defaulted in State court.

The "Inconsistently Applied" Dilemma

The habeas procedural default doctrine derives from the Supreme Court's own rules for allowing review of a State court judgment when respondent asserts the presence of an adequate and independent State bar to review of the Federal question. One exception that has proved particularly problematic in the habeas context is the rule that a State procedural bar is not

adequate to preclude further Federal review if the procedural requirement is "inconsistently applied" by the State courts. Viewed literally and without regard to the policies underlying the procedural default doctrine, the "inconsistently applied" standard can have a disturbingly broad sweep. This standard can be understood to void any State procedural rule that has been altered in any way or that is not strictly enforced in absolutely every case.

Unfortunately, some courts have adopted this draconian interpretation. For example, the Ninth Circuit has held that if a State's highest court clarifies a State procedural rule or reconciles competing interpretations of that rule, then that rule was "inconsistently applied" prior to such clarification. As a result, the Ninth Circuit deems the State rule "inadequate" to be enforced on Federal habeas review prior to that point. *See, e.g. Siripongs v. Calderon*, 35 F.3d 1308 (9th Cir. 1994) (voiding California rule on the basis of State supreme court decision construing that rule); *see also id.* at 1325 (Fernandez, J., dissenting) (arguing that State supreme court decision "certainly does not justify our erasing the effect of California procedural default determinations for all cases prior" to decision); *Lambright v. Stewart*, 241 F.3d 1201 (9th Cir. 2001) (same; Arizona Supreme Court decision).

Penalizing the "Ends of Justice" Exception

Another problematic area of procedural-default jurisprudence is particular courts' interpretation of the "independence" requirement. A State procedural decision cannot serve as a bar to further review on the merits if it is not truly procedural – *i.e.*, if it is in reality a decision on the merits of the Federal claim. Many State courts have incorporated into their procedural rules – particularly their deadlines for filing claims – an "ends of justice" exception allowing the court to hear the occasional egregious but untimely case. Presumably, in applying such an exception, these State courts perform at least a cursory review of the merits of every petition, even those that clearly are untimely. Technically, because these State courts conduct such review, their deadlines are not purely "procedural" – they involve some review, however fleeting, of the merits – and therefore these deadlines are not "adequate" for habeas purposes. The Ninth Circuit has adopted this interpretation of the adequacy requirement. *See, e.g. Russell v. Rolfs*, 893 F.2d 1033 (9th Cir. 1990) (voiding Washington State rule because it includes "ends of justice" exception").

The "Ineffective Assistance" Evasion

Finally, even when no exception to procedural default is applicable, prisoners often seek to evade State procedural bars by recasting substantive claims as claims of ineffective assistance of counsel in direct State proceedings. Review of the ineffective assistance claim inevitably substantially overlaps with the defaulted claim, rendering the procedural bar meaningless; the Federal courts are forced to address the same issues that the prisoner is barred from raising because of the default.

The Consequences: Forcing Zero-Tolerance Procedural Rules on State Courts

It is difficult to understate the perverse consequences of the more extreme interpretations of the exceptions to the procedural default doctrine. By punishing State courts for ever departing from or even clarifying their procedural rules, or for exercising discretion to hear egregious cases, these interpretations deter State courts from making the kind of common-sense decisions that are essential to preventing a miscarriage of justice. No system of procedure will ever be perfect; every system will always require some exceptions in order to operate fairly and efficiently. Yet under some courts' interpretations of procedural default, unless the State court adopts a zero-tolerance approach to all untimely claims, no matter how worthy of an exception, the State procedural rule is at risk of being voided for all Federal habeas cases.

The Consequences, Part II: Privileging State Prisoners Who Don't *Follow State Rules*

It also bears emphasis what impact the voiding of a State procedural rule has on a State's criminal justice system. The decisions cited above apply not just to the *case* before the court, but to the *State rule* – as applied in *all* cases. When these exceptions to procedural default are held to apply, hundreds or potentially thousands of claims can now be raised in Federal court under more favorable conditions than would have applied had the claim properly been raised in State court. Although the Federal habeas statute requires Federal courts to defer to a State court ruling on a claim, if the claim was never presented in State court, there is no State ruling to which a Federal court can defer. The petitioner is thus entitled to *de novo* review in some circuits. In other words, under an overly broad interpretation of exceptions to procedural default, prisoners will find themselves in a *better* position in Federal court if they fail to timely raise the claim in State court.

This phenomenon has become widespread in the Ninth Circuit. That court has accounted for a disproportionate share of all Federal court of appeals decisions identifying exceptions to the procedural default doctrine, and has issued several particularly extreme interpretations of the doctrine. The States in that circuit effectively are subject to a different habeas regime. The Ninth Circuit has now voided State procedural rules in 6 of the States under its jurisdiction. It has found State procedures either inadequate or insufficiently independent to limit Federal review in California, Oregon, Arizona, Washington, Idaho, and Nevada. In addition to the above-cited cases, *see Wells v. Maas*, 28 F.3d 1005 (9th Cir. 1994) (voiding Oregon rule); *Petrocelli v. Angelone*, 248 F.3d 877, 885-86 (9th Cir. 2001) (voiding Nevada rule); *Hoffman v. Arave*, 236 F.3d 523, 530-31 (9th Cir. 2001) (voiding Idaho rule); *see also Smith v. Stewart*, 241 F.3d 1191, 1196 (9th Cir. 2001), *overruled sub nom. Stewart v. Smith*, 536 U.S. 856 (2002) (voiding Arizona rule); *Thomas v. Hubbard*, 273 F.3d 1164 (9th Cir. 2002) (voiding California rule); *Valerio v. Crawford*, 306 F.3d 742, 773-74 (9th Cir. 2002) (Nevada).

Section 4's new 2254(h) effectively eliminates the "inconsistently applied" exception, and provides a safe harbor for State rules that allow an "ends of justice" exception to a deadline. New subsection 2254(h)(1) allows a procedurally defaulted claim to be brought in Federal court only if it presents meaningful evidence that the defendant did not commit the crime, or the State waives the procedural default. And subsection 2254(h)(3) provides that State prosecutors will

not be required to brief their merits response to a defaulted claim unless a court determines that an exception to procedural default applies. Finally, this section also bars ineffective-assistance-of-counsel claims that are derivative of a defaulted claim, in order to prevent State prisoners from recasting a claim as ineffective assistance in order to make an end run around procedural requirements.

Subsection 4(b) of the bill also applies the same principles to the tolling of the Federal habeas statute's one-year deadline. A State should not be punished for the good deed of allowing an occasional exception for important claims. Thus this subsection adds a new sentence to 2244(d)(2) that provides that if a claim was not properly filed in State court (and therefore would not toll the deadline), the claim should not be construed to have been properly filed (and thus toll the deadline) because the State rule allows for discretion in its application. The question whether a State rule's allowing such exceptions should preclude the tolling of the deadline was raised in *Artuz v. Bennett*, 531 U.S. 4, 8 n.2 (2000), and recently answered in the negative in *Pace v. DiGuglielmo*, 125 S.Ct. 1807 (April 27, 2005). This subsection codifies the rule of *Pace*.

SECTION 5. TOLLING OF LIMITATION PERIOD.

This section of the Act makes three changes that limit the tolling of the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA)'s one-year filing deadline for Federal petitions. Paragraph 1 deletes the words "judgment or" from 2244(d)(2), in order to make clear that the Federal one-year deadline on filing a Federal habeas petition is tolled only while the applicant exhausts pertinent *claims* in State court. The current statute States that the deadline is tolled during State review of "the pertinent judgment or claim." It is unclear what purpose the word "judgment" serves here. The Sixth Circuit has construed this language to allow tolling only for State review of the claims that later will be the basis of the Federal petition – other, unrelated claims do not toll the Federal deadline. *See Austin v. Mitchell*, 200 F.3d 391 (6th Cir. 1999). But in *Tillema v. Long*, 253 F.3d 494 (9th Cir. 2001), a divided panel of the Ninth Circuit took the opposite approach, ruling that *any* State-court challenge to a judgment – even one that raises no Federal questions whatsoever – tolls the deadline on filing a Federal petition. This paragraph codifies the Sixth Circuit's approach and rejects the Ninth Circuit's contrary view by eliminating the unnecessary word "judgment."

Paragraph 2 modifies the rule of *Carey v. Saffold*, 536 U.S. 214 (2002), which held that § 2244(d)(2) tolls AEDPA's one-year deadline on filing a Federal petition during the entire period before a petitioner's application for an original writ in a State supreme court is rejected. The new subsection 2244(d)(3) would specify that an application is not "pending" before a State court – and therefore does not toll the statute of limitations – if it has not actually been submitted to a State court.

This provision eliminates what Judge Easterbrook describes as the "Cheshire cat" phenomenon. Under *Saffold*, whether § 2244(d)(2) applies (and the one-year limitation is tolled) depends on the State high court's disposition of a petition that could be filed well after the one-

year limitation has expired. As a result, it is impossible to determine whether a prisoner's petition is "pending" in State court, for purposes of § 2244(d)(2), at the time that it is (later) alleged to be pending. The *Saffold* rule thus "give[s] § 2244(d)(2) a Cheshire-cat like quality, both there and not there at the same time." *Fernandez v. Sternes,* 227 F.3d 977, 980 (7th Cir. 2000) (Easterbrook, J.). Even "if a prisoner let ten years pass before seeking a discretionary writ from the State's highest court, that entire period would be excluded under § 2244(d)(2) as long as the State court denied the belated request on the merits." *Id.* The *Saffold* rule "implements a make-believe approach, under which [non-existent State] petitions were *continuously* pending whenever a State court [later] allows an untimely filing." *Id.* at 981.

Paragraph 2's new 2244(d)(3) would prevent such abuses of the habeas process by specifying that an application is not "pending" before a State court if it has not been filed in that court. This will encourage State prisoners to promptly file claims in State and Federal court, rather than try to game the Federal habeas deadline by filing original petitions in State supreme courts after all deadlines have expired.

Finally, paragraph 2's new subsection 2244(d)(4) limits the grounds for allowing tolling of the one-year statute of limitations to those grounds identified in the statute. (These grounds include unconstitutional State interference with the filing of a petition, and new evidence or legal claims that previously were unavailable.) Although it may seem obvious that current law's enumeration of some grounds for tolling precludes the recognition of other grounds ("*expressio unius est exclusio alterius*"), the Ninth Circuit has recognized broad additional grounds for tolling. In *Calderon v. United States Dist. Court*, 163 F.3d 530 (9th Cir. 1998), that court held that tolling could be allowed on the unenumerated ground that the prisoner's alleged mental incompetency made him unable to assist his attorney in the preparation of a habeas petition. And *Whalem/Hunt v. Early*, 233 F.3d 1146 (9th Cir. 2000), held that tolling could be permitted on the additional unenumerated ground that the law library of the prison in which the prisoner was incarcerated did not have legal materials describing the one-year deadline on filing Federal petitions. Both of these cases not only identify broad exceptions authorized nowhere in the statute; they also suggest that other exceptions can be created at the discretion of the courts. The new subsection 2244(d)(4) would limit tolling to the grounds authorized by the statute.

SECTION 6. HARMLESS ERROR IN SENTENCING.

One source of delay in addressing important legal claims on Federal habeas review is the general congestion of the Federal courts' dockets. This section will reduce congestion and delay by limiting the need to review alleged errors that already have been reviewed by State courts and have been determined to be harmless, and that relate only to the prisoner's sentencing – not to the portion of the trial that determines guilt or innocence. Fact-intensive and time-consuming harmless-error sentencing claims will be reviewed again in Federal court only if the State court erred in determining that the claim was subject to harmlessness review. Fundamental sentencing errors, and all guilt-phase errors, still would be subject to a second round of review in Federal court.

Current law already requires deferential review of State-court decisions but sets a vague standard: Federal courts ask whether a State court's finding that an error could not reasonably have affected the sentencing was itself reasonable. In addition to creating a conjunction of two forms of reasonableness review, this standard inevitably involves a subjective and very fact intensive inquiry. The Federal court is asked to reweigh (with deference) a State court's weighing of the totality of the evidence to determine if the jury may have decided differently absent an alleged error.

Deference to State courts is appropriate in this context, since these courts are closer to the trial and will have a better sense of what facts are likely to influence local juries. But current law's deference does not limit the breadth of its inquiry: a habeas court still is required to reweigh all of the facts in the case and speculate as to their impact on local juries. Because of the sweep of this inquiry, habeas deference tends to be construed as either limiting reversals of the State court to fundamental errors, or requiring second guessing of the full scope of the State court's calculus.

The current review standard was not specifically designed for sentencing. Rather, it is a combination of pre-existing harmless-review criteria and the deference standard that the current habeas statute applies to all State court determinations. This section applies a review standard to harmlessness determinations in sentencing that is specifically tailored to this part of the criminal trial. It replaces a fact-intensive inquiry with a legal inquiry: rather than asking about the likely impact of the weight on the evidence on local juries, the new standard asks whether the error itself rises to the level of structural error. The Federal court thus focuses on what types of errors the Supreme Court has categorized as structural, rather than repeating the State court's review of the whole sentencing case. This section codifies what habeas courts should be doing in reviewing sentencing determinations: deferring to State fact finding, but reversing clear legal errors.

It bears emphasis that this section applies to sentencing only. No one who asserts innocence of the underlying offense will see his review options limited by this section. Moreover, *all* errors still will receive full review and weighing in State court. This section

merely precludes a repeat of this process at the Federal level for minor errors that are not related to guilt of the underlying offense, and that already have been reviewed by State courts.

SECTION 7. UNIFIED REVIEW STANDARD.

This section makes the 1996 Antiterrorism and Effective Death Penalty Act applicable to all Federal habeas petitions. In *Lindh v. Murphy*, 521 U.S. 320 (1997), the U.S. Supreme Court decided that some of the changes made by the 1996 Act applied immediately, but others applied only to petitions filed after April 24, 1996. Because of that decision, a dual legal regime applies Federal habeas petitions. Old precedent and old law continue to govern some long-running petitions. Today, the number of petitions still subject to the prior habeas regime is small, but as that regime increasingly becomes a thing of the past, it becomes increasingly unfamiliar to litigants. This section would eliminate the need to apply the pre-1996 regime to any claims still pending today.

SECTION 8. APPEALS.

The Justice Department has noted in July, 2003 testimony before the House Judiciary Committee that "[w]hile most Federal judges are diligent in disposing of the business before them, cases can also be found in which habeas petitions languish for years with little or no action by the court." The Department has concluded that "statutory specification of time rules for concluding the litigation of Federal habeas petitions may be appropriate."

Subsection 8(a) of this Act establishes generous but firm time limits on Federal courts of appeals' consideration of habeas corpus petitions. A court of appeals will be required to decide on an appeal from a district court's review of a habeas case within 300 days of the completion of briefing. The court of appeals also must decide whether to grant a petition for rehearing or suggestion for rehearing en banc within 90 days. If a three-judge panel grants rehearing, it must redecide the case within 120 days after the grant of rehearing. If the full court grants rehearing en banc, it must decide the case within 180 days.

This section also provides that a State automatically is entitled to a stay of the judgment when it appeals a district court's grant of a habeas petition. This entitlement already is widely recognized as established in the Federal Rules of Appellate Procedure, but has been contested or ignored on several occasions by some courts.

Subsection 8(b) bars courts of appeals from rehearing successive-petition applications on their own motion. Current law bars petitions for rehearing or certiorari for such applications, but some courts have interpreted this restriction to not preclude rehearing by the court of appeals sua sponte. This interpretation clearly violates the spirit, if not the letter, of the current successive-petition bar. If the law does not allow a petition for rehearing, it makes no sense to nevertheless have the full court rehear the case en banc on its own motion, without even the benefit of briefing. This subsection closes this loophole.

SECTION 9. CAPITAL CASES.

This section expands and improves the special expedited habeas corpus procedures authorized in chapter 154 of the U.S. Code. These procedures are available to States that establish a system for providing high-quality legal representation to capital defendants. Chapter 154 sets strict time limits on Federal court action and places limits on claims. Currently, however, the court that decides whether a State is eligible for chapter 154 is the same court that would be subject to its time limits. Unsurprisingly, these courts have proven resistant to chapter 154. This section would place the eligibility decision in the hands of a neutral party – the U.S. Attorney General, with review of his decision in the D.C. Circuit, which does not hear habeas appeals. This section also makes chapter 154's deadlines more practical by limiting the claims that can be raised under its provisions to those presenting meaningful evidence that the defendant did not commit the crime, and by extending the time for a district court to review and rule on a chapter 154 petition from 6 months to 15 months.

This section also fixes several drafting errors in the 1996 Act. The Powell Committee recommended that a fast-track procedure be available for States that adopt a mechanism for appointment of postconviction counsel and standards of qualification. That proposal was enacted as Chapter 154, sections 2261-2266, of the 1996 Act. The Powell Committee's draft required that the mechanism and standards be adopted by statute or by rule of the highest State court. Section 2261, as enacted, recognized that States have varying mechanisms for adopting rules, and further allowed "another agency authorized by State law" to adopt the mechanism. However, this change was not propagated throughout the chapter. Section 9 correct this oversight.

SECTION 10. CLEMENCY AND PARDON DECISIONS.

This section is adopted from S. 899, a bill that was introduced in the 106th Congress by Senators Hatch, Specter, Sessions, and DeWine. It bars lower Federal courts from entertaining challenges to a State's clemency proceedings. Such litigation, occasionally brought as a last desperate tactic by prisoners facing execution, discourages States from formalizing their clemency procedures. Prisoners typically allege that a formalized procedure creates a legally cognizable "liberty interest" that can form the basis of a lawsuit. A particularly intrusive challenge of this sort, which included subpoenas of officials in the State governor's office, was allowed several years ago by Federal courts in California. Clemency proceedings can play a valuable role as a "fail safe" for catching fundamental errors that escape judicial review. And formalized procedures ensure that prisoners have better access to these mechanisms. This section ensures that States will not be discouraged by the threat of litigation from formalizing and codifying their clemency procedures.

SECTION 11. EX PARTE FUNDING REQUESTS.

This section amends the Federal law that authorizes Federal courts to grant State capital defendants Federal funds to investigate their legal claims challenging their convictions. Requests

for these funds often are authorized *ex parte* – *i.e.*, outside the presence of counsel for the State. State prosecutors have raised concerns that this practice not only potentially biases the Federal judge who also may later hear the defendant's Federal habeas petition, it also can waste Federal money when prisoners receive funds to investigate claims that, for example, are procedurally barred – and the State is not present to inform the court that the claim is barred. This section addresses these problems by providing that the Federal judge who hears the funding request cannot be the same judge who later hears the defendant's Federal habeas petition. It also bars *ex parte* requests for funds except to the extent necessary to protect the confidential-communications privilege between the defendant and his post-conviction counsel.

SECTION 12. CRIME VICTIMS' RIGHTS.

This section extends to crime victims in Federal habeas corpus proceedings for State offenses the same rights made available last year to victims in Federal prosecutions under the Crime Victims' Rights Act of 2004. These rights include the right to be present at court proceedings and the right to be notified of developments in a case.

SECTION 13. TECHNICAL CORRECTIONS.

Subsection (a) fixes a drafting error in the 1996 Act. That Act amended both the appeal statute, section 2253, and the corresponding rule in the Federal Rules of Appellate Procedure, Rule 4, to require a certificate of appealability in lieu of the prior certificate of probable cause. However, the two enactments are inconsistent as to who can issue the certificate. Subsection (a) amends section 2253 to conform to Rule 4 and authorize the district judge to issue the certificate, which is how the courts have been applying the statute.

Subsection (b) designates the paragraphs of section 2255, governing postconviction review for Federal prisoners, as subsections. This change will make the parts of this section easier to cite. The section has grown considerably since its original enactment in 1948, and it is now too long and complex to cite conveniently without subsections.

SECTION 14. APPLICATION TO PENDING CASES.

This section makes the changes made by this Act applicable to defendants who already have initiated Federal habeas-corpus proceedings. Although habeas corpus is a civil proceeding, and any changes to a civil proceeding presumptively apply to pending cases, the Supreme Court in *Lindh v. Murphy*, 521 U.S. 320 (1997), held that the reforms made by the 1996 Antiterrorism and Effective Death Penalty Act did not apply to habeas cases that already had been filed. This section precludes such a result here, guaranteeing that the normal rule of construction will govern and that the reforms made by this Act will apply to pending cases. This section also provides that if any deadline imposed by this section would run from an event that preceded the Act's enactment, the deadline shall instead run from the date of enactment.

S. 1088, THE "STREAMLINED PROCEDURES ACT OF 2005," SUBMITTED BY THE HONORABLE JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

II

109TH CONGRESS
1ST SESSION

S. 1088

To establish streamlined procedures for collateral review of mixed petitions, amendments, and defaulted claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2005

Mr. KYL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To establish streamlined procedures for collateral review of mixed petitions, amendments, and defaulted claims, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Streamlined Procedures Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. MIXED PETITIONS.

Section 2254(b) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:

''(A) the applicant—

''(i) has exhausted the remedies available in the courts of the State by fairly presenting and arguing the specific Federal basis for each claim in the State courts; and

''(ii) has described in the application how the applicant has exhausted each claim in the State courts; or

''(B)(i) the application presents a claim for relief that would qualify for consideration on the grounds described in subsection (e)(2); and

''(ii) the denial of such relief is contrary to, or would entail an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.''; and

(2) by adding at the end the following:

''(4) Any unexhausted claim that does not qualify for consideration on the grounds described in this subsection shall be dismissed with prejudice.''.

SEC. 3. AMENDMENTS TO PETITIONS.

(a) IN GENERAL.—Section 2244 of title 28, United States Code, is amended by adding at the end the following:

''(e)(1) An application for a writ of habeas corpus may be amended once as a matter of course before the earlier of the date on which an answer to the application is filed or the expiration of the 1-year period described in subsection (d).

''(2) Except as provided under paragraph (1), an application may not be amended to modify existing claims or to present additional claims, unless the modified or newly presented claims would qualify for consideration on the grounds described in subsection (b)(2).''.

(b) CONFORMING AMENDMENT.—Section 2242 of title 28, United States Code, is amended in the third undesignated paragraph by striking ''in the rules of procedure applicable to civil actions'' and inserting ''under section 2244(e)''.

SEC. 4. PROCEDURALLY DEFAULTED CLAIMS.

(a) IN GENERAL.—Section 2254 of title 28, United States Code, is amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by adding after subsection (g) the following:

''(h)(1) A court, justice, or judge shall not have jurisdiction to consider an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court with respect to any claim that was found by the State court to be procedurally barred, or any claim of ineffective assistance of counsel related to such claim, unless—

''(A) the claim would qualify for consideration on the grounds described in subsection (e)(2); or

''(B) the State, through counsel, expressly waives the provisions of this paragraph.

''(2)(A) A court, justice, or judge shall not have jurisdiction to consider any claim that the State court denies on the merits and on the ground that the claim was not properly raised under State procedural law, or any claim of ineffective assistance of counsel related to such claim, unless the claim would qualify for consideration on the grounds described in subsection (e)(2).

''(B) A court, justice, or judge shall not have jurisdiction to consider any claim that is otherwise subject to paragraph (1) and that was reviewed by the State court for plain error, fundamental error, or under a similarly

heightened standard of review, unless the claim would qualify for consideration on the grounds described in subsection (e)(2).

''(3) The State shall not be required to answer any claim described in paragraph (1) or (2) unless the court first determines that the claim would qualify for consideration on the grounds described in subsection (e)(2).

''(4) If a court determines that a State court order denying relief on procedural grounds is ambiguous as to which claims were found to be procedurally barred, the court shall resolve any perceived ambiguity, if necessary, by examining the full record in the State court.

''(5) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim under paragraph (1) or (2) unless the denial of such relief is contrary to, or would entail an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.''.

(b) LIMITATION.—Section 2244(d)(2) of title 28, United States Code, as amended by section 3, is amended by adding at the end the following: ''An application that was otherwise improperly filed in State court shall not be deemed to have been properly filed because the State court

exercises discretion in applying a rule or recognizes exceptions to that rule.''.

SEC. 5. TOLLING OF LIMITATION PERIOD.

Section 2244(d) of title 28, United States Code, is amended—

(1) in paragraph (2), by striking ''judgment or''; and

(2) by adding at the end the following:

''(3) In this section, an application for State post-conviction or other collateral review—

''(A) is pending from the date on which the application is filed with a State court until the date on which the same State court rules on that application; and

''(B) is not pending during any period of time between the date on which a State court rules on that application and the date on which the application or a related application is filed, or is otherwise presented, for adjudication to such State court on rehearing authorized by State law or to a higher State court.

''(4) The period of limitation under paragraph (1) may be tolled, suspended, or extended only as provided under this subsection.''.

SEC. 6. HARMLESS ERROR IN SENTENCING.

Section 2254 of title 28, United States Code, as amended by section 4, is amended by adding at the end the following:

''(k) A court, justice, or judge shall not have jurisdiction to consider an application with respect to an error relating to the applicant's sentence or sentencing that has been found to be harmless or not prejudicial in State court proceedings, unless a determination that the error is not structural is contrary to clearly established Federal law, as determined by the Supreme Court of the United States.''.

SEC. 7. UNIFIED REVIEW STANDARD.

Section 107(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. 2261 note) is amended by striking ''Chapter 154 of title 28, United States Code (as amended by subsection (a))'' and inserting ''This title and the amendments made by this title''.

SEC. 8. APPEALS.

(a) APPELLATE TIME LIMITS.—Section 2254 of title 28, United States Code, as amended by sections 4 and 6, is further amended by adding at the end the following:

''(l) In review by a court of appeals of a district court's determination of an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court, the following shall apply:

''(1) A timely filed notice of appeal from an order issuing a writ of habeas corpus shall operate as a stay of that order, pending final disposition of the appeal.

''(2) A court of appeals shall decide the appeal from an order granting or denying a writ of habeas corpus—

''(A) not later than 300 days after the date on which the brief of the appellee is filed or, if no timely brief is filed, the date on which such brief is due; or

''(B) if a cross-appeal is filed, not later than 300 days after the date on which the appellant files a brief in response to the issues presented by the cross-appeal or, if no timely brief is filed, the date on which such brief is due.

''(3)(A) If a petition is filed for a panel rehearing or rehearing by the court of appeals en banc following a decision by a panel of a court of appeals under paragraph (2), the court of appeals shall decide whether to grant the petition not later than 90 days after the date on which the petition is filed, unless a response is required.

''(B) If a response to a petition is required under subparagraph (A), a court of appeals shall decide whether to grant the petition not later than 90 days after the date on which the response is filed or, if no timely response is filed, the date on which the response is due.

''(C) If a panel rehearing is granted, the panel shall make a determination of the appeal on rehearing not later than 120 days after the date on which the order granting a panel rehearing is entered. No second or successive petition for panel rehearing shall be allowed.

''(D) If rehearing en banc is granted, the court of appeals shall make a final determination of the appeal not later than 180 days after the date on which the order granting rehearing en banc is entered.

''(4) If a court of appeals fails to comply with the requirements of this subsection, the State may petition the Supreme Court, or a justice thereof, for a writ of mandamus to enforce the requirements of this subsection.

''(5) The time limitations in this subsection shall apply in all proceedings in a court of appeals on review of a district court's determination of an

application for a writ of habeas corpus, including any such proceedings in a court of appeals following a remand by the Supreme Court for further proceedings.

''(6) In proceedings following remand in a court of appeals, the time limit specified in paragraph (2) shall begin on the date the remand is ordered if further briefing is not required in the court of appeals. If there is further briefing in the court of appeals, the time limit specified in paragraph (2) shall begin on the date on which a responsive brief is filed or, if no timely responsive brief is filed, from the date on which such brief is due.

''(7) The failure of a court to meet or comply with a time limitation under this subsection shall not be a ground for granting relief from a judgment of conviction or sentence, nor shall the time limitations under this subsection be construed to entitle a capital applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.''.

(b) FINALITY OF DETERMINATION.—Section 2244(b)(3)(E) of title 28, United States Code, is amended by striking ''the subject of a petition'' and all that follows

and inserting the following: ''reheard in the court of appeals or reviewed by writ of certiorari.''.

SEC. 9. CAPITAL CASES.

(a) SCOPE OF REVIEW.—Chapter 154 of title 28, United States Code, is amended by striking section 2264 and inserting the following:

''§ 2264. Scope of Federal review

''(a) IN GENERAL.—Except as provided in subsection (b), a court, justice, or judge shall not have jurisdiction to consider any claim relating to the judgment or sentence in an application covered under this chapter.

''(b) EXCEPTION.—A court, justice, or judge has jurisdiction to consider an application under this chapter if—

''(1) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

''(2) both—

''(A) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

''(B) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear

and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.''.

(b) TIME LIMITS.—Section 2266(b)(1)(A) of title 28, United States Code, is amended by striking ''180 days'' and inserting ''15 months''.

(c) REVIEW BY ATTORNEY GENERAL.—

(1) IN GENERAL.—Section 2261(b) of title 28, United States Code, is amended—

(A) by striking ''(b) This chapter is applicable if a State establishes'' and inserting the following:

''(b) This chapter is applicable if—

''(1) the Attorney General of the United States certifies that a State has established'';

(B) in the first sentence, by striking the period at the end and inserting a semicolon;

(C) by striking ''The rule of court or statute must provide standards'' and inserting the following:

''(2) the court, statute, or other agency provides standards'';

(D) by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following:

''(3) the order required under subsection (c) is entered on or after the effective date of the Attorney General's certification under section 2267.''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 2265(a) of title 28, United States Code, is amended—

(A) by striking ''(a) For purposes'' and inserting the following:

''(a)(1) For purposes'';

(B) by striking ''This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes'' and inserting the following:

''(2) This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if—

''(A) the Attorney General of the United States certifies that a State has established'';

(C) by striking ''or by statute'' and inserting '', by statute, or by agency rule'';

(D) by striking the period after ''proceedings'' and inserting a semicolon;

(E) by striking ''The rule of court or statute must provide'' and inserting the following:

''(B) the rule of the court, the statute, or the agency rule provides'';

(F) by striking the period at the end and inserting ''; and''; and

(G) by adding at the end the following:

''(C) the order required under subsection (b) is entered on or after the effective date of the Attorney General's certification under section 2267.''.

(d) JUDICIAL REVIEW.—Chapter 154 of title 28, United States Code, is amended by adding at the end the following:

''§ 2267. Judicial Review

''(a) IN GENERAL.—If requested by the chief law enforcement officer of a State, the Attorney General of the United States shall determine whether the State has established a qualifying mechanism for the purpose of section 2261(b)(3) or 2265(a)(2)(C), and, if so, the date on which the mechanism was established. The date the mechanism was established shall be the effective date of the certification.

''(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

''(c) REVIEW OF CERTIFICATION.—

''(1) IN GENERAL.—The Attorney General's determination of whether to certify a State under this section is subject to review exclusively as provided under chapter 158.

''(2) VENUE.—The Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350.

''(3) STANDARD OF REVIEW.—The Attorney General's determination of whether to certify a State under this section shall be conclusive unless manifestly contrary to the law and an abuse of discretion.''.

(e) CLERICAL AMENDMENTS.—The table of sections for chapter 154 of title 28, United States Code, is amended—

(1) by striking the item related to section 2264 and inserting the following:

''2264. Scope of Federal review.'';

and

(2) by adding at the end the following:

''2267. Judicial review.''.

SEC. 10. CLEMENCY AND PARDON DECISIONS.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following:

"§ 1370. State clemency and pardon decisions

''(a) IN GENERAL.—Except as provided under subsection (b), and notwithstanding any other provision of law, no Federal court shall have jurisdiction to hear any cause or claim arising from the exercise of a State's executive clemency or pardon power, or the process or procedures used under such power.

''(b) EXCEPTION.—This section does not affect the jurisdiction of the Supreme Court to review any decision of the highest court of a State that involves a cause or claim arising from the exercise of a State's executive clemency or pardon power, or the process or procedures used under such power.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by adding at the end the following:

''1370. State clemency and pardon decisions.''.

SEC. 11. EX PARTE FUNDING REQUESTS.

Section 408(q)(9) of the Controlled Substances Act (21 U.S.C. 848(q)(9)) is amended—

(1) by striking ''(9) Upon'' and inserting the following: ''(9) (A) Upon'';

(2) by striking the last two sentences and inserting the following: ''An application for services under this paragraph shall be decided by a judge other than the judge presiding over the post convic-

tion proceeding under section 2254 or 2255 of Title 28, United States Code, seeking to vacate or set aside a death sentence. Any amounts authorized to be paid under this paragraph shall be disclosed to the public immediately.''; and

(3) by adding at the end the following:

''(B) No ex parte proceeding, communication, or request may be considered in a post-conviction action pursuant to this section, except to the extent necessary to protect any confidential-communications privilege between the defendant and post-conviction counsel. The court shall not grant an application for an ex parte proceeding, communication, or request unless the application has been served upon the respondent and the court has allowed the respondent a reasonable opportunity to answer the application. All proceedings, communications, or requests conducted pursuant to this section shall be transcribed and made a part of the record available for appellate review.''.

SEC. 12. CRIME VICTIMS' RIGHTS.

Section 3771(b) of title 18, United States Code, is amended by adding at the end the following: ''A crime victim shall also be afforded the rights established for crime

victims by this section in a Federal habeas corpus proceeding arising out of a State conviction.''.

SEC. 13. TECHNICAL CORRECTIONS.

(a) APPEAL.—Section 2253(c)(1) of title 28, United States Code, is amended by striking ''circuit justice or judge'' and inserting ''district or circuit judge''.

(b) FEDERAL CUSTODY.—Section 2255 of title 28, United States Code, is amended by designating the 8 undesignated paragraphs as subsections (a) through (h), respectively.

SEC. 14. APPLICATION TO PENDING CASES.

(a) IN GENERAL.—This Act and the amendments made by this Act shall apply to cases pending on and after the date of enactment of this Act.

(b) TIME LIMITS.—In a case pending on the date of enactment of this Act, if the amendments made by this Act establish a time limit for taking certain action the period of which began on the date of an event that occurred prior to the date of enactment of this Act, the period of such time limit shall instead begin on the date of enactment of this Act.

○

U.S. DEPARTMENT OF JUSTICE, BUREAU OF STATISTICS, "CRIMINAL OFFENDERS STATISTICS," AVAILABLE AT HTTP://WWW.OJP.USDOJ.GOV/BJS/CRIMOFF.HTM

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Corrections facts at a glance

Reentry Trends in United States

Criminal Offenders Statistics

Summary findings

- Prevalence of imprisonment in the United States
- Lifetime likelihood of going to State or Federal prison
- Characteristics of State prison inmates
- Characteristics of jail inmates
- Comparing Federal and State prison inmates
- Recidivism
- Sex offenders
- Child victimizers
- Intimate victimizers
- Use of alcohol by convicted offenders
- Women Offenders

For additional information about homicide offenders, see **Homicide Trends in the United States**.

Prevalence of imprisonment in the United States

- As of December 31, 2001, there were an estimated 5.6 million adults who had ever served time in State or Federal prison, including 4.3 million former prisoners and 1.3 million adults in prison.
- Nearly a third of former prisoners were still under correctional supervision, including 731,000 on parole, 437,000 on probation, and 166,000 in local jails.
- In 2001, an estimated 2.7% of adults in the U.S. had served time in prison, up from 1.8% in 1991 and 1.3% in 1974.
- The prevalence of imprisonment in 2001 was higher for
  -- black males (16.6%) and Hispanic males (7.7%) than for white males (2.6%)
  -- black females (1.7%) and Hispanic females (0.7%) than white females (0.3%)

- Nearly two-thirds of the 3.8 million increase in the number of adults ever incarcerated between 1974 and 2001 occurred as a result of an increase in first incarceration rates; one-third occurred as a result of an increase in the number of residents age 18 and older.

Lifetime likelihood of going to State or Federal prison

- If recent incarceration rates remain unchanged, an estimated 1 of every 15 persons (6.6%) will serve time in a prison during their lifetime.
- Lifetime chances of a person going to prison are higher for
  - -- men (11.3%) than for women (1.8%)
  - -- blacks (18.6%) and Hispanics (10%) than for whites (3.4%)
- Based on current rates of first incarceration, an estimated 32% of black males will enter State or Federal prison during their lifetime, compared to 17% of Hispanic males and 5.9% of white males.

To the top of summary findings

Characteristics of State Prison inmates

- Women were 6.6% of the State prison inmates in 2001, up from 6% in 1995.
- Sixty-four percent of prison inmates belonged to racial or ethnic minorities in 2001.
- An estimated 57% of inmates were under age 35 in 2001.
- About 4% of State prison inmates were not U.S. citizens at yearend 2001.
- About 6% of State prison inmates were held in private facilities at yearend 2001.
- Altogether, an estimated 57% of inmates had a high school diploma or its equivalent.
- Among the State prison inmates in 2000:
  - -- nearly half were sentenced for a violent crime (49%)
  - -- a fifth were sentenced for a property crime (20%)
  - -- about a fifth were sentenced for a drug crime (21%)

To the top of summary findings

Characteristics of jail inmates

Demographics

- Women were 12% of the local jail inmates in 2002, up from 10% in 1996.
- Jail inmates were older on average in 2002 than 1996: 38% were age 35 or older, up from 32% in 1996.
- More than 6 in 10 persons in local jails in 2002 were racial or ethnic minorities, unchanged from 1996.
- An estimated 40% were black; 19%, Hispanic, 1% American Indian; 1% Asian; and 3% of more than one race/ethnicity.

Conviction Offense

- Half of jail inmates in 2002 were held for a violent or drug offense, almost unchanged from 1996.
- Drug offenders, up 37%, represented the largest source of jail population growth between 1996 and 2002.
- More than two-thirds of the growth in inmates held in local jails for drug law violations was due to an increase in persons charged with drug trafficking.
- Thirty-seven percent of jail inmates were convicted on a new charge; 18% were convicted on prior charges following revocation of probation or parole; 16% were both convicted of a prior charge and awaiting trial on a new charge; and 28% were unconvicted.

Criminal History

- Fifty-three percent of jail inmates were on probation, parole or pretrial release at the time of arrest.
- Four in 10 jail inmates had a current or past sentence for a violent offense.
- Thirty-nine percent of jail inmates in 2002 had served 3 or more prior sentences to incarceration or probation, down from 44% in 1996.

Substance Use and Treatment

- Half (50%) of convicted jail inmates were under the influence of drugs or alcohol at the time of the offense, down from 59% in 1996.
- Three out of every four convicted jail inmates were alcohol or drugs-involved at the time of their current offense.
- Alcohol use at the time of the offense dropped from 41% (1996) to 35% (2002), while drug use dropped from 35% to 29%.
- Average sentence length of inmates serving their time in a local jail increased from 22 months in 1996 to 24 months in 2002.
- Time expected to be served in jail dropped from 10 months in 1996 to 9 months, in 2002

Family background

- Thirty-one percent of jail inmates had grown up with a parent or guardian who abused alcohol or drugs
- About 12 percent had lived in a foster home or institution.
- Forty-six percent had a family member who had been incarcerated.
- More than 50% of the women in jail said they had been physically or sexually abused in the past, compared to more than 10% of the men.

To the top of summary findings

Comparing Federal and State prison inmates

- In 1997, Federal inmates were more likely than State inmates to be
  - -- women (7% vs. 6%)
  - -- Hispanic (27% vs. 17%)
  - -- age 45 or older (24% vs. 13%)
  - -- with some college education (18% vs. 11%)

-- noncitizens (18% vs. 5%)

- In 2000, an estimated 57% of Federal inmates and 21% of State inmates were serving a sentence for a drug offense; about 10% of Federal inmates and 49% of State inmates were in prison for a violent offense.
- Violent offenders accounted for 53% of the growth in State prisons between 1990 to 2000, drug offenders accounted for 59% of the growth in Federal prisons.

To the top of summary findings

Recidivism

- Of the 272,111 persons released from prisons in 15 States in 1994, an estimated 67.5% were rearrested for a felony or serious misdemeanor within 3 years, 46.9% were reconvicted, and 25.4% resentenced to prison for a new crime.
- The 272,111 offenders discharged in 1994 accounted for nearly 4,877,000 arrest charges over their recorded careers.
- Within 3 years of release, 2.5% of released rapists were rearrested for another rape, and 1.2% of those who had served time for homicide were arrested for a new homicide.
- Sex offenders were less likely than non-sex offenders to be rearrested for any offense — 43 percent of sex offenders versus 68 percent of non-sex offenders.
- Sex offenders were about four times more likely than non-sex offenders to be arrested for another sex crime after their discharge from prison — 5.3 percent of sex offenders versus 1.3 percent of non-sex offenders.

To the top of summary findings

Sex offenders

- On a given day in 1994 there were approximately 234,000 offenders convicted of rape or sexual assault under the care, custody, or control of corrections agencies; nearly 60% of these sex offenders are under conditional supervision in the community.
- The median age of the victims of imprisoned sexual assaulters was less than 13 years old; the median age of rape victims was about 22 years.
- An estimated 24% of those serving time for rape and 19% of those serving time for sexual assault had been on probation or parole at the time of the offense for which they were in State prison in 1991.
- Of the 9,691 male sex offenders released from prisons in 15 States in 1994, 5.3% were rearrested for a new sex crime within 3 years of release.
- Of released sex offenders who allegedly committed another sex crime, 40% perpetrated the new offense within a year or less from their prison discharge.

To the top of summary findings

Child victimizers

- Approximately 4,300 child molesters were released from prisons in 15 States in 1994. An estimated 3.3% of these 4,300 were rearrested for another sex crime against a child within 3 years of release from prison.
- Among child molesters released from prison in 1994, 60% had been in prison for molesting a child 13 years old or younger.
- Offenders who had victimized a child were on average 5 years older than the violent offenders who had committed their crimes against adults. Nearly 25% of child victimizers were age 40 or older, but about 10% of the inmates with adult victims fell in that age range.

To the top of summary findings

Intimate victimizers

- About 4 in 10 inmates serving time in jail for intimate violence had a criminal justice status -- on probation or parole or under a restraining order -- at the time of the violent attack on an intimate.
- About 1 in 4 convicted violent offenders confined in local jails had committed their crime against an intimate; about 7% of State prisoners serving time for violence had an intimate victim.
- About half of all offenders convicted of intimate violence and confined in a local jail or a State prison had been drinking at the time of the offense. Jail inmates who had been drinking prior to the intimate violence consumed an average amount of ethanol equivalent to 10 beers.
- About 8 in 10 inmates serving time in State prison for intimate violence had injured or killed their victim.

To the top of summary findings

Use of alcohol by convicted offenders

- Among the 5.3 million convicted offenders under the jurisdiction of corrections agencies in 1996, nearly 2 million, or about 36%, were estimated to have been drinking at the time of the offense. The vast majority, about 1.5 million, of these alcohol-involved offenders were sentenced to supervision in the community: 1.3 million on probation and more than 200,000 on parole.
- Alcohol use at the time of the offense was commonly found among those convicted of public-order crimes, a type of offense most highly represented among those on probation and in jail. Among violent offenders, 41% of probationers, 41 of those in local jails, 38% of those in State prisons, and 20% of those in Federal prisons were estimated to have been drinking when they committed the crime.

To the top of summary findings

Women offenders

- In 1998 there were an estimated 3.2 million arrests of women, accounting for 22% of all arrests that year.
- Based on self-reports of victims of violence, women account for 14% of violent offenders, an annual average of about 2.1 million violent

female offenders.
- Women accounted for about 16% of all felons convicted in State courts in 1996: 8% of convicted violent felons, 23% of property felons, and 17% of drug felons.
- In 1998 more than 950,000 women were under correctional supervision, about 1% of the U.S. female population.

To the top of summary findings

BJS Publications

This list is in order of the most recent publication first. Additional titles are listed on other topical pages and a comprehensive list is contained on the **BJS publications page**. To see a full abstract of a publication with links to electronic versions of the publication, click on the title below.

Violence by Gang Members, 1993-2003 06/05. Provides estimates of the number and rate of violent crimes committed by offenders that victims perceived to be members of gangs based on National Crime Victimization Survey data. NCJ 208875

Family Violence Statistics: Including Statistics on Strangers and Acquaintances, 6/05. Compares family and nonfamily violence statistics from victimization through the different stages of the justice system. NCJ 207846

American Indians and Crime: A BJS Statistical Profile, 1992-2002, 12/04. Reports the rates and characteristics of violent crimes experienced by American Indians and summarizes data on American Indians in the criminal justice system. NCJ 203097

Intellectual Property Theft, 10/04. Presents statistics on both criminal and civil enforcement of Federal intellectual property laws for 1994-2002. NCJ 205800

Profile of Nonviolent Offenders Exiting State Prisons, 05/02. Provides a description of the general characteristics of prison populations serving time for nonviolent crimes as they exit State prisons. NCJ 207081

Cross-National Studies in Crime and Justice, 09/04. Summarizes the results from a study that documents crime and criminal punishment trends from 1981 to 1999 in eight countries: Australia, Canada, England, the Netherlands, Scotland, Sweden, Switzerland, and the United States. NCJ 200988

Profile of Jail Inmates, 2002, 7/04. Describes the characteristics of jail inmates in 2002, including offenses, conviction status, criminal histories, sentences, time served, drug and alcohol use and treatment, and family background. Characteristics of jail inmates include gender, race, and Hispanic origin. NCJ 201932

Profile of Jail Inmates, 1996, 4/98. NCJ 164620

Recidivism of Sex Offenders Released from Prison in 1994, 11/03. Presents, for the first time, data on the rearrest, reconviction, and reimprisonment of 9,691 male sex offenders, including 4,295 child molesters, who were tracked for 3 years after their release from prisons in 15 States in 1994. NCJ 198281

Prevalence of Imprisonment in the U.S. Population, 1974-2001, 08/03. Presents estimates of the number of living persons in the United States, 1974 to 2001, who have ever been to State or Federal prison. NCJ 197976

Education and Correctional Populations, 01/03. Compares educational attainment of State and Federal prison inmates, jail inmates, and probationers to that of the general population. NCJ 195670

Immigration Offenders in the Federal Criminal Justice System, 2000, 08/02. Describes the number of immigration offenders prosecuted in Federal court between 1985 and 2000. NCJ 191745

Recidivism of Prisoners Released in 1994, 6/02. Reports on the rearrest, reconviction, and reincarceration of former inmates who were tracked for 3 years after their release from prisons in 15 States in 1994. NCJ 193427.

Recidivism of Prisoners Released in 1983, 4/89. NCJ 116261

Firearm Use by Offenders, 11/01. Describes firearm use of State and Federal prison inmates including types of firearms used, characteristics of inmates using firearms, why and where inmates used their firearms, and where they obtained their firearms. NCJ 189369.

Injuries from Violent Crime, 1992-98, 6/01. Presents data from the redesigned National Crime Victimization Survey, examining injuries as a result of violent victimizations. NCJ 168633

Policing and Homicide, 1976-98: Justifiable Homicide of Felons by Police and Murder of Police by Felons, 03/01. Presents annual trends from 1976 to 1998 in two types of homicide: justifiable homicides of felons by police, and murders of police officers by felons. NCJ 180987

Violent Victimization and Race, 1993-98, 3/01. Presents incidence estimates and per capita rates of violent victimization of whites, blacks, American Indians and Asians in 1998, and includes victimization trends, 1993-98. NCJ 176354

Defense Counsel in Criminal Cases, 11/00. Examines issues of legal representation for defendants in Federal district court and large local jurisdictions, and inmates in local jails and Federal and State prison. NCJ 179023

Offenders Returning to Federal Prison, 1986-97, 9/00. Describes offenders returning to Federal prison within 3 years of release and their time

served upon return. NCJ 182991

Incarcerated Parents and Their Children, 8/00. Presents data from the 1997 Surveys of Inmates in State and Federal Correctional Facilities concerning inmates with children under the age of 18, whether or not inmates lived with their children prior to admission, and the children's current care givers. NCJ 182335

Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics 7/00. Presents findings from the National Incident-Based Reporting System (NIBRS) regarding sexual assault, especially of young children. NCJ 182990

Drug Use, Testing, Treatment in Jails, 5/00. Describes the drug involvement of jail inmates and the level of drug use, testing, and treatment in jails. NCJ 179999.

Homicide Trends in the United States: 1998 Update, 3/00. Outlines the primary findings from the section of the BJS website about homicide patterns and trends since 1976 (**www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm**). NCJ 179767

Homicide Trends in the United States, 1/99. NCJ 173956

Profile of State Prisoners under Age 18, 1985-97, 2/00. Presents trend data from 1985 to 1997 on persons under 18 in State prison, focusing primarily on persons admitted to prison under the age of 18: their demographic characteristics, offenses, average sentence length, and expected time served. NCJ 176989

Women Offenders, 12/99. Examines offending by adult women and their handling by the criminal justice system. NCJ 175688

Mental Health and Treatment of Inmates and Probationers, 7/99. Presents survey data on offenders who were in prison or jail or on probation and who reported prior treatment for a mental or emotional problem. NCJ 174463

DWI Offenders under Correctional Supervision, 6/99. Provides data on offenders in jail, in prison, or on probation for driving while intoxicated. NCJ 172212

American Indians and Crime, 2/99. Reports the rates and characteristics of violent crimes experienced by American Indians and summarizes data on American Indians in the criminal justice system. NCJ 173386

Substance Abuse and Treatment, State and Federal Prisoners, 1997, 12/98. Presents data from the 1997 Survey of Inmates in Adult State and Federal Correctional Facilities concerning prisoners' use of alcohol and illegal drugs and the substance abuse treatment they received. NCJ 172871

Profile of Jail Inmates, 1996, 4/98. Presents data about local jail inmates: their demographic characteristics, offenses, conviction status, criminal

histories, sentences, time served, drug and alcohol use and treatment, family background, physical and mental health care, and conditions of confinement. NCJ 164620

Alcohol and Crime, 4/98. Provides an overview of national information on the role of alcohol in violent victimization and its use among those convicted of crimes, including victim perceptions of alcohol use by offenders at the time of the crime. NCJ 168632

Substance Abuse and Treatment of Adults on Probation, 1995, 3/98. Presents data from the 1995 Survey of Adults on Probation concerning probationers' use of alcohol and illegal drugs and substance abuse treatment they received. NCJ 166611

Violence by Intimates, 3/98. Reports findings about violence between people who have an intimate relationship -- spouses, exspouses, boyfriends, girlfriends, and former boyfriends and girlfriends from statistical data maintained by the Bureau of Justice Statistics and the Federal Bureau of Investigation. NCJ 167237

Lifetime Likelihood of Going to State or Federal Prison, 3/97. Describes characteristics of persons admitted to prison for the first time, compares lifetime and one-day prevalence rates, considers changes in admission rates since 1991, and discusses the estimation techniques. NCJ 160092

Juvenile Delinquents in the Federal Criminal Justice System, 2/97. Describes juvenile offenders processed in the Federal criminal justice system, including the number of juveniles charged with acts of delinquency, the offenses for which they were charged, the proportion adjudicated delinquent, and the sanctions imposed. NCJ 163066

Sex Offenses and Offenders 2/97. Reports on more than two dozen statistical datasets maintained by the Bureau of Justice Statistics and on data from the Uniform Crime Reporting (UCR) Program of the FBI to provide a comprehensive overview of current knowledge about the incidence and prevalence of violent victimization by sexual assault, the response of the criminal justice system to such crimes, and the characteristics of those who commit sexual assault or rape. NCJ 163392

Child Victimizers: Violent Offenders and Their Victims 3/96. This study presents findings on violence against children from two sources: a 1991 nationally representative sample of State prison inmates serving time for violent crimes against children and law enforcement records of nearly 37,000 child murder victims between 1976 and 1994.
Executive Summary: NCJ 158625
Full report: NCJ 153258

Profile of Inmates in the United States and in England and Wales, 1991 10/94. Compares findings from the 1991 prison inmate survey in England and Wales with data from the BJS surveys of inmates in local jails and in State prisons and the U.S. Bureau of Prisons survey of Federal prisoners. NCJ 145863

Women in Prison 3/94. Examines demographic characteristics, current

offenses, criminal histories, and the victims of violent female inmates from the 1991 BJS survey of State prison inmates. NCJ 145321

Performance Measures for the Criminal Justice System, 10/93 . This compendium of Discussion Papers represents the work of the BJS-Princeton University Study Group on Criminal Justice Performance Measures. NCJ 143505

Survey of State Prison Inmates, 1991 5/93. Presents data about State prison inmates: their background and families, recidivism, gang membership, drug and alcohol use, HIV/AIDS infection, gun use and possession, sentence, time served, and participation in prison programs. NCJ 136949

To the top

Selected statistics

The files available here provide data and statistics that may not be published elsewhere or are provided in a format intended for further analysis rather than viewing. Many of the files are in .wk1 format that is easily useable with most spreadsheet software and some word processors.

- The **number of violent crime arrests** of juveniles (under age 18) and adults (age 18 or older), 1970-2002, 06/04 **Spreadsheet** (11K)
- Arrests by age group, number and rates for total offenses, index offenses, violent offenses, and property offenses, 1970-99, 10/00 **Spreadsheet** (41K)

To the top

Also by BJS staff

Greenfeld, Lawrence A., and Maureen A. Henneberg, **"Victim and Offender Self-Reports of Alcohol Involvement in Crime,"** (pdf file), **Alcohol Research and Health, Journal of the National Institute on Alcohol Abuse and Alcoholism**, Volume 25, Number 1, 2001

Greenfeld, Lawrence A. and Patrick A. Langan. "Characteristics of Middle-aged Prisoners," in Farrington, D.P. and J. Gunn, **Reactions to Crime: The Public, the Police, Courts, and Prisons**, (London: John Wiley and Sons, Ltd.), 1985.

To the top

Related sites

- SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS
- National Criminal Justice Reference Service Corrections Page
- *Gun Crime in the Age Group 18-20* , a joint report by the Department of Justice and the Department of the Treasury
- Statistics about Juvenile Offenders and the Juvenile Justice System from the Office of Juvenile Justice and Delinquency Prevention

BJS home page | Top of this page

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Privacy Policy
Page last revised on *June 27, 2005*

LETTER FROM JOHN RHODES, ASSISTANT FEDERAL DEFENDER TO BOBBY VASSER, MINORITY COUNSEL, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

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June 13, 2005

Bobby Vassar
Minority Counsel
Subcommittee on Crime, Terrorism and Homeland Security
House Judiciary Committee
B336 Rayburn House Office Building
Washington, D.C. 20515

Re: Question Regarding Testimony of John Rhodes regarding Section 3 of H.R. 2388, June 7, 2005

Dear Mr. Vassar:

This letter responds to your question whether the 159 cases to which I referred in my testimony were factual exonerations, or cases that were reversed for legal error.

The 159 cases to which I referred were those in which post-conviction DNA testing has yielded conclusive proof of innocence. Of these 159 people, 14 had been sentenced to death, 39 to life imprisonment, and 106 to terms of imprisonment ranging from 3.5 to 3,200 years. They spent an average of over 12.5 years in prison, 94 of them for 10-19 years, 17 of them for over 20 years. A short summary of each case, taken from the website of the Cardozo Law School's Innocence Project, http://www.innocenceproject.org/, is attached to this letter.

Each of these factually innocent people had been convicted by a jury, and most had exhausted all avenues of appellate and post-conviction relief. The DNA exonerations prove that juries and appellate courts can make mistakes.

The ability of DNA testing to correct wrongful convictions is limited to the relatively few cases in which biological evidence was left at the scene of the crime, is still available, and can still be tested. In most cases, no DNA material is left at the scene, or evidence that was once there has been lost, destroyed or degraded.

In analyzing the first 70 DNA exonerations, the Innocence Project found that the most common factors leading to wrongful convictions were mistaken identity, defective or fraudulent scientific evidence, police or prosecutorial misconduct, incompetent defense counsel, false witness testimony, and false confessions. See http://www.innocenceproject.org/causes/index.php. It is unfortunate, but not surprising, that these same sources of error occur in cases in which there is no testable DNA

evidence.[1] See, e.g., Samuel Gross et. al, Exonerations in the United States 1989 Through 2003, 95 J. Crim. L. & Criminology 523 (2005).

Under the AEDPA of 1996, a person in state custody cannot obtain relief unless, among other things, he exhausts his state remedies, files the federal petition within one year, and can show not just that the state court decision was unconstitutional, but that it was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court, or was based on an unreasonable determination of the facts. The procedural hurdles combined with strict pleading requirements are already forbiddingly high for prisoners who usually must proceed without counsel.

Section 3 of H.R. 2388 would strip federal courts of jurisdiction even to apply these strict standards to claims in cases involving the killing of a person under the age of 18, unless the claim relies on "(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (ii) a factual predicate that could not previously have been discovered through the exercise of due diligence; and . . . the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."

Most of the DNA exonerations could not have met this standard,[2] and doing so would be even more difficult in cases without testable DNA evidence.

The purpose of the writ of habeas corpus is to assure that state courts do not contravene the United States Constitution and other federal law, including imprisoning or executing the factually innocent. Further limiting the right to petition the federal courts for redress in this class of cases would unreasonably increase the risk that innocent persons will be executed or spend decades or life in prison.

Sincerely,

John Rhodes
Assistant Federal Defender

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[1] Other studies report wrongful convictions in addition to the conclusive DNA exonerations. See id. at 524 (144 cleared by DNA evidence, 196 by other official acts between 1989 and 2003); Death Penalty Information Center, Death Penalty Fact Sheet, http://www.deathpenaltyinfo.org/FactSheet.pdf (119 people released from death row with evidence of innocence between 1973 and 2005).

[2] See In re McGinn, 213 F.3d 884, 885 (5th Cir. 2000) (denying leave to file successive petition to conduct exculpatory DNA testing because petitioner could not show that the factual predicate could not previously have been discovered through the exercise of due diligence).

Gary Dotson	
Year of Incident: 1977	Sentence: 25-50 years
Jurisdiction: Illinois	Year of Conviction: 1979
Charge: Aggravated Kidnapping, Rape	Year of Exoneration: 1989
Conviction: Aggravated Kidnapping, Rape	Sentence Served: 8 years
	Real perpetrator found? Not yet
	Compensation? Not yet

David Vasquez	
Year of Incident: 1984	Sentence: 35 years
Jurisdiction: Virginia	Year of Conviction: 1985
Charge: Homicide (Sec. Deg.), Burglary	Year of Exoneration: 1989
Conviction: Homicide (Sec. Deg.), Burglary	Sentence Served: 5 years
	Real perpetrator found? Not yet
	Compensation? Undisclosed

Edward Green	
Year of Incident: 1987	Sentence:
Jurisdiction: District of Columbia	Year of Conviction: 1989
Charge: Rape, Kidnapping, Sodomy, Assault With Intent	Year of Exoneration: 1990
Conviction: Rape, Kidnapping, Sodomy	Sentence Served: 1 year
	Real perpetrator found? Not yet
	Compensation? Not yet

Bruce Nelson	
Year of Incident: 1981	Sentence: Life +
Jurisdiction: Pennsylvania	Year of Conviction: 1982
Charge: Murder, Rape	Year of Exoneration: 1991
Conviction: Murder, Rape	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Charles Dabbs	
Year of Incident: 1982	Sentence: 12.5 - 20 years
Jurisdiction: New York	Year of Conviction: 1984
Charge: Rape	Year of Exoneration: 1991
Conviction: Rape	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Glen Woodall	
Year of Incident: 1987	Sentence: 2 Life, plus 203-335 years
Jurisdiction: West Virginia	Year of Conviction: 1987
Charge: Sexual Assault, Sexual Abuse, Kidnapping, Robbery	Year of Exoneration: 1992
Conviction: Sexual Assault, Sexual Abuse, Kidnapping, Agg. Robbery	Sentence Served: 5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Joe Jones	
Year of Incident: 1985	Sentence: Life +
Jurisdiction: Kansas	Year of Conviction: 1986
Charge: Rape, Kidnapping, Assault	Year of Exoneration: 1992
Conviction: Rape, Agg. Kidnapping, Agg. Assault	Sentence Served: 6.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Steven Linscott	
Year of Incident: 1980	Sentence: 40 years
Jurisdiction: Illinois	Year of Conviction: 1982
Charge: Murder, Rape	Year of Exoneration: 1992
Conviction: Murder	Sentence Served: 3 years, 7 years on bond
	Real perpetrator found? Not yet
	Compensation? Not yet

Leonard Callace	
Year of Incident: 1985	Sentence: 25-50 years
Jurisdiction: New York	Year of Conviction: 1987
Charge: Sodomy, Sexual Abuse, Wrongful Imprisonment, Crim. Poss. Of Weapon	Year of Exoneration: 1992
Conviction: Sodomy (4 cts.), Sex. Abuse (3cts.), Wrong. Imp., Crim. Poss. of Weapon	Sentence Served: 6 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Kerry Kotler	
Year of Incident: 1978, 1981	Sentence: 25 - 50 years
Jurisdiction: New York	Year of Conviction: 1981
Charge: Rape (2 cts.), Burglary 1 (2 cts.), Burglary 2 (2 cts.), Robbery	Year of Exoneration: 1992
Conviction: Rape (2 cts.), Burglary 1 (2 cts.), Burglary 2 (2 cts.), Robbery	Sentence Served: 11 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Walter Snyder	
Year of Incident: 1985	Sentence: 45 years
Jurisdiction: Virginia	Year of Conviction: 1986
Charge: Rape, Sodomy, Burglary	Year of Exoneration: 1993
Conviction: Rape, Sodomy, Burglary	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Kirk Bloodsworth	
Year of Incident: 1984	Sentence: Death
Jurisdiction: Maryland	Year of Conviction: 1985
Charge: Murder, Sexual Assault, Rape	Year of Exoneration: 1993
Conviction: First Degree Murder, Sexual Assault, Rape,	Sentence Served: 8 years
	Real perpetrator found? Yes
	Compensation? Not yet

Dwayne Scruggs	
Year of Incident: 1986	Sentence: 40 years +
Jurisdiction: Indiana	Year of Conviction: 1986
Charge: Rape, Robbery	Year of Exoneration: 1993
Conviction: Rape, Robbery	Sentence Served: 7.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Mark Diaz Bravo	
Year of Incident: 1990	Sentence: 8 years
Jurisdiction: California	Year of Conviction: 1990
Charge: Rape	Year of Exoneration: 1993
Conviction: Rape	Sentence Served: 3 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Dale Brison	
Year of Incident: 1990	Sentence: 18-42 years
Jurisdiction: Pennsylvania	Year of Conviction: 1990
Charge: Rape, Kidnap, Agg. Assault, Carrying Weapon, Involl. Deviate Sex. Intercourse	Year of Exoneration: 1994
Conviction: Rape, Kidnap, Agg. Assault, Carrying Weapon, Inv. Deviate Sex. Intercourse (3 cts.)	Sentence Served: 3.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Gilbert Alejandro	
Year of Incident: 1990	Sentence: 12 years
Jurisdiction: Texas	Year of Conviction: 1990
Charge: Sexual Assault	Year of Exoneration: 1994
Conviction: Agg. Sexual Assault	Sentence Served: 3.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Frederick Daye	
Year of Incident: 1984	Sentence: Life +
Jurisdiction: California	Year of Conviction: 1984
Charge: Rape (2 cts., in concert), Kidnapping, Robbery, Vehicle Theft	Year of Exoneration: 1994
Conviction: Rape (2 cts., in concert), Kidnapping, Vehicle Theft	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Edward Honaker	
Year of Incident: 1984	Sentence: 3 Life +
Jurisdiction: Virginia	Year of Conviction: 1984
Charge: Sexual Assault (7 cts.), Sodomy, Rape	Year of Exoneration: 1994
Conviction: Sexual Assault (7 cts.), Sodomy, Rape	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Brian Piszczek	
Year of Incident: 1990	Sentence: 15 - 25 years
Jurisdiction: Ohio	Year of Conviction: 1991
Charge: Rape, Felonious Assault, Burglary	Year of Exoneration: 1994
Conviction: Rape, Felonious Assault, Burglary	Sentence Served: 4 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ronnie Bullock	
Year of Incident: 1983	Sentence: 60 years
Jurisdiction: Illinois	Year of Conviction: 1984
Charge: Sexual Assault, Kidnapping	Year of Exoneration: 1994
Conviction: Deviate Sexual Assault, Agg. Kidnapping	Sentence Served: 10.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

David Shepard	
Year of Incident: 1983	Sentence: 30 years
Jurisdiction: New Jersey	Year of Conviction: 1984
Charge: Rape, Robbery, Weapons Violations, Terrorist Threats	Year of Exoneration: 1994
Conviction: Rape, Robbery, Weapons Violations, Terrorist Threats	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Terry Chalmers	
Year of Incident: 1986	Sentence: 12-24 years
Jurisdiction: New York	Year of Conviction: 1987
Charge: Rape, Sodomy, Robbery, Grand Larceny	Year of Exoneration: 1995
Conviction: Rape, Sodomy, Robbery, Grand Larceny (2 counts)	Sentence Served: 7.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ronald Cotton	
Year of Incident: 1984	Sentence: Life plus 54 years
Jurisdiction: North Carolina	Year of Conviction: 1985/1987
Charge: Rape, Burglary	Year of Exoneration: 1995
Conviction: Rape (2 cts.), Burglary (2 cts.)	Sentence Served: 10.5 years
	Real perpetrator found? Yes -- Felon Database Match
	Compensation? Not yet

Rolando Cruz	
Year of Incident: 1983	Sentence: Death (Murder) 60 years (Rape); 60 years (Dev. Sex. Assault); 30 years (Agg. Kidnap); 15 years (Agg. Kidnap); 30 years (Agg. Indecent Liberties with Child); 15 years (Residential Burglary); 15 years (Agg. Crim. Sex. Abuse); 60 years (Crim. Sex. Abuse)
Jurisdiction: Illinois	Year of Conviction: 1985
Charge: Rape, Murder, Kidnap, Home Invasion	Year of Exoneration: 1995
Conviction: Murder, Rape, 2 Counts Aggravated Kidnap, Dev. Sex. Assault, Agg. Indec. Liberties w/ Child, Residential Burglary, Crim. Sex. Abuse, Agg. Crim. Sex. Abuse	Sentence Served: 11 years
	Real perpetrator found? Yes
	Compensation? Not yet

Alejandro Hernandez	
Year of Incident: 1983	Sentence: Death
Jurisdiction: Illinois	Year of Conviction: 1985
Charge: Murder, Rape, Kidnapping, Home Invasion, etc.	Year of Exoneration: 1995
Conviction: Murder, Rape, Agg. Kidnapping, Dev. Sex. Assault, Agg. Indec. Liberties w/ Child, Burglary, Crim. Sex. Abuse, Agg. Crim. Sex. Abuse	Sentence Served: 11 years
	Real perpetrator found? Yes
	Compensation? Not yet

William O'Dell Harris	
Year of Incident: 1984	Sentence: 10-20 years
Jurisdiction: West Virginia	Year of Conviction: 1987
Charge: 2nd Deg. Sex. Assault	Year of Exoneration: 1995
Conviction: 2nd Deg. Sexual Assault	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Dewey Davis	
Year of Incident: 1986	Sentence: 10 - 20 years
Jurisdiction: West Virginia	Year of Conviction: 1986
Charge: Sexual Assault, Sexual Abuse, Abduction	Year of Exoneration: 1995
Conviction: Sexual Assault, Sexual Abuse, Abduction	Sentence Served: 8 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Gerald Davis	
Year of Incident: 1986	Sentence: 14 - 35 years
Jurisdiction: West Virginia	Year of Conviction: 1986
Charge: Sexual Assault, Kidnapping	Year of Exoneration: 1995
Conviction: Sexual Assault, Kidnapping	Sentence Served: 8 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Walter D. Smith	
Year of Incident: 1985	Sentence: 78 - 190 years
Jurisdiction: Ohio	Year of Conviction: 1986
Charge: Rape, Kidnapping, Robbery	Year of Exoneration: 1996
Conviction: Rape, Kidnapping, Robbery	Sentence Served: 11 (aggregate)
	Real perpetrator found? Not yet
	Compensation? Undisclosed

Vincent Moto	
Year of Incident: 1985	Sentence: 12 - 24 years
Jurisdiction: Pennsylvania	Year of Conviction: 1987
Charge: Rape, Involuntary Deviate Sex. Inter., Criminal Conspiracy, Robbery	Year of Exoneration: 1996
Conviction: Rape, Involuntary Deviate Sex. Inter., Criminal Conspiracy, Robbery	Sentence Served: 8 years (10 years aggregate)
	Real perpetrator found? Not yet
	Compensation? Not yet

Steven Toney	
Year of Incident: 1982	Sentence: 2 Life
Jurisdiction: Missouri	Year of Conviction: 1983
Charge: Rape, Sodomy	Year of Exoneration: 1996
Conviction: Rape, Sodomy	Sentence Served: 13.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Richard Johnson	
Year of Incident: 1990	Sentence: 36 years
Jurisdiction: Illinois	Year of Conviction: 1992
Charge: Rape, Robbery	Year of Exoneration: 1996
Conviction: Rape, Robbery	Sentence Served: 4 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Thomas Webb	
Year of Incident: 1982	Sentence: 60 Plus
Jurisdiction: Oklahoma	Year of Conviction: 1983
Charge: Rape, Robbery	Year of Exoneration: 1996
Conviction: Rape, Robbery	Sentence Served: 13 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Kevin Green	
Year of Incident: 1979	Sentence: 15 - Life
Jurisdiction: California	Year of Conviction: 1980
Charge: Murder, Att. Murder, Assault w/ Deadly Weapon	Year of Exoneration: 1996
Conviction: 2nd Deg. Murder, Att. Murder, Assault w/ Deadly Weapon	Sentence Served: 16 years
	Real perpetrator found? Yes (Felon Database)
	Compensation? Not yet

Verneal Jimerson	
Year of Incident: 1978	Sentence: Death
Jurisdiction: Illinois	Year of Conviction: 1985
Charge: Murder, Rape	Year of Exoneration: 1996
Conviction: Murder, Rape	Sentence Served: 11 years
	Real perpetrator found? Yes
	Compensation? Not yet

Kenneth Adams	
Year of Incident: 1978	Sentence: 75 years
Jurisdiction: Illinois	Year of Conviction: 1979
Charge: Murder, Rape	Year of Exoneration: 1996
Conviction: Murder, Rape	Sentence Served: 18 years
	Real perpetrator found? Yes
	Compensation? Undisclosed

Willie Rainge	
Year of Incident: 1978	Sentence: Life
Jurisdiction: Illinois	Year of Conviction: 1979
Charge: Murder, Rape	Year of Exoneration: 1996
Conviction: Murder, Rape	Sentence Served: 18 years
	Real perpetrator found? Yes
	Compensation? Not yet

Dennis Williams	
Year of Incident: 1978	Sentence: Death
Jurisdiction: Illinois	Year of Conviction: 1979
Charge: Murder, Rape	Year of Exoneration: 1996
Conviction: Murder, Rape	Sentence Served: 18 years
	Real perpetrator found? Yes
	Compensation? Not yet

Frederic Saecker	
Year of Incident: 1989	Sentence: 15 years
Jurisdiction: Wisconsin	Year of Conviction: 1990
Charge: Rape, Kidnapping	Year of Exoneration: 1996
Conviction: Sexual Assault, Kidnapping, Burglary	Sentence Served: 6 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Victor Ortiz	
Year of Incident: 1983	Sentence: 25 years
Jurisdiction: New York	Year of Conviction: 1984
Charge: Rape	Year of Exoneration: 1996
Conviction: Rape	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Troy Webb	
Year of Incident: 1988	Sentence: 47 years
Jurisdiction: Virginia	Year of Conviction: 1989
Charge: Rape, Kidnapping, Robbery	Year of Exoneration: 1996
Conviction: Rape, Kidnapping, Robbery	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Timothy Durham	
Year of Incident: 1991	Sentence: 3,200 years
Jurisdiction: Oklahoma	Year of Conviction: 1993
Charge: Rape, Robbery	Year of Exoneration: 1997
Conviction: Rape, Robbery	Sentence Served: 3.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Anthony Hicks	
Year of Incident: 1990	Sentence: 20 years
Jurisdiction: Wisconsin	Year of Conviction: 1991
Charge: Rape, Robbery	Year of Exoneration: 1997
Conviction: Rape, Robbery	Sentence Served: 5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Marvin Mitchell	
Year of Incident: 1988	Sentence: 9 - 25 years
Jurisdiction: Massachusetts	Year of Conviction: 1990
Charge: Forcible Sexual Intercourse, Forcible Unnatural Sexual Intercourse	Year of Exoneration: 1997
Conviction: Forcible Sexual Intercourse, Forcible Unnatural Sexual Intercourse	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Chester Bauer	
Year of Incident: 1983	Sentence: 30 years
Jurisdiction: Montana	Year of Conviction: 1983
Charge: Rape, Assault	Year of Exoneration: 1997
Conviction: Rape, Agg. Assault w/ Weapon	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Donald Reynolds	
Year of Incident: 1986	Sentence: 55 years
Jurisdiction: Illinois	Year of Conviction: 1988
Charge: Crim. Sexual Assault, Att. Crim. Sexual Assault, Armed Rob., Att. Armed Robbery	Year of Exoneration: 1997
Conviction: Agg. Crim. Sexual Assault., Att. Crim. Sexual Assault., Armed Robbery, Att. Armed Robbery	Sentence Served: 11 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Billy Wardell	
Year of Incident: 1986	Sentence: 55 years
Jurisdiction: Illinois	Year of Conviction: 1988
Charge: Crim. Sexual Assault., Att. Crim. Sexual Assault., Armed Robbery, Att. Armed Robbery	Year of Exoneration: 1997
Conviction: Agg. Crim. Sexual Assault., Att. Crim. Sexual Assault, Armed Robbery, Att. Armed Robbery	Sentence Served: 11 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ben Salazar	
Year of Incident: 1991	Sentence: 30 years
Jurisdiction: Texas	Year of Conviction: 1992
Charge: Rape	Year of Exoneration: 1997
Conviction: Rape	Sentence Served: 5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Kevin Byrd	
Year of Incident: 1985	Sentence: Life
Jurisdiction: Texas	Year of Conviction: 1985
Charge: Rape	Year of Exoneration: 1997
Conviction: Rape	Sentence Served: 12 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Robert Miller	
Year of Incident: 1986	Sentence: Death
Jurisdiction: Oklahoma	Year of Conviction: 1988
Charge: Murder, Rape, Robbery, Att. Robbery	Year of Exoneration: 1998
Conviction: Murder, Rape, Robbery, Att. Robbery	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Not yet

David A. Gray	
Year of Incident: 1978	Sentence: 60 years
Jurisdiction: Illinois	Year of Conviction: 1978
Charge: Rape	Year of Exoneration: 1998
Conviction: Rape	Sentence Served: 20 years
	Real perpetrator found? Not yet
	Compensation? Yes

Perry Mitchell	
Year of Incident: 1982	Sentence: 30 years
Jurisdiction: South Carolina	Year of Conviction: 1984
Charge: Criminal Sexual Contact	Year of Exoneration: 1998
Conviction: 1st Degree Criminal Sexual Conduct	Sentence Served: 14.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Dale Mahan	
Year of Incident: 1983	Sentence: 35 years
Jurisdiction: Alabama	Year of Conviction: 1986
Charge: Rape, Kidnapping	Year of Exoneration: 1998
Conviction: Rape, Kidnapping	Sentence Served: 12 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ronnie Mahan	
Year of Incident: 1983	Sentence: Life
Jurisdiction: Alabama	Year of Conviction: 1986
Charge: Rape, Kidnapping	Year of Exoneration: 1998
Conviction: Rape, Kidnapping	Sentence Served: 12 years
	Real perpetrator found? Not yet
	Compensation? Not yet

John Willis	
Year of Incident: 1990	Sentence: 100 years
Jurisdiction: Illinois	Year of Conviction: 1993
Charge: Sexual Assault (2 cts.), Armed Robbery (2 cts.)	Year of Exoneration: 1999
Conviction: Sexual Assault (2 cts.), Armed Robbery (2 cts.)	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ron Williamson	
Year of Incident: 1982	Sentence: Death
Jurisdiction: Oklahoma	Year of Conviction: 1988
Charge: Murder	Year of Exoneration: 1999
Conviction: 1st Degree Murder	Sentence Served: 11 years
	Real perpetrator found? Yes
	Compensation? Not yet

Dennis Fritz	
Year of Incident: 1982	Sentence: Life
Jurisdiction: Oklahoma	Year of Conviction: 1988
Charge: Murder	Year of Exoneration: 1999
Conviction: 1st Degree Murder	Sentence Served: 11 years
	Real perpetrator found? Yes
	Compensation? Not yet

Ronald Jones	
Year of Incident: 1985	Sentence: Death
Jurisdiction: Illinois	Year of Conviction: 1989
Charge: Murder, Rape	Year of Exoneration: 1999
Conviction: Murder, Rape	Sentence Served: 8 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Calvin Johnson	
Year of Incident: 1983	Sentence: Life +
Jurisdiction: Georgia	Year of Conviction: 1983
Charge: Rape (2 cts.), Sodomy, Burglary	Year of Exoneration: 1999
Conviction: Rape, Agg. Sodomy, Burglary	Sentence Served: 16 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Habib Wahir Abdal	
Year of Incident: 1982	Sentence: 20 - Life
Jurisdiction: New York	Year of Conviction: 1983
Charge: Rape	Year of Exoneration: 1999
Conviction: Rape	Sentence Served: 17 years
	Real perpetrator found? Not yet
	Compensation? Not yet

James Richardson	
Year of Incident: 1989	Sentence: Life
Jurisdiction: West Virginia	Year of Conviction: 1989
Charge: Murder, Rape	Year of Exoneration:: 1999
Conviction: Murder, Rape	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Anthony Gray	
Year of Incident: 1991	Sentence: Life
Jurisdiction: Maryland	Year of Conviction: 1991
Charge: Murder, Rape	Year of Exoneration: 1999
Conviction: Murder, Rape	Sentence Served: 7 years
	Real perpetrator found? Yes
	Compensation? Not yet

Clyde Charles	
Year of Incident: 1981	Sentence: Life
Jurisdiction: Louisiana	Year of Conviction: 1982
Charge: Rape, Assault?	Year of Exoneration: 1999
Conviction: Agg. Rape	Sentence Served: 17 years
	Real perpetrator found? Yes
	Compensation? Not yet

Larry Holdren	
Year of Incident: 1982	Sentance: 30 - 60 years
Jurisdiction: West Virginia	Year of Conviction: 1985
Charge: Sexual Assault	Year of Exoneration: 2000
Conviction: Sexual Assault (6 cts.)	Sentence Served: 14 years
	Real perpetrator found? Not yet
	Compensation? Not yet

McKinley Cromedy	
Year of Incident: 1992	Sentence: 60 years
Jurisdiction: New Jersey	Year of Conviction: 1994
Charge: Sexual Assault, Robbery, Burglary, Criminal Sexual Contact, Terroristic Threats	Year of Exoneration: 2000
Conviction: Agg. Sex. Assault, Robbery, 3rd Degree Burglary, Agg. Crim. Sex. Conduct, Terroristic Threats	Sentence Served: 5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Herman Atkins	
Year of Incident: 1986	Sentence: 45 years
Jurisdiction: California	Year of Conviction: 1988
Charge: Forcible Rape (2 counts), Forcible Oral Cop. (2 counts), Robbery	Year of Exoneration: 2000
Conviction: Forcible Rape (2 counts), Forcible Oral Cop. (2 counts), Robbery	Sentence Served: 11.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Neil Miller	
Year of Incident: 1989	Sentence: 26 - 45 years
Jurisdiction: Massachusetts	Year of Conviction: 1990
Charge: Rape, Robbery	Year of Exoneration: 2000
Conviction: Agg. Rape, Agg. Robbery	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

A.B. Butler	
Year of Incident: 1983	Sentence: 99 years
Jurisdiction: Texas	Year of Conviction: 1983
Charge: Rape, Kidnaping	Year of Exoneration: 2000
Conviction: Aggravated Kidnaping (Rape was aggravating factor)	Sentence Served: 16.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Armand Villasana	
Year of Incident: 1998	Sentence: Not Sentenced
Jurisdiction: Missouri	Year of Conviction: 1999
Charge: Rape, Kidnaping	Year of Exoneration: 2000
Conviction: Rape, Kidnaping	Sentence Served: 2 years
	Real perpetrator found? Not yet
	Compensation? Not yet

William Gregory	
Year of Incident: 1992	Sentence: 70 years
Jurisdiction: Kentucky	Year of Conviction: 1993
Charge: Rape, Att. Rape, Burglary	Year of Exoneration: 2000
Conviction: Rape, Crim. Attempt. Rape, Burglary (2 cts.)	Sentence Served: 7 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Eric Sarsfield	
Year of Incident: 1986	Sentence: 10 - 15 years
Jurisdiction: Massachusetts	Year of Conviction: 1987
Charge: Rape	Year of Exoneration: 2000
Conviction: Rape	Sentence Served: 9.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Roy Criner	
Year of Incident: 1986	Sentence: 99 years
Jurisdiction: Texas	Year of Conviction: 1990
Charge: Agg. Sexual Assault	Year of Exoneration: 2000
Conviction: Agg. Sexual Assault	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Jerry Watkins	
Year of Incident: 1984	Sentence: 60 years
Jurisdiction: Indiana	Year of Conviction: 1987
Charge: Murder, Rape	Year of Exoneration: 2000
Conviction: Murder, Rape	Sentence Served: 13 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Larry Youngblood	
Year of Incident: 1983	Sentence: 10.5 years
Jurisdiction: Arizona	Year of Conviction: 1985
Charge: Sexual Assault, Kidnaping, Child Molestation	Year of Exoneration: 2000
Conviction: Sexual Assault, Kidnaping, Child Molestation	Sentence Served: 8 years (aggregate)
	Real perpetrator found? Yes
	Compensation? Undisclosed

Carlos Lavernia	
Year of Incident: 1983	Sentence: 99 years
Jurisdiction: Texas	Year of Conviction: 1985
Charge: Rape	Year of Exoneration: 2000
Conviction: Agg. Rape	Sentence Served: 15 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Earl Washington	
Year of Incident: 1982	Sentence: Death
Jurisdiction: Virginia	Year of Conviction: 1984
Charge: Murder, Rape	Year of Exoneration: 2000
Conviction: Murder, Rape	Sentence Served: 17 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Anthony Robinson	
Year of Incident: 1986	Sentence: 27 years
Jurisdiction: Texas	Year of Conviction: 1987
Charge: Sexual Assault	Year of Exoneration: 2000
Conviction: Sexual Assault	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Frank Lee Smith	
Year of Incident: 1985	Sentence: Death
Jurisdiction: Florida	Year of Conviction: 1986
Charge: Murder, Rape	Year of Exoneration: 2000
Conviction: Murder, Rape	Sentence Served: Died in prison
	Real perpetrator found? Yes
	Compensation? Not yet

James O'Donnell	
Year of Incident: 1997	Sentence: 3.5 - 7 years
Jurisdiction: New York	Year of Conviction: 1998
Charge: Att. Sodomy, Assault	Year of Exoneration: 2000
Conviction: Att. Sodomy, 2nd Deg. Assault	Sentence Served: 2 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Willie Nesmith	
Year of Incident: 1982	Sentence: 9 - 25 years
Jurisdiction: Pennsylvania	Year of Conviction: 1982
Charge: Rape	Year of Exoneration: 2000
Conviction: Rape	Sentence Served: 18 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Richard Danziger	
Year of Incident: 1988	Sentence: Life
Jurisdiction: Texas	Year of Conviction: 1990
Charge: Agg. Sexual Assault	Year of Exoneration: 2001
Conviction: Agg. Sexual Assault	Sentence Served: 12 years
	Real perpetrator found? Yes
	Compensation? Not yet

Christopher Ochoa	
Year of Incident: 1988	Sentence: Life
Jurisdiction: Texas	Year of Conviction: 1988
Charge: Murder, Sexual Assault	Year of Exoneration: 2001
Conviction: Murder, Sexual Assault	Sentence Served: 12 years
	Real perpetrator found? Yes
	Compensation? Not yet

Kenneth Waters	
Year of Incident: 1980	Sentence: Life
Jurisdiction: Massachusetts	Year of Conviction: 1983
Charge: Murder, Robbery	Year of Exoneration: 2001
Conviction: Murder, Robbery	Sentence Served: 18 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Danny Brown	
Year of Incident: 1981	Sentence: Life
Jurisdiction: Ohio	Year of Conviction: 1982
Charge: Murder, Robbery	Year of Exoneration: 2001
Conviction: Agg. Murder, Agg. Burglary	Sentence Served: 19 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Jerry Frank Townsend	
Year of Incident: 1973, 1979, 1980	Sentence: Various
Jurisdiction: Florida	Year of Conviction: Various
Charge: Several Murders, Rape	Year of Exoneration: 2001
Conviction: Several Murders, Rape	Sentence Served: 22 years
	Real perpetrator found? In some cases
	Compensation? Not yet

Calvin Washington	
Year of Incident: 1986	Sentence: Life
Jurisdiction: Texas	Year of Conviction: 1987
Charge: Murder, Rape	Year of Exoneration: 2001
Conviction: Capital Murder	Sentence Served: 13 years
	Real perpetrator found? Yes
	Compensation? Not yet

Charles Irvin Fain	
Year of Incident: 1982	Sentence: Death
Jurisdiction: Idaho	Year of Conviction: 1983
Charge: Murder, Rape, Kidnaping	Year of Exoneration: 2001
Conviction: Murder, Rape, Kidnaping	Sentence Served: 18 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Eduardo Velasquez	
Year of Incident: 1987	Sentence: 12 - 18 years
Jurisdiction: Massachusetts	Year of Conviction: 1988
Charge: Rape, Assault with Intent	Year of Exoneration: 2001
Conviction: Agg. Rape (2 cts.), Assault & Batt. w/ Dang. Weapon (2 cts.), Indecent Assault & Batt. on Adult (2 cts.), Assault & Batt. (2 cts.)	Sentence Served: 13 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Anthony Michael Green	
Year of Incident: 1988	Sentence: 20 - 50 years
Jurisdiction: Ohio	Year of Conviction: 1988
Charge: Rape, Robbery	Year of Exoneration: 2001
Conviction: Rape, Aggravated Robbery	Sentence Served: 13 years
	Real perpetrator found? Yes
	Compensation? Yes

John Dixon	
Year of Incident: 1990	Sentence: 45 years
Jurisdiction: New Jersey	Year of Conviction: 1992
Charge: Sexual Assault, Kidnaping, Robbery, Unlawful Possession of a Weapon	Year of Exoneration: 2001
Conviction: First Deg. Sexual Assault (2 cts.), First Deg. Kidnaping, Robbery, Unlawful Possession of a Weapon	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Marcellius Bradford	
Year of Incident: 1986	Sentence: 12 years
Jurisdiction: Illinois	Year of Conviction: 1988
Charge: Murder, Rape, Armed Robbery, Kidnaping	Year of Exoneration: 2001
Conviction: Aggravated Kidnaping	Sentence Served: 6.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Calvin Ollins	
Year of Incident: 1986	Sentence: Life
Jurisdiction: Illinois	Year of Conviction: 1988
Charge: Murder, Sexual Assault, Kidnaping	Year of Exoneration: 2001
Conviction: Murder, Sexual Assault, Kidnaping	Sentence Served: 14 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Larry Ollins	
Year of Incident: 1986	Sentence: Life
Jurisdiction: Illinois	Year of Conviction: 1988
Charge: Murder, Sexual Assault, Robbery, Kidnapping	Year of Exoneration: 2001
Conviction: Murder, Agg. Criminal Sexual Assault, Armed Robbery, Agg. Kidnaping	Sentence Served: 14 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Omar Saunders	
Year of Incident: 1986	Sentence: Life
Jurisdiction: Illinois	Year of Conviction: 1988
Charge: Murder, Robbery, Kidnaping, Sexual Assault	Year of Exoneration: 2001
Conviction: Murder, Armed Robbery, Kidnaping, Agg. Crim. Sexual Assault (2 cts.)	Sentence Served: 14 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Lesly Jean	
Year of Incident: 1982	Sentence: Life x2
Jurisdiction: North Carolina	Year of Conviction: 1982
Charge: Rape, Sexual Assault	Year of Exoneration: 2001
Conviction: Rape and several counts Sexual Assault	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Jeffrey Pierce	
Year of Incident: 1985	Sentence: 65 years
Jurisdiction: Oklahoma	Year of Conviction: 1986
Charge: Rape, Robbery	Year of Exoneration: 2001
Conviction: Rape, Robbery	Sentence Served: 15 years
	Real perpetrator found? Yes
	Compensation? Not yet

David Shawn Pope	
Year of Incident: 1985	Sentence: 45 years
Jurisdiction: Texas	Year of Conviction: 1986
Charge: Sexual Assault	Year of Exoneration: 2001
Conviction: Agg. Sexual Assault	Sentence Served: 15 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Victor Larue Thomas	
Year of Incident: 1985	Sentence: Life
Jurisdiction: Texas	Year of Conviction: 1986
Charge: Rape, Robbery, Kidnaping	Year of Exoneration: 2001
Conviction: Agg. Sexual Assault, Agg. Robbery, Agg. Kidnaping	Sentence Served: 15 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Marvin Anderson	
Year of Incident: 1982	Sentence: 210 years
Jurisdiction: Virginia	Year of Conviction: 1982
Charge: Rape, Abduction, Sodomy, Robbery	Year of Exoneration: 2001
Conviction: Rape (2 cts.), Forcible Sodomy, Abduction, Robbery	Sentence Served: 15 years
	Real perpetrator found? Yes (see summary)
	Compensation? Undisclosed

Larry Mayes	
Year of Incident: 1980	Sentence: 80 years
Jurisdiction: Indiana	Year of Conviction: 1982
Charge: Rape, Robbery, Unlawful Deviate Conduct	Year of Exoneration: 2001
Conviction: Rape, Robbery, Unlawful Deviate Conduct	Sentence Served: 18.5 years (21 aggregate)
	Real perpetrator found? Not yet
	Compensation? Not yet

Richard Alexander	
Year of Incident: 1996	Sentence: 70 years
Jurisdiction: Indiana	Year of Conviction: 1998
Charge: Rape, Att. Rape (2 cts.), Robbery (2 cts.), Crim. Dev. Conduct (2 cts.), Confinement (2 cts.), Att. Robbery, Burglary, Auto Theft	Year of Exoneration: 2001
Conviction: Att. Rape, Burglary, Auto Theft, Crim. Dev. Conduct, Robbery	Sentence Served: 5.5 years
	Real perpetrator found? See Profile
	Compensation? Not yet

Leonard McSherry	
Year of Incident: 1988	Sentence: 48 years
Jurisdiction: California	Year of Conviction: 1988
Charge: Rape, Oral Copulation, Digital Penetration, Kidnaping	Year of Exoneration: 2001
Conviction: Rape, Oral Copulation, Digital Penetration, Kidnaping	Sentence Served: 13 years
	Real perpetrator found? Yes
	Compensation? Yes

Mark Webb	
Year of Incident: 1985	Sentence: 30 years
Jurisdiction: Texas	Year of Conviction: 1987
Charge: Rape	Year of Exoneration: 2001
Conviction: Rape	Sentence Served: 10 years (13 aggregate)
	Real perpetrator found? Not yet
	Compensation? Not yet

Bruce Godschalk	
Year of Incident: 1986	Sentence: 10 - 20 years
Jurisdiction: Pennsylvania	Year of Conviction: 1987
Charge: Rape, Burglary	Year of Exoneration: 2002
Conviction: Forcible Rape (2 cts.), Burglary (2 cts.)	Sentence Served: 15 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ray Krone	
Year of Incident: 1991	Sentence: Death (plus 21 years)
Jurisdiction: Arizona	Year of Conviction: 1992 (1996 - retrial)
Charge: Murder, Kidnaping, Sexual Assault	Year of Exoneration: 2002
Conviction: First Degree Murder, Kidnaping	Sentence Served: 10 years
	Real perpetrator found? Yes
	Compensation? Not yet

Hector Gonzalez	
Year of Incident: 1995	Sentence: 15 years to Life
Jurisdiction: New York	Year of Conviction: 1995
Charge: Murder	Year of Exoneration: 2002
Conviction: Murder	Sentence Served: 6.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Alejandro Dominguez	
Year of Incident: 1989	Sentence: 9 years
Jurisdiction: Illinois	Year of Conviction: 1990
Charge: Rape, Home Invasion	Year of Exoneration: 2002
Conviction: Rape, Home Invasion?	Sentence Served: 4 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Clark McMillan	
Year of Incident: 1979	Sentence: 119 years
Jurisdiction: Tennessee	Year of Conviction: 1980
Charge: Rape, Robbery	Year of Exoneration: 2002
Conviction: Aggravated Rape, Robbery With A Deadly Weapon	Sentence Served: 22 years
	Real perpetrator found? yes
	Compensation? Not yet

Larry Johnson	
Year of Incident: 1984	Sentence: Life plus
Jurisdiction: Missouri	Year of Conviction: 1984
Charge: Rape, Sodomy, Robbery, Kidnaping	Year of Exoneration: 2002
Conviction: Rape, Sodomy, First Deg. Robbery, Kidnaping	Sentence Served: 18 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Eddie Joe Lloyd	
Year of Incident: 1984	Sentence: Life w/o parole
Jurisdiction: Michigan	Year of Conviction: 1985
Charge: Murder	Year of Exoneration: 2002
Conviction: First Degree Felony Murder	Sentence Served: 17 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Arvin McGee	
Year of Incident: 1987	Sentence: 298
Jurisdiction: Oklahoma	Year of Conviction: 1989
Charge: Rape, Kidnaping, Robbery, Forcible Sodomy	Year of Exoneration: 2002
Conviction: Rape, Kidnaping, Robbery, Forcible Sodomy	Sentence Served: 14
	Real perpetrator found? Yes
	Compensation? Not yet

Jimmy Ray Bromgard	
Year of Incident: 1987	Sentence: 40 years
Jurisdiction: Montana	Year of Conviction: 1987
Charge: Sexual Intercourse w/o Consent	Year of Exoneration: 2002
Conviction: Sexual Intercourse w/o Consent (3 cts.)	Sentence Served: 15.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Albert Johnson	
Year of Incident: 1991	Sentence: 39 years
Jurisdiction: California	Year of Conviction: 1992
Charge: Sexual Assault	Year of Exoneration: 2002
Conviction: Sexual Assault (2 cts.)	Sentence Served: 10 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Douglas Echols	
Year of Incident: 1986	Sentence: 5 years
Jurisdiction: Georgia	Year of Conviction: 1987
Charge: Rape, Kidnaping, Robbery	Year of Exoneration: 2002
Conviction: Rape, Kidnaping, Robbery	Sentence Served: 5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Samuel Scott	
Year of Incident: 1986	Sentence: Life +
Jurisdiction: Georgia	Year of Conviction: 1987
Charge: Rape, Kidnaping, Robbery	Year of Exoneration: 2002
Conviction: Rape, Kidnaping, Robbery	Sentence Served: 15 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Bernard Webster	
Year of Incident: 1982	Sentence: 30
Jurisdiction: Maryland	Year of Conviction: 1983
Charge: Rape, Daytime Housebreaking	Year of Exoneration: 2002
Conviction: Rape, Daytime Housebreaking	Sentence Served: 20
	Real perpetrator found? Yes
	Compensation? Not yet

Antron McCray	
Year of Incident: 1989	Sentence: 5-10 years
Jurisdiction: New York	Year of Conviction: 1989
Charge: Rape, Assault	Year of Exoneration: 2002
Conviction: Rape, Assault	Sentence Served: 6 years
	Real perpetrator found? Yes
	Compensation? Not yet

Kevin Richardson	
Year of Incident: 1989	Sentence: 5-10 years
Jurisdiction: New York	Year of Conviction: 1989
Charge: Attempted Murder, Rape, Sodomy, Robbery	Year of Exoneration: 2002
Conviction: Attempted Murder, Rape, Sodomy, Robbery	Sentence Served: 6.5 years
	Real perpetrator found? Yes
	Compensation? Not yet

Yusef Salaam	
Year of Incident: 1989	Sentence: 5-10 years
Jurisdiction: New York	Year of Conviction: 1989
Charge: Rape, Assault	Year of Exoneration: 2002
Conviction: Rape, Assault	Sentence Served: 6.5 years
	Real perpetrator found? Yes
	Compensation? Not yet

Raymond Santana	
Year of Incident: 1989	Sentence: 5-10 years
Jurisdiction: New York	Year of Conviction: 1989
Charge: Rape, Assault	Year of Exoneration: 2002
Conviction: Rape, Assault	Sentence Served: 8 years
	Real perpetrator found? Yes
	Compensation? Not yet

Kharey Wise	
Year of Incident: 1989	Sentence: 5-15 years
Jurisdiction: New York	Year of Conviction: 1989
Charge: Assault, Sexual Abuse, Riot	Year of Exoneration: 2002
Conviction: Assault, Sexual Abuse, Riot	Sentence Served: 11.5 years
	Real perpetrator found? Yes
	Compensation? Not yet

Paula Gray	
Year of Incident: 1978	Sentence: 50 years
Jurisdiction: Illinois	Year of Conviction: 1978
Charge: Murder, Rape, Perjury	Year of Exoneration: 2002
Conviction: Murder, Rape, Perjury	Sentence Served: 9 years
	Real perpetrator found? Yes
	Compensation? Not yet

David Brian Sutherlin	
Year of Incident: 1985	Sentence:
Jurisdiction: Minnesota	Year of Conviction: 1985
Charge: Rape	Year of Exoneration: 2002
Conviction: Rape	Sentence Served: 0 years (serving unrelated homicide sentence)
	Real perpetrator found? Yes
	Compensation? No

Gene Bibbins	
Year of Incident: 1986	Sentence: Life
Jurisdiction: Louisiana	Year of Conviction: 1987
Charge: Rape, Burglary	Year of Exoneration: 2003
Conviction: Agg. Rape, Agg. Burglary	Sentence Served: 16
	Real perpetrator found? Not yet
	Compensation? Not yet

Julius Ruffin	
Year of Incident: 1981	Sentence: Life
Jurisdiction: Virginia	Year of Conviction: 1981
Charge: Rape, Sodomy	Year of Exoneration: 2003
Conviction: Rape, Sodomy	Sentence Served: 21 years
	Real perpetrator found? Yes
	Compensation? Not yet

Dennis Maher	
Year of Incident: 1983	Sentence: Life
Jurisdiction: Massachusetts	Year of Conviction: 1984
Charge: Rape, Assault w/ Intent to Rape, Assault & Battery, Aggravated Rape	Year of Exoneration: 2003
Conviction: Rape, Assault w/ Intent to Rape, Assault & Battery, Aggravated Rape	Sentence Served: 19 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Eddie James Lowery	
Year of Incident: 1981	Sentence: 11 years to life
Jurisdiction: Kansas	Year of Conviction: 1982
Charge: Rape, Battery, Burglary	Year of Exoneration: 2003
Conviction: Rape, Agg. Battery, Agg. Burglary	Sentence Served: 11 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Michael Mercer	
Year of Incident: 1991	Sentence: 20.5 - 41 years
Jurisdiction: New York	Year of Conviction: 1992
Charge: Rape, Sodomy, Robbery	Year of Exoneration: 2003
Conviction: Rape, Sodomy, Robbery	Sentence Served: 12
	Real perpetrator found? Yes
	Compensation? Not yet

Paul D. Kordonowy	
Year of Incident: 1987	Sentence: 30 years
Jurisdiction: Montana	Year of Conviction: 1989
Charge: Aggravated Burglary, Sexual Intercourse w/o Consent	Year of Exoneration: 2003
Conviction: Aggravated Burglary, Sexual Intercourse w/o Consent	Sentence Served:
	Real perpetrator found? Not yet
	Compensation? Not yet

Dana Holland	
Year of Incident: 1993	Sentence: 118 years
Jurisdiction: Illinois	Year of Conviction: 1993
Charge: Aggravated Criminal Sexual Assault	Year of Exoneration: 2003
Conviction: Aggravated Criminal Sexual Assault	Sentence Served: 10 years
	Real perpetrator found? Yes
	Compensation? Not yet

Kenneth Wyniemko	
Year of Incident: 1994	Sentence: 40-60 years
Jurisdiction: Michigan	Year of Conviction: 1994
Charge: Criminal Sexual Conduct, Armed Robbery, Breaking and Entering	Year of Exoneration: 2003
Conviction: Criminal Sexual Conduct (15 counts), Armed Robbery, Breaking and Entering	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Undisclosed

Mark Reid	
Year of Incident: 1996	Sentence: 12 years
Jurisdiction: Connecticut	Year of Conviction: 1997
Charge: Sexual Assault in the First degree, Kidnapping in the First Degree	Year of Exoneration: 2003
Conviction: Sexual Assault in the First degree, Kidnapping in the First Degree	Sentence Served: 6 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Michael Evans	
Year of Incident: 1976	Sentence: 400 years
Jurisdiction: Illinois	Year of Conviction: 1977
Charge: Murder, Aggravated Kidnapping, Rape, Deviate Sexual Assault, and Indecent Liberties with a Child	Year of Exoneration: 2003
Conviction: Murder, Aggravated Kidnapping, Rape, Deviate Sexual Assault, and Indecent Liberties with a Child	Sentence Served: 27 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Paul Terry	
Year of Incident: 1976	Sentence: 400 years
Jurisdiction: Illinois	Year of Conviction: 1977
Charge: Murder, Aggravated Kidnapping, Rape, Deviate Sexual Assault, and Indecent Liberties with a Child	Year of Exoneration: 2003
Conviction: Murder, Aggravated Kidnapping, Rape, Deviate Sexual Assault, and Indecent Liberties with a Child	Sentence Served: 27 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Lonnie Erby	
Year of Incident: 1985	Sentence: 115 years
Jurisdiction: Missouri	Year of Conviction: 1986
Charge: Kidnapping, Armed Criminal Action, Forcible Rape, Forcible Sodomy, Robbery in the First Degree, Sexual Abuse, Attempted Rape, Attempted Robbery, Felonious Restraint, and Stealing	Year of Exoneration: 2003
Conviction: Kidnapping, Armed Criminal Action, Forcible Rape, Forcible Sodomy, and Stealing	Sentence Served: 17 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Steven Avery	
Year of Incident: 1985	Sentence: 32 years
Jurisdiction: Wisconsin	Year of Conviction: 1986
Charge: Sexual Assault, Attempted Murder, False Imprisonment	Year of Exoneration: 2003
Conviction: First Degree Sexual Assault, Attempted Murder, False Imprisonment	Sentence Served: 18 years
	Real perpetrator found? Yes
	Compensation? Not yet

Calvin Willis	
Year of Incident: 1981	Sentence: Life
Jurisdiction: Louisiana	Year of Conviction: 1982
Charge: Rape	Year of Exoneration: 2003
Conviction: Aggravated Rape	Sentence Served: 22 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Calvin Lee Scott	
Year of Incident: 1982	Sentence: 25 years
Jurisdiction: Oklahoma	Year of Conviction: 1983
Charge: Rape	Year of Exoneration: 2003
Conviction: Rape	Sentence Served: 20 years
	Real perpetrator found? Yes
	Compensation? Undisclosed

Ulysses Rodriguez Charles	
Year of Incident: 1980	Sentence: 72-80 years
Jurisdiction: Massachusetts	Year of Conviction: 1984
Charge: Aggravated Rape, Robbery, Unlawful Confinement, Entering Armed w/ Intent	Year of Exoneration: 2003
Conviction: Aggravated Rape, Robbery, Unlawful Confinement, Entering Armed w/ Intent to Commit a Felony	Sentence Served: 18 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Nicholas Yarris	
Year of Incident: 1981	Sentence: Death
Jurisdiction: Pennsylvania	Year of Conviction: 1982
Charge: Murder, Rape Abduction	Year of Exoneration: 2003
Conviction: Murder, Rape, Abduction	Sentence Served: 21 years
	Real perpetrator found? Not yet
	Compensation? Undisclosed

Stephan Cowans	
Year of Incident: 1998	Sentence: 30 - 45 years
Jurisdiction: Massachusetts	Year of Conviction: 1998
Charge: Armed Assault w/ Intent to Murder, Home Invasion, Assault and Battery by means of a Dangerous Weapon, Armed Robbery, Assault and Battery on a Police Officer, Assault by means of a Dangerous Weapon, Unlicensed Possession of a Firearm	Year of Exoneration: 2004
	Sentence Served: 6.5
Conviction: Convicted as Charged	Real perpetrator found? Not yet
	Compensation? Undisclosed

Darryl Hunt	
Year of Incident: 1984	Sentence: Life
Jurisdiction: North Carolina	Year of Conviction: 1985, 1990
Charge: Murder	Year of Exoneration: 2004
Conviction: First Degree Murder	Sentence Served: 18 years (aggregate)
	Real perpetrator found? Yes
	Compensation? Undisclosed

Anthony Powell	
Year of Incident: 1991	Sentence: 12 - 20 years
Jurisdiction: Massachusetts	Year of Conviction: 1992
Charge: Rape, Kidnaping	Year of Exoneration: 2004
Conviction: Rape, Kidnaping	Sentence Served: 12 years
	Real perpetrator found? Not yet
	Compensation? Undisclosed

Josiah Sutton	
Year of Incident: 1998	Sentence: 25 years
Jurisdiction: Texas	Year of Conviction: 1999
Charge: Rape	Year of Exoneration: 2004
Conviction: Rape	Sentence Served: 4.5 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Lafonso Rollins	
Year of Incident: 1993	Sentence: 75 years
Jurisdiction: Illinois	Year of Conviction: 1993
Charge: Rape	Year of Exoneration: 2004
Conviction: Rape	Sentence Served: 11 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Ryan Matthews	
Year of Incident: 1997	Sentence: Death
Jurisdiction: Louisiana	Year of Conviction: 1999
Charge: Murder	Year of Exoneration: 2004
Conviction: First Degree Murder	Sentence Served: 5 years
	Real perpetrator found? yes
	Compensation? Not yet

Wilton Dedge	
Year of Incident: 1981	Sentence: Life
Jurisdiction: Florida	Year of Conviction: 1982, 1984 (retrial)
Charge: Sexual Battery, Assault, Burglary	Year of Exoneration: 2004
Conviction: Sexual Battery, Aggravated Battery, Burglary	Sentence Served: 22 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Arthur Lee Whitfield	
Year of Incident: 1981	Sentence: 63 years
Jurisdiction: Virginia	Year of Conviction: 1982
Charge: Rape (2 crimes), Sodomy, Robbery	Year of Exoneration: 2004
Conviction: Rape, Sodomy, Robbery	Sentence Served: 22 years
	Real perpetrator found? yes
	Compensation? Not yet

Barry Laughman	
Year of Incident: 1987	Sentence: Life
Jurisdiction: Pennsylvania	Year of Conviction: 1988
Charge: Murder, Rape, Robbery, Burglary	Year of Exoneration: 2004
Conviction: Murder, Rape, Robbery, Burglary	Sentence Served: 16 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Clarence Harrison	
Year of Incident: 1986	Sentence: Life
Jurisdiction: Georgia	Year of Conviction: 1987
Charge: Rape, Robbery	Year of Exoneration: 2004
Conviction: Rape, Robbery	Sentence Served: 17 years
	Real perpetrator found? Not yet
	Compensation? Not yet

David Allen Jones	
Year of Incident: Various	Sentence: 36 to Life
Jurisdiction: California	Year of Conviction: 1995
Charge: Murder, Rape	Year of Exoneration: 2004
Conviction: Murder, Rape	Sentence Served: 9 years
	Real perpetrator found? yes
	Compensation? undisclosed

Bruce Dallas Goodman	
Year of Incident: 1984	Sentence: 5 to Life
Jurisdiction: Utah	Year of Conviction: 1986
Charge: Murder, Rape, Sodomy, Kidnap	Year of Exoneration: 2004
Conviction: Second Degree Murder	Sentence Served: 19 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Donald Wayne Good	
Year of Incident: 1983	Sentence: Life
Jurisdiction: Texas	Year of Conviction: 1984
Charge: Rape, Sexual Abuse, Burglary	Year of Exoneration: 2004
Conviction: Rape, Sexual Abuse, Burglary	Sentence Served: 9 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Brandon Moon	
Year of Incident: 1987	Sentence: 75 years
Jurisdiction: Texas	Year of Conviction: 1988
Charge: Sexual Assault (3 cts.)	Year of Exoneration: 2004
Conviction: Aggravated Sexual Assault (all counts)	Sentence Served: 16 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Donte Booker	
Year of Incident: 1986	Sentence: 10-25 years
Jurisdiction: Ohio	Year of Conviction: 1987
Charge: Rape, Kidnaping, Robbery	Year of Exoneration: 2005
Conviction: Rape, Kidnaping, Robbery	Sentence Served:
	Real perpetrator found? Not yet
	Compensation? Not yet

Dennis Brown	
Year of Incident: 1984	Sentence: Life
Jurisdiction: Louisiana	Year of Conviction: 1985
Charge: Rape	Year of Exoneration: 2005
Conviction: Rape	Sentence Served: 19 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Peter Rose	
Year of Incident: 1994	Sentence: 27 years
Jurisdiction: California	Year of Conviction: 1996
Charge: Rape, Kidnaping, Forced Oral Copulation	Year of Exoneration: 2005
Conviction: Rape, Kidnaping, Forced Oral Copulation	Sentence Served: 8 years (10 aggregate)
	Real perpetrator found? Not yet
	Compensation? Not yet

Michael Anthony Williams	
Year of Incident: 1981	Sentence: Life
Jurisdiction: Louisiana	Year of Conviction: 1981
Charge: Aggravated Rape	Year of Exoneration: 2005
Conviction: Aggravated Rape	Sentence Served: 24 years
	Real perpetrator found? Not yet
	Compensation? Not yet

Anthony D. Woods	
Year of Incident: 1983	Sentence: 25 years
Jurisdiction: Missouri	Year of Conviction: 1984
Charge: Forcible Rape, Felonious Restraint, Armed Criminal Action	Year of Exoneration: 2005
Conviction: Forcible Rape, Felonious Restraint, Armed Criminal Action	Sentence Served: 18 years
	Real perpetrator found? Not yet
	Compensation? Not yet