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## Sexual Predators, Civil Commitment Programs, and Sexual Predator Laws



Children are being abused at alarming rates in this country. Research has shown that 23% of adults have reported being sexually abused as a child. The National Center on Child Abuse Prevention Research reported that “in 1997 there were 223,650 reports of child sexual abuse received by child welfare agencies across the United States” (Levenson, 2003). These numbers don’t include the thousands of abuse cases that go unreported each year. Even in the case where the abuse is reported, many of the sexual abusers are never caught and/or prosecuted.

It is because of the growing number of victims that researchers have spent so much time researching the sexual abuser and all issues related to the sexual abuser. One of the most researched aspects of the sexual abuser is how the government is trying to treat these sexual predators and keep the communities safe from them, namely civil commitment programs and community notification. The researchers who have provided some of the most imperative research in this area of study include Jill Levenson with her meta-analysis “Policy Interventions Designed to Combat Sexual Violence: Community Notification and Civil Commitment” and her study “Sexual Predator Civil Commitment: A Comparison of Selected and Released Offenders”; Ron Langevin, Suzanne Curnoe, Paul Fedoroff, and Renee Bennet with their study “Lifetime Sex Offender Recidivism: A 25-year Follow-Up Study”; Wanda Kendall and Monit Cheung and their article “Sexually Violent Predators and Civil Commitment Laws”; John La Fond and Bruce Winnick with their literature review “Sex Offenders and the Law”;

Stephen Webster’s “Pathways to Sexual Offense Recidivism Following Treatment: An Examination of the Ward and Hudson Self-Regulation Model of Relapse”; James Seager, Debra Jellicoe, and Gurmeet Dhaliwal with their study “Refusers, Dropouts, and Completers: Measuring Sex Offender Treatment Efficacy”.

These authors, through their research, have helped to answer why sexual abusers abuse, how they abuse, what can be done to prevent them from abusing, what are predictors of abusing, and how is the government protecting society from these abusers. All of the researchers’ empirical findings are presented and these questions answered in this review. Jill Levenson did a thorough meta-analysis of the topics at hand and it is the format of that meta-analysis that will be used to lay out the issues in a logical format, to integrate the other researchers’ findings coherently together, and to integrate the other researchers’ findings to Levenson’s meta-analysis. The main issues of this literature review concern sexual predators, civil commitment programs, and laws regarding sexual abuse.

### Jill Levenson’s Meta-Analysis of Sexual Offenders and Civil Commitment Programs

Jill Levenson’s meta-analysis on the topic of sexual violence is a key piece in studying sexual predators, civil commitment programs, and laws pertaining to sexual predators and civil commitment programs. The big area of research for Levenson is civil commitment programs and sexual predators. Civil commitment is recognized as “the process by which mentally ill individuals who are considered dangerous to themselves or others are detained in an inpatient facility and forced to receive mental health care” (Levenson, 2003). States were required to have civil commitment programs after the Sexually Violent Predator Statute was enacted in 1990 in response to a sexual predator with a 24-year history of murder and sexual assault who was released from a 10-year prison sentence and just two years later abducted, sexually abused, and killed a 7-year old boy. This statute requires that sexual predators be put into treatment programs after their prison sentences have been fulfilled. Another benchmark case for civil commitment programs is that of *Hendricks v. Kansas*. This case

“limited sex offender civil commitment to those individuals who have been convicted of a sexual crime and demonstrate (a) a mental abnormality or personality disorder that makes it difficult, if not impossible, for the person to control his sexual behavior and (b) a likelihood to commit future sexual offenses” (Levenson, 2003). More extensive discussion of the laws dealing with sexual offenders appears later in this literature review.

The question of who is a sexually violent predator is one of the sub-areas of research under civil commitment programs. The label of sexual predator in many states “applies specifically to sex offenders who target strangers or acquaintances with whom a relationship has been established primarily for the purpose of victimization, who have multiple victims, or who commit especially violent offenses” (Levenson, 2003). Most sexually violent predators have some kind of a mental abnormality or a personality disorder. It is because of these abnormalities and disorders that predators seek out young and impressionable children and gain their trust while meticulously planning their attack. When looking at the average number of victims of sexually violent predators, Levenson found that “the average number of victims for pedophiles who molested girls was 20; for pedophiles who preferred boys, the average number was over 100” (Levenson, 2003).

Next, Levenson looked at the goals of civil commitment. Although one of the main goals of civil commitment is rehabilitation of sexual offenders, punishment, isolation, and incapacitation are the primary goals. For a sexual offender to be admitted into a civil commitment program, they must go through an admittance process with multiple steps. First, the sexual offender needs a referral from the prison that released them. Second, trained professionals must evaluate them and if the offender is then deemed to be at high risk for being sexually violent, they are given a hearing. Finally, if at the trial there is probable cause to believe that the person is indeed sexually violent, they then enter the system.

There are, however many criticisms of civil commitment. Some critics argue that civil commitment programs are just another jail and another way to keep someone locked up for good. Other critics wonder if paraphilia, a diagnosis of many

sexual offenders, meets the American Psychiatric Association’s definition of a “mental illness” and therefore meeting the requirements for civil commitment programs. The problem, critics contend, is that “the term ‘mental abnormality’ has no scientific or clinical meaning, but rather represents only a ‘deviation from the norm’” (Levenson, 2003). This is just one of the many arguments in the ongoing debate of “mad v. bad” or “sick v. evil”.

Levenson then researches the costs of civil commitment programs. She finds that the costs of the programs are very high. To be more specific, “yearly costs for civil commitment programs are estimated to range from \$70,000 per client in Washington to \$103,000 in California” (Levenson, 2003). Release from the civil commitment programs does not occur nearly as much as admittance to the programs does; release is actually a rare occurrence. The cost of these programs continues to grow with each new client. There have been some alternatives to civil commitment programs mentioned. These include treatment while incarcerated and lifetime parole. These are both cost-cutting mechanisms and ways to reach many sexual offenders at one time.

Levenson finds pitfalls in the research of civil commitment programs when she is researching whether or not they are linked to offender recidivism. One pitfall was that there was no literature available on the subject. Another pitfall, she discovered, is that professionals’ ability to predict future dangerous behavior is questionable. Another area of concern is the lack of ability to evaluate whether or not a sexual offender is ready for release from the program. Levenson concludes her literature review emphasizing the point that, “perhaps the most pressing need is the importance of establishing empirical evidence that community notification and civil commitment achieve their goal of reducing sexual violence” (Levenson, 2003).

#### Other Researchers’ Findings on Sexual Predators and Civil Commitment Programs

Levenson’s meta-analysis of the issues at hand is thorough and extensive. However, even more studies have been done and even more articles written about sexual offenders, civil commitment programs, and laws concerning sexual offenders and civil commitment programs that are not included in her

literature review. A study of lifetime, sex-offender recidivism by Ron Langevin, a piece by Jill Levenson on sexual predators and civil commitment, and academic articles and analyses written by Wanda Kendall, Stephen Webster, James Seager, and John La Fond, allow us to study the issues at hand more extensively. The information obtained through these studies and articles is linked and formatted almost exactly as Levenson's meta-analysis.

One of the first questions addressed by Levenson that is also addressed by some of the previously mentioned authors is the issue of who is a sexually violent predator. Levenson goes into detail about who is considered to be a violent predator and what this label means. She does not, however, define sexual abuse in her review, which is key considering that sexual abuse is the behavior of these sexually violent predators. Kendall does offer a definition in her analysis and goes into further detail about who is a sexually violent predator. Kendall defines sexual abuse as "referring to an individual perpetrating a sexual act against another person who is non-consenting, unable to consent, or too young to consent. Such sexual behaviors range from verbal and sexual harassment to fondling genitalia, rape, and sadistic sexual acts" (Kendall & Cheung, 2004). Kendall also discovers that sexually violent predators are repetitive in their behavior. Offenders are considered to be predatory because they are always on the hunt for their next victims.

The next issue addressed is civil commitment programs. The main areas of concern for the civil commitment programs are their goals, the cost, impact, and effectiveness. La Fond writes that one of the goals of civil commitment programs is that offenders be treated and monitored in the communities where they live thus freeing up resources, namely financial resources, needed to help sexually abused children or those who are at risk for becoming abusers themselves. Kendall offers up goals of the civil commitment programs from two different perspectives, the public health view and the treatment point of view. Kendall writes, "[f]rom the public health point of view, incarcerating these criminals will protect the public from harm. From the treatment point of view, simultaneous prevention and treatment programs planned with support from legislation will prevent later abuse" (Kendall & Cheung, 2004).

The next sub-topic discussed is the cost of civil commitment programs. Kendall's research coincides with Levenson's in that they both have found that civil commitment programs are expensive. Levenson discusses the one-year cost per offender in the states of Washington and California, whereas Kendall discusses the 10-year cost of implementing a new policy in the state of Illinois and found that it would be \$1,007,719,300.

The next area discussed is prediction of sexual offense recidivism. Many of the authors find meaningful research to add to Levenson's extensive review in this area. Segar finds that some programs have linked treatment with reduced recidivism but that the efficacy of the treatment in reducing recidivism is still unknown. Webster discovers that Marlatt and Fordon are responsible for creating the first model of relapse prevention. Relapse, as Webster also learns, is a four-step process, "the occurrence of a high-risk situation for which there is no coping response; decreased self efficacy (accompanied by a positive outcome expectancy for the sexually abusive encounter); a lapse, which leads the individual to anticipate the positive effects of the sexually abusive encounter; and finally a relapse" (Webster, 2005).

On the topic of prediction, Ron Langevin, Suzanne Curnoe, Paul Fedoroff, and Renee Bennet's study, "Lifetime Sex Offender Recidivism: A 25-year Follow-Up Study", is a significant piece of research. They first acknowledge the problems that have occurred in other recidivism studies, mainly the varying results from different studies. Problems occur due to the multiple criteria that fit the definition of recidivism. These criteria include: 1) sex offense re-convictions and 2) any new charge or arrest for sexual offenses (this includes any type of new conviction, any type of new charge, parole violations, and/or court appearances). Researchers have used one or all of the criteria but no two researchers use the exact same when conducting research. Problems also occur because sex offenses can be plea-bargained down to a lesser charge and fly under the radar of researchers. Another problem occurs due to the fact that police charges may be deceiving. A perfect example is, "a single charge of sexual assault may represent years of abuse of a single victim, while multiple charges of sexual assault may involve a single victim on a single occasion" (Langevin, Curnoe, Fedoroff,

Bennet, 2004). Problems also occur because group composition and sample size may vary over time in recidivism studies. Lastly, problems occur with low reported rates and short follow-up time.

For this study, Langevin and his colleagues have 2,124 sexual offenders who had been seen for psychiatric assessment from 1966 to 1999. For the follow-up portion of the study only 351 men were available. The different groups of men were: incest offenders, genital exhibitionists, extra-familial child sexual abusers, sexually aggressive, courtship disorders, and sexually polymorphous men. The mean age of the group was 31.7 years old and most participants were high-school dropouts. It was also discovered that the vast majority of the offenders (96.9%) were Caucasian. Langevin compiled the detailed criminal histories of all the participants and divided them into five different types of charges:

- 1) Sexual offences, including sexual assault indecent assault, and sexual interference;
- 2) violent offences that were not indicated as sexual, such as common assault, wounding, and homicide;
- 3) substance-abuse related charges such as driving while ability impaired;
- 4) property offences such as break and enter;
- and 5) other procedural offences such as failure to comply with a court order (Langevin et al, 2004).

He also looks at time in prison, time on parole, number of convictions, and number of court appearances.

Next, Langevin shares his results. Of the 351 men used for this portion of the study, they would have a lifetime total of 2,961 convictions over the 25 years, 38.7% labeled as sex crimes. The offenders were in court a total of 2,193 times over the 25 years, 37.5% because of sex offenses. Langevin also discovers that “the majority of men had reoffended within five years at large, 68.6%...and 74.2% acknowledged offending without any legal involvement with the authorities” (Langevin et al, 2004). Extra-familial offenders against children and exhibitionists showed the highest recidivist rates, about 70%, however almost all reoffended if their undetected crimes would have been included in the results. Finally, “a total of 88.3% of offenders would have been considered sex offense recidivists if they had been caught” (Langevin et al, 2004). These results could vary due to the fact that, as mentioned before, many sexual offenders have their

charges plea-bargained down to lesser charges. After looking at the research, one could predict that the vast majority of sexual offenders, if given the opportunity, will recidivate. It is because of this fact that Langevin suggests that future research cover a time span of over five years for the findings to be more accurate.

Another area that Levenson discusses in her literature review is the impact of civil commitment programs on sexual offense recidivism. To shed more light on the topic, a study done by Levenson, “Sexual Predator Civil Commitment: A Comparison of Selected and Released Offenders”, is a valuable tool. The purpose of this study “is to investigate whether sex offenders who are selected for civil commitment are indeed more sexually dangerous than those who are not selected” (Levenson, 2004). Levenson hypothesizes that those selected for civil commitment would be more likely to have been diagnosed with a paraphilia or antisocial disorder as well as having higher risk assessment scores and other factors linked to recidivism. The sample for this study consists of 450 adult males who were competent sex offenders. Of the sample of men, “222 were child molesters with minor victims only, 115 rapists with adult victims only, 99 mixed who had adult and minor victims...the vast majority of participants had extra familial victims (92%)... and nearly half belonged to a racial or ethnic minority group” (Levenson, 2004). The participants of this study went through the civil commitment program selection process discussed earlier: they are interviewed, evaluated, the court has probable cause that they will recidivate, and then they are taken under custody. The evaluators use the Static-99, the Rapid Risk Assessment for Sex Offense Recidivism, the Minnesota Sex Offender Screening Tool, and the Psychopathy Checklist-Revised to assess the mental capacities of all sexual offenders who are part of this study. These evaluations also include criminal history, diagnosis, psychosocial information, and risk assessment.

The results of Levenson’s study show that the selected offenders score significantly higher on their evaluation tests. Levenson also discovers that selected offenders “had younger victims than released offenders, higher numbers of victims... had prior treatment failure, used a weapon in the commission of a sex offense, had a history of a variety of sex crimes, and had

reported experiencing childhood sexual abuse” (Levenson, 2004). Although the percentage is small, it is significant to note that 5% of the selected offenders said that they intended to commit more sex crimes if and when they were released whereas none in the release group did. Levenson found that her hypothesis is supported in that evaluators select the worst sexual offenders to place in the civil commitment programs and that those who are part of the selected group are more likely to be diagnosed paraphilic or antisocial than the released group. This study aids in trying to assess how successful the civil commitment programs are, however; more research needs to be done. This is why Levenson suggests that “more research from states with sexually violent predator commitment statutes is needed, and ultimately, the effectiveness of civil commitment should be measured by its impact on sex offense recidivism” (Levenson, 2004).

The last area of discussion when dealing with civil commitment programs is evaluating readiness for release from civil commitment. John La Fond and Bruce Winnick offer insight into this area of discussion with their article “Sex Offenders and the Law”. They conclude that when discussing sex-offender risk assessment, “experts can provide useful information in predicting whether specific sex offenders are likely to reoffend and points out that experts are better at identifying which offenders are dangerous than they are in determining when these offenders can be safely released into the community” (La Fond & Winnick, 1998). They also conclude that actuarial prediction is better than clinical prediction when looking at the approaches to risk assessment.

### Sexual Predators and the Law

The third and final area of discussion by Levenson and all the other authors is sexual predators and the law. The laws have just recently started catching up with the problems created by sexual offenders. Although our system has come far, it is significant to note that 37% of sex offenders will return to the system again and again and that the vast majority of sex offenders in custody are not and may not be incarcerated. Kendall discovers through her research that there are four categories of civil commitment laws:

First, the sexual psychopathic model: which is an alternative to criminal prosecution and is based on the premise that sex offenders are “mad, not bad” and therefore need to be treated, cured, and released. Second, the post-conviction commitment: treatment of the offender ensues instead of sentencing and indefinite confinement of persons determined to be dangerous offenders. Third, the mental health commitment: offenders are not criminally prosecuted but are committed for mental health treatment. This law also recognizes that sex offenders may not be psychotic. Fourth, the post-prison commitment: the offender must complete involuntary civil commitment after imprisonment (Kendall & Cheung, 2004).

In the literature, high recidivism rates have been discussed extensively and a few questions arise. What has the government been doing to prevent sex offenders from recidivating and what is protecting the communities from the sexual predators? There are two benchmark cases that have addressed these questions, one of which was discussed earlier in the review. The first of the benchmark cases, as discussed in Levenson’s meta-analysis, deals with community notification and children who are victims of sexual abuse. The brutal rape and murder of Megan Kanaka by a sexual offender in her neighborhood led to “Megan’s Law” being passed by President Bill Clinton in 1996. This federal law “mandated all 50 states to develop requirements for convicted sex offenders to register with local law enforcement agencies and to notify communities when a sex offender lives in close proximity” (Levenson, 2003).

However, notification laws are the cause of many problems for communities. Notification may give the community a false sense of security because only convicted sexual offenders are forced to follow this law. The public does not take into consideration how many of the sexual predators are members of their own families, close family friends, or other non-convicted sexual offenders. Another flaw of community notification is geography. The laws of notification “are typically restricted to the geographical community in which the offender resides, offenders can easily seek victims in communities other than their own” (Levenson, 2003). These laws also have negative

effects on the offender and the offender's family and friends and can lead to verbal and physical abuse of the offender, their friends, and/or their family. Another problem with notification is that so much money is going to these notification programs that treatment and prevention programs have suffered monetarily. Studies also show that "38% of citizens reported increased anxiety due to notification and the lack of alternatives for dealing with sex offenders living in communities" (Levenson, 2003). The notification laws also add work for the already exhausted law enforcement agencies. One of the sub-areas of notification-law research was recidivism. Levenson discovered that recidivism rates might be lower than the public thinks but also goes on to acknowledge that so many sex crimes go unreported that recidivism statistics may not be all that accurate. Levenson concludes that there has been no research suggesting that the community notification laws actually benefit communities, are an effective strategy, or reduce recidivism.

Kansas v. Hendricks, the second benchmark case briefly discussed earlier, deals with civil commitment programs. This case made it necessary for sexual offenders to be diagnosed with a mental disorder to be put into a civil commitment program. Hendricks had a long history of child abuse and was a perfect candidate for the Sexually Violent Predator Act mentioned earlier. Hendricks motioned for the petition of confinement against him to be dismissed on the grounds that his Constitutional rights were being violated. Supreme Court Justice Clarence Thomas wrote for the majority, "The Kansas Act requires a finding of future dangerousness, and then links that finding to the existence of a 'mental abnormality' or 'personality disorder' that makes it difficult, if not impossible, for the person to control his dangerous behavior" (Levenson, 2003) for that person to be justifiably entered into a civil commitment program and Hendricks fit the requirements.

Since then, civil commitment programs have been required in all 50 states and 16 states have "passed civil commitment laws providing for the continuous confinement and treatment of sexually violent offenders" (Kendall & Cheung, 2004). However, just as Megan's Law and notification laws have their fair share of problems, so do the mandatory

civil commitment laws. The sex offenders' liberty comes into question when dealing with civil commitment programs. Critics believe that sexual offenders who have been punished to the fullest extent of the law should regain their liberty and be released back into society, not forced into further confinement and incarceration. There is also an issue when diagnosing someone as 'mentally ill'. La Fond and Winnick discover in their research that "the courts that have upheld sexual predator laws have not yet provided a thorough and useful account of legal mental illness... What type of impairment should qualify as a mental disorder that would justify involuntary civil commitment?" (La Fond & Winnick, 1998). So as one can see, the United States government has made great strides in dealing with sexual predators but much still needs to be done to fix the pitfalls of the laws that have been passed.

### Conclusion

The research is extensive when it comes to sexual predators, civil commitment programs, and the law. The research has shown that sexual predators are usually diagnosed as mentally ill with some form of mental abnormality or personality disorder. Because of that fact that they are in need of treatment. Treatment can be found in the civil commitment programs that are mandated by all 50 states. Research has also shown that sexual predators have a high recidivism rate. Almost all sexual predators, if given ample opportunity, will recidivate and it is unlikely that the proper authorities will catch them. It is because of that fact that communities need protection from these predators. Laws requiring sexual predators to notify their communities of their presence are one way of protecting the community. However, as seen through the research, there are many problems with the treatment programs, notification policies, and the laws that have been established to help sexual predators with their illnesses and to keep the communities safe from their abuse. It is because of these problems that more research needs to be done on sexual predators, civil commitment programs, and the law. Research needs to be done to verify that treatment programs prevent sexual offenders from recidivating. There has been no empirical research done that

has verified that treatment programs are the direct cause of low recidivism rates in sexual offenders. More research needs to be done to figure out how community notification statutes effect the communities and if these effects are positive or negative. More research also needs to be done to find out if community notification laws are reaching their intended goals, namely protecting the community from convicted sexual abusers by preventing sexual abuse of members of the community. The research available on community notification has found that sexual predators still abuse even after notifying communities of their presence and that notifying laws even lure the communities into a false sense of security. Research has shown that studies done on sexual predators need to be done over longer time periods to get more accurate results. Sexual offenders have been shown to recidivate within the first five years of release from the civil commitment programs. The number only increases as time goes on. Most research done on recidivism has a time frame of five years or shorter. This excludes imperative information about the many sexual offenders who recidivate after five years or of the sexual offenders who continuously recidivate after the time frame allotted for the study.

More research needs to be done to find other ways of treating sexual offenders besides mandated civil commitment programs that may or may not effect recidivism rates. The research presented has shown many holes when it comes to studies done on sexual offenders, civil commitment programs, and the law. These holes lead to many questions but these next few in particular: 1) Are civil commitment programs the direct cause of lower recidivism rates of sexual offenders? 2) Are community notification programs reaching their intended goals? 3) What other programs can be implemented to better treat sexual predators?

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