

NLWJC - Kagan

DPC - Box 011 - Folder 040

Crime - Sexual Predators

DRAFT STATEMENT OF THE PRESIDENT
February 23, 1998

This morning the Supreme Court declined to review a challenge to the community notification provision of New Jersey's "Megan's Law," thus leaving intact a crucial tool to protect children from known sex predators. Because of the importance of this law to families and communities, my Administration has defended its constitutionality, enacted a similar federal Megan's Law, and worked with states to establish a national sex offender registry. We will continue to do everything we can to make sure that community notification and sex offender registration laws are enforced and upheld throughout the country.



SHIMABUKUR_L @ A1
02/23/98 11:18:00 AM

Record Type: Record

To: Jose Cerda III, Elena Kagan
cc: Leanne A. Shimabukuro
Subject: WASHINGTON (AP) THE SUPREME COURT TODAY REJECTED A

Date: 02/23/98 Time: 09:55
SWASHINGTON (AP) The Supreme Court today rejected a

WASHINGTON (AP) The Supreme Court today rejected a constitutional challenge to a New Jersey law requiring authorities to tell communities the whereabouts of convicted sex offenders.

The court turned down an appeal by sex offenders and left intact the notification provisions of Megan's Law, enacted by New Jersey in 1995 and adopted by 36 other states since.

Lawyers for sex offenders had argued that the disputed provisions violate the Fifth Amendment's protection against being punished twice for the same crime because such notice, and the public reaction it generates, amounts to punishment.

The justices also turned down a counter-appeal by New Jersey over the opportunities sex offenders must get to question the risk classifications prosecutors give them, the key to how much community notice is provided.

Today's action, taken without comment, was not a ruling and did not preclude the possibility the court might some day fully review and disapprove of such a notification measure. But survival of the prototype law against the first constitutional challenge to reach the Supreme Court is a huge legal victory for proponents of such measures.

Community notifications began in New Jersey last month.

Megan's Law is named for Megan Kanka, a 7-year-old girl who was raped and murdered in 1994 by a twice-convicted sex offender who lived across the street from her home. Jesse Timmendequas has been sentenced to death for the crime.

MORE
APNP-02-23-98 1006EST

DRAFT

Dear Governor _____:

I write to you again to seek your assistance and cooperation on one of our most important responsibilities -- protecting our children from violent, sexual predators. Nothing is more threatening to our families and communities than criminals who move from neighborhood to neighborhood looking for children to prey on. That is why we must do everything we can to track these offenders and keep them away from our children.

With your support we have already enacted critical legislation -- such as the Jacob Wetterling Act, the Pam Lychner Act and Megan's Law -- to help our communities guard against repeat sex offenders. These laws now serve as the foundation for many state sex offender registration systems and for notifying communities of released sex offenders. Congress is now considering -- and I strongly support -- additional legislation to help states implement these registration systems and to make sure that sex offenders convicted in federal or military courts are covered by these laws.

Equally important, my administration has worked hard to defend the constitutionality of state sex offender registration systems and community notification laws. And I am pleased to report that three federal courts of appeal have now upheld sex offender statutes in New Jersey, New York, Connecticut and Washington against constitutional challenges. My Administration will continue to fight to uphold these laws in the courts, including -- if necessary -- the United States Supreme Court.

Last year, I directed the Attorney General to create a national sexual offender registry to join together the efforts being made in all fifty states to track sex offenders. Our national registry will only be effective if every state participates and shares its data on sex offenders with other states. Although our interim registry became operational this spring, only 11 states are currently participating. With an incomplete registry, the law is unable to follow dangerous sex predators wherever they go -- state by state, neighborhood by neighborhood. I urge you to move expeditiously to participate in our national registry for the safety of the public and our children.

I can not emphasize enough how important your continued support and personal involvement is to the success of these initiatives. Through our combined efforts, we can be confident that we will have taken decisive steps to help families across the country protect their children.

*Crime - sexual predators***DRAFT**

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In addition, next week I will submit legislation to the Congress that will help protect our children in other important ways. This legislation -- the National Crime Prevention and Privacy Compact -- would standardize policies for states to share criminal records for purposes such as backgrounds checks for child care workers and school bus drivers to help screen out convicted sex offenders and other dangerous criminals. I need your support of the Compact as it moves through Congress and your State legislature.

I can not emphasize enough how important your continued support and personal involvement is to the success of these two initiatives. Through our combined efforts, we can be confident that we will have taken decisive steps to help families across the country protect their children.

Crime - sex predators

Leanne A. Shimabukuro 09/02/97 06:37:20 PM

Record Type: Record

To: Michelle Crisci/WHO/EOP
cc: Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP
Subject: community notification laws --update on pending cases

Here's the update on community notification laws (Megan's Laws):

* There have been four federal court of appeals cases challenging state community notification/registration laws: New Jersey, Washington, New York and Connecticut. The Justice Department filed amicus briefs in all four cases.

* The 3rd Circuit upheld the NJ law and the 2nd Circuit upheld the NY law. The Connecticut and Washington cases are still pending. Justice expects that the CN case will be decided soon-- although they didn't give a date. The decision on the WA law is expected to come later since it is coming out of the 9th Circuit. [Note: Washington was the first state to enact community notification in 1990 -- NJ basically copied the WA statute when they enacted their version which they named "Megan's Law."]

* The federal Megan's Law that the President signed last year has not yet been challenged.

I'm getting copies of all of the amicus briefs for the files. Let me know if you want them.

crime - sex ^{predatory} offenders



Jose Cerda III

08/22/97 05:28:57 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: daily

Sorry, thought this went to you. jc3

----- Forwarded by Jose Cerda III/OPD/EOP on 08/22/97 05:28 PM -----

Leanne A. Shimabukuro 08/21/97 03:06:30 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc: Jose Cerda III/OPD/EOP

Subject: daily

CRIME

Sex Offenders -- Yesterday, a divided federal appeals court upheld the constitutionality of New Jersey's "Megan's Law." The court held that it is not unconstitutional for authorities to notify residents of convicted sex offenders living in the community. The Third Circuit Court was the highest court to rule on the constitutionality of community notification. All 50 states have laws requiring sex offenders to register with law enforcement upon release from prison and 46 states have enacted laws on community notification of released sex offenders. The federal Megan's Law you signed last year requires states to impose community notification systems by November or risk losing federal funds.

COPS Program -- On Friday, the COPS Office will announce \$73 million in grants to police departments to fund 1,000 additional officers and deputies. The grants will go to 48 states and two U.S. territories, bringing the total to more than 64,000 community officers funded under the Clinton COPS Program.

crime - rx ^{predators} offenders

Leanne A. Shimabukuro 08/21/97 01:01:51 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP

cc:

Subject: Megan's Law case

FYI: The 3d Circuit case was NOT a challenge to the federal Megan's Law, but to the New Jersey state law which bears the same name. The challenge to the NJ law dealt with the provisions requiring the application of community notification to offenders who were convicted before the law was enacted. The federal Megan's Law is, for the most part, applied prospectively.

Crime - sexual predators

DRAFT

MEMORANDUM FOR THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
ALL FEDERAL LAW ENFORCEMENT AGENCIES

SUBJECT: Registration Of Sex Offenders Adjudicated in Federal or
Military Courts

A recent Justice Department report found that on any given day, 60%, or over 140,000 of the 234,000 convicted sex offenders under the care of corrections officials, are living in the community on either probation or parole. We have taken steps to guard our communities against repeat offenses by these sex offenders by enacting the "Jacob Wetterling Act," "Megan's Law" and the "Pam Lychner Act." Among other things, these important pieces of legislation require States to make public relevant information about released child molesters and sexually violent offenders.

We have also worked to ensure that the information gathered in all 50 States is available on a nationwide basis. Last June, I directed the Justice Department to develop a national sexual predator and child molester registration system-- which for the first time would link together the sex offender registration systems being developed in all 50 states. The FBI recently announced that its interim national sex offender registry had become operational. Once complete, this system will allow arresting officers and others to immediately identify an individual as a convicted sex offender and indicate where that person is registered.

Much still needs to be done to make this system an effective tool in combating and preventing sex crimes. The new national registry will only be as good as the quality of the information on sex offenders that it contains. We must forge a close partnership between the FBI, other federal agencies, and state law enforcement agencies in ensuring that accurate and up-to-date information on the whereabouts of sex offenders is timely loaded into the system and available to those who need it.

Some states have already risen to this challenge and are loading their sex offender information into the national system. Other states are moving rapidly toward that objective. But, for the system to work, all states must work together. We have called upon every state to load its information on sex offenders into the national registration system as soon as possible.

At the same time, it is important that sex offenders adjudicated in federal or military courts are registered, including those released from federal or military prisons, or placed on probation. The potential danger to the public from a released child molester or sexually violent offender whose whereabouts are unknown to the authorities is the same, regardless of whether the offender was

convicted in a state, federal, or military court.

DRAFT

I am accordingly directing the Attorney General and the Secretary of Defense to maximize the use of current administrative options to ensure that: (1) federal and military authorities notify the appropriate state authorities concerning the release to their areas of sex offenders adjudicated in federal or military courts; (2) sex offenders adjudicated in federal or military courts are required to register in the states where they reside; and (3) complete and current information on released sex offenders adjudicated in federal or military courts will be included in the registries of the states where they reside and in the national sex offender registry. I am also asking the Attorney General and the Secretary of Defense to report, within 60 days, on any legislative changes that would be needed to realize these objectives fully and to allow the national sex offender registry to completely realize its important potential. Finally, I encourage federal and state cooperation with Indian tribes toward the inclusion of sex offenders who have been adjudicated through tribal justice systems.

[WILLIAM J. CLINTON]

DRAFT

MEMORANDUM FOR THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
ALL FEDERAL LAW ENFORCEMENT AGENCIES

SUBJECT: ~~Registration of Sex Offenders Adjudicated in
Federal or Military Courts~~

~~A recent Justice Department report found that on any given day
Registration of Federal and Military Sex Offenders~~

~~One of the most important duties of the government is to protect our children and others from sexual offenders. Law enforcement data show that, as a group, sex offenders are significantly more likely than other offenders to commit additional sex crimes. And a recent Justice Department report found that on any given day, 60%, or over 140,000 of the 234,000 convicted sex offenders under the care of corrections officials, are living in the community on either probation or parole. We have taken steps to guard our communities against repeat offenses by these sex offenders by enacting "Megan's Law" and the Pam Lychner Act. Together, these two important pieces of legislation require States to make public relevant information about released child molesters and sexually violent offenders. We have also worked to ensure that the information gathered in all 50 States is able to be shared by concerned parents and citizens around the country. Toward that end, the FBI recently announced that its interim national sex offender registry had become operational. Once complete, this system will allow arresting officers and others to immediately identify an individual as a convicted sex offender and increase where that person is registered. Recidivism by these offenders presents significant challenges to law enforcement in protecting children and others from sex crimes.~~

~~Among the most significant provisions in the 1994 Crime Act is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It promotes the establishment by States of effective registration systems for child molesters and other sexually violent offenders. In addition, I recently signed two major pieces of legislation that build upon the registration requirement. The first of these, "Megan's Law," requires States to make public relevant information about released child molesters and sexually violent offenders. The second, the "Pam Lychner Sexual Offender Tracking and Identification Act," refines and strengthens the earlier registration requirements.~~

~~In June of last year, I directed the Justice Department to develop a national sexual predator and child molester registration system—a computerized system that would, for the first time, link together the sex offender registration and notification systems being developed in all 50 States. On February 23, 1997, an important first step occurred toward making that national registration system a reality, when the FBI's interim national sex offender registry became operational. The~~

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DRAFT

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~~FBI has modified its existing Flash Program to allow arresting officers and others to identify immediately an individual as a convicted sex offender and indicate where that person is registered.~~

Much still needs to be done to make this system an effective tool in combatting and preventing sex crimes. The new national registry will only be as good as the quality of the information on sex offenders that it contains. We must forge a close partnership between the FBI, other federal agencies and state law enforcement agencies in ensuring that accurate and up-to-date information on the whereabouts of sex offenders is timely loaded into the system and available to those who need it.

Some states have already risen to this challenge and are loading their sex offender information into the national system. Other states are moving rapidly toward that objective. But, for the system to work, all states must work together. We have called upon every state to load its information on sex offenders into the national registration system as soon as possible.

At the same time, ~~it is important that sex offenders adjudicated in federal or military courts are registered. It is important that federal sex offenders be registered, including those released from federal or military prisons, or placed on probation. The potential danger to the public from a released child molester or sexually violent offender whose whereabouts are unknown to the authorities is the same, regardless of whether the offender was convicted in a state, federal, or military court.~~

I am accordingly directing the Attorney General and the Secretary of Defense to maximize the use of current administrative options to ensure that: ~~(1) federal and military sex offenders are notified by appropriate state authorities concerning the release to their areas of sex offenders adjudicated in federal or military courts; (2) sex offenders adjudicated in federal or military courts are required to register in the states where they reside, and (3) complete and current information on released sex offenders adjudicated in federal or military courts will be included in the registries of the states where they reside and in the national sex offender registry. (1) federal and military authorities notify the appropriate state authorities concerning the release to their areas of federal and military sex offenders, (2) federal and military sex offenders are required to register in the states where they reside, and (3) complete and current information on released federal and military sex offenders will be included in the registries of the states where they reside and in the national sex offender registry.~~ I am also asking the Attorney General and the Secretary of Defense to report, within 60 days, on any legislative changes that would be needed to realize these objectives fully and to allow the national sex offender registry to completely realize its important potential. Finally, I encourage federal and state cooperation with Indian tribes toward the inclusion of sex offenders who have been adjudicated through

tribal justice systems.

DRAFT

[WILLIAM J. CLINTON]

Clinton Administration: Protecting Children from Sex Offenders

Registration of Federal and Military Sex Offenders Initiative

June 24, 1997

Initiative on

Announcement

- Today, President Clinton directed the Attorney General, the Secretary of Defense, and all federal law enforcement agencies to ensure that federal and military sex offenders are registered, both in the state in which they live and in the national sex offender registry. Today's directive is an important step that builds upon the Clinton Administration's record of protecting our children from sex offenders.

Background

A recent Justice Department report found that on any given day, about 60% of the 234,000 convicted sex offenders under the care of corrections officials are living in communities, either on probation or parole. Over the last few years, the Clinton Administration has made protecting our children from sex offenders a national priority.

- The 1994 Clinton Crime Act required sex offenders to register in the state in which they live; increased penalties for sexual abuse offenses and certain offenses against youthful victims; and broadened pretrial detention for serious sex offenses cases.
- In May 1996, President Clinton signed Megan's Law to ensure that communities are notified when sex offenders are in their midst. In June 1996, President Clinton directed the Attorney General to establish a national sexual predator and child molester registration system. This computerized system will help link together the sex offender and notifications systems being developed in all 50 states.
- The national sex offender registry became operational in February-- allowing law enforcement agencies to search the FBI's criminal history record database to determine whether an individual is a registered sex offender, and if so, where he or she is registered. Close partnerships must be formed between the FBI and other law enforcement agencies to ensure that accurate and up-to-date information on the whereabouts of sex offenders is loaded into the system and available to those who need it.

Today's Measure

- The directive instructs the Attorney General and Secretary of Defense to ensure that:
 - 1) federal and military authorities provide appropriate state authorities with information concerning the release of sex offenders from their facilities;
 - 2) federal and military sex offenders are required to register in the states where they reside; and
 - 3) complete and current information on released federal and military sex offenders will be included in appropriate state registries and the national registry.
- In addition, President Clinton has asked the Attorney General and the Secretary of Defense to report back to him within 60 days on any legislative changes that might be needed to fully implement the directive.

MEMORANDUM FOR THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
ALL FEDERAL LAW ENFORCEMENT AGENCIES

SUBJECT: Registration Of Federal and Military Sex Offenders

One of the most important duties of the government is to protect our children and others from sexual offenders. Law enforcement data show that, as a group, sex offenders are significantly more likely than other offenders to commit additional sex crimes. And a recent Justice Department report found that on any given day, 60%, or over 140,000 of the 234,000 convicted sex offenders under the care of corrections officials, are living in communities on either probation or parole. Recidivism by these offenders presents significant challenges to law enforcement in protecting children and others from sex crimes.

Among the most significant provisions in the 1994 Crime Act is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It promotes the establishment by States of effective registration systems for child molesters and other sexually violent offenders. In addition, I recently signed two major pieces of legislation that build on the registration requirement. The first of these, "Megan's Law," requires States to make public relevant information about released child molesters and sexually violent offenders. The second, the "Pam Lychner Sexual Offender Tracking and Identification Act," refines and strengthens the earlier registration requirements.

In June of last year, I directed the Justice Department to develop a national sexual predator and child molester registration system -- a computerized system that would, for the first time, link together the sex offender registration and notification systems being developed in all 50 States. On February 23, 1997, an important first step occurred toward making that national registration system a reality, when the FBI's interim national sex offender registry became operational. The FBI has modified its existing Flash Program to allow arresting officers and others to identify immediately an individual as a convicted sex offender and indicate where that person is registered.

Much still needs to be done to make this system an effective tool in combating and preventing sex crimes. The new national registry will only be as good as the quality of the information on sex offenders that it contains. We must forge a close partnership between the FBI, other federal agencies and state law enforcement agencies in ensuring that accurate and up-to-date information on the whereabouts of sex offenders is timely loaded into the system and available to those who need it.

Some states have already risen to this challenge and are loading their sex offender information into the national system. Other states are moving rapidly toward that objective. But, for the system to work, all states must work together. We have called upon every state to load its information on sex offenders into the national registration system as soon as possible.

At the same time, it is important that federal sex offenders be registered, including those released

from federal or military prisons, or placed on probation. The potential danger to the public from a released child molester or sexually violent offender whose whereabouts are unknown to the authorities is the same, regardless of whether the offender was convicted in a state, federal, or military court.


I am accordingly directing the Attorney General and the Secretary of Defense to maximize the use of current administrative options to ensure that: (1) federal and military authorities notify the appropriate state authorities concerning the release to their areas of federal and military sex offenders, (2) federal and military sex offenders are required to register in the states where they reside, and (3) complete and current information on released federal and military sex offenders will be included in the registries of the states where they reside and in the national sex offender registry. I am also asking the Attorney General and the Secretary of Defense to report, within 60 days, on any legislative changes that would be needed to realize these objectives fully and to allow the national sex offender registry to completely realize its important potential. Finally, I encourage federal and state cooperation with Indian tribes toward the inclusion of sex offenders who have been adjudicated through tribal justice systems.

[WILLIAM J. CLINTON]

Crime - sexual predators

Leanne A. Shimabukuro 04/27/97 05:41:01 PM

Record Type: Record

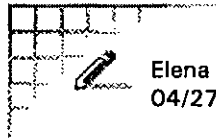
To: Elena Kagan/OPD/EOP
cc: Dennis K. Burke/OPD/EOP
bcc:
Subject: Re: sexual predators 

I'm working with Justice OPD on this idea. I have them reviewing the Arizona statute and getting ready to prepare options on what aspects of lifetime parole/ supervised release are the most viable for sexual predators.

If we are going to do anything on this, it should be a part of the sexual offenders announcement we were originally preparing to release: 1) announcement that national sexual offender registry is up and running; and 2) directive to include sex offenders in federal and military prisoners in the national registry database (right now, national registry is only including the state prisoner info submitted by states).

I will be working with Christa to figure out a date for a sex offenders event that Rahm approves. Once we have a firm date, I think it will help me get Justice energized on it. I will keep you updated.

Elena Kagan



Elena Kagan
04/27/97 03:20:37 PM

Record Type: Record

To: Dennis K. Burke/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
cc:
Subject: sexual predators

whatever happened to Tom Freedman's idea about lifetime parole for sexual predators? Is someone still looking into that? or has it died?

AARR PRESS RELEASE

For Immediate Release

4 PM, Friday, February 21, 1997

Contact:
Roger Conner,
Executive Director
(202) 785-7844

Controlling Sexually Violent Predators for Life: AARR Calls on States to Institute "Automatic Lifetime Supervision"

Based on findings from a new study published by the U.S. Justice Department, the American Alliance for Rights & Responsibilities is calling on all states to adopt a new policy -- "Automatic Lifetime Supervision" -- for all violent sex offenders and those who abuse children.

Roger Conner, Executive Director of the American Alliance for Rights & Responsibilities (AARR), said: "Thousands of American children face life-shattering trauma every year. Many thousands face abuse at the hands of criminals who have previously been convicted of a felony and released into the community. Based on new research, *we know how to stop most of these people from repeating their offenses, short of imprisoning them for life.* The key is "Automatic Lifetime Supervision," a radically new approach to sentencing of sexual offenders, coupled with a 'containment model' of supervision," Conner said.

AARR is a national organization that provides assistance to state and local leaders on crime and disorder issues and defends innovative policies in court. AARR has filed *amicus curiae* briefs in support of New York's version of Megan's law, and also in the U.S. Supreme Court to defend a Kansas law that allows civil commitment of sexually violent predators who are likely to repeat their offenses.

Conner stated, in response to front page articles in the Washington Post, New York Times and many papers across the country, "citizens who are reading in their papers today about a savage murder of a Tampa woman by Lawrence Singleton, a 69-year-old man with a history of violent sexual acts, are asking themselves this question: Is there any way to protect ourselves and our children from sexual offenders? Are the only alternatives vigilantism by citizens or automatic life sentences by judges?"

"The answer, based on new research published by the National Institute for Justice, is 'yes'" But state officials must make two dramatic departures from existing policies."

First, AARR proposes that **Sexual predators who violate children or use violence must receive "Automatic Lifetime Supervision."** Currently, over 60 per cent of all sexual offenders in the typical state receive probation instead of going to jail. The vast majority of the 88,100 offenders in prison (as of 1994) will be released into the community, many on parole. Persons on probation or parole can be subjected to stringent limits on their behavior, but "the system has one huge loophole," according to Conner: "under typical state laws, the term of the conditions can run no longer than the maximum allowed for imprisonment.

The case of Lawrence Singleton, the accused Florida murder, is illustrative. He was in prison for eight years, then on parole for six more. He has been living in Florida for four years, and recent erratic

behavior -- two shoplifting incidents and an attempted suicide -- would have been enough to trigger action by a parole officer that could have prevented the murder. But Silverman was no longer on parole.

AARR's proposal — that violent sexual offenders and sexual offenders against children be given "Automatic Lifetime Supervision" *in addition* to any other sentence that is administered would eliminate this loophole. "Persons under supervision should be given the chance to prove, before a judge, that the conditions be lifted, but the burden of proof must be on them to demonstrate that he/she is not a risk."

Second, AARR urges state probation and parole authorities to adopt the "containment model" outlined in the new study, in which the "primary purpose" of probation/parole for sexual offenders must become "community protection and victim safety." Under a "containment model,"

- **Offenders must be subjected to frequent polygraph exams.** Sex offenders "have developed complicated and persistent psychological [techniques] to assist them in denying the harm they cause to others, and often they are very accomplished at presenting a facade," the report points out. The standard parole/probation officer interview is essentially worthless.
- **Judges and probation/parole departments must develop detailed conditions** to prevent them from engaging in behavior that can lead to reoffending (e.g. reading child pornography, contacting victims without approval, frequenting places where children congregate).
- **Specialty trained probation officers, therapists, and polygraph operators must work as a team** to identify individuals who are slipping into dangerous behavior and to modify probation/parole conditions as needed.

According to Conner, "the Containment Model" is a proven system. He pointed to the Maricopa County (Phoenix) program, where over 1800 sexual offenders have been released with a recidivism rate of 1.4% -- and the recidivists were discovered through polygraph exams, not standard law enforcement.

The recently published National Institute of Justice report, "Managing Adult Sex Offenders in the Community — A Containment Approach" by Kim English, Suzanne Pullen and Linda Jones is available from the National Criminal Justice Clearinghouse, 1-800-851-3420.

Other sources on this issue:

Jeremy Travis, Director, National Institute of Justice: 202-307-2942

Kim English, Research Director, Colorado Division of Criminal Justice, 303-239-4453

Norm Elber, Maricopa County (Phoenix) Chief Probation Officer, 602-506-7244.

American Alliance for Rights & Responsibilities (AARR)

A voice for the community on crime and disorder issues

Washington: (202) 785-7844 Dallas: (214) 922-9822 New York: (212) 682-0218

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§ 13-604

Note 187

187. Probation revocation, sentences

In probation revocation proceeding, sentence imposed on defendant of imprisonment for not less than ten nor more than 21 years for the original conviction of robbery with a prior conviction was not excessive. State v. Mendibles (App.1981) 129 Ariz. 124, 629 P.2d 91.

188. Resentencing

Conduct of trial court when, after sentencing defendant in absentia as a "dangerous" offender and determining in a postconviction proceeding that an allegation of "dangerousness" had not been submitted to jury, it resentenced defendant on charge of second-degree murder, a repetitive class two felony, to the maximum term of 21 years did not amount to a violation of due process because the defendant was sentenced originally to less than the maximum term where the trial court reiterated the factors which it had originally considered when it imposed the original sentence and expressed its belief that the sentence was the appropriate punishment for the particular crime and the particular offender. State v. Williams (App.1984) 141 Ariz. 127, 685 P.2d 764.

§ 13-604.01. Dangerous crimes against children; sentences; definitions

A. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving second degree murder, sexual assault, taking a child for the purpose of prostitution, child prostitution or sexual conduct with a minor or involving or using minors in drug offenses shall be sentenced to a presumptive term of imprisonment for twenty years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for thirty years.

B. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, child abuse or kidnapping shall be sentenced to a presumptive term of imprisonment for seventeen years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for twenty-eight years.

C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving sexual abuse shall be sentenced to a presumptive term of imprisonment for

CRIMINAL CODE

Title 13

189. Review, sentences

Penalty imposed by trial court upon conviction will not be reduced unless it clearly appears that sentence imposed is excessive, resulting in an abuse of trial court's discretion. State v. Jerousek (1979) 121 Ariz. 420, 590 P.2d 1366.

In reviewing propriety of trial judge's discretion in imposing sentence, supreme court must look to general character of both party convicted and offense charged. Id.

Where, at first trial, state alleged two prior convictions but offered no proof, allowing state to prove prior convictions at third trial was a violation of fundamental fairness in that it penalized defendant for seeking a new trial, so that even though issue was not timely raised at trial, as no objection was made until time set for sentencing, issue could be considered on appeal of conviction pursuant to third trial. State v. Corrales (1976) 26 Ariz.App. 344, 548 P.2d 437.

The Court of Appeals, did not have appellate jurisdiction in prosecution charging burglary in the first degree with a statement of prior conviction since offense was punishable under habitual criminal statute by imprisonment for not less than 10 years nor more than life. State v. Cuzick (1967) 5 Ariz.App. 498, 428 P.2d 443.

CLASSIFICATION
Ch. 6

ten years. I predicate felony imprisonment

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C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than three years.
2. For a misdemeanor, not more than one year.

D. Notwithstanding any other provision of law, justice courts and magistrate courts may impose the probation periods specified in subsection A, paragraphs 3, 4 and 5¹ and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense that is included in chapter 14 of this title,² if probation is available, probation may continue for a term not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

Amended by Laws 1993, Ch. 223, § 4; Laws 1993, Ch. 255, § 17, eff. Jan. 1, 1994.

¹ So in original. Should read, "5, 6 and 7."

² Section 13-1401 et seq.

For text of section effective until January 2, 1994, see § 13-902, ante

Application

Laws 1993, Ch. 255, § 99, provides:

"Sec. 99. Applicability

"The provisions of §§ 1 through 96 and §§ 98 through 99 of this act apply only to persons who commit a felony offense after the effective date of this act."

Historical and Statutory Notes

The 1993 amendment by Ch. 223 inserted subsec. B and references thereto; and redesignated the other subsecs. accordingly.

Laws 1993, Ch. 223, §§ 11 and 12, provide:

"Sec. 11. Severability

"If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

"Sec. 12. Delayed repeal

"Section 11 (So in original. Should read, "Section 10".) of this act is repealed from and after December 31, 1993."

The 1993 amendment by Ch. 255 rewrote subsec. A; and added subsec. D relating to convictions for offenses covered by chapter 14 of title 13 (subsection, paragraph and subdivision designations modified by 1993 blend; see Reviser's Note, post). Subsec. A had read:

"A. Unless terminated sooner, probation may continue for the following periods:

"1. For a class 2, 3 or 4 felony, the term authorized by § 13-701, subsection C.

"2. For a class 5 or 6 felony, three years.

"3. For a class 1 misdemeanor, three years.

"4. For a class 2 misdemeanor, two years.

"5. For a class 3 misdemeanor, one year."

Laws 1993, Ch. 255, § 101, provides:

"Sec. 101. Legislative Intent

"It is the intent of the legislature that the provisions of this act relating to parole, work furlough, home arrest, earned release credits and other early release programs have only prospective effect. For any person convicted for an offense committed before the effective date of this act the provisions of this act shall have no effect and such person shall be eligible for and may participate in such programs as though this act has not passed."

1993 Reviser's Note:

This section contains the amendments made by Laws 1993, Ch. 223, sec. 4 and Ch. 225, sec. 17 that were blended together as shown above pursuant to authority of § 41-1304.03.

§ 13-903. Calculation of periods of probation

Notes of Decisions

1. Equal protection

Time defendant spent in jail after his arrest on allegation of probation violation and until disposi-

tion of charge was not bailable presentence incarceration, implicating equal protection clause of Fourteenth Amendment so as to require defendant

ten years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for fifteen years.

D. The presumptive sentences prescribed in subsections A, B and C of this section may be increased or decreased by up to five years pursuant to the provisions of § 13-702, subsections C, D and E.

E. A person sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement on any other basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served.

F. A person who stands convicted of any dangerous crime against children in the first degree having been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement on any other basis except as specifically authorized by § 31-233, subsection A or B until the person has served not fewer than thirty-five years.

G. Notwithstanding chapter 10 of this title,¹ a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the second degree is guilty of a class 3 felony and shall be sentenced to a presumptive term of imprisonment for ten years. The presumptive term may be increased or decreased by up to five years pursuant to § 13-702, subsections C, D and E. If the person is sentenced to a term of imprisonment the person is not eligible for release from confinement on any basis until the person has served not less than one-half the sentence imposed by the court.

H. Section 13-604, subsections H and I apply to the determination of prior convictions.

I. In addition to the term of imprisonment imposed pursuant to this section and notwithstanding any other law, the court shall order that a person convicted of any dangerous crime against children in the first degree be supervised on parole after release from confinement on such conditions as the court or the board of pardons and paroles deems appropriate for the rest of the person's life. If the person is convicted of any dangerous crime against children in the second degree the court, in addition to any term of imprisonment imposed or in lieu of the term if probation is otherwise authorized, may order that the person convicted be supervised on probation or on parole after release from confinement on such conditions as the court or board of pardons and paroles deems appropriate for any term up to the rest of the person's life.

J. The sentence imposed on a person by the court for a dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time.

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§ 13-604.01

CRIMINAL CODE
Title 13

CLASSIFIC
Ch. 6

1. "Dangerous crime against children" means any of the following committed against a minor under fifteen years of age:

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§ 15-55

- (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or committed by the use of a deadly weapon or dangerous instrument.
- (c) Sexual assault.
- (d) Molestation of a child.
- (e) Sexual conduct with a minor.
- (f) Commercial sexual exploitation of a minor.
- (g) Sexual exploitation of a minor.
- (h) Child abuse as defined in § 13-3623, subsection B, paragraph 1.
- (i) Kidnapping.
- (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as defined in § 13-3206.
- (l) Child prostitution as defined in § 13-3212.
- (m) Involving or using minors in drug offenses.

Assault and
Infants
Kidnapping
Rape
WESTLAW

A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense.

Consecutive t
Dangerousne

2. "Predicate felony" means any felony involving child abuse, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

1. Dangerou

Added by Laws 1985, Ch. 364, § 6, eff. May 16, 1985. Amended by Laws 1987, Ch. 166, § 1; Laws 1987, Ch. 307, § 4.

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Historical Note

Laws 1987, Ch. 166, § 1, provided in subsec. A for taking a child for the purpose of prostitution and child prostitution, and add para. (1)(k) and 1(l) to subsec. K.

offenses committed while released from confinement, was renumbered as § 13-604.02 by Laws 1985, Ch. 364, § 5, effective May 16, 1985.

Laws 1987, Ch. 307, § 4, provided for involving a minor in a drug offense in subsec. A, and added subsec. K1(m).

1987 Reviser's Note:

Former § 13-604.01, added by Laws 1982, Ch. 322, § 2, amended by Laws 1983, Ch. 32, § 1, Laws 1984, Ch. 163, § 1, and Laws 1985, Ch. 227, § 1, and relating to punishment for

This section contains the amendments made by Laws 1987, Ch. 166, § 1 and Ch. 307, § 4, which were blended together as shown above pursuant to authority of § 41-1304.03.

Cross References

- Aggravated assault, see § 13-1204.
- Child abuse, see § 13-3623.
- Children's behavioral health programs personnel, certification as to criminal offenses, see § 36-425.03.
- Commercial sexual exploitation of a minor, see § 13-3552.

§ 13-604

A. Not
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jail term imposed as condition of reinstating probation. *State v. Srdler*, 1982, 172 Ariz. 162, 835 P.2d 496.

79. Motor vehicle licenses

Court properly ordered probation on two additional counts of driving under influence with suspended license imposed to run consecutively to

sentence on first count, to begin after defendant's release from parole supervision as opposed to his physical release from prison on first count of driving under influence with suspended license; sentence on first count was not satisfied until defendant was released from prison and parole supervision. *State v. Gandara*, 1992, 174 Ariz. 105, 847 P.2d 606.

§ 13-902. Periods of probation

Text of section effective until January 1, 1994

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2, 3 or 4 felony, the term authorized by § 13-701, subsection C.
2. For a class 5 or 6 felony, three years.
3. For a class 1 misdemeanor, three years.
4. For a class 2 misdemeanor, two years.
5. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of § 28-692, five years.
2. For a violation of § 28-697, ten years.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than three years.
2. For a misdemeanor, not more than one year.

D. Notwithstanding any other provision of law, justice courts and magistrate courts may impose the probation periods specified in subsection A, paragraphs 3, 4 and 5 and subsection B, paragraph 1 of this section.

Amended by Laws 1988, Ch. 223, § 4.

For text of section effective January 1, 1994, see § 13-902, post

§ 13-902. Periods of probation

Text of section effective January 1, 1994

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2 felony, seven years.
2. For a class 3 felony, five years.
3. For a class 4 felony, four years.
4. For a class 5 or 6 felony, three years.
5. For a class 1 misdemeanor, three years.
6. For a class 2 misdemeanor, two years.
7. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of § 28-692, five years.
2. For a violation of § 28-697, ten years.

CLASSIFICATIONS; DISPOSITIONS
Ch. 6

§ 13-604.01

ten years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for fifteen years.

D. The presumptive sentences prescribed in subsections A, B and C of this section may be increased or decreased by up to five years pursuant to the provisions of § 13-702, subsections C, D and E.

E. A person sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement on any other basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served.

F. A person who stands convicted of any dangerous crime against children in the first degree having been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement on any other basis except as specifically authorized by § 31-233, subsection A or B until the person has served not fewer than thirty-five years.

G. Notwithstanding chapter 10 of this title,¹ a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the second degree is guilty of a class 3 felony and shall be sentenced to a presumptive term of imprisonment for ten years. The presumptive term may be increased or decreased by up to five years pursuant to § 13-702, subsections C, D and E. If the person is sentenced to a term of imprisonment the person is not eligible for release from confinement on any basis until the person has served not less than one-half the sentence imposed by the court.

H. Section 13-604, subsections H and I apply to the determination of prior convictions.

I. In addition to the term of imprisonment imposed pursuant to this section and notwithstanding any other law, the court shall order that a person convicted of any dangerous crime against children in the first degree be supervised on parole after release from confinement on such conditions as the court or the board of pardons and paroles deems appropriate for the rest of the person's life. If the person is convicted of any dangerous crime against children in the second degree the court, in addition to any term of imprisonment imposed or in lieu of the term if probation is otherwise authorized, may order that the person convicted be supervised on probation or on parole after release from confinement on such conditions as the court or board of pardons and paroles deems appropriate for any term up to the rest of the person's life.

J. The sentence imposed on a person by the court for a dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time.

K. In this section:

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Title 13

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§ 13-604.01

CRIMINAL CODE
Title 13

CLASSIFICATION
Ch. 6

1. "Dangerous crime against children" means any of the following committed against a minor under fifteen years of age:

Domestic violence,
Drug offenses, inv.
Economic security
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§ 15-550.

- (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or committed by the use of a deadly weapon or dangerous instrument.
- (c) Sexual assault.
- (d) Molestation of a child.
- (e) Sexual conduct with a minor.
- (f) Commercial sexual exploitation of a minor.
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- (m) Involving or using minors in drug offenses.

Assault and Bat-
Infants ⇨13, 20
Kidnapping ⇨1
Rape ⇨1 et seq
WESTLAW Top:

A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense.

Consecutive term
Dangerousness 1

2. "Predicate felony" means any felony involving child abuse, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

1. Dangerousness

Added by Laws 1985, Ch. 364, § 6, eff. May 16, 1985. Amended by Laws 1987, Ch. 166, § 1; Laws 1987, Ch. 307, § 4.

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(1985) 767 P.2d 14

¹Section 13-1001 et seq.

Historical Note

Laws 1987, Ch. 166, § 1, provided in subsec. A for taking a child for the purpose of prostitution and child prostitution, and add pars. (1)(k) and 1(l) to subsec. K.

offenses committed while released from confinement, was renumbered as § 13-604.02 by Laws 1985, Ch. 364, § 5, effective May 16, 1985.

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518, 753 P.2d 117-

Cross References

Aggravated assault, see § 13-1204.

Child abuse, see § 13-3623.

Children's behavioral health programs personnel, certification as to criminal offenses, see § 36-425.03.

Commercial sexual exploitation of a minor, see § 13-3552.

§ 13-604.02

A. Notwith-
ed of any felo-



U. S. Department of Justice

Office of Intergovernmental Affairs

Director

Washington, D.C. 20530

March 26, 1997

MEMORANDUM FOR:

Stefanie Sanford
Office of Cabinet Affairs
Executive Office of the President

FROM:


Nicholas M. Gess
Director
Office of Intergovernmental Affairs

SUBJECT:

Presidential Directive Regarding the
Registration of Federal and Military Sex
Offenders

The 1994 Crime Act and subsequent legislation require states to report registration information for certain convicted sex offenders. The law does not require this of Federal convicts. Later this week we expect the President to enter a directive requiring that Federal agencies which hold convicted offenders begin the process of reporting such registration information. A copy of the current draft directive is attached.

As best as we can determine, convicted sex offenders are held by only two Federal agencies: 1) the Department of Justice (Bureau of Prisons) in the case of civil offenders; and 2) the Department of Defense in the case of military offenders tried under military law.

However, out of an abundance of caution, we would appreciate it if Cabinet Affairs would circulate this memorandum and the accompanying draft. The sole question is whether the recipient cabinet agency holds sentenced sex offenders pursuant to Federal civil or military law.

Should any agency hold such prisoners, we would deeply appreciate a call to either Eric Rosen or me on (202) 514-3465. Negative responses need not call. Thank you in advance for your assistance.

Enclosure

MEMORANDUM FOR THE ATTORNEY GENERAL
 THE SECRETARY OF DEFENSE
 ALL FEDERAL LAW ENFORCEMENT AGENCIES

SUBJECT: Registration of Federal and Military Sex Offenders

One of the most important duties of the government is to protect our children and others from sexual offenders. Law enforcement data show that, as a group, sex offenders are significantly more likely than other offenders to commit additional sex crimes. And a recent Justice Department report found that on any given day, 60% or over 140,000 of the 234,000 convicted sex offenders under the care of corrections officials, are living in the community on either probation or parole. Recidivism by these offenders presents significant challenges to law enforcement in protecting children and others from sex crimes.

Among the most significant provisions in the 1994 Crime Act is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It promotes the establishment by States of effective registration systems for child molesters and other sexually violent offenders. In addition, I recently signed two major pieces of legislation that build upon the registration requirement. The first of these, "Megan's Law," requires States to make public relevant information about released child molesters and sexually violent offenders. The second, the "Pam Lychner Sexual Offender Tracking and Identification Act," refines and strengthens the earlier registration requirements.

In June of last year, I directed the Justice Department to develop a national sexual predator and child molester registration system - a computerized system that would, for the first time, link together the sex offender registration and notification systems being developed in all 50 States. On February 23, 1997, an important first step occurred toward making that national registration system a reality, when the FBI's interim national sex offender registry became operational. The FBI has modified its existing Flash Program to allow arresting officers and others to identify immediately an individual as a convicted sex offender and indicate where that person is registered.

Much still needs to be done to make this system an effective tool in combatting and preventing sex crimes. The new national registry will only be as good as the quality of the information on sex offenders that it contains. We must forge a close partnership between the FBI, other federal agencies and state law enforcement agencies in ensuring that accurate and up-to-date information on the whereabouts of sex offenders is timely loaded into the system and available to those who need it.

A few states have already risen to this challenge and are loading their sex offender information into the national system. Other states are moving rapidly toward that objective. But, for the system to work, all states must work together. I have called upon

every state to load its information on sex offenders into the national registration system as soon as possible.

At the same time, it is important that federal sex offenders be registered, including those released from federal or military prisons, or placed on probation. The potential danger to the public from a released child molester or sexually violent offender whose whereabouts are unknown to the authorities is the same, regardless of whether the offender was convicted in a state, federal, or military court.

I am accordingly asking the Attorney General and the Secretary of Defense to maximize the use of current administrative options to ensure that: (1) federal and military authorities notify the appropriate state authorities concerning the release to their areas of federal and military sex offenders, (2) federal and military sex offenders are required to register in the states where they reside, and (3) complete and current information on released federal and military sex offenders will be included in the registries of the states where they reside and in the national sex offender registry. I am also asking the Attorney General and the Secretary of Defense to report, within 60 days, on any legislative changes that would be needed to realize these objectives fully and to allow the national sex offender registry to completely realize its important potential. Finally, I encourage federal and state cooperation with Indian tribes toward the inclusion of sex offenders who have been adjudicated through tribal justice systems.

[WILLIAM J. CLINTON]

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than three years.
2. For a misdemeanor, not more than one year.

D. Notwithstanding any other provision of law, justice courts and magistrate courts may impose the probation periods specified in subsection A, paragraphs 3, 4 and 5¹ and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense that is included in chapter 14 of this title,² if probation is available, probation may continue for a term not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

Amended by Laws 1993, Ch. 223, § 4; Laws 1993, Ch. 255, § 17, eff. Jan. 1, 1994.

¹ So in original. Should read, "5, 6 and 7".

² Section 13-1401 et seq.

For text of section effective until January 1, 1994, see § 13-902, ante

Application

Laws 1993, Ch. 255, § 99, provides:

"Sec. 99. Applicability

"The provisions of §§ 1 through 86 and §§ 88 through 95 of this act apply only to persons who commit a felony offense after the effective date of this act."

Historical and Statutory Notes

The 1993 amendment by Ch. 223 inserted subsec. B and references thereto; and redesignated the other subsections accordingly.

Laws 1993, Ch. 223, §§ 11 and 12, provide:

"Sec. 11. Severability

"If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

"Sec. 12. Delayed repeal

"Section 11 (So in original. Should read, "Section 10".) of this act is repealed from and after December 31, 1993."

The 1993 amendment by Ch. 255 rewrote subsec. A; and added subsec. D relating to convictions for offenses covered by chapter 14 of title 13 (subsection, paragraph and subdivision designations modified by 1993 blend; see Reviser's Note, post). Subsec. A had read:

"A. Unless terminated sooner, probation may continue for the following periods:

"1. For a class 2, 3 or 4 felony, the term authorized by § 16-701, subsection C.

"2. For a class 5 or 6 felony, three years.

"3. For a class 1 misdemeanor, three years.

"4. For a class 2 misdemeanor, two years.

"5. For a class 3 misdemeanor, one year."

Laws 1993, Ch. 255, § 101, provides:

"Sec. 101. Legislative intent

"It is the intent of the legislature that the provisions of this act relating to parole, work furlough, home arrest, earned release credits and other early release programs have only prospective effect. For any person convicted for an offense committed before the effective date of this act the provisions of this act shall have no effect and such person shall be eligible for and may participate in such programs as though this act has not passed."

1993 Reviser's Note:

This section contains the amendments made by Laws 1993, Ch. 223, sec. 4 and Ch. 225, sec. 17 that were blended together as shown above pursuant to authority of § 41-1504.03.

§ 13-903. Calculation of periods of probation

Notes of Decisions

1. Equal protection

Time defendant spent in jail after his arrest on allegation of probation violation and until disposi-

tion of charge was not bailable presentence incarceration imposing equal protection clause of Fourteenth Amendment so as to require defendant

Wanted to see get 1/14



National Institute of Justice

Research in Brief

Jeremy Travis, Director

January 1997

Issues and Findings

Discussed in this Brief: Results of a national telephone survey identifying how probation and parole agencies managed adult sex offenders and a description of a model management process for containing sex offenders serving community sentences. The model process evolved from insights gleaned from field research in six States.

Key issues: In 1994, State prisons held 88,100 sex offenders compared to 20,500 in 1980. Most will return to the community, many supervised by parole officers. Many persons convicted of sexual assault felonies are sentenced to probation. The distinctive characteristics of sex offenders and the unique trauma they inflict require use of more than routine, one-size-fits-all methods of supervision. How can sex offenders be managed in community settings in ways that enhance public safety and victim protection?

Key findings: The survey and field research yielded the following results and suggestions:

- The most commonly reported special conditions for sex offenders on probation or parole were court- or officer-ordered treatment requirements and no-contact-with-victim provisions.

continued . . .

Managing Adult Sex Offenders in the Community—A Containment Approach

by Kim English, Suzanne Pullen, and Linda Jones

Of the many factors that underscore the critical importance of effectively managing sex offenders on probation, parole, or under other forms of community supervision, none is more compelling than the devastating trauma¹ visited on victims of sexual assault.

Such trauma falls disproportionately on children under age 18 if data obtained in 1991 from sex offenders in State prisons are any indication: about two-thirds of them committed their crimes against children under age 18, with about 58 percent being under age 13.² Less than 10 percent of the inmates incarcerated for sexual assault of children reported that victims had been strangers to them.³

Components of the trauma associated with sexual assault include shame, self-blame, fear, developmental crises, post-traumatic stress disorder, and the threat or actuality of physical violence, terror, and injury. Most profound in its traumatic implications is the violation of trust that occurs if, as in most sexual assault victimizations,⁴ offenders are known to victims. Trauma and the length and level of recovery seem linked to trust violation more than to many other factors.⁵ Thus,

what might be regarded by some as a relatively minor type of sexual assault (e.g., "just fondling") can be extremely traumatic to a victim who trusted the perpetrator.

The accelerating influx of sex offenders into the criminal justice system further heightens the need for effective sex offender supervision and management practices, both in and out of prisons. The number of adults convicted annually of rape, child molestation, or other forms of sexual assault and sentenced to State prisons more than doubled between 1980 (8,000) and 1992 (19,100, almost 5 percent of all State prison admissions that year).⁶

State prisons held 20,500 sex offenders in 1980, 75,900 in 1992, 81,100 in 1993, and 88,100 in 1994.⁷ The majority will return to the community, many under supervision by parole officers. In 1992, States paroled 7,382 prisoners convicted of sex offenses.⁸

In addition, many—more in some States than others—of those convicted of sexual assault felonies are sentenced to probation or to other forms of community

Issues and Findings

continued. . .

- Probation and parole agencies with specialized caseloads were more likely to report use of such community-safety approaches as emphasis on after-hours monitoring of offenders and an orientation focusing on victim protection.

- More than 80 percent of probation and parole respondents stated that mental health treatment is mandated for sex offenders under community supervision.

- The model process for managing and containing sex offenders on probation or parole values public safety, victim protection, and reparation for victims as paramount.

- The model process seeks to contain offenders in a triangle of supervision: treatment to teach sex offenders to develop internal control over deviant thoughts; supervision and surveillance to control offenders' external behaviors; and polygraph examinations to help design, and to monitor conformance to, treatment plans and supervision conditions.

- Other aspects of the process are (1) collaborative strategies relying on intra-agency, interagency, and interdisciplinary teams to develop a unified approach to sex offender management; (2) consistent public policies supportive of sex offender-specific containment practices; and (3) quality control measures that include monitoring and evaluation to guide continuous improvement in sex offender management.

Target audience: Probation and parole officers and supervisors, treatment providers, victim services personnel, law enforcement officials, prosecutors, judges, social services personnel, State and local policymakers.

supervision.⁹ For example, in Colorado in 1990, of those convicted of sexual assault (5 percent of all felony convictions), courts sentenced 60 percent to probation, 4 percent to halfway houses, and 36 percent to prison.¹⁰ In one notable area, Maricopa County, Arizona, about 500 of the 1,300 sex offenders on probation are serving lifetime probation sentences.¹¹

Clinical practice and research, and data obtained from probation and parole officers nationwide, indicate that adults who commit sex crimes should be managed, treated, and supervised differently from other criminals.

Although community safety is the central purpose of sex offender management, characteristics of the sex offenders themselves dictate the form and style of treatment that will be most effective. Not all sex offenders share all the following characteristics, and the absence of a particular characteristic does not mean the individual is not a sex offender.

- Sex crimes flourish in secrecy. Sex offenders have secretive and manipulative lifestyles, and many of their sexual assaults are so well planned that they appear to occur without forethought.¹² The skills used to manipulate victims have also been employed to manipulate criminal justice officials.¹³

- Many sex offenders are otherwise highly functioning people who use their social skills to commit their crimes.¹⁴

- Sex offenders typically have developed complicated and persistent psychological and social systems constructed to assist them in denying and minimizing the harm they inflict on others, and often they are very accomplished at presenting to others a facade designed to hide the truth about themselves.¹⁵

- Many sex offenders commit a wide range and large number of sexually devi-

ant acts during their lives and show a continued propensity to reoffend.¹⁶ In a study of 561 compulsive adult subjects, rapists reported a lifetime average of 7 incidents and exhibitionists more than 500. In this sample of 561 voluntary subjects, about 54 percent reported having at least two paraphilias; 20 percent participated in deviant behavior without regard to victim gender; and 23.3 percent reported offending against both family and nonfamily victims.¹⁷

Knowledge of the actual dynamics of sex offending is not widespread, but the public's awareness of sex offenders is increasing and is often manifested as outrage at particularly heinous sexual assaults, especially those committed by offenders under community supervision. In many States, victim and family outrage is fueling legislation requiring registration of convicted sex offenders with law enforcement agencies, and enactment of community notification and sexual predator laws.

What is being done to manage sex offenders in the community to contain them and thereby protect victims and the public? Research sponsored by the National Institute of Justice (NIJ) and conducted by the Colorado Division of Criminal Justice addressed those questions through (1) a national telephone survey of 732 probation and parole supervisors and (2) field research in six States (see "Research Methods").

The telephone survey focused on identifying how probation and parole agencies managed adult sex offenders (see "Telephone Survey: Selected Findings"). Field research uncovered specific, targeted methods for managing sex offenders and led to insights that culminated in a detailed proposal—a model containment process—for the management of adult sex offenders serving community sentences.

Five-part model containment process

The model process for managing adult sex offenders in the community is a containment approach that seeks to hold offenders accountable through the combined use of both offenders' internal controls and external control measures (such as the use of the polygraph and relapse prevention plans). A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices that have clearly been designed to work together. This approach is implemented through interagency and interdisciplinary teamwork.

Consistent with the clinical treatment literature and with dozens of local protocols developed for managing cases of sexual assault, the model process consists of five components, discussed below: an overall philosophy and goal of community and victim safety, sex offender-specific containment strategies, interagency and interdisciplinary collaboration, consistent public policies, and quality control.

1. Overall philosophy and goal: community and victim safety. At the heart of the model process is a philosophy that values public safety, victim protection, and reparation for victims as the paramount objectives of sex offender management. Protection and recovery of the victim and the well-being of the community are concerns that guide policy development, program implementation, and actions of professionals working with sexual assault victims and perpetrators.

In this approach to sex offender management, the client is the community. Under this philosophy, treatment and supervision modalities give priority to

Research Methods

The research question: How are the Nation's probation and parole agencies managing adult sex offenders? Field research and a national telephone survey were the primary research approaches used to address that question.

Encompassing 49 States (South Dakota was not included) and the District of Columbia, the telephone survey sample was stratified by population density and geography. During June–October 1994, interviewers contacted 758 probation and parole supervisors, of whom 732 (96.6 percent) agreed to hour-long interviews. The survey obtained basic information about policies and procedures related to sex offender case management, treatment and other court orders, staff training, and interagency collaboration.

community protection and victim safety. Orders for no contact with the victim are sought at the earliest opportunity. Whenever possible, the perpetrator rather than the victim is removed from the home in cases of incest. Confidentiality is limited, and information is shared freely among the management team. And the importance of employment for sex offenders yields to public safety considerations when prospective jobs are high-risk because of the access they give offenders to potential victims—as would employment as a school bus driver or as apartment-complex superintendent with keys to each unit. The energy and commitment of the probation and parole officer is thereby devoted to assisting the sex offender to remain safely in the community.

2. Sex offender-specific containment: individualized case management system. This component of the

Conducted in 1994, field research involved more than 100 interviews in 13 jurisdictions located in Arizona, Colorado, Louisiana, Ohio, Oregon, and Texas. Researchers interviewed probation and parole officers, defense and prosecuting attorneys, law enforcement personnel, social service workers, sex offender treatment providers, sexual assault victim treatment providers, polygraph examiners, judges, correctional administrators, parole authorities, victim advocates, and sex offenders.

Other research included a review of the research and theoretical literature on victim trauma and sex offender management and treatment, a content analysis of sex offense statutes in 50 States, and a systematic document review (manuals, protocols, policies, etc.).

model process focuses on a containment approach to case processing and case management that can be tailored to the individual sex offender and his or her deviant sexual history. This approach rests on the dual premise that sex offenders are 100 percent responsible for the damage they inflict and that they must constantly and consistently be held accountable for the inappropriate thoughts and feelings that precede their crimes as well as for their illegal actions. Three elements work together to contain the sex offender:

- Sex offender-specific treatment to help offenders learn to develop internal control. Trained and skilled therapists treat sex offenders in cognitive-behavioral group therapy to help them achieve personal control of their deviant sexual impulses, thoughts, feelings, and behaviors. Sex offenders are expected to understand and learn

to interrupt their individual offense cycles. The effort to promote and monitor internal control with an approach that overtly identifies dangerous thoughts, fantasies, and feelings as critical treatment and management issues is an important departure from traditional criminal justice intervention with sex offenders.

- Official supervision and monitoring to exert external control over offenders. Probation and parole agencies apply pressure—through clear expectations and through use or threatened use of sanctions—to ensure that the offender complies with specialized treatment and supervision conditions. This pressure to participate in sex offender-specific treatment for purposes of public safety inextricably links the mental health community and criminal justice system.

- Polygraph examinations to obtain complete sexual history information and to monitor the offender's deviant fantasies and external behaviors—particularly access to victims. Data obtained during the polygraph examination provide vital management and compliance feedback to the treatment provider and probation/parole officer.

Maintaining close communication and acting as a team, the treatment provider, probation/parole officer, and polygraph examiner form a triangle of supervision, with the offender contained in the middle (see "Containing the Sex Offender in the Supervision Triangle"). Sex offenders must waive confidentiality of the information they divulge because containment depends on the constant sharing of information by and among team members, other criminal justice professionals, family members, and others, such as employers and church officials.



Telephone Survey: Selected Findings

Findings based on the responses of 732 probation and parole supervisors to a nationwide telephone survey are presented in terms of seven supervision issues that field research identified as vital components of an effective sex offender containment strategy.

1. Specialized units or caseloads. Almost one-third of the probation and parole agencies had specialized caseloads. Those agencies were more likely to report the use of such community safety-related approaches as imposition of special supervision conditions on sex offenders, emphasis on after-hours monitoring of offenders, and an orientation focusing on victim safety.

2. Availability of victim information for case management purposes. Seventy-eight percent of probation agencies and 63 percent of parole agencies represented in the survey included a victim impact statement in the sex offender's case file, and about 30 percent had procedures for informing victims of significant changes in the status of the sex offender's case.

3. Sex offender management practices and special conditions. The most commonly reported special conditions of probation and parole were court- or officer-ordered treatment requirements and no-contact-with-victim provisions. About 10 percent of the probation and parole agencies reported electronic monitoring of sex offenders; the same percent reported use of the polygraph for treatment or supervision purposes. Supervision contacts with sex offenders were more frequent than with nonsex offenders in most of the probation and parole agencies surveyed.

4. Sanctioning and revocation practices. Respondents indicated that super-

vising officers required a range of sanctions to "tighten the reins" on adult sex offenders when they began to exhibit high-risk behavior patterns or to fail to comply with supervision or treatment conditions. Agencies following a specialized approach to managing sex offenders were more likely to use short-term confinement (jails or halfway houses) as a prerevocation sanction than to use electronic monitoring or to increase supervision contacts. Sanctions that could be imposed in less than 24 hours were the ones most likely used, suggesting the need for methods of immediate intervention.

5. Sex offender treatment. Treatment is commonly required of sex offenders under community supervision. More than 80 percent of probation and parole respondents reported that mental health treatment is mandated. Sixty percent of respondents used an approved list of treatment providers; 26 percent stated that sex offender treatment services were in short supply.

6. Training. About two-thirds of the probation and parole supervisors reported they had received training in sex offender management, but less than half had received it within the last year.

7. Interagency collaboration. One-third of the respondents reported that an interagency group meets regularly to discuss sex offender issues. Most frequently named as participants in interagency teams were law enforcement officers and treatment providers.

*See English, K., S. Colling-Chadwick, S. Pullen, and L. Jones, *How Are Adult Felony Sex Offenders Managed on Probation and Parole?* Denver: Colorado Division of Criminal Justice, Department of Public Safety, 1996.

In pursuing safe and effective **treatment** of sex offenders in the community, therapists must obtain full disclosure of offenders' sexual histories. Sex offenders must examine carefully their lives and recognize as dysfunctional the situations, relationships, emotional states, attitudes, and behaviors that they may be considering as "normal." Use of the polygraph helps ensure that offenders fully reveal their sexual histories—information that is essential to the development of effective treatment programs.¹⁸ To the observation that polygraph results may not always be accurate, the rejoinder is that they have been found to be significantly more reliable, on average, than offenders' self-reported histories.

In jurisdictions identified by field research as employing the containment approach, the treatment intervention was group therapy, for which offenders were nearly always required to pay at least a portion of the cost. Individual therapy may occur for specific issues and in limited contexts but provides too much opportunity for image management. Only in group therapy are offenders exposed to the type of valuable, perceptive, and corroborating confrontation that occurs with fellow sex offenders.

A "cure" for sex offending is no more available than is a cure for epilepsy or high blood pressure. But use of a variety of interventions can help manage these disorders. A realistic objective of treatment is to provide sex offenders with the tools to manage their inappropriate sexual arousal and behavior. A therapist can, in many cases, teach offenders self-management by developing skills for avoiding high-risk situations through identification of decisions and events that precede them

and through correction of their thought distortions. Treatment focuses on recognizing and managing deviant sexual behavior and offenders' thoughts and attitudes that promote it.

Research reveals that deviant thoughts and fantasies by sex offenders are precursors to sexual assault and, therefore, are an integral part of the assault pattern.¹⁹

By instilling in offenders the dictum that deviant attitudes and fantasies reinforce deviant behavior and are not acceptable, treatment providers and supervising officers are prepared to intervene—set limits—at the incipient stages of reoffending patterns. Although such thoughts and feelings are not crimes, they are signals that constitute good reasons—based on empirical research and clinical experience—to increase supervision and "tighten the reins" on an offender. This increased surveillance often results in detecting preassault behaviors that can be interrupted or, conversely, lead to revocation.

Using thoughts and feelings—the stuff of therapy—as a starting point for risk management is a marked departure from traditional criminal justice supervision. Once a sex offender reveals thoughts and feelings that are part of the assault pattern, criminal justice officials can use that information to develop and, if necessary, continuously update an individualized treatment, **supervision, and surveillance plan**. The top priority of such a plan is to eliminate opportunities for reoffense—to protect victims and the general public. In that regard, sex offender-specific probation or parole conditions, such as those that follow, play a crucial role:

- Your employment must be approved by the probation/parole agency.
- You shall participate in treatment with a therapist approved by the probation/parole department.
- You shall participate in periodic polygraph examinations.
- You shall not have contact with children under age 18.
- You shall not frequent places where children congregate, such as schoolyards, parks, playgrounds, and arcades.
- You shall maintain a driving log (mileage; time of departure, arrival, return; routes traveled and with whom; etc.).
- You shall not drive a motor vehicle alone without prior permission of your supervising officer.
- You shall not possess any pornographic, sexually oriented, or sexually stimulating visual, auditory, telephonic, or electronic media and computer programs or services that are relevant to your deviant behavior pattern.
- You shall reside at a place approved by the supervising officer, including supervised living quarters.
- You shall abide by a curfew imposed by the supervising officer and comply with electronic monitoring, if so ordered.
- You shall not have contact, directly or through third parties, with your victims.
- You shall abstain from alcoholic beverages and participate in periodic drug testing.

- You shall not have a post office box number without the approval of your supervising officer.
- You shall not use fictitious names.

Specialized surveillance officers can also help determine compliance with conditions by monitoring offenders through intensive field work. Duties of surveillance officers may include searching the residences and vehicles of offenders, monitoring their activities, making arrests, attending therapy groups, and discussing high-risk issues with offenders and assessing their mental states.²⁰

The goal of the **polygraph examination** is to obtain information necessary for risk management and treatment, and to reduce the sex offender's denial mechanisms. The examiner evaluates answers to carefully developed questions as truthful, deceptive, or inconclusive. Deceptive results flag areas of concern that the treatment provider and supervising officer need to investigate further. Every effort is made to assist the offender in obtaining a positive evaluation so that treatment can be informed and relevant. To this end, polygraph data should be used in conjunction with other information when making decisions about case management of sex offenders.²¹

Use of the polygraph raises questions about granting limited immunity from prosecution to offenders who disclose new crimes. Jurisdictions vary regarding immunity policies. Some jurisdictions, like Colorado, do not offer limited immunity, but prosecutors make thoughtful decisions about further prosecution on a case-by-case basis. Decisionmakers in one jurisdiction visited during the field research concluded that to prosecute all reported

offenses would infringe on Fifth Amendment rights and thus prohibit therapeutic use of the polygraph.²² Another study site grants limited immunity for similar past offenses if the offender meets several containment conditions, including actively participating in an approved treatment program, pleading guilty, and gaining employment that meets the approval of the probation or parole officer.²³

Ultimately, success of the containment system depends on the caliber of the last three elements of the model process: collaborative implementation strategies, consistent public policies, and quality control.

3. Collaboration: a multidisciplinary approach. The creation of intra-agency, interagency, and interdisciplinary teams to develop, implement, and monitor policies, procedures, and protocols forges a unified and comprehensive approach to sex offender management. Examples of such teams include the following:

- Interagency policy and protocol committees.
- Law enforcement/child protection partnerships.
- Case management supervision teams of probation/parole officers, treatment providers, and polygraph examiners, among others.
- Intra-agency networks of specialized probation and parole officers.

Members of interagency teams, for example, may include law enforcement officers, child protection personnel, rape crisis center counselors, prosecuting attorneys, probation and parole officers, medical doctors, treatment providers, polygraph operators,

and prison officials. In some cases, members may also include school counselors, crime victim advocates, and medical staff specializing in child sex abuse.

Through systematic cooperation and collaboration, such teams are an antidote to traditionally fragmented intervention efforts. Teams improve interagency communication, facilitate case-specific information sharing, promote the exchange of expertise and ideas, help break down traditional turf barriers, minimize duplication of effort, maximize resources, and often reduce staff burnout.

Some intra-agency teams consist of probation and parole officers who specialize in the management of sex offenders. Teams such as these are facilitated by job specialization—the assignment of one or more persons to deal solely with sex offender cases. Specialization may occur at the organizational level by formally creating a unit to manage sexual assault cases, at the line level by specializing work assignments of identified staff, or at both levels by a combination of those approaches. Specialization enhances skills, increases communication, and tends to improve consistency at all stages of sex offender management, and is a fundamental component of the collaboration process.

4. Consistent public policies. No matter how good the design and implementation of sex offender-specific containment practices, these cannot function at peak effectiveness without the support of informed, clear, and consistent public policies—the fourth element of the model process.

Ideally, local criminal justice practitioners should work with State legisla-

tures, governors, and officials from State judicial and corrections departments to develop policies reflecting the latest thinking about the management of sex offenders. Whenever possible, practitioners should help shape legislative mandates, executive orders, and agency policies and protocols that support and advance the public safety priority of sex offender management. Clear and consistent policies define agency responsibilities and reinforce practices that, when operating effectively, will interrupt any attempt by sex offenders to manipulate the management plan.

Particularly important is the development of policies that prohibit pleas or dispositions that reinforce sex offenders' frequent refusal to admit their crimes, to acknowledge the seriousness of their actions, or to take responsibility for the harm they have caused. The greater such denial, the more the offender resists (or even escapes) treatment and the more difficult the task of establishing appropriate external controls. Continued denial on the part of the offender is also uniquely disempowering to the victim. The following are pleas and dispositions that contribute to and reinforce a sex offender's denial or minimization of the sexual assault:

- Alford and no contest pleas. These pleas allow sex offenders to avoid a direct admission of guilt. An Alford plea is a guilty plea that permits a sex offender to verbally maintain his or her innocence at conviction. A no contest plea is a guilty plea in which an offender neither admits nor denies the charges. Such pleas grant sex offenders official justification to continue denying their offending behavior after conviction.



Containing the Sex Offender in the Supervision Triangle

Within the limits set by the supervision triangle of probation officer, therapist, and polygraph examiner, Jim was serving 4 years on probation for molesting the 7-year-old daughter of a woman he was dating. He had met the mother of the victim at church.

Although this was Jim's first conviction, he admitted he had long been attracted to young girls. Jim told his therapy group that, over the years, he attended church to "meet people." When pressed, he told the group that he had dated several women from the church and that all of them had young daughters. But he denied that this was a pattern that had preceded abuse.

The therapist called a team meeting with the probation officer and polygraph examiner to discuss Jim's pattern of accessing children. The probation officer

- Pleas that change sex offenses to nonsex offenses. Pleas to nonsex offenses minimize what the offender did and reinforce denial. Further, if the official record does not reflect that the original charge was a sex offense, this critical information is lost to those who subsequently make public safety decisions about the offender.
- Deferred judgments and sentences. Such dispositions are important options but are inappropriate for most sex offenders. Such dispositions imply that the offense was not that important, a one-time mistake, and if the offender behaves for a couple of years, the court will forget about it and dismiss the case, leaving an incomplete official record. Also, public safety may be jeopardized: in some jurisdictions, deferred judgments for sex offenses are

petitioned the court to modify probation orders to prohibit Jim from attending church unsupervised. The polygraph examiner then added the question "Have you gone to any church or religious services unsupervised since the last polygraph exam?" to the next examination.

The therapist and therapy group continued to work with Jim until he understood that going to church alone was, for him, a high-risk activity that placed him dangerously close to children.*

*See Strate, D.C., L. Jones, S. Pullen, and K. English, "Criminal Justice Policies and Sex Offender Denial," in English, K., S. Pullen, and L. Jones (eds.), *Managing Adult Sex Offenders: A Containment Approach*, Lexington, Kentucky: American Probation and Parole Association, 1996:4.9.

not counted as convictions for the statewide sex offender registry.

- Referrals to diversion programs. Applied to sex offenders, this alternative to filing a criminal charge further dilutes the seriousness of the crime, reinforces offender denial, and may distort the criminal history record.

Development of consistent interagency policies on family reunification is also very important—especially between probation/parole agencies and agencies whose mission is generally keeping the family intact or reunifying it at the earliest opportunity. For example, family reunification in incest cases should not occur prior to the disposition of the criminal case. Subsequent decisions on family reunification should be made only after consultation

with the victim's therapist, the offender's therapist, and the supervising officer.

The well-being of the victim—and the potential for other children and adults to become victimized—should be the fundamental criterion applied by all agencies to family unification decisions. The rigorous use of clear protocols for family reunification—protocols that fully explore the offender's risk to other children in the household—may be the most important way the criminal justice system can intervene to protect children from sexual assaults by known sex offenders.

Additional critical policies on which to obtain jurisdictionwide agreement are, among others: selection criteria for treatment providers; prevention of offenders from changing therapists without permission of supervising officers (i.e., "treatment shopping"); third-party liability (e.g., the duty to warn potential victims); use of polygraph data; prerevocation sanctions; revocation criteria; and sex offender community notification.

5. Quality control. As the final component of the model containment process, quality control encompasses (1) monitoring to determine whether the prescribed implementation strategies and interagency policies and practices are in place and functioning as intended and (2) evaluating to assess whether what is in place is producing an impact and, if so, its magnitude. Quality control, therefore, can provide an objective means of documenting program success, identifying implementation and operational problems, and guiding program refinements.

Because the sex offender containment approach requires a long-term, consistent, systemwide response to sexual assault, a model process for managing sex offenders is one that continuously improves. Such improvement is highly unlikely to occur without implementation of quality control measures. When systematic monitoring and evaluation are accorded appropriate priority, program staff and administrators are continuously prepared with objective data to demonstrate the value of their work and to modify the program, when necessary, according to empirical feedback.

Secondary trauma

Management of adult sex offenders in community settings often exacts a significant toll on those charged with managing cases, including probation and parole officers and their supervisors. Secondary trauma refers to the emotional and psychological experience of professionals who expose themselves to a world of unthinkable acts. Effective case management requires that these professionals understand each victim's trauma and the specific types of sex offender manipulation leading to that trauma. They also generally experience a variety of manipulative behavior during interactions with offenders.

To offset the experience of secondary trauma, sex offender management must be conducted in an environment where the dynamics of sex offending and secondary trauma are understood by coworkers and managers. That understanding will provide vital professional support.

Managers and staff must create an emotionally safe environment for personal discussion of all aspects of

sexual assault and offender management. Specifically, working together and discussing feelings and problems as a team can provide the empathy and validation so vital to reducing isolation and burnout among sex offender practitioners. Agencies should make every effort to provide counseling and other resources to help relieve officer stress. Data from field interviews suggest that interagency collaboration and networking may help prevent burnout.

Part of the remedy for burnout is training. According to a Texas parole supervisor interviewed, "Being pulled into an offender's manipulation is the biggest problem. Because offenders are so manipulative, officers need constant training."²⁴

Training

The complex nature of sex-offending behavior and the potential dangerousness of offenders mandate frequent training (such as annually) for probation and parole officers—both specialized and nonspecialized—and their supervisors. Training topics should include, among others, the following:

- Dynamics of victimization—trauma, shame, self-blame, and fear.
- Dynamics of sexual offending—psychopathy, blame, impulsiveness, and denial.
- Risk assessment—secrets, manipulation, grooming, and conscious and unconscious assault planning.
- Issues about family reunification.
- Offender lifestyle issues, such as leisure time and access to victims.
- Relevant laws.
- Safety of field officers.

- Sex offense-specific therapy and medical assessments.
- Surveillance and use of the polygraph.
- Characteristics of sex offenders.
- Investigative methods, including sexual assault crime scene investigation.
- Management of secondary trauma and professional burnout.

In addition to direct training, cross-training among criminal justice practitioners, child protection workers, victim advocates, private treatment providers, and other professionals is important. "Cross-training allows physicians to learn the evidentiary issues prosecutors face, law enforcement officers and prosecutors to learn about common reactions to trauma from rape crisis counselors, and victim advocates to learn more about the criminal justice system, so they can better help victims prepare for court."²⁵

Operational and research suggestions and needs

Besides the model process itself, a number of operational suggestions for consideration flow from a comparison of findings from the national telephone survey with data obtained from the field research and from extensive reviews of the research and theoretical literature on sex offender management, treatment, and victim trauma. Among them are the following:

- Make training, including cross-training, in sex offender management a priority at the Federal²⁶ and local levels.
- Design individualized supervision plans for adult sex offenders according to their particular risk factors.

- Implement special supervision conditions for adult sex offenders that restrict specified activities, including barring employment that facilitates access to victims.

- Develop a variety of immediate, short-term, prerevocation sanctions for adult sex offenders who place themselves in high-risk situations. Those sanctions include 72-hour mental health holds, short-term jail confinement, additional counseling sessions, day fines, and halfway-house confinement.

- Create within criminal justice agencies specialized sex offender crime units.

- Facilitate collaboration across disciplines and across agencies, including victim advocate agencies.

- Require sex offenders under supervision of the criminal justice system to participate fully in treatment programs that are approved by probation and parole agencies and that include cognitive-behavioral therapy, group therapy, polygraph monitoring, and waiver of confidentiality.

- Consider imposition of long-term, even lifetime, supervision sentences.

Research needs also are apparent, including the need to conduct process and outcome evaluations of containment strategies implemented in a variety of communities. Not only should the model process and its constituent parts be evaluated but research questions such as the following should be addressed as well:

What types of sex offenders are best suited to the containment approach?

Do different subgroups of sex offenders respond differently to different aftercare programs?

How can community notification procedures be designed to enhance public safety?

What are the best assessment tools to classify sex offenders into categories that are meaningful for supervision purposes?

What jurisdiction-specific actuarial risk assessment tools can predict sex offender dangerousness?

What would a carefully conducted cost-benefit analysis of a containment approach tell us?

Conclusion

The five-part model process to contain adult sex offenders establishes a framework within which agencies and communities can develop specific practices to better promote public safety and victim protection and assistance. Just as the stringency of the supervision triangle should be tailored to the individual characteristics of each sex offender, so should the method of implementing the model process vary according to the needs of each community.

Incremental improvement in the model process and in underlying case management practices will flow from new research findings and feedback from the field. But the bottom line of sex offender management in community settings should not change: public and victim safety first.

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23. English, K., S. Pullen, L. Jones, and B. Krauth, "A Model Process: A Containment Approach," in English K., S. Pullen, and L. Jones, (eds.), op. cit., 2.25.

24. Texas parole supervisor, telephone interview, July 25, 1994. Jones, L., S. Pullen, K. English, J. Crouch, S. Colling-Chadwick, and J. Patzman, "Summary of the National Telephone Survey of Probation and Parole Supervisors," in English, K., S. Pullen, and L. Jones (eds.), op. cit., 3.10.

25. Epstein, J., and S. Langenbahn, *The Criminal Justice System and Community Response to Rape*, Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1994:850. Cited in English K., S. Pullen, and L. Jones (eds.), op. cit., 2.10.

26. The Office of Justice Programs, U.S. Department of Justice, has initiated steps to help shape and promote training in sex offender management.

Quick Access to NIJ Publication News

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Kim English presented an NIJ-sponsored seminar on the results of her and her colleagues' research before an audience of researchers and criminal justice practitioners. A 60-minute videotape of her pre-

sentation, *Managing Adult Sex Offenders in Community Settings: A Containment Approach*, is available from NCJRS for \$19 (\$24 in Canada and other foreign countries). Ask for NCJ 159740.

Related Reading

Listed below are selected Office of Justice Programs publications related to the subject addressed by this Research in Brief. They may be obtained free from the National Criminal Justice Reference Service (NCJRS): phone 800-851-3420, e-mail askncjrs@ncjrs.org, or write NCJRS, Box 6000, Rockville, MD 20849-6000. When free publications are out of stock, photocopies are available for a minimal fee or through interlibrary loan. Publications may also be available electronically; contact NCJRS for more information.

Epstein, J., Esq., and S. Langenbahn. *The Criminal Justice and Community Response to Rape*. Issues and Practices. National Institute of Justice. 1994. 142 pp. NCJ 148064. Describes organizational and procedural changes in several urban jurisdictions that have assisted criminal justice and victim service agencies in combating rape.

Greenfeld, L.A. *Child Victimization: Violent Offenders and Their Victims*. Bureau of Justice Statistics and Office of Juvenile Justice and Delin-

quency Prevention. 1996. 28 pp. NCJ 153258. Presents national statistics that throw new light on the most serious types of child abuse and victimization, including sexual assault.

Prentky, R., R.A. Knight, and A.F.S. Lee, *Child Sexual Molestation: Research Issues*. Research Report. National Institute of Justice. Forthcoming (January 1997). NCJ 163390.

Whitcomb, D. *When the Victim Is a Child*. Second Edition. Issues and Practices. National Institute of Justice. 1992. 176 pp. NCJ 136080. Overview of the state of the art in the investigation and adjudication of child sexual abuse cases.

Widom, C.S. *Victims of Childhood Sexual Abuse—Later Criminal Consequences*. Research in Brief. National Institute of Justice. 1995. 8 pp. NCJ 151525. Summary of a research study examining childhood sexual abuse and its possible association with criminal behavior later in life.

Study Reports

This Research in Brief is based on the study supported by award 92-IJ-CX-K021 from the National Institute of Justice. The study resulted in two reports.

Managing Adult Sex Offenders: A Containment Approach (1996) is available for a fee from the American Probation and Parole Association. Call 606-244-8207 for cost information.

How Are Adult Felony Sex Offenders Managed on Probation and Parole? (1996) presents

findings of the researchers' national telephone survey of probation and parole supervisors.

While supplies last, the publication is available for \$10 from the Colorado Division of Criminal Justice (Attn.: Office of Research), 700 Kipling Street, Suite 3000, Denver, Colorado 80215. Alternatively, a photocopy of the publication is available, for a fee, from the National Criminal Justice Reference Service (NCJRS). Call 800-851-3420 for cost information. Ask for NCJ 163388.

Kim English is research director for the Colorado Division of Criminal Justice, Department of Public Safety. Also with the Division, Suzanne Pullen is senior research and policy analyst and Linda Jones is a program administrator and staff to the Colorado Sex Offender Treatment Board.

Points of view expressed in this report are those of the authors and do not necessarily represent the official position or policies of the Colorado Division of Criminal Justice, Department of Public Safety, or of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Juvenile Justice Delinquency Prevention, and the Office of Victims of Crime.

NCJ 163387

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Dennis K. Burke 03/17/97 11:47:43 AM

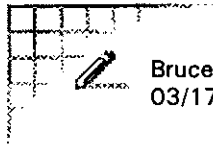
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Michelle Crisci/WHO/EOP

cc: Christa Robinson/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP

Subject: Megan's Law Guidelines -- Another potential announcement

Justice just told me that they are finalizing the guidelines for Megan's Law -- which would tell communities exactly what would constitute adequate "community notification" under the law. This would be good to go along w/ the National Sex Offender Registry announcement (or maybe even alone).



Bruce N. Reed
03/17/97 11:53:54 AM

Record Type: Record

To: Dennis K. Burke/OPD/EOP, Elena Kagan/OPD/EOP
cc:
Subject: Megan's Law Guidelines -- Another potential announcement

Yes, do with Sex offenders.

----- Forwarded by Bruce N. Reed/OPD/EOP on 03/17/97 11:53 AM -----

Dennis K. Burke 03/17/97 11:47:43 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Michelle Crisci/WHO/EOP
cc: Christa Robinson/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
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Dennis K. Burke 03/17/97 12:01:22 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: Megan's Law Guidelines -- Another potential announcement 

I haven't seen them, yet -- they are going to send me over a copy. In our phone conversation, they told me that the draft regulations provide a fair degree of flexibility for the states to meet the minimum requirements (under the law, states would have to enact community notification laws or risk losing 10% of Byrne Formula Grant funding --- funding that goes to the states for law enforcement purposes).

States can't comply by just providing information to local law enforcement or for employment purposes. Some states were already trying to comply by just notifying schools and Justice told them more was needed. However, New Jersey has a state law that has risk levels and the level of notice is determined by the risk level (I assume that means that sexual assault of an adult would be notice to law enforcement but sexual child molester would be schools, neighborhood notice, etc. too) and that is enough. Some states have call-in numbers in which you can ask for a list of where convicted child molesters live, etc. I think she said that would be in compliance.

I will get you a copy of the guidelines when they come in so you can see if they make sense.

Supposedly, a majority of states have some form of community notification law and DoJ thinks that most states will have already complied with the Megan's Law regulations.