Evaluation of Sex Offenders

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This chapter is designed to provide an introduction for judges and attorneys who are handling sex-offense cases. The chapter will provide an overview of the different legal contexts in which psychological evaluations of sex offenders are relevant or typically requested by attorneys or the court. Each different legal context makes different demands on the evaluator, focusing on varying legal issues. The chapter will review the best practices in conducting psychological evaluations in these various legal contexts, with the goal of allowing legal professionals to make informed use of these evaluations (see Witt & Conroy, 2009, for a more detailed review).

Sex offenses arouse strong emotions—disgust, anger, fear. For decades, these emotions have motivated specialized laws to manage sex offenders, with the goal of reducing sex-offense rates. Some laws are designed to monitor sex offenders closely, such as community-notification laws or parole supervision for life. Other laws aim to mandate treatment for sex offenders, such as statutorily enabled specialized treatment programs. Other laws have mixed purposes, such as sexually violent predator (SVP) civil commitment statutes, which are designed both to provide treatment and to remove from the community those offenders considered to be highest risk to the community.

The 1930s saw the first laws specifically targeted at sex offenders. These early laws, referred to as sexual psychopath laws (Melton, Petria, Poythress, & Slobochin, 2007), were based on the assumption that sex offenders both were different than other criminals and were treatable. As Conroy summarizes (2003, p. 264):

The first of the sexual psychopath laws, allowing for the commitment of sexual offenders to treatment facilities, was passed in Michigan in 1937. Although that particular Michigan law was ultimately ruled unconstitutional by the Michigan Supreme Court, it was followed quickly by similar legislation in Illinois in 1938, and both California and Minnesota in 1939. The Minnesota statute soon reached the United States Supreme Court where it was deemed constitutional. The Justices ruled the Minnesota law sufficiently narrowed the class of persons to whom it could be applied to those who demonstrated "an utter lack of power to control their sexual impulses and... are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled or uncontrollable desires." (Minnesota ex rel Pearson, 1940, p. 273)

By the 1960s, 26 states had enacted such laws (Lieb, Quinsey, & Berlins, 1998), which typically mandated some form of specialized treatment for all or a subset of convicted sex offenders. Although there was variability, many statutes allowed early release from incarceration or probation if the sex offender progressed well in treatment.

By the 1970s, however, the tide had turned. In many states, rehabilitation of sex offenders had been scrapped in favor of a punishment/just deserts model. Many of the early sexual psychopath laws were repealed during that period. Partially in the wake of Martinson's widely publicized criminology rehabilitation survey (Lipton, Martinson, & Wilks, 1975), the pithy conclusion of which was "nothing works," the pendulum swung away from correctional rehabilitation programs, including those for sex offenders. Only five states (Massachusetts, Nebraska, New Jersey, Oregon, and Washington) were applying these laws with any regularity in 1985 (Conroy, 2003).
The 1990s saw a return of sex offense-specific statutes. A series of heinous sex crimes—such as the rape and sexual mutilation of a young boy by Earl Shriner in Washington State in 1989 and the rape and murder of a young girl by Jesse Timmendequas in New Jersey in 1994—spurred a variety of sex-offender statutes, ranging from community notification to civil commitment to residency restrictions. Many of these laws remain in effect today and, if anything, are expanding in scope.

**LEGAL CONTEXT**

Attorneys commonly request psychological evaluations of sex offenders in five legal contexts (Fig. 5.1).

**Pre-adjudication**

Defense attorneys frequently send a sex-offender client for a psychological evaluation shortly after the client's arrest (or, in the case of individuals charged with possession of child pornography, after the execution of a search warrant). Both the defense attorney and the prosecution at this stage have an interest in the defendant's risk to the community—for bail consideration immediately and for plea negotiations eventually. Because these pre-adjudication evaluations frequently occur early in the legal process, often before indictment, discovery materials relating to the current offense may not yet be available to the psychologist; if, as is typically the case in this context, the psychologist is retained by the defense. Nonetheless, collateral information in regard to the defendant's history of behavior and mental health difficulties is important to any assessment of future behavior or risk (Conroy & Murrie, 2007; Witt & Conroy, 2009).

One question that no mental health expert can ever address is: Did the defendant commit the alleged sex offense (assuming that he denies having done so)? Despite popular belief to the contrary, no reliable profile exists that would allow an evaluator to determine whether an individual is or is not a sex offender. As we have noted elsewhere (Witt & Conroy, 2009):

> It is not uncommon for courts to ask if a particular defendant fits the test profile (e.g., the Minnesota Multiphasic Personality Inventory-2, or MMPI-2) of a sex offender. However, no MMPI-2 profile has been found to differentiate sex offenders from other offenders or from non-offenders. Taxonomies of sex offenders have been developed, as noted, but these taxonomies classify known sex offenders. They are not useful in determining whether an alleged sex offender has committed an offense. [citations omitted] (p. 43)

Moreover, the practice standards for the Association for the Treatment of Sexual Abusers (ATSA) are quite specific in this regard (ATSA, 2005, p. 11): “Evaluators do not offer conclusions

![FIGURE 5.1 Legal contexts for sex offender evaluations. (Reprinted by permission of Oxford University Press, Inc., Figure 1 in Witt & Conroy (2009), Evaluation of Sexually Violent Predators.)](image)
regarding whether an individual has or has not committed a specific act of sexual abuse.

Post-adjudication
There are three situations in which a post-adjudication (but pre-sentencing) evaluation is requested: voluntarily by the defense (usually with regard to mitigation at sentencing); by the defense as a condition of the plea agreement; and by the defense in compliance with a specialized sentencing statute in the jurisdiction. The first two situations bear similarities, the focus in both typically being a risk assessment and treatment/planning plan. The defendant’s risk and a credible plan to manage this risk may have a bearing on the severity and circumstances of the sentence.

The third situation in which a post-adjudication (but pre-sentencing) psychological evaluation may be needed is in conformance with any special sentencing statutes in the jurisdiction. Although these statutes are jurisdiction-specific, so it is difficult to generalize regarding the specific psychological criteria to be addressed, many involve some form of mandated treatment. By way of example, in New Jersey the relevant statute (NJSA 2C:47-1) requires an assessment of four criteria regarding the defendant and his illegal sexual behavior: (a) repetitive; (b) compulsive; (c) amenable for treatment; and (d) willing to undergo treatment. Defendants found to meet all four criteria in New Jersey can be sentenced to a specialized treatment center to serve their sentence and will be subject to different parole procedures than in the general prison system.

Community-Notification Laws
In 1989, Jacob Wetterling, an 11-year-old boy, was kidnapped at gunpoint in Minnesota. Although Jacob was never found and no one was ever arrested, the assumption was that the kidnapper had sexual motives. In response, in 1994 Congress passed the Jacob Wetterling Act (42 U.S.C. §14071 (1994)), which required all states to develop sex-offender registries by 1997. Then, in 1994 in Hamilton, New Jersey, a convicted sex offender, Jesse Timmendequas, raped and murdered Megan Kanka, a seven-year-old girl. This offense spurred New Jersey to enact what would be referred to as Megan’s Law, a sex-offender registration and notification law (NJSA § 2C:7-2). Over the following decade, all 50 states and the District of Columbia have enacted some form of sex-offender registration and community-notification law.

These registration and community-notification laws have proved controversial. Due to the public perception that sex-offender recidivism rates are extremely high, these laws tend to be popular among the general public and, as a consequence, among legislators, who understandably respond to their constituents. However, the empirical evidence supporting these laws is quite weak. Relatively few studies have been conducted on the effectiveness of these laws, and those studies to date have so far been inconclusive. One study found at least some positive effect of community notification in Minnesota (e.g., Barnoski, 2005; Duwe & Donnay, 2008). However, studies in New York State (Sandler, Freeman, & Socié, 2008) and New Jersey (Zgoba et al, 2008) found no effect of that state’s community-notification law in decreasing sex-offense rates. One study (Freeman, 2009) found that community-notification laws actually increased sex-offense rates.

In many states, the extent of community notification is risk-based. That is, some form of risk assessment of the sex offender takes place and those offenders seen as higher risk receive a broader extent of community notification. Many jurisdictions allow hearings at which the sex offender can challenge the proposed level of notification; typical grounds for such a challenge are that the risk assigned to the offender by the state is erroneously high. In other states, registration and community notification are statute-based; all offenders adjudicated of specific enumerated sex offenses must register and be subject to community notification of some form.

SVP Commitments
Beginning in the early 1990s, a number of states began to put into effect what have been termed SVP civil commitment statutes. Conroy (2003) provides a summary of the origins of these laws:

In 1989, a particularly horrendous sex crime in the state of Washington breathed new life into the idea of committing violent sex offenders to treatment programs. Earl Shrier, a repeat violent sex offender who had failed to qualify for commitment under Washington’s sexual psychopath law, raped a 7-year-old boy, cut off his penis, and left him to die. Although the child amazingly survived,
broad publicity regarding the brutality of the crime incensed the community and motivated legislators to immediate action. The next year, the state of Washington enacted the first of a second generation of sex offender civil commitment statutes. Known as Sexually Violent Predator (SVP) statutes [Washington Laws § 71.09.020, 1990], these laws differed from the earlier version in that commitment was generally applied after a term of incarceration was completed rather than in lieu of imprisonment. They also differed from more traditional civil commitment statutes in that neither a serious mental illness nor a recent dangerous act was a prerequisite. (p. 465)

As of 2008, 20 states had enacted SVP civil commitment statutes and as of 2006, the total number of persons being held in the United States as SVP commitments was roughly 2,600, with another 1,000 being detained pending commitment hearings (Deming, 2008). Witt and Conroy (2009, pp. 9–10) note four differences between SVP commitments and traditional civil commitments:

- SVP commitments do not require a recent overt act; traditional civil commitments usually do.
- SVP commitments occur after an offender has served his term of incarceration, whereas traditional civil commitments typically occur instead of incarceration.
- SVP commitments do not usually involve diagnoses of psychosis, whereas traditional civil commitments frequently involve such diagnoses.
- SVP civil commitments require assessment of volitional impairment, whereas traditional civil commitments do not.

Although there is some variability among jurisdictions, most SVP commitment statutes share similarities. A typical statute is that of Kansas, first enacted in 1994 and later revised in 2003 (Kansas Stat. Ann. § 59-29-402, 2003), which defines an SVP as "any person who has been convicted of or charged with a sexually violent offense and he suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence." Some states allow as a foundation for SVP commitment a finding of juvenile delinquency, incompetency, not guilty by reason of insanity.

The Kansas statute is one of the better known given that two major court decisions have focus on that statute, and after the Kansas statute was upheld in the U.S. Supreme Court, a number other states have adopted the wording of the Kansas statute, or some similar wording. The first major court challenge to the Kansas statute was Kansas v. Hendricks (1997). Kansas had filed its first SI petition against Hendricks, who had previously molested 10 children, and at the conclusion of 10 years in prison, Kansas applied to civilly commit him under its SVP statute. Hendricks challenged the law, and his challenge eventually reached the U.S. Supreme Court, which upheld the constitutionality of the Kansas SVP statute in a 5–4 decision. The Court concluded that use of the term "mental abnormality" did not violate due-probate requirements and that in Hendricks's case, his diagnosis of pedophilia was sufficient to qualify him SVP, given that it impaired his volitional control and made him likely to commit future sex offenses (p. 360). The Court also concluded that SVP commitments did not constitute double jeopardy.

A further challenge to the Kansas statute occurred in Kansas v. Crane (2002), which address perhaps the most controversial of all aspects of SI commitments: the requirement that volitional impairment be found. There is considerable debate in both the psychological and legal community to whether volitional impairment can be reliably assessed. In any case, the U.S. Supreme Court Crane interpreted its previous holding in Hendricks and found "no requirement of complete or total lack of control," but only that "serious" impairments of control be present (p. 413).

The eventual result of this line of cases is that currently, an SVP civil commitment requires the interrelated elements (once an individual has committed any qualifying sex offense): mental abnormality, volitional impairment, and risk of future sex offense.

**Release from Commitment**

SVP commitments are performed upon those sex offenders who are seen as highest risk to re-offend based upon the presence of a mental disorder (discussed in more detail below). As of 2006, there were 2,600 persons committed under SVP statute in the U.S. (Deming, 2008). The figures regardi
conditional release of SVP commitment cases are difficult to interpret, because different states have different language defining release and the circumstances of release vary among the states. For example, some states release SVP-committed persons only to supervised halfway houses, not full release. However, most studies indicate that the percentage of individuals granted release—other than for legal reasons—is small, with some states reporting no releases at all (Deming, 2008).

Determining when to release from commitment an individual who presumably was previously found to be at high risk is a difficult challenge. The individual’s static risk factors (generally elements from the person’s history, such as number of prior offenses or violations of release conditions) are unlikely to change. Therefore, the individual’s release is likely to hinge on changes in dynamic risk factors (those that do change over time and may potentially be affected by interventions—for example, antisocial attitudes or response to mental health treatment). However, it is these dynamic risk factors that are the least researched. Those instruments that have been developed to assess dynamic risk variables, such as the Acute-2007 and the Stable-2007 (Hanson, Harris, Scott, & Helmus, 2007), have been developed on a community-dwelling population. Moreover, relatively few civilly committed sex offenders have been conditionally released to the community, so this issue remains mostly a hypothetical one (Arkowitz, Shale, & Carabello, 2008). One final difficulty is the lack of recidivism research to date on those relatively few sex offenders who have been released from civil commitment (Arkowitz et al., 2008). Jackson (2008) recommends that evaluators performing pre-release evaluations on SVP commitment cases first have an understanding of the offender’s historical background, obtained from reviewing the file, and then examine the offender’s chronological functioning while both incarcerated and committed (Jackson, 2008).

**FORENSIC MENTAL HEALTH CONCEPTS**

Pre-adjudication and post-adjudication evaluations vary greatly among the various jurisdictions. Although the relevant issues are similar—including risk assessment, risk management, treatment planning, and assessment of any specialized psychological issues within that jurisdiction—no cross-jurisdictional literature exists on definitions for these constructs. This is not surprising since there is such variability among jurisdictions.

By way of example, in New Jersey, after a finding of guilty for any of a number of enumerated sex offenses, either by plea or trial, an individual is evaluated at a specialized facility to determine whether his illegal sexual behavior was part of a repetitive and compulsive course of conduct (N.J.S.A. 2C:47-1). Over time, case law has articulated jurisdiction-specific definitions of these two psychological constructs: repetitive and compulsive. Compulsive, perhaps the more ambiguous of the two constructs, has been defined in New Jersey as simply its common dictionary definition: an irresistible urge to perform some irrational act (NJ v. Howard, 1986). Although one can see an underlying concern here with volitional impairment, the definition is specific to both this jurisdiction and this statute.

One area in which broad, cross-jurisdictional definitions have been developed for psychological constructs is in SVP civil commitments. U.S. Supreme Court decisions have led to relative uniformity of statutes across jurisdictions, and common definitions have emerged regarding the three constructs of mental abnormality, volitional impairment, and risk. Nonetheless, case law may further define these concepts specific to a particular jurisdiction.

**Mental Abnormality**

All jurisdictions require some finding of mental abnormality as a foundation for an SVP civil commitment. The majority of the states use the following wording: “A congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts to a degree constituting the person a menace to the health and safety of others” (Sreenivasan, Weinberger, & Garrick, 2003, p. 473). As we have noted elsewhere (Witt & Conroy, 2009), mental disorders are broadly defined. There is no language requiring a specific diagnosis from the primary text used for diagnoses of mental illness, the Diagnostic and Statistical Manual (DSM) and, in fact, no requirement that a DSM diagnosis be given at all. In practice, however, DSM diagnoses are routinely given, and considerable testimony (and cross-examination) in SVP cases can focus on whether the offender meets specific criteria for a given diagnosis and whether that diagnosis qualifies him for an SVP commitment.
Ambiguity here results from the fact that mental health professionals and legal professionals use the term "mental disorder" in different ways. Witt and Conroy (2009) summarize these distinctions:

For decades, forensic mental health experts have struggled with the gap between mental health constructs and legal constructs. Although the two types of constructs may sound similar, there is frequently not a direct correspondence between them. The two families of constructs have different roots and traditions. Legal constructs are the result of legislative statutes and interpreted case law. Mental health constructs flow from medical and behavioral science theory and validating research. (p. 19)

In traditional civil commitment cases, the individual being committed invariably has some serious Axis I diagnosis, such as psychosis. In fact, some traditional civil commitment statutes require that the individual's mental disorder be such that it damages the individual's perception of reality, thus implying a psychotic diagnosis. In SVP civil commitment cases, a psychotic diagnosis is the exception rather than the rule. Perhaps one of the more hotly debated aspects of SVP civil commitments is the fact that Axis II diagnoses (i.e., personality disorders) qualify in most jurisdictions as sufficient mental disorder for an SVP commitment.

One personality disorder meriting special mention is psychopathy. This is not a construct formally included in the DSM but is often an issue of considerable importance in sex-offender evaluations. Individuals said to have many psychopathic traits are generally described as significantly antisocial in lifestyle, interpersonally manipulative, lacking in empathy for others, failing to take responsibility for their behavior, and often devoid of remorse/guilt for their actions. Psychopathy is not equivalent to the DSM diagnosis of Antisocial Personality Disorder; rather, it is a much more aberrant constellation of personality traits, demonstrated by less than 25% of the incarcerated male population (Cunningham & Reidy, 1998). High scores on psychopathic traits have been linked to high risk for sexual and violent re-offending (Witt & Conroy, 2009); however, a low score on psychopathic traits (commonly seen among exclusive child molesters) simply indicates this is one high-risk factor the individual does not have and does not by itself establish low risk.

A few studies have examined what actually occurs in practice. That is, what are the diagnoses of individuals already committed under SVP statutes? Janus and Walbek (2000) examined the characteristics of 116 civil commitment sex-offender cases in Minnesota. They found that the most frequent diagnoses were substance abuse (52%); paraphilia (46%); personality disorder (18%); and both paraphilia and personality disorder (18%). Becker, Stinson, Tromp, and Messer (2003) examined an SVP sample in Arizona and found as the most common diagnoses paraphilia (56%) and personality disorder (77%). Looking more closely, Becker et al. found that 42% had a diagnosis of personality disorder not otherwise specified and 40% a diagnosis of antisocial personality disorder. Jackson and Richards (2007) examined SVP civil commitment cases in Washington State and found paraphilia (98%), personality disorder and paraphilia (86%), substance abuse (56%), and personality disorder but no paraphilia (50%). The most common personality disorder in the Washington State sample was antisocial personality disorder (41%). Similarly, Levenson (2004) found that, in Florida, about half of those referred for SVP commitment had a diagnosis of antisocial personality disorder, and Miller, Amenta, and Conroy (2005) reported that, in Texas, antisocial personality disorder was among the most common diagnoses in an SVP population. One can see that in practice evaluators include combinations of Axis I diagnoses, especially paraphilias, and Axis II diagnoses, particularly antisocial personality disorder.

One final caveat regarding the use of DSM diagnoses should be made. The DSM was never developed to be statutorily binding, but rather as a guide to assist clinical judgment. The volume itself specially states its listed criteria are meant:

to serve as guidelines to be informed by clinical judgment and not meant to be used in cookbook fashion. For example, the exercise of clinical judgment may justify giving a certain diagnosis to an individual even if the clinical presentation falls short of meeting the full criteria for the diagnosis as long as the symptoms that are present are persistent and severe. On the other hand, lack of familiarity with DSM-IV or excessive flexibility and idiosyncratic application of DSM-IV criteria or conventions substantially reduces its utility
as a common language for communication. (APA, 2000, p. xxxiii)

In addition, it should be noted that with the coming advent of the DSM-V, some diagnostic formulations and criteria might change significantly.

Volitional Impairment
As we have noted (Witt & Conroy, 2009, p. 29): "It is not sufficient for a sex offender to suffer a mental abnormality; to be eligible for an SVP commitment, the mental abnormality must cause volitional impairment as well." In *Kansas v. Hendricks* (1997), the U.S. Supreme Court noted 17 times that the mental abnormality must be directly linked to the offender's difficulty controlling dangerous sexual behavior (Miller et al., 2005). However, considerable debate exists among mental health and legal professionals as to whether there is any reliable way to assess and reach an opinion on volitional impairment. The argument can be best captured by a widely quoted statement from the American Psychiatric Association: "The line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk" (1983, p. 685).

Court decisions on this issue vary to some extent among jurisdictions; however, a recent survey by Mercado, Schopp, and Bornstein (2005) of court decisions regarding volitional impairment from Minnesota illustrates how the courts are beginning to articulate the issues. Mercado and colleagues found Minnesota courts to reach the following conclusions regarding volitional impairment (summarized from Witt & Conroy, 2009, p. 32):

- Repeated illegal conduct despite consequences or fear of capture is relevant.
- Loss of control may be present even when the offender has entrenched beliefs that justify sexual contact with minors.

Mercado, Bornstein, and Schopp (2006) reviewed both case law and a relatively limited sample of empirical studies and concluded that four broad factors were considered by either legal or mental health professionals as relevant in determining volitional impairment: (a) verbalized lack of control, (b) history of sex crimes, (c) lack of offense planning, and (d) substance use.

Rogers and Shuman (2005) suggested four areas of consideration:

- **Lack of capacity for meaningful choice:** Does the behavior have a driven quality? In contrast, was there evidence of rational consideration of choices?
- **Disregard for personal consequences:** Does the behavior occur or continue despite negative personal consequences for the individual? In contrast, is there evidence of attempts to minimize the consequences of the actions, such as avoiding detection?
- **Incapacity for delay:** Was the individual unable to delay sexual gratification for lengthy periods? Is there evidence of opportunity-seeking behavior by the individual?
- **Chronicity:** Is the behavior enduring? Does the behavior consist of more than a few isolated instances?

Risk
The widely-relied-on *Kansas* statute defines risk as "likely to engage in repeated acts of sexual violence" (*Kansas Stat. Ann.* § 59-29a01, 2003). The words "likely to engage" immediately suggest a forward-looking, future-oriented assessment. Sreenivasan and colleagues (2003, pp. 477-478) review and discuss the various definitions of "likely" used in different jurisdictions, noting that some jurisdictions used more specific phrases, such as "highly likely," "probable," and "highly probable." Whether these supposedly clarifying phrases truly clarify anything is another question entirely. Missouri is perhaps the exception in this regard, given that case law in that jurisdiction uses the term "more likely than not,"

- There is no requirement that the impairment be caused by an extreme cognitive deficit resulting from conditions such as severe mental retardation, dementia, or organic brain damage, or psychosis, sleepwalking, or seizures.
- Planning or grooming behavior does not necessarily preclude a finding of volitional impairment, although such planning may be one factor potentially inconsistent with such a finding.
- Lack of insight into one's behavior may indicate volitional impairment.
- Loss of control may be situational, may result from removal of external controls, and need not be present all the time.
perhaps the clearest articulation of what is meant in any jurisdiction by the term "likely." A review of relevant case law and practice in a specific jurisdiction can shed light on what standard is being used for likelihood or propensity.

Risk assessment with regard to sexual violence has undergone considerable development in recent years. A few decades ago, most evaluators relied on unstructured clinical judgment to assess risk of future violence, sexual or otherwise. However, as Witt and Conroy note (2009, p. 38): "Decades of research on risk assessment accuracy have found that such unstructured clinical judgments are poor predictors of future dangerousness. In a widely cited work, Monahan (1981) reviewed early research on this area and found that, using unstructured clinical judgment, mental health professionals were wrong more often than right in predicting future violence in institutionalized mental patients."

Over the past decade, risk assessments have relied heavily on structured, empirically supported methods, using some structured instruments that have an empirical relationship to future sex offending (Miller et al., 2005). There are at present three variants of this approach (Doren, 2002; Witt & Conroy, 2009):

- Research-guided/structured professional judgment: This approach uses risk and protective factors gathered from the empirical literature to create a coherent structured guide. The guide developers conduct a rational analysis of the professional literature to select these various factors for inclusion in the instrument. Factors are included that have empirical support in the literature; however, no mathematical formula is used to weight them. An example of such a structured, empirically guided tool would be the Sexual Violence Risk-20 (SVR-20) (Boer, Hart, Kropp, & Webster, 1997).

- Actuarial: Actuarial instruments are those whose risk and (rarely) protective factors are selected on the basis of each of the criteria being empirically associated with future sex-offense recidivism. These factors are frequently a result of pooling a number of studies together in what is referred to as a meta-analysis. In addition, each item is given a weight and assigned a specific number of points. The rules for scoring and combining the criteria are mechanical, involving adding up points without deviation from the scoring manual. A prime example of an actuarial scale is the Static-99 (Hanson & Thornton, 1999, 2000).

- Clinically adjusted actuarial: This approach involves using an actuarial instrument as the foundation, but then considering other factors that may be unique to the individual. Witt and Conroy (2009) note that anecdotal evidence indicates that this approach is widely used by SVP evaluators.

Much debate currently exists in the field between those who believe that pure actuarial assessment should be preserved with no adjustments (Quinsey, Harris, Rice, & Cormier, 2006) and those who see advantages to considering more dynamic factors and issues specific to an individual (Knight & Thornton, 2007; Olver, Wong, Nicholaichuk, & Gordon, 2007; Wong, Olver, & Stockdale, 2009). However, there appears to be general agreement that factors simply based on an examiner's intuition that are not supported in research (e.g., denial of an offense, meeting the goals of a treatment program) should not be applied (e.g., Hanson & Morton-Bourgon, 2009).

**EMPIRICAL FOUNDATIONS AND LIMITS**

**Adult Males**

To date, the vast majority of the empirical research regarding sex offenders has been conducted on adult male offenders, beginning in the 1970s and 1980s (e.g., Abel et al., 1987; Groth, Burgess, & Holstrom, 1977). Witt and Conroy (2009) and Conroy and Witt (in press) provide an extensive review of research regarding risk factors and instruments available.

It may be appropriate to dispel misconceptions regarding the base rate of sexual-offending recidivism. Although the general public may believe that the recidivism rate among sex offenders is 100%, or very close to that figure, the reality is quite different. U.S. Bureau of Justice statistics from 1992, 1993, and 1995 indicate no higher rate of parole violations than among other offenders (Heilbrun, Nezu, Keeney, Chung, & Wasserman, 1998). Estimates based on reconvictions over a five-year period—admittedly, a conservative figure—indicate an overall recidivism rate for sex offenders of 13.4%,
with an 18.9% rate for rapists and 12.7% for child molesters (Hanson & Bussiere, 1998).

**Juvenile Males**

Juvenile male offenders constitute a significant proportion of sex offenders, with some estimates indicating that 20% of sex offenses are committed by juveniles (Snyder, 2006). Although there are similarities between juvenile male offenders and adult male offenders, there are differences as well. Some research indicates that juvenile sex offenses are a better predictor of general criminal recidivism than of sex-offense recidivism (McCann & Lussier, 2008) and that, similarly, the primary factor associated with many juvenile sex offenses is a broadly delinquent, antisocial attitude, as opposed to specific sexual deviance (Hiscox, Witt, & Haran, 2007; Rasmussen, 1999). Recent years have seen the development of risk-assessment scales specific to juvenile sex offenders, such as two actuarial scales, the JSOAP-II (Prentky & Rithband, 2003) and the Juvenile Risk Assessment Scale (JRA; Hiscox et al., 2007), and one structured professional judgment scale, the Estimate of Risk of Adolescent Sex Offender Recidivism (ERASOR; Worling, & Curwen, 2001). Although there is some moderate support in the literature for these scales, they lack the broad research base of the adult instruments.

Juvenile sex-offense recidivism rates vary widely, depending upon the criteria used for recidivism and the length of follow-up time, but generally studies find that juvenile male sex-offense recidivism rates are lower than those of adult male offenders. In one meta-analysis of over 1,000 juveniles, Alexander (1999) found that sex-offense recidivism ranged from roughly 5% to 21%, with follow-up periods of between one and more than five years. The recidivism rates varied by offense type: 5.8% for "rapists," 2.1% for "child molesters," and 7.5% for an "unspecified group." However, particularly in the sex-offender arena, there is always the real probability of underreporting of offenses. Therefore, it is impossible to provide a verifiable base rate for this population.

**Child Pornography**

In recent years, an increasing number of men have been arrested and prosecuted for downloading or trading child pornography over the Internet. This group of sex offenders has been studied over only perhaps the past five years. One study found that men arrested for child pornography actually had more deviant sexual-interest patterns (as measured by penile plethysmography) than men who had molested children (Seto, Cantor, & Blanchard, 2006)—a finding that understandably raises concerns regarding the potential risk of this population. Moreover, two studies within the Federal Bureau of Prisons raise the possibility that child pornography offenders have many previously undisclosed contact victims (Bourke & Hernandez, 2009; Hernandez, 2000).

The key question is: How likely is it that such an individual will commit a future sex offense, either contact or child pornography-related? To answer this question, one needs forward-looking studies, and given the relative newness of this offense type, such studies have begun to be conducted only within the past few years. However, results so far suggest that those individuals whose only criminal offense has been viewing or trading child pornography over the Internet have extremely low rates of recidivism for either further child pornography offenses or for contact sex offenses; those child pornography offenders with the highest recidivism rates are those with significant prior criminal histories (Eke & Seto, 2008; Endrass et al., 2009; Seto & Eke, 2005). Consistent with these results is a recent study by Li, Lee, and Prentky (2010), which found that among child pornography offenders, there was a linear positive relationship between likelihood of
an actual contact sex offense and degree of generally conduct-disordered/antisocial behavior.

THE EVALUATION

Almost all sex-offender evaluations start with a file review. In SVP commitment cases, such files are typically voluminous, given that the individual presumably has a long, documented history to reach consideration for an SVP commitment. Consequently, it is important that the evaluator review collateral information—such as witness and victim accounts and other investigation materials. However, in pre-adjudication cases, the file may be thinner. Nonetheless, evaluators need to review as much historical record as can be assembled, as well as interview other collateral sources, such as individuals who might provide information about the offender’s functioning—possibly including treatment providers, spouse, or work and housing supervisors (if incarcerated or committed).

The evaluation itself should be clearly related to the issue at hand. The evaluation should avoid speculation. The court is most likely not interested in tenuous hypotheses about the possible causes of an individual’s sex offending, unless those hypotheses can be tied to supported evidence and related logically to the issue at hand. Moreover, the evaluation should keep in mind the psycholegal question that needs to be addressed; this psycholegal question should guide the entire evaluation process. For example, an SVP evaluation should clearly focus on the elements of mental disorder, volitional impairment, and risk. An evaluation for a state’s community-notification statute should focus on whatever criteria are relevant in that jurisdiction (e.g., risk as defined in that jurisdiction).

REPORT WRITING AND TESTIMONY

The best reports do not contain extraneous and irrelevant information, but rather focus upon what information is germane to the psycholegal question being addressed. The report should document the sources of information, the observations drawn from those sources of information, and the inferences and conclusions that result, drawing clear, logical connections between the underlying observations and resulting conclusions (Conroy, 2006; Grasso, 2010; Melton et al., 2007; Witt & Conroy, 2009). There should be a separation between the observations and inferences, and then a clear articulation of the reasoning that led to the conclusions. The report should be tailored to any jurisdictional requirements. Each jurisdiction conducts matters differently, and the report should be written with these jurisdictional considerations in mind. The retaining attorney or agency is frequently the best source of information about any jurisdictional requirements or expectations.

In an effort to determine empirically what constitutes a well-written (or poorly written) forensic report, Grasso (2010) recently conducted a study of 62 forensic reports that had been rejected after being submitted as practice samples by candidates for forensic diplomate status by the American Board of Forensic Psychology. Grasso examined the reasons why these forensic reports were found unacceptable, and he classified these reasons into five broad areas in which deficiencies were found: introductory materials, organization and style, data reporting, psychological test reporting, and interpretations and opinions. Witt (2010) then took the 10 most common reasons that Grasso found as grounds for failure and constructed a checklist for writing acceptable forensic reports. These 10 checklist elements are:

1. Forensic referral question stated clearly
2. Report organized coherently
3. Jargon eliminated
4. Only data relevant to forensic opinion included
5. Observations separated from inferences
6. Multiple sources of data considered, if possible
7. Psychological tests used appropriately
8. Alternate hypotheses considered
9. Opinions supported by data
10. Connections between data and opinions made clear

Although not all inclusive, Grasso’s study and the checklist elements derived from that study can give the legal professional an overview of what constitutes a good forensic psychological report.

In particular, information in the report should be relevant to the legal issue at hand. Including extraneous information in the report can serve to distract the reader from the primary issue. As Conroy and Murrie (2007) note, evaluators should avoid including “red herring” information—that is, data that have no demonstrable relationship to the
psychological referral question, but that simply serve as distracters. Legal professionals should keep these elements in mind when reviewing a forensic report concerning a sex offender.

When testifying, the evaluator serves as a teacher. Many of the constructs used by the evaluator are foreign to the lay public. Even relatively sophisticated legal audiences, such as judges and attorneys, may need a clear explanation of what the evaluator means if using terms of art, including "mental disorder," "risk," "volitional impairment," and the like.

In addition, the evaluator should make clear what facts are being assumed. In many sex-offender cases, and in all the legal contexts we discussed, facts are frequently in dispute, even post-adjudication. It is not the evaluator’s role to act as a finder of fact. Rather, the evaluator has to make reasonable choices (Witt & Conroy, 2009):

- Provide a range of conclusions, depending upon what facts are assumed
- Provide a clear conclusion, indicating what factual assumptions are being made to reach that conclusion, but acknowledging that these are only assumptions, not findings of fact

There is considerable debate in the field concerning whether a mental health professional when testifying should offer an opinion on the ultimate legal issue (Meitonn et al, 2007)—for instance, whether a sex offender meets a specific criterion, such as appropriateness for SVP commitment. One school of thought believes that offering such ultimate-issue opinions is inappropriate for two reasons. First, mental health professionals have no special training or ability to give opinions on ultimate legal issues. Second, offering such ultimate-issue opinions invades the purview of the judge, the individual whom society has determined should be making such ultimate determinations. The opposing school of thought believes that legal professionals, including judges, want mental health professionals to offer ultimate-issue opinions, knowing that these opinions are only advisory. Ultimate issues are particularly controversial in the arena of SVP commitments because, as written, most statutes specify elements that are not clearly clinical in nature. For example, it is unclear whether "mental abnormality" or "behavioral abnormality" was intended to equate to any clinical diagnosis that mental health professionals are trained to make. Turning to the element of behavioral control, mental health professionals lack specific methods for differentiating volitional impairment from conscious choice. If the psychologist determines either of these factors is not within his or her expertise, it becomes impossible to reach an ultimate conclusion regarding whether the person meets the criteria outlined in the statute for civil commitment. The issue is far from resolved, and may depend upon the opinions of each individual evaluator and practices within the specific jurisdiction of the evaluation.

**SUMMARY**

This chapter reviews five typical legal contexts in which psychological evaluations of sex offenders are requested: (1) pre-adjudication, (2) post-adjudication, (3) registration and community notification, (4) SVP commitment, and (5) release from commitment. The chapter discusses the issues specific to each context. In all contexts, an assessment of risk is relevant, given that virtually all psychological issues involve some consideration of the individual's propensity for future sex offending. However, beyond that, each legal context may have issues specific to only itself. For example, SVP commitment evaluations focus on three interrelated issues: (1) mental abnormality, (2) volitional impairment, and (3) risk. Each of these constructs may have a definition that is specific to that jurisdiction, and both legal and forensic mental health professionals need to be aware of jurisdiction-specific considerations.

The chapter reviewed the empirical foundations and limits, with particular consideration of special populations, such as juveniles, female sex offenders, and child pornography possession offenders. Although to date the bulk of the research has been performed on adult male sex offenders, data have been slowly accumulating on these special populations, allowing credible assessment of risk with them.

The chapter also reviewed the evaluation process itself, beginning with the pre-evaluation file review. The extent of a file review frequently depends on the context of the evaluation. Pre-adjudication evaluations, frequently being pre-indictment, may have relatively little documentation to review, whereas SVP evaluations, typically dealing with sex offenders with well-documented criminal histories, may have extensive files.
Finally, the chapter concluded with consideration of how the results of the evaluation are communicated: the report and testimony. Both report and testimony should be focused on the psychological issue at hand. Irrelevant information should be excluded from report or testimony. Additionally, no forensic psychological evaluation of an alleged sex offender should offer an opinion on the guilt or innocence of that alleged offender. There is no scientifically supported profile that one could use to determine guilt, and such statements of an alleged offender’s guilt are specifically prohibited by the practice standards of the Association for the Treatment of Sexual Abusers.

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