Order Code RL34068

CRS Report for Congress

Civil Commitment of Sexually Dangerous Persons

July 2, 2007

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Prepared for Members and Committees of Congress

Civil Commitment of Sexually Dangerous Persons

Summary

The 109th Congress passed legislation (P.L. 109-248) that allows the federal government to civilly commit "sexually dangerous persons." Civil commitment, as it relates to sex offenders, is when a state retains custody of an individual, found by a judge or jury to be a "sexually dangerous person," by involuntarily committing the person to a secure mental health facility after the offender's prison sentence is done. In 1990, the state of Washington passed the first civil commitment law for sexually dangerous persons. Currently, 18 other states and the federal government have similar laws. Moreover, the Supreme Court, in *Kansas v. Hendricks* and *Kansas v. Crane*, ruled that current civil commitment laws are constitutional.

The civil commitment of sex offenders centers on the belief that sex offenders are more likely than other offenders to re-offend. However, data on sex offender recidivism is varied. Data show that the recidivism risk for sex offenders may be lower than it is typically thought to be; in fact, some studies show that sex offenders recidivate at a lower rate than many other criminals. Other studies show that, given time, almost all sex offenders will commit a new sex crime. Most discussions about recidivism examine ways to decrease recidivism; for example, by providing sex offenders with treatment. Research on the efficacy of sex offender treatment is promising, but it cannot prove that treatment reduces recidivism. Cognitive-behavioral techniques appear to be the most promising type of treatment for sex offenders, although some research indicates that offenders who receive a diagnosis of psychopathy may be less amenable to treatment.

For civil commitment to be effective, practitioners must be able to identify sex offenders who pose a high risk of re-offending. Although the ability of practitioners to identify offenders has improved, there is still the possibility that an offender who would not re-offend might be committed. Moreover, determining when it is safe to release a sex offender from custody is still difficult for practitioners. Such concerns have raised questions about alternatives to civil commitment. One potential alternative is the use of less restrictive measures, such as intensive community supervision. Another alternative is the use of indeterminate sentences for sex offenders. The cost of civil commitment programs has fueled debate about other viable means for managing dangerous sex offenders. Data show that civil commitment programs are expensive when compared with traditional incarceration or community supervision. The cost of civil commitment programs is expected to grow as more offenders are committed.

An issue for Congress is whether civil commitment is a sustainable policy for dealing with sexually dangerous persons, or whether there is a different way to manage this population effectively. The issue of civil commitment raises a series of concomitant questions: How much do civil commitment programs cost? How dangerous are sex offenders? Is sex offender treatment effective? Can sexually dangerous persons be defined and identified? Are there less restrictive alternatives for managing sex offenders?

This report will be updated as warranted.

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Introduction[1]

In 1990, the state of Washington passed a law that allows for the civil commitment of sex offenders. Civil commitment, as it relates to sex offenders, is when a state retains custody of an individual, found by a judge or jury to be a "sexually dangerous person," by involuntarily committing the person to a secure mental health facility after the offender's prison sentence is done. The state of Washington law requires the state to prove that such offenders suffer from a mental abnormality or personality disorder that would make them likely to engage in predatory acts of sexual violence unless they are confined.[2] The law allows for civil commitment after an offender completes a prison sentence for his or her crime(s). Since 1990, 19 states have passed similar legislation,[3] and in 2006, Congress passed legislation (P.L. 109-248) that allows the Attorney General to civilly commit federal inmates who are found to be sexually dangerous persons.

Every state has "civil commitment" laws that allow for the involuntarily hospitalization of people with serious mental illness.[4] Generally speaking, people can be civilly committed when they are a danger to others. When a person's symptoms begin to remit, the individual is discharged and typically referred to aftercare services. Hospital stays for individuals under a civil commitment order for mental illness rarely exceed 30 days. However, in this report, "civil commitment" refers to civil commitment laws targeted at the hospitalization or commitment to a secure institution of "sexually violent persons" after they are released from prison.

With respect to sex offenders, civil commitment laws allow states, and now the federal government, to civilly commit sexually dangerous persons. For the most part, discussions about sexually dangerous persons treat sex offenders as a homogenous group, sometimes making a distinction between "rapists" and "child molesters." However, sex offenders are a heterogeneous group of offenders; under many state statutes, sex offenses range from rape to child molestation to exhibitionism.

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[1] Michael Nance, a CRS intern, assisted with the research and development of this report.

[2] See **Appendix A**.

[3] Monica Davey and Abby Goodnough, "Doubts Rise as States Hold Sex Offenders After Prison," *New York Times*, March 4, 2007, p. 1, hereafter referred to as "New York Times Civil Commitment Article."

[4] W. Lawrence Fitch, "Sexual Offender Commitment in the United States," *Annals of the New York Academy of Sciences*, vol. 989 (2003), p. 489, hereafter referred to as "W.L. Fitch."

An issue for Congress is whether civil commitment is a sustainable policy for dealing with sexually dangerous persons, or whether there is a different way to manage this population effectively. The issue of civil commitment raises a series of concomitant questions: How much do civil commitment programs cost? How dangerous are sex offenders? Is sex offender treatment effective? Can sexually dangerous persons be defined and identified? Are there less restrictive alternatives for managing sex offenders?

This report begins with an outline of the history of civil commitment laws, followed by a review of two cases, *Kansas v. Hendricks* and *Kansas v. Crane*, in which the Supreme Court addressed constitutional issues involving civil commitment. This review is followed by a summary of the recently enacted legislation governing the federal civil commitment program. The report then discusses research on sex offender recidivism and treatment. It concludes with an evaluation of some of the issues surrounding civil commitment.

Background on Civil Commitment

This section describes the history of civil commitment laws in the United States, two Supreme Court rulings on the constitutionality of civil commitment programs, and a description of the federal civil commitment program.

History of Civil Commitment Laws

With respect to sexually dangerous persons, current civil commitment laws are a reincarnation of what are generally referred to as "sexual psychopath"[5] laws. Beginning in the 1930s, states started to enact sexual psychopath laws, which grew out of the rehabilitative ideal that characterized the American criminal justice system at the time.[6] By the mid-1960s, more than half of the states in the country had enacted some form of sexual psychopath laws.[7] Sexual psychopath laws reflected the growing belief that sexual psychopaths could be identified and treated.[8] The influence of psychiatry on sexual psychopath laws can be seen in the four presumptions on which the laws were based: (1) sexual psychopaths are distinguishable from generic sex offenders, (2) individuals commit sex offenses because of mental disease, (3) mental diseases are treatable and curable, and (4)

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[5] Sexual psychopaths were offenders who did not suffer from a serious mental illness but who were believed to have a "psychopathic personality" that caused their criminal behavior. W.L. Fitch, p. 490.

[6] Ibid.

[7] Grant H. Morris, "The Evil that Men Do: Perverting Justice to Punish Perverts," *University of Illinois Law Review*, vol. 2000 (2000), p. 1200, hereafter referred to as "G.H. Morris."

[8] Jill S. Levenson, "Policy Interventions Designed to Combat Sexual Violence: Community Notification and Civil Commitment," *Journal of Child Sexual Abuse*, vol. 12, no. 3/4 (2003), p. 31; John Q. LaFond, "The Future of Involuntary Civil Commitment in the U.S.A. after *Kansas v. Hendricks*," *Behavioral Sciences and the Law*, vol. 18 (2000), p. 157-158, hereafter referred to as "J.Q. LaFond (2000)."

mental health professional can successfully predict who will commit sex crimes in the future.[9] Sexual psychopath laws were designed to offer alternatives to prison for sex offenders and to prevent further harm to other members of society by incapacitating the offender.[10] After a court found an offender to be a sexual psychopath, the offender was sent to a mental health facility for control and treatment in lieu of imprisonment and punishment.[11] Sexual psychopath laws targeted offenders who were not seriously mentally ill (thus, not making them candidates for traditional civil commitment) but who were believed to have a "psychopathic personality" that caused their criminal behavior.[12]

Starting in the 1970s, many of the sexual psychopath laws were repealed, modified, or abandoned.[13] Many states eventually abolished sexual psychopath laws because of criticism from the Group for the Advancement of Psychiatry (GAP) and the American Bar Association's (ABA's) Criminal Justice Mental Health Standards.[14] Such criticism contended that labeling offenders as sexual psychopaths lacked scientific merit, the treatment of sex offenders was ineffective, and the prediction of future offending was suspect.[15] In 1977, GAP stated that

> First and foremost, sexual psychopath and sexual offender statutes can best be described as approaches that have failed. The discrepancy between the promises in sex statutes and performances have rarely been resolved.... The notion is naive and confusing that a hybrid amalgam of law and psychiatry can validly label a person a "sex psychopath" or "sex offender" and then treat him in a manner consistent with a guarantee of community safety. The mere assumption that such a heterogeneous legal classification could define treatability and make people amenable to treatment is not fallacious; it is startling.[16]

There was growing intolerance for the idea of treating sex offenders after a series of treated and released sex offenders committed additional sex crimes.[17] Beginning in

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[9] Laura Barnickol, "Missouri's Sexually Violent Predator Law: Treatment or Punishment," *Washington University Journal of Law and Policy*, vol. 4 (2000), p. 324.

[10] Ibid.

[11] J.Q. LaFond (2000), p. 157.

[12] W.L. Fitch, p. 490.

[13] Eric S. Janus, "Sexual Predator Commitment Laws: Lessons for Law and Behavioral Sciences," *Behavioral Sciences and the Law*, vol. 18 (2000), p. 7, hereafter referred to as "E.S. Janus."

[14] Rudolph Alexander, Jr. "The United States Supreme Court and the Civil Commitment of Sex Offenders," *The Prison Journal*, vol. 83, no. 3 (September 2004), p. 363, hereafter referred to as "R. Alexander."

[15] Ibid.

[16] As cited in American Psychiatric Association (APA), *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association* (Washington, DC: APA, 1999), p. 14, hereafter referred to as "APA task force report."

[17] Jill S. Levenson, "Policy Interventions Designed to Combat Sexual Violence: Community (continued...)

the 1970s, states started to adopt a more traditional criminal justice model for managing dangerous sex offenders, such as incarcerating sex offenders instead of placing them under the supervision of mental health institutions.[18]

Starting in the 1990s, some states passed legislation reminiscent of the old sexual psychopath laws. In 1990, Washington became the first state to pass a new sexual predator civil commitment law.[19] Other states passed similar legislation since that time. As of June 2007, 19 states have sexual predator civil commitment laws. Each state had its own impetus for passing its civil commitment law, but generally speaking, the reasons for enacting such laws are similar. In many states, the laws were passed in response to a particularly heinous sex crime.[20] The change in the 1970s and 1980s in most states from an indeterminate to a determinate sentencing structure[21] allowed some sex offenders to be released from prison after a relatively short period of incarceration.[22] There was also a growing change in societal attitudes and behavior towards violence against women.[23] In addition, general civil commitment laws were considered inadequate to confine sex offenders who were considered dangerous.[24] General civil commitment laws required proof of serious mental disorder (such as schizophrenia) and recent behavior indicating that the individual was dangerous. Many states could not commit sex offenders under general civil commitment laws because the state could not demonstrate that such offenders (1) had a medically recognized mental disorder and (2) had engaged in recent behavior that proved that they were dangerous (the population in question was usually incarcerated, which limited offenders from engaging in sexually dangerous behavior).

Generally, civil commitment laws that target sexually dangerous persons have a similar structure. They require (1) proof of a past course of sexually harmful conduct, (2) a current mental disorder or "abnormality," (3) a finding of risk of future sexually harmful conduct and, (4) some connection between the mental abnormality

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[17] (...continued)
Notification and Civil Commitment," *Journal of Child Sexual Abuse*, vol. 12, no. 3/4 (2003), p. 31.

[18] Ibid.

[19] John Q. LaFond, "The Costs of Enacting a Sexual Predator Law," *Psychology, Public Policy, and Law*, vol. 4 (1998), p. 474, hereafter referred to as "J.Q. LaFond (1998)."

[20] W.L. Fitch, p. 491.

[21] Determinate sentencing requires a convicted offender to serve a specified amount of prison time. The length of the offender's sentence is usually determined by the offender's criminal history and the crime for which the offender is sentenced.

[22] E.S. Janus, p. 8; J.Q. LaFond (2000), p. 160; Howard Zonana, "The Civil Commitment of Sex Offenders," *Science*, vol. 278, no. 5341 (November 14, 1997).

[23] E.S. Janus, p. 8.

[24] J.Q. LaFond (2000), p. 160.

and the danger.[25] Although similarities exist between the old sexual psychopath laws and civil commitment laws, they vary in some key aspects. Rather than providing an alternative to imprisonment, civil commitment laws require sex offenders to be committed *after* they complete their terms of incarceration.[26] Also, civil commitment laws do not require an allegation or proof of recent criminal, dangerous, or inappropriate behavior or deteriorating mental state before the state can seek commitment.[27]

Civil commitment laws have been both politically and legally contentious because they allow sex offenders to be confined after their criminal sentence is completed. Moreover, some members of the psychiatric community have challenged the validity of the legislatively created definition of "mental abnormality." For example, the Washington State Psychiatric Association (WSPA) testified before the Washington State Legislature when it was considering civil commitment legislation. One psychiatrist who testified on behalf of the WSPA noted that a psychiatrist's definition of "mental disorder" includes the loss of contact with reality, confusion, loss of reason, and hallucinations.[28] Some sex offenders, however, do not demonstrate any of these behaviors. According to the WSPA, the issue is not "mental disorders," but rather "abnormal behavior."[29] Persons who have committed more than one sex offense are assumed to be depraved or sick, or to have some type of mental abnormality or personality disorder that makes them likely to re-offend.[30]

Several offenders have attempted to challenge their civil commitment in court. Civilly committed offenders argue that civil commitment laws are unconstitutional because they allow offenders to be committed after they have completed their sentences, even if they do not suffer from a medically recognized mental disorder. Two legal challenges to civil commitment laws have made it to the United States Supreme Court, *Kansas v. Hendricks* and *Kansas v. Crane*.

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[25] E.S. Janus, p. 9.

[26] W.L. Fitch, p. 491.

[27] Ibid.

[28] James D. Reardon, "Sexual Predators: Mental Illness or Abnormality? A Psychiatrist's Perspective," *University of Puget Sound Law Review*, vol. 15 (1991-1992), p. 849, hereafter referred to as "J.D. Reardon"; Robert M. Wettstein, "A Psychiatric Perspective on Washington's Sexually Violent Predator Statute," *University of Puget Sound Law Review*, vol. 15 (1991-1992), p. 597, hereafter referred to as "R.M. Wettstein."

[29] J.D. Reardon.

[30] Ibid.

Supreme Court Rulings on Civil Commitment

***Kansas v. Hendricks*.**[31] In *Kansas v. Hendricks*,[32] the Supreme Court considered constitutional challenges to the Kansas Sexually Violent Predator Act,[33] which was enacted to address the issue of repeat sexual offenders. Although Kansas law already contained a provision for the confinement of the "mentally ill," the Kansas legislature found that this statute was inadequate in its application to sex offenders. According to the Act's preamble:

> [A] small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the [general involuntary civil commitment statute].... In contrast to persons appropriate for civil commitment under the [general involuntary civil commitment statute], sexually violent predators generally have anti-social personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The legislature further finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure ... is inadequate to address the risk these sexually violent predators pose to society. The legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the [general involuntary civil commitment statute].

As traditional methods of civil confinement were found to be inappropriate, Kansas created a civil commitment procedure specifically for sexual predators. Under this Act, "sexually violent predators" were defined as "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence."[34] This definition was intended to be applied regardless of whether a person had been previously convicted of a sexual offense.

In *Hendricks*, the state sought to commit a defendant who had been convicted of taking "indecent liberties" with two 13-year-old boys, and who had served nearly 10 years in prison for that crime. Shortly before his scheduled release, Kansas filed a petition seeking to confine the defendant as a sexually violent predator. After a trial that considered the defendant's long history of pedophilia, the defendant was civilly committed.

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[31] For a discussion of the *Hendricks* case, see G.H. Morris; R. Alexander; J.Q. LaFond (2000); Eli M. Rollman, "'Mental Illness': A Sexually Violent Predator is Punished Twice for One Crime," *Journal of Criminal Law and Criminology*, vol. 88 (1997-1998), p. 985, hereafter referred to as "E.M. Rollman"; Franklin T. Wilson, "Out of Sight, Out of Mind: An Analysis of *Kansas v. Crane* and the Fine Line Between Civil and Criminal Sanctions," *The Prison Journal*, vol. 84, no. 3 (2004), p. 379, hereafter referred to as "F.T. Wilson."

[32] 521 U.S. 346 (1997).

[33] K.S.A. § 59-29a03 (1994).

[34] K.S.A. § 59-29a02(a)(1994).

The Court first considered whether the Act violated the defendant's substantive due process rights to freedom from physical restraint. In general, states may civilly commit people who are unable to control their behavior and who thereby pose a danger to the public's health and safety.[35] Thus, the question in the *Hendricks* case was whether the Act met that standard.

The Court noted that the statute required more than proof of predisposition to violence, in that it also required evidence of past sexually violent behavior and a present mental condition that created a likelihood of such conduct in the future. Because the Act specifically required a finding of dangerousness either to oneself or to others before a person is civilly committed, it was found to be consistent with the requirements of due process.[36]

The Court also considered two other arguments. First, it considered whether the application of the Act was intended to punish Hendricks for behavior that he had engaged in before passage of the law, as this would run afoul of the prohibition on the passage of ex post facto laws. Second, the Court considered whether the Act was being used to punish Hendricks for behavior that he had previously been convicted and punished for, in violation of the prohibitions on double jeopardy.[37] The Court noted that the resolution of both ex post facto and double jeopardy challenges turns on whether the challenged statute is found to be punitive or regulatory in nature.

The Supreme Court has long held that the Ex Post Facto Clause limits Congress from passing criminal or penal laws that have a retrospective effect.[38] However, when the statute in question is not clearly criminal in nature, a question may arise as to whether the challenged law is actually imposing a penalty for past conduct.[39] For instance, when convicted sex offenders were subject to the retroactive application of an Alaskan statute requiring convicted sex offenders to register (with much of the resulting information being made public), the statute was upheld as a nonpunitive regulatory scheme.[40]

Determining what is punitive is a multistep process, sometimes referred to as the "intent/effects" test. First, a court must ascertain whether the legislature meant the statute to establish "civil" or "criminal" proceedings. To do so, a court will

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[35] Foucha v. Louisiana, 504 U.S. 71 (1992) (in order to continue confinement after a finding of not guilty by reason of mental illness, the government must show that the defendant is a danger to society).

[36] 521 U.S. at 357-358

[37] U.S. Const. Amendment 5 (as incorporated through the 14th Amendment).

[38] Calder v. Bull, 3 U.S. (3 Dall.) 386, 390, 397 (1789)*; Ex Parte* Garland, 71 U.S. (4 Wall.) 333, 377 (1867).

[39] Thus, for instance, when a post-Civil War statute required attorneys to swear they had not participated in a rebellion against the Union before they could practice law in federal court, the Court found the law punitive, because the oath had no relationship to the professional duties of attorneys. Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 316 (1867).

[40] Smith v. Doe, 538 U.S. 84 (2003).

examine a statute's text and structure to determine the legislative objective.[41] If the intention of the legislature was to impose punishment, that ends the inquiry.[42] If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, a court must then determine whether the statutory scheme is "so punitive either in purpose or effect as to negate [the government's] intention to deem it civil."[43] Only the "clearest proof" will allow a court to override legislative intent and find that a civil remedy is in fact punitive.[44]

In *Hendricks*, the Court found that Kansas intended for the Act to be civil in nature, describing it as "civil commitment procedure" and placing it within the Kansas probate code, instead of the criminal code. Second, the Court held the Act did not implicate either of the two primary objectives of criminal punishment: retribution or deterrence. The Court found that prior criminal conduct was considered under the Act, not as a means to punish for prior conduct but as evidence for the regulatory purpose of determining dangerousness. Further, the Court noted that offenders could be committed even if they had been acquitted for prior criminal conduct. Finally, the Court noted that, unlike traditional punishment, the confinement is indefinite in scope and is reviewed on an annual basis.

Similarly, the Court found that for purposes of double jeopardy, the application of the Act had none of the attributes of punishment. Because the Act is civil in nature, instituting commitment proceedings after a criminal case for the same crime has been concluded does not constitute a second prosecution.[45] Consequently, the Court concluded that neither the ex post facto clause or double jeopardy was implicated by the application of the Act.[46]

Kansas v. Crane.[47] The Kansas Act was again in question in *Kansas v. Crane*,[48] in which the Court refined its holding in *Hendricks*. In *Crane*, the defendant in question was a previously convicted sexual offender who apparently suffered from both exhibitionism and antisocial personality disorder. In *Crane*, the Court considered the issue of whether a civil commitment statute, beyond showing the likelihood of dangerousness, must also show that a defendant cannot control his or her dangerous behavior. While rejecting the argument that the individual be completely unable to control their behavior, the Court did reaffirm language from the *Hendricks* case, noting that the Kansas Act required that it be "difficult, if not impossible" for the dangerous person to control his dangerous behavior. While

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[41] Flemming v. Nestor, 363 U.S. 603 (1960).

[42] 538 U.S. at 92.

[43] United States v. Ward, 448 U.S. 242, 248-249 (1980).

[44] Id. at 249.

[45] *See* Jones v. United States, 463 U.S. 354, 77 L. Ed. 2d 694, 103 S. Ct. 3043 (1984) (permitting involuntary civil commitment after verdict of not guilty by reason of insanity).

[46] 521 U.S. at 369-71

[47] For a discussion of the *Crane* case, see R. Alexander and F.T. Wilson.

[48] 534 U.S. 407 (2002).

recognizing the difficulty of setting a precise standard for the degree of volition required, the Court did indicate that a state would have to show that a defendant had "serious difficulty" in controlling his or her impulses.[49]

Civil Commitment Legislation in the 109th Congress

Title III of The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) established a federal civil commitment program. The program allows the Attorney General (AG), or any individual authorized by the AG, or the Director of the Bureau of Prisons (BOP) to certify as sexually dangerous a person who is in BOP's custody, under the custody of the AG under current law,[50] or whose criminal charges have been dismissed solely for reasons relating to the mental condition of the person. If an individual is deemed sexually dangerous, a court in the district where the individual is being held conducts a hearing to determine whether the individual is indeed a sexually dangerous person. Under the law, the court may order a psychological or psychiatric examination before the proceedings begin, and those findings are filed with the court. The individual cannot be released until the proceedings conclude. If the court finds by clear and convincing evidence that the person is a sexually dangerous person, the individual is committed to the custody of the AG.

After the individual is committed to the custody of the AG, the AG releases the individual to the appropriate official of the state in which the person was confined or tried, if the state will assume responsibility for the offender's custody, care, and treatment. If the state will not assume responsibility for the offender, the AG places the offender in a suitable treatment facility until either the state assumes responsibility for the offender or the offender is no longer considered a sexually dangerous person and would not be a threat to others if released under a prescribed regimen of medical, psychiatric, or psychological care, whichever is earlier.

After the individual is committed to custody, the director of the facility in which the offender is placed may petition the court to release the individual if the director determines that the offender is no longer a sexually dangerous person and would not be a threat to others. The court may order the discharge of the individual or, on the motion of the government's attorney, hold a hearing to determine whether the individual should be released. If the court finds by a preponderance of evidence that the individual's condition is such that he or she would not be sexually dangerous to others if released unconditionally, the court orders the person discharged. If he or she is found not to be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care, the court orders the individual conditionally discharged under a prescribed regimen that has been certified to the court as appropriate. The director of the facility is responsible for notifying the AG and the court of any failure to comply with the regimen. If the court receives notice that the individual is not complying with the treatment regime, or upon other probable cause to believe that the discharged individual is not complying with the

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[49] 534 U.S. at 413.

[50] 18 U.S.C. §§4241 and 4247.

regimen, the individual is arrested and brought before the court. The court then determines whether the individual should be remanded to a suitable facility on the grounds that he or she is a sexually dangerous person and is not complying with the imposed regimen.

The law also states that if the director of a facility in which an individual is hospitalized or placed certifies to the AG that the individual, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the AG will release the person to the appropriate official of the state in which the person is confined or was tried for the purpose of instituting state proceedings for civil commitment. If the state will not assume responsibility for the individual, the AG releases the person, but not later than 10 days after certification by the director of the facility.

Title III of the Adam Walsh Child Protection and Safety Act of 2006 also created a grant program that allows the AG to award grants to jurisdictions for the purpose of establishing, enhancing, or operating civil commitment programs for sexually dangerous persons. The civil commitment programs must be consistent with guidelines issued by the AG. The law also requires states to notify the state official responsible for conducting civil commitment proceedings upon the impending release of an inmate that (1) has been convicted of a sexually violent offense or (2) has been deemed by the state to be a high risk for recommitting a sexual offense against a minor.

Sex Offender Recidivism

The common perception of sex offenders is that they are more dangerous than other criminals. For some, it is not a matter of *if* sex offenders will re-offend, but *when* they will re-offend.[51] The civil commitment of sex offenders hinges on the belief that sex offenders are more likely to recidivate.[52] This section evaluates the threat that sex offenders pose to the public by reviewing four studies of sex offender recidivism.

Limitations of Studies on Sex Offender Recidivism

Although an increasing number of studies have attempted to capture the recidivism rate of sex offenders, each study suffers from inherent limitations. First, sexual offenses are usually underreported, which means that many of the traditional measures of recidivism, such as rearrest or reconviction, underestimate the true amount of recidivism amongst sex offenders.[53] Moreover, debate exists about what

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[51] Lisa L. Sample and Timothy M. Bray, "Are Sex Offenders Dangerous," *Criminology and Public Policy*, vol. 3, no. 1 (2003), p. 60.

[52] In general, *recidivism* refers to when a convicted offender commits another crime after the offender is released from prison.

[53] APA task force report, p. 129. A 1992-2000 National Crime Victimization Survey (continued...)

type of outcome measure should be used to measure recidivism. The broader the outcome measure (e.g., rearrest compared with reconviction), the greater the reported recidivism rate. Second, many studies tend to report recidivism rates for sex offenders as a whole, rather than for more homogenous groups of sex offenders (e.g., rapists, intrafamiliar child molesters, extrafamiliar child molesters, and exhibitionists), which can affect the rate because evidence shows that different groups of sex offenders have different recidivism rates.[54] For example, if a study measured the recidivism rate for a group of released sex offenders composed primarily of convicted rapists, it might have a higher recidivism rate than a group of released sex offenders composed primarily of intrafamiliar child molesters. Third, many studies include only incarcerated sex offenders, not sex offenders who are placed on probation, which means the sample might not reflect the true population of sex offenders.[55] Finally, the length of the follow-up period can affect the reported recidivism rate. The longer the follow-up period, the greater the recidivism rate. Although a five year follow-up period is common for many studies of sex offender recidivism, research has shown that some sex offenders may commit new crimes 10, 15, or 20 years after being released from incarceration or community supervision.[56]

Sex Offender Recidivism Data

This section reviews two studies from the Bureau of Justice Statistics (BJS). One study reported the recidivism rate of sex offenders released from prison in 1994; the other study reported the recidivism rate of all types of offenders released from prison in 1994. The recidivism rates for sex offenders and violent offenders are compared to evaluate whether sex offenders are at a higher risk to recidivate than other violent offenders. To evaluate whether the sex offender recidivism rates reported by BJS are consistent with other research, this section also reviews two additional studies that reported the recidivism rates for other groups of sex offenders. Later in the report, recidivism data from the BJS studies are analyzed to evaluate whether sex offenders specialize in sex crimes, or whether they commit sex crimes as a part of a general pattern of violent behavior.

BJS collected data on 272,111 prisoners released in 15 states[57] in 1994. In 2003, BJS released a report that presented recidivism data for 9,691 male *sex offenders*[58] who were a part of the 272,111 released prisoners.[59] The 9,691 released men

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[53] (...continued)
showed that only 36% of rapes were reported to police.

[54] Ibid., pp. 129-130.

[55] Ibid., p. 130.

[56] Ibid., pp. 133-134.

[57] The sex offenders included in the BJS report were released from prisons in Arizona, California, Delaware, Florida, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Texas, and Virginia.

[58] All released sex offenders were convicted for *violent* sex offenses.

[59] Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, (continued...)

represent two-thirds of all male sex offenders released from prison in 1994.[60] BJS collected data on the released sex offenders for three years and reported the following:

- 5.3% of *all* released sex offenders were rearrested for a new sex crime within three years of being released, and 3.5% of *all* released sex offenders were reconvicted for a new sex crime within three years of being released;
- 5.0% of released rapists were rearrested within three years for a new sex crime, and 3.2% of released rapists were reconvicted within three years for a new sex crime;
- 5.5% of sexual assaulters were rearrested for a new sex crime within three years, and 3.7% of sexual assaulters were reconvicted for a new sex crime within three years;
- 5.1% of child molesters were rearrested for a new sex crime within three years, and 3.5% of child molesters were reconvicted for a new sex crime within three years;
- 5.0% of statutory rapists[61] were rearrested for a new sex crime within three years, and 3.6% of statutory rapists were reconvicted for a new sex crime within three years.[62]

BJS also reported that released sex offenders were four times more likely than non-sex offenders to be rearrested for a sex crime.[63] BJS found that 5.3% of released sex offenders were rearrested for a sex crime within three years of being released (517 of the 9,961 released sex offenders were rearrested for a sex crime).[64] In comparison, BJS found that 1.3% of the released non-sex offenders were rearrested for a sex crime within three years of being released (3,328 of the 262,420 released non-sex offenders were rearrested for a sex crime).[65]

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[59] (...continued)
report NCJ 198281, November 2003, available online at [http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf], accessed November 29, 2006, hereafter referred to as "BJS 1994 sex offender recidivism report."

[60] Ibid., p. 1.

[61] "Statutory rapist" refers to an offender who had consensual sexual intercourse with someone under the age of consent in the state in which the offense occurred. Statutory rape included incest offenses.

[62] Ibid., p.1 and p. 24.

[63] BJS 1994 sex offender recidivism report, p. 1.

[64] Ibid.

[65] Ibid.

A 2002 BJS report discussed data from *all* the 272,111 offenders released in 1994.[66] Like the 2003 report on released sex offenders, data were collected for three years after the prisoners were released. **Table 1** presents data from the 2002 BJS report showing the number of released *violent* offenders that were rearrested, reconvicted, and returned to prison. Data show that released rapists and other sexual assaulters were less likely than other released violent offenders, other than released murders, to be rearrested and reconvicted within three years of being released. This data suggest that rapists and other sexual assaulters, in terms of recidivism for any type of crime, may not be a greater threat to recidivate than other released violent offenders.

Table 1. Rate of Recidivism of State Offenders Released in 1994, by Most Serious Offense for Which Released

Most Serious Offense for Which Released	Percentage of Released Prisoners Who, Within Three Years, Were —			
	Rearrested	Reconvicted	Returned to Prison with a New Sentence[h]	Returned to Prison with or without a New Sentence[i]
Homicide[a]	40.7%	20.5%	10.8%	31.4%
Kidnapping[b]	59.4%	37.8%	25.1%	29.5%
Rape[c]	46.0%	27.4%	12.6%	43.5%
Other sexual assault[d]	41.4%	22.3%	10.5%	36.0%
Robbery[e]	70.2%	46.5%	25.0%	54.7%
Assault[f]	65.1%	44.2%	21.0%	51.2%
Other violent[g]	51.7%	29.8%	12.7%	40.9%

Source: CRS presentation of Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, NCJ 193427, June 2002. Extracted from Table 9. This table focuses on the recidivism rates of sex offenders compared to other violent offenders; hence, it does not include information on the recidivism rates for offenders convicted of property offenses (burglary, larceny/theft, motor vehicle theft, arson, fraud, stolen property, or other property), drug offenses (possession, trafficking, or other/unspecified), or public-order offenses (weapons, driving under the influence, or other public-order offenses).

a. "Homicide" is defined as (1) intentionally causing the death of another person without extremeprovocation or legal justification or (2) causing the death of another while committing or attempting to commit another crime.

b. "Kidnapping" is defined as the unlawful seizure, transportation, or detention of a person against his or her will, or of a minor without the consent of his or her guardian. Includes forcible detainment, false imprisonment, abduction, or unlawful restraint. Does not require that ransom or extortion be the purpose of the act.

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[66] Bureau of Justice Statistics, *Recidivism of Offenders Released in 1994*, report NCJ 193427, June 2002, available online at [http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf], accessed November 29, 2006, hereafter referred to as "BJS 1994 offender recidivism report."

c. "Rape" is defined as forcible intercourse (vaginal, anal, or oral) with a female or male. It includes forcible sodomy or penetration with a foreign object; it excludes statutory rape or any other nonforcible sexual acts with some unable to give legal or factual consent because of mental or physical defect or intoxication.

d. "Other sexual assault" is defined as (1) forcible or violent sexual acts not involving intercourse with an adult or minor, (2) non-forcible sexual acts with a minor (such as statutory rape or incest with a minor), or (3) non-forcible sexual acts with someone unable to give consent because of mental or physical defect or intoxication.

e. "Robbery" is defined as the unlawful taking of property that is in the immediate possession of another, by force or the threat of force. Includes forcible purse snatching, but excludes nonforcible purse snatching.

f. "Assault" is defined as (1) intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon or (2) using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury, if any. Includes attempted murder, aggravated battery, felonious assault, and assault with a deadly weapon.

g. Includes offenses such as intimidation, illegal abortion, extortion, cruelty towards a child or wife, hit-and-run driving with bodily injury, and miscellaneous crimes against the person.

h. Includes new sentences to state or federal prisons but does not include sentences to local jails. Prisoners released in Ohio and Virginia were not included in the calculations because of missing data.

i. Includes both prisoners with new sentences to state or federal prisons and prisoners returned for technical violations. Prisoners released in Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia were not included in the calculations because of missing data.

Two studies found recidivism rates for sex offenders that were higher than the rates reported in the BJS report. A 1998 study[67] combined the data from 61 sex offender recidivism studies.[68] The 61 studies include data from 28,972 sex offenders. Recidivism was defined as either rearrest or reconviction. The average follow-up period was four to five years. The study found that, on average, sex offenders had a 13.4% recidivism rate for sex crimes, rapists had a 18.9% recidivism rate, and child molesters had a 12.7 recidivism rate.[69] When recidivism was defined as *any* re-offense, the recidivism rate increased to 36.3% for all sex offenders, 36.9% for child molesters, and 46.2% for rapists.[70] The study also found that non-sexual violent offense recidivism rate for sex offenders was 12.2%, 9.9% for child molesters, and

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[67] R. Karl Hanson and Monique T. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," *Journal of Consulting and Clinical Psychology*, vol. 66, no. 2 (1998), p. 348.

[68] Meta-analysis "pools together the treatment effectiveness estimates and thus provides a reliable and valid method of assessing the consistency of results across studies." Meta-analysis allows researchers to test the relationships between treatment effectiveness and substantive and methodological issues such as treatment length and type, offender type, and the degree that offenders drop out of the sample. Meta-analysis gives researchers "the opportunity [to draw] definitive quantitative conclusions by combining the results of many studies, none of which alone would be decisive." Catherine A. Gallagher, David B. Wilson, Paul Hirschfield, Mark B. Coggeshall, and Doris L. MacKenzie, "A Quantitative Review of the Effects of Sex Offender Treatment on Sexual Reoffending," *Corrections Management Quarterly*, vol. 3, no. 4 (1999), p. 20; Vernon L. Quinsey, Grant T. Harris, Marine E. Rice, and Martin L. Lalumiere, "Assessing Treatment Efficacy in Outcome Studies of Sex Offenders," *Journal of Interpersonal Violence*, vol. 8 (1993), p. 521.

[69] Ibid., p. 351.

[70] Ibid.

22.1% for rapists.[71] The averages should be considered cautiously because the studies included in the meta-analysis used diverse methods and follow-up periods.[72]

A 2003 study calculated recidivism rates for sex offenders up to 20 years after they were released from prison.[73] The analysis included data from 10 individual samples of sex offenders. The 10 studies included data from 4,724 sex offenders. In five of the samples, recidivism was defined as a new charge for a sex crime; in the other five samples, recidivism was defined as a new conviction for a sex crime. The average follow-up period was seven years, with approximately 16% of sex offenders being followed for more than 15 years. The study estimated that the five-year recidivism rate for sex offenders was 14% (95% Confidence Interval [CI][74] of 13%-15%); the 10-year recidivism rate was 20% (95% CI of 19%-21%); the 15-year recidivism rate was 24% (95% CI of 22%-26%); and the 20-year recidivism rate was 27% (95% CI of 24%-30%).[75]

As previously mentioned, there are several factors that may account for why the three studies discussed above found different recidivism rates for sex offenders. First, the studies had different follow-up periods.[76] Second, the samples in the studies were composed of different types of sex offenders (i.e., rapists, child molesters, sexual assaulters, and statutory rapists), which could have affected the recidivism rate.[77] Third, the sex offender samples in the two non-BJS studies were from multiple countries, and the studies were conducted in different years.

The data on sex offender recidivism are varied and, as discussed above, studies have inherent limitations. However, the data indicate that sex offenders, when compared with other violent offenders, may not be the high-risk offenders that they are perceived to be. Some argue that any risk of recidivism, given the impact sex crimes have on their victims, is too great for the community. Others argue, however, that given the fact that sex offenders pose a similar risk to the community as other violent offenders, the need for special measures to monitor and control sex offenders, such as civil commitment, are unwarranted.

Any discussion about recidivism almost inevitably includes a discussion about ways to decrease recidivism. Sex offender treatment is viewed as one way to

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[71] Ibid.

[72] Ibid.

[73] R Karl Hanson, Kelley E. Morton, and Andrew J.R. Harris, "Sex Offender Recidivism Risk: What We Know and What We Need to Know," *Annals of the New York Academy of Sciences*, vol. 989 (2003), p. 154, hereafter referred to as "R.K. Hanson et al. (2003)."

[74] A confidence interval shows the range within which the true value of a calculated statistic is likely to fall a certain percentage of the time. In this case, the study estimated that there is a 95% chance that the five-year recidivism rate for sex offenders was in the range of 13% to 15%. There was a 5% chance that it was either higher or lower than that range.

[75] Ibid., p. 155.

[76] APA task force report, p. 133.

[77] Ibid., p. 134.

decrease sex offender recidivism. As discussed above, civil commitment is meant to provide treatment to sexually dangerous persons. Civilly committed offenders are confined until treatment renders them no longer dangerous to others. The literature on sex offender treatment is reviewed in the next section.

Sex Offender Treatment

One of the key tenets of civil commitment is the belief that sex offenders can be treated; for if they cannot, it is likely that there will be a burgeoning population of civilly committed sex offenders that will never be released. However, questions linger about the efficacy of sex offender treatment. Recent research provides evidence that sex offender treatments might reduce recidivism, but the degree to which the treatments are effective is uncertain.

Can Sex Offenders Be Treated?

A 1989 study that analyzed the breadth of treatment literature and recidivism among sex offenders found that recidivism rates for treated offenders ranged from 0% to 40%.[78] The researchers noted that the results of the studies varied, including some that found that treated offenders had higher recidivism rates than untreated offenders.[79] The researchers concluded that there was no compelling evidence that sex offender treatment reduced recidivism. However, they also could not conclude that sex offender treatment was a failure.[80] They noted that a variety of methodological shortcomings were present in most every study they reviewed, which made the results from any single study hard to interpret.[81] The methodological shortcomings in most studies prevented the researchers from using meta-analytic techniques, which would have allowed them to draw more definitive conclusions about the effectiveness of sex offender treatment.[82] The researchers also noted that sex offender treatment has continued to evolve, and many of the treatment programs evaluated in the studies would now be considered obsolete.[83]

A 1996 Government Accountability Office (GAO) report on the effectiveness of sex offender treatment found that the research was inconclusive.[84] The research included in the GAO's analysis was generally more recent than the research included

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[78] Lita Furby, Mark R. Weinrott, and Lyn Blackshaw, "Sex Offender Recidivism: A Review," *Psychological Bulletin*, vol. 105 (1989), p. 24, hereafter "Furby et. al."

[79] Ibid., p. 25.

[80] Ibid.

[81] Ibid., p. 27

[82] Furby et. al, p. 27.

[83] Ibid., p. 25.

[84] U.S. Government Accountability Office, *Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism*, GAO/GGD-96-137, June 1996, hereafter referred to as "GAO report."

in the analysis discussed above. The GAO included 22 studies in its analysis, which were published between 1977 and 1996.[85] Ten studies were published after 1990, and one was unpublished at the time of the analysis. The GAO reported that some of the research indicated that cognitive-behavioral[86] treatment was promising, but methodological limitations in the studies prevented it from drawing any firm conclusions about effectiveness.[87] The GAO reported that conclusions about the effectiveness of sex offender treatment were limited by three general weaknesses in the research: (1) limitations in the methodological designs of the study, which included a lack of a comparison group[88] and inconsistent and inadequate follow-up periods; (2) limitations in the recidivism measures used; and (3) limitations in how the studies were reported.[89]

A relatively recent study conducted in 2002 found that the sex offense recidivism rate for treated offenders (12.3%) was lower than that of untreated offenders (16.8%).[90] The study reviewed the effectiveness of any type of psychological treatment for sex offenders. Other research has evaluated the effectiveness of two specific forms of sex offender treatment: antiandrogen (hormonal) treatment and cognitive-behavioral treatment.

Antiandrogens reduce the level of a sex offender's circulating testosterone.[91] Studies have shown that decreased testosterone levels have resulted in reductions in

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[85] Ibid., p. 15.

[86] Cognitive-behavioral therapy focuses on patterns of thinking that are maladaptive and the beliefs that underlie such thinking. Cognitive-behavioral therapy encourages individuals in treatment to view such beliefs as hypotheses rather than facts and to test such beliefs by running experiments. Individuals are encouraged to monitor and log thoughts in order to enable them to determine what patterns of biases in thinking may exist and to develop more adaptive alternatives to their thoughts. National Alliance on Mental Illness, *About Treatment and Supports: Cognitive-Behavioral Therapy*, available at [http://www.nami.org/Template.cfm?Section=About_Treatments_and_Supports&template=/ContentManagement/ContentDisplay.cfm&ContentID=7952], accessed March 7, 2007.

[87] Ibid., pp. 6-7.

[88] A comparison group is a group of offenders that either do not receive treatment, or receive a different treatment than the offenders in the treatment group. Offenders assigned to the comparison group are followed, along with members of the treatment group, to track their recidivism.

[89] GAO report, p. 8.

[90] The recidivism rates were based on an average 46-month follow-up period using the recidivism criteria reported in the original studies. The study also found the same to be true for recidivism involving any type of offense, not just sex offenses (27.9% for treated offenders versus 39.2% for untreated offenders). R. Karl Hanson, Arthur Gordon, Andrew J.R. Harris, Janice K. Marques, William Murphy, Vernon L. Quinsey, and Michael Seto, "First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders," *Sexual Abuse: A Journal of Research and Treatment*, vol. 14, no. 2 (2002), p. 181, hereafter referred to as "R.K. Hanson et al. (2002)."

[91] Linda S. Grossman, Brian Martis and Christopher G. Fichtner, "Are Sex Offenders Treatable? A Research Overview," *Psychiatric Services*, vol. 50 (1999), p. 351, hereafter referred to as "Grossman et al."

self-reported deviant sexual fantasies and paraphilic symptoms in sex offenders.[92] Research suggests that antiandrogen treatment may reduce sex offender recidivism in many cases.[93] Antiandrogens do have side effects, which might explain the high drop-out rate for offenders who use them.[94] Antiandrogen treatment requires a high level of medical supervision, which can be costly.[95] Also, doctors do not know what the long-term effects of the treatment are.[96]

Another meta-analysis study found that, overall, cognitive-behavioral treatment appears to be a promising way to reduce recidivism in sex offenders.[97] Research also shows that cognitive-behavioral treatment combined with other treatments, such as relapse prevention,[98] group therapy, or social skills training,[99] can help prevent recidivism.[100] Cognitive-behavioral treatments are some of the most common forms of therapy for sex offenders.[101] Cognitive-behavioral treatments seek to change a sex offender's belief system, eliminate inappropriate behavior, and increase appropriate behavior by ensuring the inappropriate behavior is not reinforced.[102] Some cognitive-behavioral treatments are aimed at reducing deviant arousal. These treatments

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[92] Ibid. Fabian M. Saleh and Laurie L. Guidry, "Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender," *Journal of the American Academy of Psychiatry and the Law*, vol. 31 (2003), p. 489.

[93] Grossman et al., p. 352; Gordon C. Nagayama Hall, "Sexual Offender Recidivism Revisited: A Meta-Analysis of Recent Treatment Studies," *Journal of Consulting and Clinical Psychology*, vol. 63 (1995), pp. 806-808, hereafter referred to as "G.C.N. Hall."

[94] Grossman et al., p. 353.

[95] Ibid.

[96] Ibid.

[97] G.C.N. Hall, pp. 806-808; Gallagher et al., p. 27; Danielle M. Polizzi, Doris Layon MacKenzie, and Laura J. Hickman, "What Works in Adult Sex Offender Treatment? A Review of Prison- and Non-Prison-Based Treatment Programs," *International Journal of Offender Therapy and Comparative Criminology*, vol. 43 (1999), p. 371, hereafter referred to as "Polizzi et al."

[98] Relapse prevention involves teaching sex offenders maintenance strategies to anticipate and resist deviant sexual urges. It also teaches sex offenders to recognize high-risk situations and that one's decisions could lead to recidivism. Offenders are taught how to prevent recidivism by dealing with high-risk situations. Grossman et al.

[99] Social skills training helps offenders develop the skills necessary to have successful interactions in social and non-deviant sexual situations. Some programs focus on social anxiety, conflict resolution, and anger management. Other programs include assertiveness training. Ibid.

[100] Gallagher et al., p. 24.

[101] John Q. LaFond, *Preventing Sexual Violence: How Society Should Cope With Sex Offenders* (Washington, DC: American Psychological Association, 2005), p. 65, hereafter referred to as "J.Q. LaFond (2005)."

[102] Ibid., p. 354.

include aversion treatment,[103] covert sensitization,[104] imaginal desensitization,[105] and masturbatory reconditioning.[106] Other cognitive-behavioral treatments focus on cognitive restructuring, which attempts to correct distorted cognitions used to justify sexual offending.[107] These treatments include social skills training, victim empathy training,[108] lifestyle management, sex education, and relapse prevention.

Because *violent* sex offenders (i.e., rapists and child molesters) are the most likely candidates for civil commitment, there are concerns about whether treatment can decrease recidivism. Research indicates that treatment for incarcerated sex offenders (who are more likely to be violent sex offenders) is promising, but the findings are somewhat mixed. One study found that offenders who were treated in prison had a 9.4% recidivism rate, compared with a 17.6% recidivism rate for untreated offenders.[109] Another study indicated that cognitive-behavioral treatment for incarcerated sex offenders can decrease recidivism, but the effect of treatment is smaller than the effect of treatment for non-incarcerated sex offenders.[110] Other research found that although cognitive-behavioral treatment for incarcerated sex offenders looks promising, the evidence is not sufficient to draw a conclusion about the effectiveness of treatment for incarcerated offenders.[111]

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[103] Aversion therapy pairs deviant sexual fantasies with punishment (such as an electric shock or a noxious odor). The therapy links the deviant fantasy with the punishment, thereby decreasing the desire to act on the deviant fantasy. Ibid.

[104] Covert sensitization pairs deviant sexual fantasies with mental images of adverse consequences, such as being arrested for sexual offending. Sometimes offenders are required to subject themselves to a noxious odor to augment the imagined adverse consequences. Like aversion therapy, covert sensitization links the deviant fantasy with the punishment, thereby decreasing the desire to act upon the deviant fantasy. Ibid.

[105] Imaginal desensitization teaches the offender deep muscle relaxation techniques, which are paired with fantasies of a chain of events that lead to a sexual offense. The therapy is meant to teach offenders to tolerate the feelings associated with sexual offending without acting on them. Ibid.

[106] In mastubatory reconditioning, offenders use masturbation to reinforce non-deviant fantasies. Mastubatory reconditioning can also be used to decrease deviant fantasies by requiring offenders to masturbate after orgasm while thinking of deviant fantasies, thereby associating the deviant fantasies with pain or boredom. Ibid.

[107] Ibid.

[108] Victim awareness or empathy training attempts to increase sex offenders' understanding of the impact of their crimes on their victims. Victim awareness or empathy training attempts to help sex offenders understand their cognitive distortions that allow them to believe that their victims were not harmed or even enjoyed being victimized. Ibid.

[109] Margaret A. Alexander, "Sexual Offender Treatment Efficacy Revisited," *Sexual Abuse: A Journal of Research and Treatment*, vol. 11, no. 2 (1999), pp. 106-107, hereafter referred to as "M.A. Alexander."

[110] G.C.N. Hall, pp. 806-808.

[111] Polizzi et al., p. 371.

Studies that evaluate the effectiveness of sex offender treatment can only determine whether the treatment was effective as long as the researchers are following the treated offenders to see if they recidivate. It is possible that treated offenders might recidivate after the follow-up period ends, which raises questions about how long a treatment should be shown to decrease recidivism in order to be considered "effective." If a form of treatment is shown to decrease recidivism for five years, is it "effective?" One researcher found that the longer a sex offender can remain offense-free, the greater the likelihood that the offender will not recidivate.[112] Therefore, any treatment that decreases the risk that a sex offender will commit new offenses in the short-term may increase the likelihood that an offender will not recidivate in the long-term.

Certain characteristics of offenders who may be likely candidates for civil commitment may make them less likely to benefit from treatment. Potential candidates for civil commitment, especially rapists, might be diagnosed with psychopathy[113] or anti-social personality disorder (ASPD).[114] Offenders diagnosed with ASPD or psychopathy may not be as amenable to treatment as offenders diagnosed with paraphilias.[115] Candidates for civil commitment are also, by definition, repeat offenders. According to one researcher, repeat offenders are more likely not to complete treatment than first-time offenders.[116] Moreover, candidates for civil commitment are likely to have served long prison sentences before being committed. If an offender did not receive treatment in prison before being

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[112] R.K. Hanson et al. (2003), p. 155.

[113] Psychopathy is traditionally defined by a collection of interpersonal, affective, and lifestyle characteristics. On the interpersonal level, psychopaths are grandiose, arrogant, callous, dominant, superficial, and manipulative. Affectively, psychopaths are short-tempered, unable to form strong emotional bonds with others, and lack guilt or anxiety. The interpersonal and affective characteristics of psychopaths are associated with a socially deviant lifestyle that includes irresponsible and impulsive behavior and a tendency to ignore or violate social conventions and mores. Robert D. Hare, "Psychopathy as a Risk Factor for Violence," *Psychiatric Quarterly*, vol. 70, no. 3 (Fall 1999), pp. 183, hereafter referred to as "R.D. Hare."

[114] R.D. Hare, p. 189; Stephen Porter, David Fairweather, Jeff Dregge, Hugues Herve, Angela Birt, Douglas P Boer, "Profiles of Psychopathy in Incarcerated Sexual Offenders," *Criminal Justice and Behavior*, vol. 27, no. 2 (2000), p. 224; Howard Zonana, "The Civil Commitment of Sex Offenders," *Science*, vol. 278, Academic Search Premier via EBSCO Host, herafter referred to as "H. Zonana."

[115] The essential features of paraphilia are recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving (1) non-human objects, (2) the suffering or humiliation of oneself or one's partner, (3) children or other non-consenting persons that occur over a period of at least six months. The behavior, sexual urges, or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*, pp. 522-523, Washington, DC: American Psychiatric Association (1995). H. Zonna, R.D. Hare, pp. 191-193.

[116] Andrew J. Harris, *Civil Commitment of Sexual Predators: A Study in Policy Implementation* (New York: LFB Scholarly Publishing, 2005), p. 62, hereafter referred to as "A.J Harris."

committed, it may make treatment more difficult.[117] Delays in treatment could allow offenders to deny their sexual offending, externalize responsibility, or claim amnesia for their offenses. Such distortions make it harder for offenders to accept responsibility for their offenses, thus making it harder to treat them.[118]

Questions also exist regarding whether involuntary treatment can reduce sex offender recidivism. Most of the recent literature on treatment involves sex offenders who wanted to receive treatment.[119] This is noteworthy because civil commitment laws require treatment for offenders who, at least initially, chose not to participate in treatment.

Many experts believe that there is sound evidence that sex offender treatment can reduce recidivism.[120] However, other researchers warn that more research needs to be done because, currently, it cannot be proven that treatment is effective.[121] Results are less than definitive because there is not a large body of highly rigorous treatment research. In conclusion, the research indicates that there is not enough evidence to definitively prove that treatment for sex offender works.

Sex Offender Treatment Research Issues

More recent research has addressed many of the methodological problems of past research, but issues still remain.[122] As mentioned before, faults in the methodology used in some research can limit the generalizability of the findings. The issues include the following:

- In some cases, treatment groups are limited to sex offenders who meet stringent criteria, thereby treating only sex offenders who are the most likely to respond to treatment.[123]

- Some studies provided treatment for sex offenders that was questionably implemented.[124]

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[117] R.M. Wettstein, p. 617.

[118] Ibid.

[119] J.Q. LaFond (2005), p. 82.

[120] Ibid., p. 82.

[121] M.A. Alexander, p. 112; R.K Hanson et al. (2002), p. 186; Polizzi et al., p. 372; Gallagher et al., pp. 27-28; J.Q. LaFond (2005).

[122] Polizzi et al., p. 372

[123] L.M.J Simon (2000), p. 297.

[124] Ibid.

- Some studies did not use a comparison group, and in other studies that did, offenders were not randomly assigned to either the treatment or comparison group.[125]

- Some studies did not count offenders who refused treatment or those who dropped out of treatment when calculating the recidivism rate of treated and untreated offenders. Therefore, the lower recidivism rates for treated offenders in these studies could be the result of the fact that treatment groups consisted of offenders who were more open to treatment.[126]

- In some studies, recidivism is narrowly defined (studies only count new sex offenses when calculating recidivism) or studies rely only on one data source to determine whether or not a treated offender recidivated.[127]

- The length of the follow-up period in some studies might be too short to effectively determine recidivism.[128] Research has shown that the longer the follow-up period, the greater the rate of recidivism.[129]

Select Issues

Notwithstanding the Supreme Court's rulings that addressed constitutional issues, there are issues that could influence the long-term viability of civil commitment laws. These issues include (1) the ability of the government to determine which offenders should be civilly committed, (2) the use of less restrictive alternatives to civil commitment, (3) the use of indeterminate sentences to punish sex offenders, and (4) the cost of civil commitment programs.

Who Should Be Civilly Committed?

Do Sex Offenders Specialize in Sex Crimes? Special laws governing the control and management of sex offenders have been passed in many states out of concern that sex offenders are not only dangerous, but they are more likely to commit new *sex* crimes. Some research indicates that sex offenders do not specialize in sex crimes; hence, it might be difficult to label an offender simply as a "rapist" or a "child molester."[130] One researcher reported that convicted rapists self-report sexual

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[125] L.M.J Simon (2000), p. 297; GAO report, p. 4; Polizzi et al., p. 372.

[126] L.M.J Simon (2000), p. 297.

[127] Ibid; GAO report, p 10.

[128] Ibid; GAO report, p. 4.

[129] Furby et al., p.27.

[130] Leonore M.J. Simon, "An Examination of the Assumption of Specialization, Mental (continued...)

contact with children and convicted child molesters have admitted to raping adult females.[131] Most sex crimes are committed by offenders with extensive criminal histories that involve other violent and property crimes.[132] In many cases, sex crimes are committed by individuals as part of a pattern of violent and non-violent offending.

This section presents data from both the 2002 BJS report on the recidivism rates of 272,111 prisoners released in 1994 and the 2003 BJS report on the recidivism rates of 9,961 sex offenders released in 1994 to analyze whether sex offenders specialize in sex crimes. This section reviews data on the relative likelihood that violent offenders were rearrested for the same crime for which they were incarcerated. Next, this section reviews data on how many rapists, sexual assaulters, child molesters, and statutory rapists were rearrested and reconvicted for any type of crime within three years of being released. Finally, this section also reviews data on the criminal histories of released rapist, sexual assaulters, child molesters, and statutory rapists. Data indicate that sex offenders do specialize in sex crimes to some degree, but they also commit other crimes.

Table 2 shows the likelihood that released violent offenders were rearrested for the same crime. The odds of a rapist being rearrested for rape was 4.2 times the odds of a non-rapist being rearrested for rape.[133] The odds of a sexual assaulter being rearrested for another sexual assault was 5.9 times the odds of a non-sexual assaulter being rearrested for a sexual assault. The odds ratios for rapist and sexual assaulter relative to the odds ratios for murderers, robbers, and assaulters suggest that rapists and sexual assaulters are more likely than other violent offenders to be rearrested for the same crime. In all cases, the odds ratios for rapists and sexual assaulters is at least double that of the odds ratios of other violent offenders.

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[130] (...continued)
Disorder, and Dangerousness in Sex Offenders," *Behavioral Sciences and the Law*, vol. 18 (2000), p. 275, hereafter referred to as "L.M.J Simon (2000)"; Leonore M.J. Simon, "Do Criminal Offenders Specialize in Crime Types," *Applied and Preventive Psychology*, vol. 6 (1997), p. 35; Leonore M.J. Simon, "The Myth of Sex Offender Specialization: An Empirical Analysis," *New England Journal on Criminal and Civil Confinement*, vol. 23 (1997), p. 387, hereafter referred to as "L.M.J Simon (1997)."

[131] L.M.J Simon (1997), p. 391.

[132] L.M.J. Simon (2000), p. 283.

[133] Ibid.

Table 2. Relative Likelihood of Rearrest for Same Offense as Release Offense, Among State Prisoners Released in 1994

	All Violent Offenses	Homicide[a]	Rape[b]	Other Sexual Assault[c]	Robbery[d]	Assault[e]
Relative likelihood of rearrest	1.3	1.4	4.2	5.9	2.7	1.9

Source: CRS presentation of Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, NCJ 193427, June 2002. Extracted from Table 11. This table focuses on how the likelihood of sex offenders being rearrested for another sex crime compares to the likelihood of other violent offenders being rearrested for the same crime for which they were incarcerated; hence, this table does not include the odds-ratios for offenders convicted of property crimes (burglary, larceny/theft, motor vehicle theft, fraud, or stolen property), drug offenses, or public-order offenses.

Notes: The likelihood of rearrest in **Table 2** is presented as an odds ratio. In the context of this study, an odds ratio is calculated by calculating the ratio of the odds that a group of offenders released after being incarcerated for a particular crime will be rearrested for that same crime to the odds of all other offenders being rearrested for that particular crime. For example, 78 out of 3,138 released rapists were rearrested for rape, meaning the odds of a released rapist being rearrested for another rape was 0.025 or ((78/3,138)/((3,138-78)/3,138)). Out of 266,814 released non-rapists, 1,639 were rearrested for rape, meaning the odds of a prisoner released non-rapist being rearrested for rape was 0.006 or ((1,639/266,814)/((268,631-1,639)/266,814)). The resulting odds ratio is 4.2 or (0.025/0.006).

a. "Homicide" is defined as (1) intentionally causing the death of another person without extreme provocation or legal justification or (2) causing the death of another while committing or attempting to commit another crime.
b. "Rape" is defined as forcible intercourse (vaginal, anal, or oral) with a female or male. It includes forcible sodomy or penetration with a foreign object; it excludes statutory rape or any other nonforcible sexual acts with some unable to give legal or factual consent because of mental or physical defect or intoxication.
c. "Other sexual assault" is defined as (1) forcible or violent sexual acts not involving intercourse with an adult or minor, (2) non-forcible sexual acts with a minor (such as statutory rape or incest with a minor), or (3) non-forcible sexual acts with someone unable to give consent because of mental or physical defect or intoxication.
d. "Robbery" is defined as the unlawful taking of property that is in the immediate possession of another, by force or the threat of force. Includes forcible purse snatching, but excludes nonforcible purse snatching.
e. "Assault" is defined as (1) intentionally and without legal justification causing serious bodily injury, with or without a deadly weapon or (2) using a deadly or dangerous weapon to threaten, attempt, or cause bodily injury, regardless of the degree of injury, if any. Includes attempted murder, aggravated battery, felonious assault, and assault with a deadly weapon.

Data in **Table 3** show that at least 40% of rapists, sexual assaulters, and statutory rapists were rearrested for any type of crime (i.e., violent crimes, property crimes, drug offenses, or public-order offenses) within three years of release, and more than 20% of rapists, sexual assaulters, child molesters, and statutory rapists were reconvicted for any type of crime. Moreover, all types of sex offenders were more likely to be rearrested or reconvicted for any type of crime than for a sex crime.

Table 3. Percentage of Sex Offenders Rearrested or Reconvicted for a Sex Crime or Any Crime Within Three Years of Release

	All Sex Offenders	Rapist[a]	Sexual Assaulter[b]	Child Molester[c]	Statutory Rapist[d]
Percentage rearrested or reconvicted for a sex crime					
Rearrested	5.3%	5.0%	5.5%	5.1%	5.0%
Reconvicted	3.5%	3.2%	3.7%	3.5%	3.6%
Percentage rearrested or reconvicted for any crime					
Rearrested	43.0%	46.0%	41.5%	39.4%	49.9%
Reconvicted	24.0%	27.3%	22.4%	20.4%	32.7%
Total Released	9,691	3,115	6,576	4,295	443

Source: CRS presentation of Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, report NCJ 198281, November 2003. Extracted from Table 7, Table 8, Table 21, and Table 22. This table only focuses on two measures of recidivism: rearrest and reconviction. This table does not include data on two additional recidivism measures: returned to prison with a new sentence for *any* type of crime and returned to prison with or without a new sentence because BJS only provided this data for rearrests or reconvictions for any crime and not for rearrests or reconvictions for sex crimes.

Note: The sum total of the number of released offenders in the four sex offender categories (rapist, sexual assaulter, child molester, and statutory rapist) does not equal 9,691 because some sex offenders are counted in more than one category (though "rapist" and "sexual assaulter" are exclusive). For example, an offender counted as a "rapist" or a "sexual assaulter" could also be counted as a "child molester" if the offender's crime was committed against a child. All "statutory rapists" would be counted as "child molesters" because their crime involved consensual sexual intercourse with a child.

a. "Rapist" refers to a released sex offender whose imprisonment offense was defined by state law as forcible intercourse with a female or male.
b. "Sexual assaulter" refers to a released sex offender whose imprisonment offense was defined as (1) forcible sexual acts not amounting to intercourse with a victim of any age, (2) nonforcible sexual acts with a minor, or (3) nonforcible sexual acts with someone unable to give consent because of mental or physical reasons.
c. "Child molester" refers to a released sex offender whose imprisonment offense involved (1) forcible intercourse with a child, (2) statutory rape, or (3) any other type of sexual contact with a child, with or without the use of force.
d. "Statutory rapist" refers to an offender who had consensual sexual intercourse with someone under the age of consent in the state in which the offense occurred. Statutory rape includes incest offenses.

Data in **Table 4** show that a large percentage of sex offenders had at least one prior arrest for any type of crime (i.e., violent crimes, property crimes, drug offenses, or public-order offenses). More than half of sex offenders had a past conviction for any type of crime. However, BJS reported that sex offenders were more likely than

non-sex offenders to have a past arrest (6.5% of non-sex offenders) or conviction (0.2% of non-sex offenders) for a sex offense.[134]

Table 4. Criminal History of Sex Offenders Released from Prison in 1994, by Type of Sex Offender

	All	Rapist[a]	Sexual Assaulter[b]	Child Molester[c]	Statutory Rapist[d]
Percentage with at least one prior arrest for					
Any crime	78.5%	83.1%	76.3%	76.8%	80.6%
Any sex offense	28.5%	28.7%	28.4%	29.0%	38.4%
Sex offense against a child	10.3%	5.7%	12.5%	18.3%	19.6%
Percentage with at least one prior conviction for					
Any crime	58.4%	62.9%	56.2%	54.6%	64.6%
Any sex offense	13.9%	14.6%	13.5%	11.9%	21.2%
Sex offense against a child	4.6%	3.4%	5.2%	7.3%	11.5%
Total Released	9,691	3,115	6,576	4,295	443

Source: CRS presentation of Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, report NCJ 198281, November 2003. Extracted from Table 5 and Table 6. This table focuses on whether sex offenders have a history of any other crimes other than sex crimes; hence, this table does not include information on the mean and median number of arrests and convictions for any crimes, or the percentage of sex offenders with a prior prison sentence for any crime.

Note: The sum total of the number of released offenders in the four sex offender categories (rapist, sexual assaulter, child molester, and statutory rapist) does not equal 9,691 because some sex offenders are counted in more than one category (though "rapist" and "sexual assaulter" are exclusive). For example, an offender counted as a "rapist" or a "sexual assaulter" could also be counted as a "child molester" if the offender's crime was committed against a child. All "statutory rapists" would be counted as "child molesters" because their crime involved consensual sexual intercourse with a child.

a. "Rapist" refers to a released sex offender whose imprisonment offense was defined by state law as forcible intercourse with a female or male.
b. "Sexual assaulter" refers to a released sex offender whose imprisonment offense was defined as (1) forcible sexual acts not amounting to intercourse with a victim of any age, (2) nonforcible sexual acts with a minor, or (3) nonforcible sexual acts with someone unable to give consent because of mental or physical reasons.
c. "Child molester" refers to a released sex offender whose imprisonment offense involved (1) forcible intercourse with a child, (2) statutory rape, or (3) any other type of sexual contact with a child, with or without the use of force.
d. "Statutory rapist" refers to an offender who had consensual sexual intercourse with someone under the age of consent in the state in which the offense occurred. Statutory rape includes incest offenses.

[134] BJS 1994 sex offender recidivism report, p. 12.

Data indicate that sex offenders are more likely than non-sex offenders to be rearrested for a sex crime. Sex offenders are also more likely than non-sex offenders to have a past arrest or conviction for a sex crime. However, the data indicate that sex offenders do not specialize solely in sex crimes. Sex offenders are also rearrested and reconvicted for committing offenses other than sex offenses. At the same time, it appears that sex offenders *may* be at a greater risk than non-sex offenders to commit another sex crime after they are released from prison.

Are Some Sex Offenders More Dangerous Than Others? Some researchers believe that there is a small group of sex offenders — ones diagnosed with both paraphilia and psychopathy — who are at a high risk for re-offending. One researcher concluded that "the rate at which this highest risk subgroup actually reoffends with another sexual offense could be conservatively estimated at 50% and could reasonably be estimated at 70% to 80%."[135] Other research indicates that sex offenders diagnosed with psychopathy, especially sex offenders diagnosed with both psychopathy and paraphilia, are more likely to recidivate than other sex offenders.[136] One study found that more than 80% of sex offenders released from a maximum security psychiatric facility who were diagnosed with psychopathy were rearrested or returned to custody for a violent offense within six years.[137] In comparison, about 20% of non-psychopathic offenders were rearrested or returned to custody for a violent offense within six years.[138] However, it should be noted that recidivism in this case was measured as arrest or return to custody for a *violent* offense, not just sex offenses. Other research found that a high Psychopathy Checklist-Revised (PCL-R)[139] score was a good predictor of *violent* recidivism in general.[140] However, it also found that *sexual* recidivism was predicted by a combination of a high PCL-R score and deviant sexual arousal.[141]

Future Dangerousness. Before a sex offender is civilly committed, the offender is evaluated to determine the likelihood of recidivism. There are two general methods for predicting dangerousness: clinical and actuarial.[142] The clinical method involves a clinician examining the offender and the offender's history, including the offender's criminal record, psychosexual history, and other biographical

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[135] R. Karl Hanson, "What Do We Know About Sex Offender Risk Assessment," *Psychology, Public Policy and Law*, vol. 4, no. 50 (1998), pp. 67-68.

[136] R.D. Hare, pp. 189-191; Philip H. Witt, Joseph DelRusso, Jessica Oppenheim, and Glen Ferguson, "Sex Offender Risk Assessment and the Law," *The Journal of Psychiatry and Law*, vol. 24 (1997), p. 357, hereafter referred to as "P.H. Witt et. al."

[137] Vernon L. Quinsey, Marine E. Rice and Grant T. Harris, "Actuarial Prediction of Sexual Recidivism," *Journal of Interpersonal Violence*, vol. 10, no. 1 (1995), p. 99.

[138] Ibid.

[139] The PCL-R was developed by Robert Hare and is the tool most commonly used to diagnose psychopathy.

[140] R.D. Hare, p. 190.

[141] Ibid.

[142] J.Q. LaFond (2005), pp. 51-55.

information.[143] The clinician weighs all he knows about the individual and then, based on knowledge of risk factors, makes a judgement about the likelihood the offender will re-offend if the offender was released to live in the community *without supervision*.[144] The clinician has the ability to decide how much weight, if any, to give each risk factor.[145] Supporters of the clinical method argue that trained clinicians can shape their assessment based on cues that actuarial methods cannot pick up, especially if the clinician interviews the offender.[146]

The actuarial method involves the use of actuarial instruments[147] by trained individuals to predict the risk of re-offense. Actuarial instruments are developed by studying large numbers of repeat sex offenders and collecting data on their common characteristics.[148] Researchers also collect data on the rate of re-offending by a group of sex offenders with a set of common characteristics. Actuarial tools predict the likelihood that offenders will re-offend based on how their characteristics match the characteristics of a group of offenders with a known re-offense rate. Supporters of actuarial instruments argue that the instruments are developed using proven statistical methods for calculating risk and that a large number of repeat sex offenders have been studied to provide them with reliable predictive accuracy.[149] Supporters also maintain that the instrument prevents evaluators from introducing errors or bias, thereby making them more objective.

Both methods have their flaws; some are particular to the method, others are inherent to the nature of predicting risk. Studies indicate that clinical judgements about sex offender dangerousness are quite poor.[150] One researcher reported that a number of studies that have evaluated the predictive accuracy of clinical judgements of sex offender dangerousness found that the average correlation between a prediction of re-offending and actual offending was 0.10.[151] There is also the

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[143] Gregory DeClue, "Avoiding Garbage 2: Assessment of Risk for Sexual Violence After Long-term Treatment," *The Journal of Psychiatry and Law*, vol. 33 (Summer 2005), p. 183, hereafter referred to as "G. DeClue."

[144] J.Q. LaFond (2005), p. 51.

[145] G. DeClue, p. 183.

[146] Ibid.

[147] Several actuarial instruments have been developed to predict the risk sex offenders pose. They include the *Violence Risk Appraisal Guide* (VRAG), the *Sex Offender Risk Appraisal Guide* (SORAG), the *Rapid Risk Assessment of Sexual Offense Recidivism* (RRASOR), the *Static-99*, and the *Minnesota Sex Offender Screening Tool* (revised) (Mn-SOST-R). Grant T. Harris and Marnie E. Rice, "Actuarial Assessment of Risk among Sex Offenders," *Annals of the New York Academy of Sciences*, vol. 989 (2003), p. 199.

[148] J.Q. LaFond (2005), p. 208.

[149] Ibid, p. 53.

[150] Ibid.

[151] In general terms, the 0.10 correlation coefficient means that experts were correct in only about 10% of the cases in which they predicted that the sex offender would re-offend. Ibid., p. 52.

possibility that clinicians could introduce bias into the risk assessment, such as giving more weight to some risk factors and less to others.

Actuarial instruments can only identify a range of risk for a *group* of sex offenders; they cannot identify the specific risk for any individual within the group.[152] A given individual in the group might have a risk of re-offending that is either higher or lower than the group's risk. Actuarial instruments rely heavily on static factors (i.e., factors that do not change with time, such as age at first offense, number of victims, and gender of victim) when determining risk.[153] This means that when offenders are placed in a risk group based on their history, they will most likely stay in that risk group because their history cannot change.

There is also the possibility of type I errors.[154] One inherent problem in risk assessments for sex offenders is that sex offenders do not commit new sex crimes at high rates, which means that there is a low recidivism base-rate[155] upon which to predict risk.[156] However, as discussed above, certain groups of offenders may recidivate at higher rates, which can make risk assessment more accurate. Yet, even the highest risk groups do not recidivate 100% of the time, which means that there is still the possibility of error.

Safe to Release. After the offender is committed, it must be determined when it is safe to release the offender into society. Although researchers have made advancements in determining whether an offender is at-risk to re-offend, not as much progress has been made in developing methods to determine when it is safe to release sex offenders from custody.[157] Predictions of dangerousness are based on static risk factors,[158] but predictions of safety are based on dynamic risk factors.[159] Researchers have yet to accurately determine which dynamic risk factors are associated with

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[152] J.Q. LaFond (2005), p. 209.

[153] Ibid, p. 55.

[154] Type I errors are sometimes referred to as "false-positives." In statistical terms, a type I error results when the null hypothesis is true, but it is rejected. In the context of civil commitment, the null hypothesis for someone assessing a sex offender's risk to recidivate would be that the sex offender is *not* at risk to recidivate. A type I error would result when an offender that is not at risk to recidivate is assessed as being a risk to recidivate. A.H. Studenmund, *Using Econometrics: A Practical Guide*, (Boston: Addison Wesley, 2001). p. 116.

[155] A recidivism base rate is the proportion of a group of sex offenders who will re-offend after a given period of time. R.K. Hanson et al. (2003).

[156] P.H. Witt et. al, p. 352.

[157] J.Q. LaFond (2005), p. 211.

[158] Such as criminal history, age at first offense, or the sex of past victims. Ibid., p. 212.

[159] Dynamic risk factors are risk factors that can change. Dynamic risk factors are the factors that therapy usually addresses. Examples of dynamic risk factors include developing empathy for victims, attitudes towards women, and mastering techniques to prevent relapse. Ibid.

decreased risk of sex offenders recidivating.[160] This is problematic because sex offender treatment attempts to decrease the risk of re-offending by changing dynamic risk factors. Some have argued that it is difficult to assess risk in an institutional setting because the offender does not have the opportunity to re-offend.[161] Offenders do not face the same stimulations and opportunities in a institutional setting that they will face in the community, hence it is difficult to tell whether they can apply what they have learned in treatment.[162]

Less-Restrictive Alternatives

The difficulty in accurately predicting whether committed offenders are safe to release from confinement raises questions about whether less restrictive alternatives should be used to manage sexually dangerous persons. Some have argued that judges or juries should be allowed to, in certain situations, civilly commit an offender to outpatient treatment, or if the offender is placed in an institution, the offender should be released to community supervision after he shows improvement.[163] Maricopa County in Arizona was the first jurisdiction in the country to implement lifetime supervision for sex offenders.[164]

The lifetime supervision program in Maricopa County involves specialized units that focus solely on the supervision of sex offenders.[165] Some offenders under the supervision of these units are placed in an intensive probation supervision program. Offenders in this program are assigned to a probation officer (PO) with a limited caseload that gives the PO more time to monitor the offenders. Each PO has a maximum caseload of 25 probationers.[166] POs are supported by surveillance officers who make random field visits to offenders on their caseload. POs also have a "maintenance" caseload that is composed of offenders who have been on probation for several years and are considered low-risk.[167] All offenders begin probation on a specialized caseload and are designated as high-risk until they have undergone an

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[160] Ibid.

[161] Ibid, p. 212; R.M. Wettstein, p. 621.

[162] J.Q. LaFond (2005), p. 212.

[163] J.Q. LaFond (2005), pp. 158, 217.

[164] In 1990, the Arizona Supreme Court affirmed a 1988 Court of Appeals decision (*Arizona v. Wagstaff*) that ruled that lifetime parole was invalid due to a violation of the Separation of Powers clause in the state constitution. Also in 1990, the Arizona Supreme Court ruled (*Arizona v. Lyons*) that lifetime probation was constitutional because it did not violate a separation of judicial and executive power. The Arizona Court of Appeals ruled in 1991 that a court could not impose lifetime probation *and* a prison sentence on the same offense. This is why prosecutors try to get sex offenders to plead to one crime where they are required to be placed on lifetime supervision. Center for Sex Offender Management, *Lifetime Supervision of Sex Offenders: Emerging Practices and Implications*, unpublished brief, April 2001, p. 1.

[165] Ibid., p. 9.

[166] Ibid.

[167] Ibid.

evaluation.[168] Periodic reassessment is conducted to determine the risk the offender poses, thereby determining the degree of supervision he will receive. Offenders also receive a set of conditions for their supervision, which can include requirements to attend sex offender treatment, register as a sex offender, and restrictions on where the offender can live and with whom he can have contact.[169] Violations of the terms of supervision result in increased supervision and surveillance.[170] The offender's probation can be revoked if the graduated sanctions fail to ensure compliance. Offenders are also subject to polygraph examinations to ensure that they are following the terms of their supervision.[171]

The program appears to help prevent recidivism. Agency data showed that 39.5% of offenders supervised by the specialized units over a seven-year period (May 1993 to August 2000) returned to court at least once for a violation of the terms of supervision. Less than 7% of the supervised offenders committed a new criminal offense, and less than 2% committed a new sex offense.[172] Data also showed that 31.9% had a violation for not complying with treatment, 29.6% had a violation for using or abusing alcohol or drugs, and 26.9% had a violation for having contact with children.[173] However, it is not clear what proportion of the offenders on lifetime supervision were sentenced for violent or non-violent sex crimes, hence it is difficult to tell whether the program was successful at reducing recidivism for violent sex offenders.

A successful outpatient civil commitment program could have many of the same elements as Maricopa County's lifetime probation program: the use of polygraph examinations, reduced caseloads for POs, a set of conditions for supervision that includes a requirement for treatment, and intensive supervision. However, additional elements could be incorporated into an outpatient civil commitment program. The program could use electronic monitoring to ensure that sex offenders avoid prohibited areas. Colorado has a sex offender management program similar to the Maricopa County's lifetime probation program, but it also includes some elements not found in Maricopa County's program. Colorado's program uses containment plans tailored to offenders based on their offense patterns.[174] The plan places boundaries on what offenders can do, where they can go, their access to erotic material, and other activities that are a part of their offense patterns.[175]

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[168] Ibid., p. 10.

[169] Ibid., p. 9-10.

[170] Ibid., p. 11

[171] Ibid.

[172] Ibid.

[173] It should be noted that some offenders might have had multiple violations. Ibid.

[174] J.Q. LaFond (2005), p. 220.

[175] Ibid.

Allowing offenders to be placed in the community under intense supervision could assist in the treatment of offenders while they are committed.[176] The program could motivate offenders to participate in treatment because they would know that there is a possibility of being released. The outpatient treatment program would allow psychologists to evaluate offenders outside of a institutional setting to see whether they are applying what they are learning in treatment. However, there is always a risk associated with placing an offender on parole. Even with intensive supervision, a PO cannot monitor a sex offender all the time, hence there is a possibility that an offender can commit a new crime while on parole. There is also the possibility that an offender could abscond while on parole.

Indeterminate Sentences for Sex Offenders

Starting in the 1980s, many states adopted determinate sentencing laws. In general, these laws allowed judges to impose a fixed sentence. To help structure determinate sentences, many states adopted sentencing guidelines that suggested how long an offender's sentence should be based on the crime the offender was convicted for and the individual's criminal history, among other factors. In most instances, determinate sentence laws eliminated parole, so even though offenders had to serve most or all of their sentence, they were released unsupervised after serving their sentence. Although many states implemented determinate sentencing laws, some maintained indeterminate sentencing. Under an indeterminate sentencing approach, statutes provide a range of possible sentences, offenders are released on parole as determined by a parole board, and rehabilitation of prisoners is the main objective.

One researcher has proposed that states implement what he refers to as "a sexually dangerous offender sentence."[177] The proposal would allow for a sentence that is both determinate and indeterminate. Offenders would be sentenced to an indeterminate term in addition to whatever punishment they would receive under the existing determinate sentencing structure. Offenders would be eligible to receive a sexually dangerous offender sentence after they commit a second serious sex crime. A special hearing would be held where the prosecutor would present evidence that the defendant is a "sexually dangerous offender" with an enduring propensity for committing sex crimes. The hearing would focus solely on the offender's current sexual dangerousness. Sexually dangerous offender laws would ensure that the offender serves at least the minimum sentence required by law, but if there is reason to believe that the offender is still dangerous and would commit a new crime if released, the state would not be required to release him from prison, much like if the offender had received an indeterminate sentence. Also, when released, the offender would be released on parole instead of being released unsupervised. Sexually dangerous offender laws would have the benefit of avoiding the costs associated with civil commitment.[178] They would also send a message to sex offenders that if

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[176] Ibid.

[177] J.Q. LaFond (2005), p. 161-163.

[178] Ibid.

they continue to commit sex crimes and are found to be dangerous, they can be punished indefinitely.[179]

This system could be implemented at the federal level, but it would require Congress to reestablish parole for convicted offenders. Such a proposal would also have to provide the appropriate procedural due process to the offender, such as the right to contest evidence and the right to present evidence with the assistance of counsel and the offender's expert, and a jury would have to make a finding of sexual dangerousness.[180]

Cost of Civil Commitment

The annual cost of a civil commitment program can run into the millions of dollars. Different sources have attempted to estimate states' costs for implementing and running a civil commitment program.[181] One researcher stated that it costs about $100,000 per person per year to civilly commit an offender.[182] Projected annual costs could continue to increase as more offenders are civilly committed. As of fall 2006, 2,694 offenders in 18 states[183] have been civilly committed. Of the 2,694 offenders, 252 have been discharged (9.4%).[184] Of the 252 discharged offenders, 81 (32.1%) were released by the state of Arizona, and 59 (23.4%) were released by the state of California.[185] Five states (Minnesota, Nebraska,[186] North Dakota, Pennsylvania, and Texas) have not released any civilly committed offenders.[187] The population of offenders will likely continue to grow because very few offenders are being released after being committed. As more offenders are committed, states will likely have to build new facilities or renovate old facilities to house the increasing population. It is likely that there will be an increased demand for new facilities because the

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[179] Ibid.

[180] Ibid, p. 162.

[181] For example see W.L. Fitch, p. 493, J.Q. LaFond (1998), pp. 476-486; A.J Harris, pp. 17-18; Washington State Institute for Public Policy, *Involuntary Commitment of Sexually Violent Predators: Comparing State Laws*, March 2005, available online at [http://www.wsipp.wa.gov/rptfiles/05-03-1101.pdf], accessed December 18, 2006.

[182] J.Q. LaFond (2005), p. 150.

[183] Currently, 19 states have civil commitment laws, but only 18 states have actually civilly committed offenders. New Hampshire recently passed a civil commitment law and is in the process of beginning to civilly commit sex offenders. As of fall 2006, New Hampshire had not civilly committed any sex offenders. Monica Davey and Abby Goodnough, "Doubts Rise as States Hold Sex Offenders After Prison," *New York Times*, March 4, 2007 p. 1, hereafter referred to as "New York Times Civil Commitment Article."

[184] Ibid.

[185] Ibid.

[186] This only includes offenders that have been civilly committed since July 2006. Ibid.

[187] Ibid.

facilities used to house committed offenders will have to be therapeutic and secure.[188] Also, states might face costs associated with increased medical care as the civilly committed population ages. As of fall 2006, 229 (8.5%) of all civilly committed offenders were over the age of 60.[189] An elderly civil commitment population could be a growing problem if the trend of releasing relatively few civilly committed offenders continues.

Civil commitment includes other costs in addition to housing and treating committed offenders. States have to pay the cost of the legal proceedings required under civil commitment laws. The state of Washington estimates that court and litigation costs are, on average, $35,000 per patient per year.[190] The state of Minnesota estimates that a single civil commitment trial costs about $100,000, which includes attorneys and expert fees and not other court costs.[191] Moreover, states will likely have to establish and maintain community placement programs for released offenders. Other costs could include construction and operation of transitional facilities, as well as any medications offenders are required to take.

Conclusion

The public outrage towards sex crimes, especially sex crimes against children, has resulted in demands for harsher penalties for sex offenders and better methods for managing them in the community. Recent media coverage of high-profile sex crimes may have increased the public's fear that *all* sex offenders are dangerous. Elected officials in 19 states and the federal government have turned to civil commitment as a means of trying to ensure the public's safety from sex offenders. Yet, there is a growing controversy about whether civil commitment is the best policy for protecting the public from sex offenders.

Notwithstanding the Supreme Court's rulings on civil commitment, issues remain that continue to fuel the debate over civil commitment. Some of these issues include the following:

- Are sex offenders the threat most people believe them to be? There is some evidence that they may not be, but evidence also shows that a select group of sex offenders are at a high risk to re-offend. Data on sex offender recidivism is not conclusive. The rate of recidivism among sex offenders varies depending on the study, which, along with the limitations of recidivism data, makes it difficult to conclude that sex offenders are not the threat many think they are.

- Can sex offenders be treated? Studies show that there are promising methods for treating sex offenders, but certain traits found in some

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[188] J.Q. LaFond (2005), p. 151.

[189] New York Times Civil Commitment Article.

[190] Ibid, p. 150.

[191] Ibid.

sex offenders, especially those who are candidates for civil commitment, may make them more resistant to treatment. A review of the literature on the efficacy of sex offender treatment indicates that no consensus exists regarding whether treatment can reduce recidivism among sex offenders.

- Questions persist regarding whether "dangerousness" can be accurately predicted. This can make civil commitment a problematic endeavor because for it to be effective, only the most dangerous offenders should be committed, and they should be released when it is safe to do so.

- The potentially high cost of establishing and maintaining a civil commitment program continues to be a concern. If, however, few civilly committed offenders are released, costs will likely continue to grow as the population of committed offenders increases.

These issues raise questions central to the debate on civil commitment. If sex offenders are not at a greater threat to recidivate than other violent offenders, should they be subject to civil commitment? If sex offenders cannot be treated, is civil commitment a viable method for managing sex offenders? Would it be better for sex offenders to be managed by the criminal justice system rather than requiring mental health professionals to work with offenders that are not responsive to treatment? Are there more cost-effective measures for managing sex offenders that also protect communities from repeat sex crimes?

Appendix A. Civil Commitment Statutes, by State

This appendix provides an overview of the state laws governing the civil commitment of sexually dangerous persons. It does not review state laws governing civil commitment of individuals with serious mental illness.

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Arizona	Guilty except insane, guilty or incompetent to stand trial for a sexually violent offense and 18 years of age with a mental disorder that makes the person likely to engage in acts of sexual violence (Ariz. Rev. Stat. §§ 36-3701 and 3702).	Beyond a reasonable doubt (Ariz. Rev. Stat. § 36-3707).	Court or Jury (Ariz. Rev. Stat. § 36-3706).	Until the mental disorder has changed and no longer a danger to others (Ariz. Rev. Stat. §§ 36-3707, 3709, and 3714).	Release to less restrictive alternative or discharge (Ariz. Rev. Stat. §§ 36-3707, 3709 and 3714).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
California	Convicted, not guilty by reason of insanity, adjudicated delinquent of a sexually violent offense and suffering from a mental disorder that makes the person likely to engage in sexually violent criminal behavior (Cal. W & I §§ 6600, 6601).	Beyond a reasonable doubt (Cal. W & I § 6604).	Court or jury (Cal. W & I § 6603 & 6604).	Mental disorder has so changed that person is no longer a danger and is not likely to engage in sexually violent criminal behavior (Cal. W & I § 6605).	Unconditional discharge and release (Cal. W & I § 6605).
	Incompetent to stand trial for a sexual offense and a danger to others (Cal. Pen. Code § 1370).	Clear and convincing evidence (Cal. Pen. Code § 1370).	Court (Cal. Pen. Code § 1370).	After three year commitment or the maximum term of imprisonment for the offense whichever is shorter or until mentally competent (Cal. Pen. Code §§ 1370 and 1372).	Return to committing court (Cal. Pen. Code §§ 1370 and 1372).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Florida	Guilty, not guilty by reason of insanity, or adjudicated delinquent of a sexually violent offense and suffering from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined (Fla. Stat. Ann. § 394.912).	Clear and convincing evidence (Fla. Stat. Ann. § 394.917).	Court or unanimous jury (Fla. Stat. Ann. §§ 394.916).	Until mental abnormality or personality disorder has so changed that it is safe for the person to be at large and the person will not engage in acts of sexual violence (Fla. Stat. Ann. §§ 394.917 and 394.918).	Release (Fla. Stat. Ann. § 394.918 and 394.919).
Illinois	Convicted, adjudicated delinquent, or found not guilty by reason of insanity of a sexually violent offense and suffering from a mental disorder that creates a substantial probability that the person will engage in acts of sexual violence (725 Ill. Comp. Stat. Ann. 207/15).	Beyond a reasonable doubt (725 Ill. Comp. Stat. Ann. 207/35).	Court or unanimous jury (725 Ill. Comp. Stat. Ann. 207/15 and 207/25).	No longer a sexually violent person (725 Ill. Comp. Stat. Ann. 207/65).	Discharge and parole or mandatory supervised release resume (725 Ill. Comp. Stat. Ann. 207/15 and 207/65).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Iowa	Convicted of, charged with, acquitted of, or found incompetent to stand trial for a sexually violent offense and suffering from a mental abnormality that makes the person likely to engage in predatory acts of sexual violence, if not confined (Iowa Code §§ 229A.3 and 229A.4).	Beyond a reasonable doubt (Iowa Code § 229A.7).	Judge or jury (Iowa Code § 229A.7).	Mental abnormality has so changed that person is not likely to engage in sexually violent offenses (Iowa Code § 229A.10).	Discharge (Iowa Code § 229A.10).
Kansas	Convicted of or charged with a sexually violent offense and suffering from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts os sexual violence (Kan. Stat. Ann. § 59-29a02).	Beyond a reasonable doubt (Kan. Stat. Ann. § 59-29a07).	Judge or unanimous jury (Kan. Stat. Ann. §§ 59-29a06 and 59-29a07).	Until mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release (Kan. Stat. Ann. § 59-29a8).	Place in transitional release (Kan. Stat. Ann. § 59-29a8). Incompetent: period of limitation for the prosecution shall continue to run (Kan. Stat. Ann. §§ 59-29a07 and 22-3305).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Massachusetts	Convicted of or adjudicated as a delinquent of, charged with, or found incompetent to stand trial for a sexual offense and suffering from a mental disorder *that makes such person likely to engage in sexual offenses (Mass. Gen. Laws ch. 123A, § 1).*	Beyond a reasonable doubt (Mass. Gen. Laws ch. 123A, § 14).	Court or unanimous jury (Mass. Gen. Laws ch. 123A, § 14).	No longer sexually dangerous (Mass. Gen. Laws ch. 123A, § 9).	Discharge (Mass. Gen. Laws ch. 123A, § 9).
Minnesota	Mentally ill, a danger to others and sexually dangerous or having a sexual psychopathic personality (Minn. Stat. § 253B.185).	Clear and convincing evidence (Minn. Stat. § 253B.185).	Judge (Minn. Stat. § 253B.185).	Until capable of making an acceptable adjustment to open society, no longer a danger, and no longer in need of inpatient treatment and supervision (Minn. Stat. § 253B.18).	Discharge or provisional discharge (Minn. Stat. § 253B.18).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Missouri	Guilty or not guilty by reason of mental disease/defect of a sexually violent offense or committed as a criminal sexual psychopath and suffering from a mental abnormality which makes the person more likely to engage in predatory acts of sexual violence if not confined (Mo. Rev. Stat. § 632.480).	Clear and convincing evidence (Mo. Rev. Stat. § 632.495).	Court or Unanimous jury (Mo. Rev. Stat. § 632.492).	Mental abnormality has changed so that person is not likely to commit sexual violence. (Mo. Rev. Stat. § 632.501).	Conditional Release (Mo. Rev. Stat. §§ 632.498 and 632.505).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Nebraska	A dangerous sexual offender suffering from a mental illness or personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior. (Neb. Rev. Stat. Ann. § 83-174.01) and neither voluntary hospitalization nor other less restrictive treatment alternatives are available or would suffice to prevent harm (Neb. Rev. Stat. Ann. § 71-1209).	Clear and convincing evidence (Neb. Rev. Stat. Ann. § 71-1209)	Mental Health Board (Neb. Rev. Stat. Ann. §§ 71-1205 and 71-1209).	Mental illness or personality disorder has been successfully treated or managed to the extent that the subject no longer poses a threat to the public or a less restrictive treatment alternative exists which does not increase the risk that the subject will commit another sexual offense (Neb. Rev. Stat. Ann. § 71-1219).	Discharged or new treatment order entered (Neb. Rev. Stat. Ann. § 71-1219).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
New Hampshire	Guilty, not guilty by reason of insanity or incompetent to stand trial on a charge of a sexually violent offense and suffering from a mental abnormality or personality disorder that makes a person likely to engage in acts of sexual violence if not confined (N.H. Rev. Stat. Ann. § 135-E:2). Effective 1/1/2007.	Clear and convincing evidence (N.H. Rev. Stat. Ann. § 135-E:11). Effective 1/1/2007.	Court or Jury (N.H. Rev. Stat. Ann. § 135-E:9). Effective 1/1/2007.	Until mental abnormality or personality disorder has changed and person is no longer a danger to others. Commitment order valid for up to five years (N.H. Rev. Stat. Ann. § 135-E:11). Effective 1/1/2007.	Release from commitment and return to department of corrections (N.H. Rev. Stat. Ann. § 135-E:20). Effective 1/1/2007.
New Jersey	Convicted, adjudicated delinquent, not guilty by reason of insanity or incompetent to stand trial on a charge of a sexually violent offense and suffering from a mental abnormality that makes him likely to engage in acts of sexual violence if no confined (N.J. Stat. Ann. § 30:4-27.26).	Clear and convincing evidence (N.J. Stat. Ann. § 30:4-27.32).	Court (N.J. Stat. Ann. §§ 30:4-27.32 and 30:4-27.33).	No longer a sexually violent predator (N.J. Stat. Ann. § 30:4-27.36).	Return to appropriate authority, release or conditional release (N.J. Stat. Ann. §§ 30:4-27.32 and 30:4-27.36).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
North Dakota	An individual has engaged in sexually predatory conduct and has a congenital or acquired condition that is manifested by sexual, personality or other mental disorder that makes the individual likely to engage in further sexual acts (N.D. Cent. Code § 25-03.3.01).	Clear and convincing evidence (N.D. Cent. Code § 25-03.3.13).	Court (N.D. Cent. Code § 25-03.3.13).	No longer sexually dangerous (N.D. Cent. Code §§ 25-03.3.17 and 25-03.3.18).	Discharge (N.D. Cent. Code §§ 25-03.3.17 and 25-03.3.18).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Pennsylvania	Adjudicated delinquent for an act of sexual violence, committed to an institution as a delinquent child (§ 6352) and remains upon attaining 20 years of age, and is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence (42 Pa. Cons. Stat. Ann. § 6403).	Clear and convincing evidence (42 Pa. Cons. Stat. Ann. § 6403).	Court (42 Pa. Cons. Stat. Ann. § 6403).	Commitment expires after one-year unless court determines by clear and convincing evidence the person is likely to engage in an act of sexual violence, then the court shall order an additional period of involuntary treatment of one year (42 Pa. Cons. Stat. Ann. § 6404).	Discharged if person no longer has serious difficulty in controlling sexually violent behavior (42 Pa. Cons. Stat. Ann. § 6404).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
South Carolina	The individual is convicted, or found guilty but mentally ill, not guilty by reason of insanity, adjudicated delinquent, or found incompetent to stand trial for a sexually violent offense and suffering from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined (S.C. Code Ann. § 44-48-30).	Beyond a reasonable doubt (S.C. Code Ann. § 44-48-100).	Court or unanimous jury (S.C. Code Ann. § 44-48-100).	Mental abnormality or personality disorder has so changed that the person is no longer a danger and not likely to commit acts of sexual violence (S.C. Code Ann. § 44-48-110).	Release (S.C. Code Ann. §§ 44-48-110).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Texas	Convicted of, charged with, not guilty by reason of insanity of, or adjudicated delinquent of a sexually violent offense and is a repeat sexually violent offender and suffering from behavioral abnormality that makes him likely to engage in predatory acts of sexual violence (Tex. Health & Safety Code Ann. § 841.003).	Beyond a reasonable doubt (Tex. Health & Safety Code Ann. § 841.062).	Court or unanimous jury (Tex. Health & Safety Code Ann. §§ 841.061and 841.062).	Behavioral abnormality has changed and no longer likely to engage in predatory acts of sexual violence (Tex. Health & Safety Code Ann. § 841.121).	Release (Tex. Health & Safety Code Ann. § 841.121).
Virginia	Charged and unrestorably incompetent to stand trial or convicted of a sexually violent offense and because of a mental abnormality or personality disorder, finds it difficult to control predatory behavior, which makes him likely to engage in sexually violent acts (Va. Code Ann. §§ 37.2.900).	Clear and convincing evidence (Va. Code Ann. §§ 37.2.908).	Unanimous jury or court (Va. Code Ann. §§ 37.2.908).	No longer a sexually violent predator (Va. Code Ann. §§ 37.2.910).	Release or conditional release (Va. Code Ann. §§ 37.2.910).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Washington	Convicted of or charged with a sexual violent offense and suffering from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined (Wash. Rev. Code § 71.09.020). Charged with a sexually violent offense and found incompetent to stand trial (Wash. Rev. Code § 71.09.060).	Beyond a reasonable doubt (Wash. Rev. Code § 71.09.060).	Court or unanimous jury (Wash. Rev. Code § 71.09.060).	Acquitted by reason of insanity: commitment cannot exceed the maximum possible penal sentence for the offense charged (Wash. Rev. Code § 10.77.025). No longer a sexual predator or conditions can be imposed that adequately protect the community (Wash. Rev. Code § 71.09.090).	Conditional release or unconditional discharge (Wash. Rev. Code § 71.09.090).

State	Commitment Eligibility	Burden of Proof	Trial	Duration	Proceeding Following Commitment
Wisconsin	Convicted, adjudicated delinquent, not guilty of or not responsible by reason of insanity or mental disease/defect/illness of a sexually violent offense and dangerous because of a mental disorder that makes the person likely to engage in one or more acts of sexual violence (Wis. Stat. § 980.01).	Beyond a reasonable doubt (Wis. Stat. § 980.05).	Court or jury (Wis. Stat. § 980.05).	No longer a sexually violent person (Wis. Stat. § 980.06).	Supervised release (Wis. Stat. § 980.08). Discharge (Wis. Stat. § 980.09).