Final Report of the Special Commission to Reduce the Recidivism of Sex Offenders

May 18, 2016

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Commission Membership

- Co-Chair William N. Brownsberger, Senate Chair of the Joint Committee on the Judiciary
- Co-Chair Paul Brodeur, State Representative
- Joan B. Lovely, State Senator
- Evandro Carvalho, State Representative
- Deputy Assistant Secretary Robyn Kennedy
- Robert Kinscherff, PhD, JD, William James College, and joint Senior Fellow in Law and Applied Neuroscience (Harvard Law School and Massachusetts General Hospital).
- Larni Levy, Esq., Committee for Public Counsel Services
- Edward J. Dolan, Commissioner, Massachusetts Probation Service
- Nancy Connolly, Psy.D., Program Director, Mentally Ill/Problematic Sexual Behavior, Program of the Department of Mental Health
- Raymond Knight, Ph.D., Gryzmish Professor of Human Relations, Department of Psychology, Brandeis University
- Laurie L. Guidry, Psy.D., President, Center for Integrative Psychological Services, Inc., and President, Massachusetts Association for the Treatment of Sexual Abusers
- Daniel J. Bennett, Secretary of Public Safety and Security
- Maureen Gallagher, Director of Policy, Jane Doe, Inc.
- Kevin Hayden, Chairperson, Sex Offender Registry Board
- District Attorney Marian Ryan, Massachusetts District Attorneys Association

Introduction

I. The Commission's Charge

In the wake of a criminal case involving John Burbine[1], of Wakefield, Massachusetts, the General Court considered legislation to reform certain policies and practices related to the registration and classification by the Sex Offender Registry Board (SORB) of persons convicted of sex offenses in the Commonwealth (or convicted of like offenses in other jurisdictions). As a result, the legislature included within the FY 2014 budget several outside sections reforming the statutes governing the SORB. *See* Acts of 2013, Chapter 38, §§ 7-13, 208. Governor Patrick returned sections 8 and 13 with suggested amendments, which the legislature adopted. *See* Acts of 2013, Chapter 63. As a result, the law now provides for improved communication among agencies with information relevant to sex offender classification[2]; allows non-conviction investigations and information to be considered by SORB in making classification and reclassification proceedings; requires posting data of individual level 2 offenders on the internet[3]; enhances registration requirements for level 2 offenders; and requires police officers, district attorneys, and agents and employees of the Executive Office of Health and Human Services to give SORB notice upon receiving information that a sex offender is at risk to reoffend.

The Special Commission to Reduce the Recidivism of Sex Offenders was created in outside section 208 of the FY14 state budget (Chapter 38 of the Acts of 2013). The legislation included direction

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[1] Originally convicted of indecent assault against a child, Burbine was charged with raping and sexually abusing 13 children between 2010 and 2012. Burbine and his wife had been running an unlicensed day care center at the time of his arrest. Burbine was originally classified as a level 2 offender, but the classification was later reduced to level 1. A review of the Burbine matter indicated that Burbine had been investigated by the Department of Children and Families (then DSS) in 2005 and 2009 on suspicion of sexually abusing young boys. At the time, SORB could only consider new criminal convictions when making reclassification decisions.

[2] Section 10 provides: "The sex offender registry board, in cooperation with the executive office of public safety and security, and with the consultation of the offices of the district attorneys, the department of probation, the department of children and families and the Massachusetts Chiefs of Police Association Incorporated, shall establish and maintain a system of procedures for the ongoing sharing of information that may be relevant to the board's determination or reevaluation of a sex offender's level designation among the board, the offices of the district attorneys and any department, agency or office of the commonwealth that reports, investigates or otherwise has access to potentially relevant information, including, but not limited to, the department of youth services, the department of children and families, the department of mental health, the department of developmental services, the department of correction, the department of probation, the department of early education and care, the department of public health and the office of the child advocate, .

The board shall promulgate any rules or regulations necessary to establish, update and maintain this system including, but not limited to, the frequency of updates, measures to ensure the comprehensiveness, clarity and effectiveness of information, and metrics to determine what information may be relevant. When sharing information through this system, all members shall have discretion to delay sharing information where it is reasonably believed that disclosure would compromise or impede an investigation or prosecution or would cause harm to a victim." It is not clear that the formal system and related rules and regulations have been developed as of the writing of this report.

[3] The Massachusetts Supreme Judicial Court has ruled that only individuals classified as level 2 on or after July 13, 2013 shall have their information posted on the internet.

as to the Commission's charge, membership, and reporting requirements. The complete legislative language can be found below:

> There shall be a special commission established pursuant to section 2A of chapter 4 of the General Laws to investigate and study the most reliable protocols for assessing and managing the risk of recidivism of sex offenders. The commission shall develop the Massachusetts authorized risk assessment protocols for sexual offenders including, but not limited to, any special assessment protocols for juveniles, female offenders and persons with developmental, intellectual, psychiatric or other disabilities. The commission shall assess the effectiveness and necessity of sections 178C to 178P, inclusive, of chapter 6 of the General Laws and the guidelines promulgated by the sex offender registry board, pursuant to section 178K of said chapter 6, as those sections relate to: (i) determining a sex offender's risk of re-offense; (ii) degree of dangerousness posed to the public; and (iii) the general public's access to information based upon the offender's risk of re-offense and the degree of dangerousness.
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> The commission shall consist of: 2 members of the senate, 1 of whom shall serve as co-chair; 2 members of the house of representatives, 1 of whom shall serve as co-chair; the chairman of the sex offender registry board or a designee; the commissioner of probation or a designee; the commissioner of mental health or a designee; the secretary of public safety and security or a designee; the secretary of health and human services or a designee; and 6 persons to be appointed by the governor, 3 of whom shall have expertise in the assessment, treatment and risk management of adult sex offenders and familiarity with the research on recidivism of sex offenders, 1 of whom shall have experience in the assessment, treatment, and risk management of juvenile sex offenders and familiarity with the research on recidivism of juvenile sex offenders, 1 of whom shall be a representative of the Massachusetts District Attorneys Association, and 1 of whom shall be a representative of the committee for public counsel services. The commission shall convene not later than 60 days after the effective date of this act.
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> The board shall submit a report, detailing the results of its investigation and study, any recommended legislative or regulatory action and a timeline for implementation to the governor, the president of the senate, the speaker of the house of representatives and the clerks of the house of representatives and senate not later than 180 days after the effective date of this act.

The Commission's membership was not fully appointed by the time of the reporting deadline established by the session law. The Commission did approve language to alter the Commission's charge, reporting deadline, and membership, but as of the filing of this report it has not been approved by the legislature.

With regard to the charge, the Commission concluded that it was unable as currently constituted to fulfill the piece of the charge requiring the Commission to "develop the Massachusetts authorized risk assessment protocols for sexual offenders including, but not limited to, any special assessment protocols for juveniles, female offenders and persons with developmental, intellectual, psychiatric or other disabilities." The development of risk assessment protocols is a highly technical project involving large-scale data collection and complex statistical analysis. Only a few members of the Commission had the kind of expertise necessary to undertake such a project. The Commission was not funded by the legislature, and the expert members of the Commission indicated that the development of authorized risk assessment protocols could cost in the millions of dollars. Additionally, for juveniles, there is no good scientific basis for predicting recidivism and models currently in use in other parts of the country do not account for adults with disabilities. The Commission did engage in extensive discussions relative to the "most reliable protocols for assessing and managing the risk of recidivism of sex offenders," but a strong difference of opinion emerged among members of the Commission, which is reflected in the separate statements relative to actuarial risk assessment tools appearing toward the end of this report. The Commission did also review the Sex Offender Registry Board's legislative mandate to level offenders based on their risk of re-offense and degree of dangerousness posed to the public, as well as the public purpose served (and the collateral consequences posed) by the general public's access to information regarding sex offenders.

II. The Commission's Process

The Commission convened for the first time on September 16, 2014. It proceeded to meet through May 2016 for a total of 17 meetings, concluding May 9, 2016, first inviting experts, institutions, and agencies in the field to present to the Commission on an area within their expertise, and later developing statements and recommendations. The Commission strove to develop an open process for its meetings and materials, including all agendas, minutes, and materials relevant to the Commission's work on a website developed for the Commission and interested parties: commissiononsexoffenderrecidivism.com.

The Commission heard presentations relative to supervision of sex offenders by a Parole officer and the Massachusetts Probation Service, the Sex Offender Registry Board, assessments of sex offenders' risk levels, civil commitment, juvenile sex offenders, sex offender treatment, the Middlesex District Attorney's Office's work relative to sexually dangerous persons, the Committee for Public Counsel Services' and community partners' identification of collateral consequences of conviction and registration, and sexual violence prevention. Each presenter provided a summary of his or her presentation. These summaries appear, unedited, in the Commission's report, immediately following this introduction. In this section, a statement provided by the Executive Office of Health and Human Services also appears, which was presented as part of a conversation of the Commission when it considered (but ultimately decided against) including a statement on interagency cooperation as part of its recommendations. These statements and any recommendations contained therein only reflect the views of that presenter; the Commissioners may or may not concur in these statements and recommendations.

The Commission developed a set of statements or recommendations relative to sentencing, collateral consequences, and prevention, which some, but not all Commissioners have joined. Additional statements relative to actuarial risk assessment tools, special populations and data collection, drafted separately by the Sex Offender Registry Board and Commissioners Guidry, Kinscherff, Knight, and Levy, which some Commissioners have chosen to join. These statements and recommendations appear in Part IV of this report. The Commission considered but ultimately chose not to adopt a set of recommendations regarding interagency cooperation.

Each Commissioner was given the opportunity to submit or join a brief final statement. These statements appear at the end of the report.

Summary of Presentation on the Enough Abuse Campaign

By Jetta Bernier, Executive Director, MassKids

[As a result of the Campaign]... Massachusetts is one of the first states in the nation to lead a trailblazing effort to prevent child sexual abuse by building a movement of concerned citizens, community by community."

Rodney Hammond, Director, Division of Violence Prevention
U.S. Centers for Disease Control & Prevention, 2005

In January 2002, Massachusetts became the epicenter what was to become an international focus on the problem of child sexual abuse when the **Boston Globe** exposed the clergy sex abuse scandal and the Archdiocese of Boston's long-standing practice of reassigning sexually abusing priests to unsuspecting parishes. That July, the CDC issued its first ever Request for Proposals challenging applicants to address the need to *"build adult and community responsibility"* to address the problem. Two meeting were held subsequently with a small group of Massachusetts public and private groups to explore the option of responding to CDC's call. MassKids drafted a proposal for the group's approval and in September that proposal was submitted and selected as one of only three applicants to receive what became a 5 year, $200,000 per year grant. MassKids agreed to serve as lead agency for the effort.

The statewide Massachusetts Child Sexual Abuse Prevention Partnership was subsequently organized and included public and private organizations representing experts in public health, child protection, mental health, child abuse prevention and treatment, sexual assault prevention, and juvenile and adult offender treatment and management.

In 2003, the Enough Abuse Campaign was launched as the Partnership's community mobilization and citizen education initiative. Three social change models were adopted to guide the Campaign's work – the Socio-ecological model promoted by CDC; the Spectrum of Prevention framework promoted by the Prevention Institute; and the Framework for Collaborative Public Health Action in Communities developed by the National Academy of Sciences, Institute of Medicine. The Campaign sought to engage in a variety of prevention actions including: state and local coalition building, education of parents and other citizens, training of a range of child and youth serving professionals, organizational policy development, and legislative advocacy.

The Campaign adopted the dual mission of preventing adult perpetration against children and preventing child-on-child sexual abuse. It selected out of a pool of 20 communities, three that would serve as pilot sites to test the various Campaign strategies. These included the 7-town North Quabbin Area, an economically disadvantaged area with the highest per capita residency of Level 3 sex offenders in the state; the city of Newton labeled "the safest city in America;" and Gloucester, a middle class working community on the North Shore. Currently the Campaign is operating in several communities and areas of the state and has been adopted in New Jersey, Maryland, New York, Nevada, California's 10-county Greater Bay area and the 15-county Sacramento/Sierra region.

Two scientific surveys conducted by the Campaign assessed the public's knowledge about child sexual abuse and helped determine the Partnership's first priority. Since 48 % of survey participants indicated a willingness to participate in local trainings to learn more about child sexual abuse and how to prevent it, the group set out to develop a comprehensive set of training curricula that would incorporate the latest knowledge in the field.

Currently, the Campaign's training resources include six curricula that it developed specifically to educate parents and concerned individuals, early education and child care providers, schools, and youth serving organizations. Once local Partnerships are established, Campaign staff assist communities to identify and vet a cadre of volunteers who then participate in the Campaign's intensive 2-day Training of Trainers. Once certified, they offer free trainings in their communities. Oversight and evaluation of these trainers by their local Partnership and feedback from workshop participants document consistently high levels of satisfaction; on a scale of excellence of 5, trainings typically receive 4.7 or higher ratings. Evaluations of the first 5,000 persons trained indicated:

- 95% said the training helped them identify problem behaviors in adults
- 94% learned to assess and respond to unhealthy sexual behaviors in children
- 95% learned where to go and who to talk to if they suspect sexual abuse
- 98% would recommend the trainings to others

Feedback solicited from over 1,000 individuals who completed the Campaign's online *"10 Conversations"* series, showed significant knowledge gains and a variety of prevention actions taken post-training, e.g. 70% - spoke to spouse/partner about the issue and what they learned, 56% spoke to their children, 55% spoke to friends, 51% spoke to work colleagues, etc.

CDC identifies "community and systems change" as a marker of effective child sexual abuse prevention efforts. They define this as *"any program, policy or practice that resulted in institutionalized changes in the community and its systems from those efforts."* CDC's evaluation of the Campaign documented impressive community and systems changes during the 5-year grant period.

Another evaluation of the Campaign is currently underway by researchers at Penn State and Prevent Child Abuse America that is expected to further document the Campaign as an evidence-based child sexual abuse prevention model.

To address its goal of promoting organizational policy development to prevent child sexual abuse, the Campaign issued the 20-page *"Massachusetts Safe-Child Standards"* in April 2015. It identifies six key standards schools and youth organizations can work to achieve and provides specific action steps to help them reach each standard.

MassKids provided the key private agency support that resulted in civil and criminal reform of Massachusetts' Statute of Limitations in child sexual abuse cases. Currently, it has spearheaded a set of bills in the 2015 Legislative Session that include: the Comprehensive Child Sexual Abuse Prevention Education bill for schools and youth organizations; the Stop Educator Sexual Abuse, Misconduct, and Exploitation (S.E.S.A.M.E.) bill; and the Age of Consent - Not a Defense bills.

We ask the Commission to formally support these prevention bills and, furthermore, we invite its member agencies to partner with MassKids to help meet our goal that "by 2018 every Massachusetts city and town will be actively engaged in preventing child sexual abuse in their homes and communities."

> *"[The Campaign]…breaks the mold on child sexual abuse in many ways. It goes beyond a limited set of trainings to foster the building of real and lasting relationships among diverse stakeholders. Its emphasis on community collaboration truly sets it apart from previous efforts."*
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> Ms. Foundation for Women, 2010

Testimony of the Western Massachusetts Network to End Homelessness
May 28, 2015
Submitted by Pamela Schwartz, Director

Our mission

The Western Massachusetts Network to End Homelessness, launched in 2009, serve the four Western counties, including Hampden, Hampshire, Franklin and Berkshire, from Springfield to Pittsfield and dozens of rural communities in between. Its mission is to *create collaborative solutions to end homelessness through a housing first approach that prioritizes prevention, rapid re-housing and housing stabilization.*

Why we are here today:

John was a 14 year old ward of the Department of Social Services when he was convicted of sexual relations with a 12 year old. At age 29, he was convicted of larcenies, drug possession and failure to register. At that time he was classified as a Level 3 sex offender. He served 4 years, 3 months, participated in extensive treatment while in jail and was placed on lifetime parole supervision. At 33 years old, he had not re-offended sexually since age 14. Upon release in 2013, due to his Level 3 status and lifetime parole, he was banned from living with his close friend in Springfield because that friend had a 16 year old daughter at home. He was forced to relocate 40 minutes from all familiar support services and relationships and was unable to participate in Springfield's After Incarceration Support Services. Since that time, he has been charged with failure to register and larceny over $250.

Our Network Partners

Our Network includes over 200 participating partners including:

- Senate President Stan Rosenberg, Senator Ben Downing, Representative Peter Kocot and Representative Aaron Vega;
- 7 Western MA mayors and town managers;
- Faith leaders;
- Bank and other business leaders;
- Community college presidents and staff;
- Regional employment boards and career centers;
- Housing, child care and health care providers

Our Structure

Our Network structure includes a Leadership Council of 60 community leaders from every community sector; Family Services Committee; Individual Services Committee; Work Group to House People with Sex Offense Histories; Secure Jobs Advisory Committee (a jobs program for homeless families); Unaccompanied Homeless Youth Committee and Veterans Committee.

Work Group to House People with Sex Offense Histories

The Work Group to House People with Sex Offense Histories was formed in 2011, in direct response to increasing homelessness among sex offenders due to lack of housing options. The mission of the work group is: *to maximize the safety of children, women and vulnerable others by minimizing the potential for re-offense through the identification and development of stable housing options for registered sex offenders who are committed to a positive and offense-free life.*

Housing Sex Offenders Work Group Members include:

- Hampden, Hampshire, Franklin and Berkshire Sheriff Departments;
- Springfield and Northampton Police Departments;
- Faith organizations across the region, including churches, the Catholic Diocese and synagogues;
- Mental health and substance abuse treatment centers;
- Cooley Dickinson Hospital and Mercy Medical Center;
- Housing and elder home care agencies

Why we are here today:

Adam is now age 73 and suffers from Parkinson's Disease, COPD, diabetes, dementia, chronic kidney disease and requires extensive assistance with all activities of daily living. He was released from prison in 2007, following conviction for a sexual relationship with a 14 year old neighbor. He was deemed a Level 3 offender. Upon release, Adam was deposited by corrections officers at Friends of the Homeless shelter in Springfield without medications. He was eventually transferred to a rest home but was asked to leave due to his Level 3 status. He now lives in a group home and pays $1,224 monthly, an amount that precludes his capacity to pay for other life expenses. Adam's condition has worsened markedly; he relies on a walker to ambulate and cannot use utensils due to his tremors. Adam has not engaged in any criminal activity since his release in 2007, and was released from probation requirements this past December. His Level 3 status prohibits him from living in an elder subsidized housing complex and from becoming a resident of a skilled nursing facility. Between May 2014 and May 2015, Adam was admitted to the hospital 9 times and had 4 emergency room visits. An effort was made to re-level Adam in 2013. He case was transferred to Boston and it is still pending due to a "backlog at SORB." He does not have the intellectual capacity to represent himself and SORB does not provide counsel for indigent clients.

Current Law

Under the current federal public housing law, any offender who is subject to lifetime sex offender registration in the state in which he resides is ineligible for admission to federal public housing (42 USCS Section 13663). State public housing law, however, is discretionary. An applicant could be disqualified if the "applicant or the household member in the past has engaged in other criminal activity…which if repeated…would interfere with or threaten the rights of other tenants to be secure in their persons or their property or with the rights of other tenants to their peaceful enjoyment…" (G.L.C. 121B Section 32)

Promoting Public Safety Through Housing

The fear and concern for public safety makes sense. Current practices and policies regarding housing and employment restrictions do not. Instead, they inadvertently increase the risk of harm to the public.

"…Sex offenders without positive social support systems and stable employment recidivate at higher rates than those with jobs or ties to the community." (Levenson, 2008)

Destabilizing Factors

Homelessness among sex offenders causes destabilization that can increase the risk of re-offense:

- Increases lifestyle instability and transience
- Fosters isolation and pushes sex offenders away from:
  - Social services and supports
  - Employment
  - Public transportation
- Increases risk of substance abuse and criminal associations
- Creates seemingly insurmountable barriers to successful community re-integration

Best Practices

An increasing number of national and local models exit that meet the complex problem of housing sex offenders in the community while maximizing public safety.

Here in Massachusetts:

- St Francis House, Boston

- The Majestic Apartment Building, Springfield: Managed for 38 years by Rosa with support from probation, law enforcement and community service providers. 42 housing units, over 25 tenants are sex offenders; tenant behavior is excellent and only 1 tenant may have re-offended in 38 years.

Our Work Group's Goals

- Bring to the forefront evidence-based, best practices in housing sex offenders and providing education and training to the broader community.
- Develop criteria to assist local housing proivders in determining suitable housing for ex offenders.
- Engage and train local housing providers on best practices regarding public safety and housing sex offenders.
- Change housing provider policy from a blanket ban to case-by-case determiations regarding sex offenders.

Proposed Criteria for Housing Sex Offenders

Available only to single adults seeking individual (non-family) housing:

- On probation or parole
- Attached to services such as sex offend-specific treatment, mental health and/or substance abuse treatment as deemed necessary
- Designated community or agency contact person for communications regarding tenancy
- Committed to living an offense-free life

Housing Providers Responded

Five major housing providers in Western MA attended three meetings that included training by Dr. Laurie Guidry and review of the proposed criteria and intensive discussion.

Consensus: Until state policy changes and reflects evidence-based practices, housing providers do not feel they are sufficiently supported by the State to house sex offenders. The fear of liability outweighs understanding of current evidence and best practices. They need the State to provide leadership before they consider changing their policy of a complete ban on housing sex offenders.

Proposed Action Steps

- Create Advisory Board to propose policy change that reflects evidence-based, best practices around the leveling system.
- Advance the dialogue and education regarding public safety in relationship to housing and employment practices for sex offenders: **Housed and Employed Equals a Safer Community.**
- Review and reform state housing policies to move away from absolute ban and implement case-by-case decision-making based on evidence-based criteria.

Why we are here today:

Daniel became homeless at 15 years old. His father was convicted of a sex offense and sentenced to 30 years. His mother was unable to care for him. He survived living on the streets and selling drugs. At 18 years old, Daniel was convicted of rape of a child and deemed a Level 3 sex offender. He was released in 2012 and had nowhere to go but in and out of shelters. Family members and friends refused to take him in because of the random police checks that occurred, finding them threatening and invasive. Daniel was forced to pay extra for the "hassles" of housing sex offender to a landlord/acquaintance who provided him a place to stay. Daniel returned to jail in 2013 because "selling drugs felt like the only thing to do to support" himself. He was also charged with failing to register as a sex offender (found it especially difficult to do since homelessness required registering every 30 days). Daniel will be released in 2017. He turned himself around in jail this time and is attending school for his GED and is pursuing job training in jail so he can get out and get a "real job." Daniel does not want to return to crime ever again but is very worried about the impact of his Level 3 status on his capacity to find a home or a job. "I don't want to get out and be forced to go back to the streets to sell drugs so I can afford to pay for a place to live."

Summary of Presentation- Massachusetts Probation Service

Supervision of Sex Offenders is a high priority for the Massachusetts Probation Service (MPS) both from a public safety perspective and a treatment perspective. MPS supervises approximately 1,400 sex offenders across the Commonwealth daily. We have several evidence- based, well established models that vary by local resources and supervision/treatment partners. A critical challenge for MPS is sufficiency of resources. Sufficient probation officer staffing, access to certified treatment and other ancillary resources are a challenge across the system. Increasingly, treatment, although provided by certified sex offender treatment providers, is court based. This allows for drug testing, probation officer contact and support on collateral issues with each offender. The common theme among the various models is a multi-dimensional or wraparound approach. As a part of this approach MPS acts as the hub coordinating the wraparound of services, treatment, support, information sharing and accountability combined with active engagement of the client that is the key to both safety and change with this population. Supervision plans, although adhering to these general principles, are individualized based on the nature of the behaviors associated with an offender's specific conduct and history, specific identified risks, overall risk level and current life circumstance.

Two models were presented to illustrate the approaches that are mirrored in many of the 101 Probation Offices across the state. The two highlighted presentations were:

Worcester Superior Court

The Worcester Superior Court Probation Office's Intensive Sex Offender Supervision Program is made up of two components. Intensive treatment, the first component, consists of a probationer reporting to the probation office to partake in in-office sex offender treatment delivered by certified providers. The treatment is built on evidence-based principles of effective intervention and includes polygraph testing and Transition to Community groups. Intensive supervision and surveillance, the second component, consists of a collaboration with the Worcester Police Department. Probation officers, joined by Worcester Police Department officers, conduct frequent visits to the homes of sex offenders on probation at Worcester Superior Court. The home visit collaboration with the Worcester Police Department, which predates the Worcester Superior Court Probation Office's Intensive Sex Offender Supervision Program, has resulted in 1,350 joint probation-police visits to the homes of sex offenders since 2010. These home visits are in addition to traditional probation officer home visits. Since the Intensive Sex Offender Supervision Program's inception in 2012 there have been 63 participants. The program has resulted in a sex-offense specific recidivism rate of approximately 3% and an overall recidivism rate of approximately 11%.

Dudley District Court

The Dudley District Court Probation Office's Sex Offender Containment Program is a collaboration between multiple criminal justice agencies including six local police departments, the Massachusetts State Police, District Attorney Early and the Dudley District Court Probation Office. The Sex Offender Containment Program, made up of Dudley District Court probationers involved with a sexual offense, takes a victim centered philosophy and includes intensive community supervision, risk assessment, mandatory sex offender treatment, GPS monitoring, restriction of travel patterns and practices specifically designed to limit aspects of privacy and access to victims. Over the past 10 years, the Sex Offender Containment Program

has consisted of approximately 115 probationers and has resulted in a sex-offense specific recidivism rate of less than 1% (one new sexual related arraignment) and an overall recidivism rate of approximately 9%.

Currently, probation officers throughout the Commonwealth are required to have a minimum of two face-to-face contacts with sex offenders placed on risk/need probation per month (30 calendar days). At least one of these contacts every two months is mandated to be a home visit for the duration of the court ordered term of probation. Additionally, this group of probationers is required to provide verification of address and income every 14 days over the course of their probation supervision. Probation officers are required to refer this group of probationers to court ordered programming during their first face-to-face contact as well.

In the future, MPS would like to select and implement a validated, sex offender specific risk/needs assessment to supplement the general risk/needs assessment, the Ohio Risk Assessment System-Community Supervision Tool (ORAS-CST), already being used by probation offices across the state. To support such a sex offender specific assessment, MPS would also like to develop and implement supervisory protocols for specific typologies of sex offenders grounded in evidence-based practices.

Summary of Presentation- Brooke Berard and Kaitlyn Peretti

William N. Brownsberger, Senate Chair
Paul Brodeur, House Chair
The General Court
Commonwealth of Massachusetts
State House, Boston 02133-1053

September 14, 2015

Dear Senate Chair Brownsberger and House Chair Brodeur,

The following is a summary of the presentation to the Special Commission to Reduce the Recidivism of Sex Offenders, delivered on December 3, 2014 by Brooke Berard, Psy.D. and Kaitlyn Peretti, Psy.D.:

The MHM, Inc. Sex Offender Treatment Program (SOTP) is offered to state inmates and individuals civilly committed as Sexually Dangerous Persons (SDPs) within the Department of Correction (DOC). The majority of the SOTP treatment and assessment services are offered at the Massachusetts Treatment Center (MTC), although there are some services offered at satellite sites within the DOC. The population at the MTC in December, 2014 was 310 state inmates, 207 SDPs, and 31 temporary commits. Any state inmate who has been convicted of a sexual offense or an offense of a sexual nature and who is within six years of earliest possible release is eligible to participate in the SOTP. Any individual who has been temporarily committed or committed as a SDP is eligible to participate in the SOTP. The SOTP phases for state inmates include Assessment and Treatment Introduction, Assessment and Treatment Preparation, Nonresidential Treatment (moderate intensity) or Residential Treatment (high intensity), and Maintenance Treatment. The SOTP phases for SDPs include Assessment and Treatment Preparation, Residential Treatment (high intensity), Community Transition House, and Community Access Program.

The MHM, Inc. SOTP is consistent with best practices in the treatment and assessment of adult male sex offenders. Research has found that treatment effectively reduces sexual recidivism when consistent with best practices, which include Cognitive Behavioral Therapy; a focus on risk, need, responsivity principles; strengths-based treatment; objective measures of treatment progress; and a focus on risk management and rehabilitation (Laws & Ward, 2006; Ward & Fisher, 2006; McGrath et al., 2010; Olver et al., 2012). Within a Risk Need Responsivity (RNR) model the intensity and duration of treatment is dependent on the offender's risk level (high risk offenders should receive the most treatment/resources), the offender's dynamic risk factors are identified as treatment targets, and the treatment is individualized to account for numerous factors that facilitate and interfere with treatment progress. Hanson, Bourgon, Helmus, and Hodgson (2009) found sex offender treatment programs that adhere to all three RNR principles have greater reductions in sexual recidivism (10.9% treated vs. 19.2% untreated).

Best practices in assessment of adult male sex offenders include evaluation of an offender's static and dynamic risk. Although static factors are historical and fixed, these factors assist in determining the amount of risk an offender poses. Dynamic factors are enduring but may change over time and/or through treatment efforts, and these factors assist in identifying determining the amount of risk, identifying treatment targets, and assessing a change in risk and the ability to manage risk (Mann,

Hanson, & Thornton, 2010). Common assessment tools include the Static 99-R, Static 2002-R, Stable 2007, Acute 2007, Structured Risk Assessment, Sex Offender Treatment Progress Scale, and Multidimensional Inventory of Development Sex and Aggression. Results of the assessment should guide treatment planning and the evaluation of treatment progress (e.g. change in ability to manage risk).

In sum, best practices include use of the RNR principles, an assessment of static and dynamic risk utilizing standardized and well-accepted instruments, assessment-driven treatment, individualized treatment, and objective measures of treatment progress. The MHM, Inc. SOTP is consistent with best practices: the initial focus of treatment is motivating and engaging the offender in treatment, followed by a comprehensive assessment, assignment to a treatment unit based on risk level and treatment needs, development of an individualized treatment plan, objective measures of treatment progress over time, and a focus on successful reintegration to the community.

Preliminary results of the ongoing MTC Program Evaluation Research include information on risk frequency data at MTC. Just over 60% of state inmates in the sample were in the low or low-moderate risk category when combining the results of the Static 99-R and Stable 2007. Despite this figure, 97.5% of state inmates released from the MTC between 2012 and 2014 were assessed by the SORB as LOS 3 offenders. Within the SDP sample, there were no offenders in the low risk category when combining the results of the Static 99-R and Stable 2007. Approximately 59% of SDPs were in the very high risk category and 22% were in the high risk category when combining the results of the Static 99-R and Stable 2007.

Systemic challenges exist in Massachusetts impact sex offender recidivism rates and desistance. Release and registration decisions are often not consistent with treatment recommendations and evaluations of risk level; instead, an importance is placed on acceptance of responsibility for offenses and other factors generally unrelated to sexual recidivism. In addition, no system is in place to facilitate continuity of care upon release and the sex offender treatment offered in the community is inconsistent in terms of compliance with best practices. Furthermore, the supervision of sex offenders in the community is largely one size fits all and therefore inconsistent with RNR principles [e.g. all sex offenders have identical supervision conditions; the highest risk offenders (SDPs) are oftentimes released without supervision]. There are limited housing resources available, offenders often need housing plans in place for parole yet need to obtain a parole/release date to secure housing, and there is no transitional housing for sex offenders.

MHM, Inc. SOTP resources are underutilized by other systems in the Commonwealth. The assessments would assist in release, supervision, and registration decisions; consultation between treatment providers and supervision officers would enhance continuity of care upon release; and improving interagency communication and collaboration would contribute to a reduction in sex offender recidivism.

Sincerely,

Brooke Berard, Psy.D.

Director of Treatment and Assessment

MHM/Forensic Health Services

Sex Offender Treatment Program

Massachusetts Treatment Center

Kaitlyn Peretti, Psy.D.

Supervising Psychologist and Director of Training

MHM/Forensic Health Services

Sex Offender Treatment Program

Massachusetts Treatment Center

Special Commission to Reduce the Recidivism of Sexual Offenders
Summary of Presentation to the Commission

Swimming Against The Tide:
A Developmental Perspective on Juvenile Sexual Offenders

Presented October 22, 2014
Robert Kinscherff, PhD, JD[4]

Overview of the Issues

Both sexual and non-sexual behaviors which may bring a youth under age 18 before a Juvenile Court begin to increase during middle school, peak during mid-adolescence, and then begin a path of self-desistance as youth enter late adolescence and early young adulthood. Even youth who have been chronic and violent offenders typically show this pattern of self-desistance as they mature. This trajectory of self-desistance as they enter late adolescence and early young adulthood has posed significant challenges in identifying which youth adjudicated[5] of sexual or non-sexual offenses will continue harming others and end up within the adult criminal justice system.

There is growing recognition of the problem of sexually abusive behavior among adolescents. Sexually abusive behavior by adolescents has a significant impact upon victims, families and communities. There will always be some sexually abusive youth who will require facilities-based containment during which they receive intensive specialized treatment to address and lower their risk of sexual recidivism.

Sexually abusive behavior by adolescents warrants an effective, research-based response. Research[6] suggests that approximately a quarter of known sexual offenses are committed by persons under age

[4] Dr. Robert Kinscherff is a Commission member and representative for the Massachusetts Adolescent Sexual Offender Coalition (MASOC). MASOC is comprised of clinical and forensic behavioral health services providers, academics, prevention specialists, juvenile justice professionals, and others with a focus on preventing and addressing sexually abusive behaviors among children and adolescents. The coalition "is committed to stopping sexual abuse through early and specialized intervention, assessment, treatment and management in the lives of sexually abusive children and youth."

[5] Youth charged and adjudicated delinquent by virtue of a sex crime are Juvenile Sexual Offenders (JSO). Being a JSO is a legal status. Sexually abusive misconduct involving a "hand-on" victim or other problematic sexual behaviors may or may not be detected, and if detected it may not be charged or result in an adjudication.

[6] Finkelhor, et al (2009).

18 and comprise approximately a third of all sexual offense cases known to the police in which the victim is a minor. One in eight of these youth are under age twelve and cases involving adjudicated early adolescent juvenile sexual offenders (JSO) more commonly involve both younger perpetrators and younger victims. Sexual offenses committed by mid-adolescents and older youth more commonly harm peer-aged youth and fewer younger children. Approximately seven percent of JSO are females who offend more commonly as younger teens and are more likely to have younger, male family members as victims.

Framing a Response to Adolescents Adjudicated for Sexually Abusive Conduct

Framing a response to adolescents who have been adjudicated delinquent on charges involving sexual abuse/aggression must be guided by research-based principles described below. All youth who engage in sexually abusive behavior must be held accountable and, as noted above, there will always be a small percentage of youth whose sexual aggression or repeated acts of sexual abusive behavior warrant placement in a secure setting while they receive intensive specialized assessment and treatment.

However, adolescents who engage in sexually abusive behavior vary widely in terms of their sexually abusive behavior, their motives for that behavior, their individual characteristics, and characteristics of their families and communities, and their stage of development. One may be a developmentally delayed 13 year-old with cognitive disabilities who functions like a much younger child and as he enters puberty engages with a younger child for sexual experimentation. Another may be a mid-adolescent in a peer group involved in "sexting" who violates child pornography laws by sending a "sext" of a 14 year-old boyfriend or girlfriend. Yet another may be an adolescent who engages with peers in a sexual assault during a party when they are very intoxicated.

None of this sexual conduct is acceptable but the responses most likely to effectively address the abusive behavior will differ from case to case. Except for the fact that all of these cases would be heard before a Juvenile Court if the youth is charged, Massachusetts law does not currently distinguish among child, adolescent or adult sexually abusive/aggressive behavior in the way that many other states do. The existing framework in Massachusetts is essentially a "one size fits all" approach that fails to take into account important differences among children and adolescents, and between youth and adults.

This Commission affords an opportunity to review the Massachusetts framework for responding to sexually abusive/aggressive behavior by youth in light of the following research-based principles:

1. Youth are in ***developmental flux***—especially during adolescence--and the nature and meaning of their sexual offense, their responses to intervention and management, and their likelihood of sexual recidivism must be understood developmentally. As a result, ***effective assessment, intervention and management of JSOs requires a developmental perspective highly individualized*** to the risks, needs and characteristics of each JSO.

Developmentally-informed assessment prompts attention to the history and current status of each JSO along the following dimensions:

- Attachment and relationships
- Capacities for emotional regulation
- Cognitive capacities (including "executive functioning" and learning style)
- "Social intelligence" (ability to take the perspective of others, capacities for empathy)
- Social contexts (e.g., peers, family, school, community) shaping development
- Adaptiveness of coping skills
- Learning about human sexuality and sexual behaviors
- History and current point along normal child and adolescent development
- Special needs, characteristics, or talents
- Nature of the sexual offense(s), victim(s), trajectory towards offense(s), function served

2. JSO have ***significantly lower risks of sexual recidivism than do adult sexual offenders.*** Most adolescents desist upon detection and confrontation growing up to live healthy and safely in the community. .

The best research available indicates that 85% – 95% of JSO had no prior arrests and no subsequent arrests for a sexual offense. Youth adjudicated of a sexual offense do not sexually reoffend. However, if they are arrested again they typically are arrested for non-sexual crimes such as property or drug offenses. Research-based rates for JSO sexual recidivism consistently report rates of 7 – 13%. A landmark meta-analysis study[7] involving 11,219 JSO across 63 data sets follow for an average of over four years found a sexual recidivism rate of 7.08%. This compares to a recidivism rate of 43.4% for youth adjudicated delinquent on non-sexual offenses.

3. Sexual recidivism rates are sufficiently low that ***researchers have not been able to generate the same kinds of robust actuarial tools that are available for adult sexual offenders.*** As a result, it is not possible to confidently assign risk ratings or probabilities for sexual recidivism relying primarily on those tools, and existing tools for JSO are plagued by high rates of "false positives" (rating of a youth as at high or very high risk of sexual re-offense but the youth does not sexually re-offend), especially for youth deemed most concerning and at-risk.

The Juvenile Sexual Offense Recidivism Risk Assessment Tool (JSORRAT-II)[8] is a good example of the challenges involved. This widely used JSO assessment tool was devised assuming a 13.% sexual recidivism rate and establishes cut-off scores for identifying JSOs as posing sexual re-offense risk on this continuum: Low-Moderately Low-Moderate-Moderately High-and High.
One reviewer[9] of this tool observed that it placed 70% of youth in the Low-Moderately Low risk groups which had a reported sexual recidivism rate of 2.7%. It placed 30% of youth in Moderate-Moderately High-High risk groups where there was a reported sexual recidivism rate of 37%.

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[7] Caldwell, M. *Int J Offender Ther Comp Criminol,* published online January 23, 2009.
[8] Epperson, et al (2006).
[9] DiCataldo, F. The Perversion of Youth: Controversies in the Assessment and Treatment of Juvenile Sex Offenders (2009)

However, in the High risk group 63% of those rated as high risk did not sexually reoffend. As a result, this tool is useful in broadly distinguishing those youth at lowest risk from those youth at highest risk but is wrong more than half the time for youth deemed "High" risk.

Tools certainly have their place in JSO assessments and their use is certainly much better than relying upon "unstructured" clinical interviewing and judgment due to their many vulnerabilities to bias and error. However, at their current state of development, tools are still blunt instruments in differentiating among youth deemed moderate to high risk for sexual recidivism and they should be used in the context of a broader developmentally-informed evaluation.

Nonetheless, being identified as "high risk" on a tool or when applying various factors has substantial potential consequences including commitment to the Department of Youth Services as a delinquent, potential exposure to adult correctional supervision or incarceration if tried as a Youthful Offender, intensive community-based tracking and monitoring removal from the community and placement in facilities-based residential care, specialized high-intensity JSO treatment, and registration obligations with the Sexual Offender Registry Board. Each of these can, in turn, have collateral impacts upon where a JSO can live, current and future employment or educational prospects, and/or ability to enlist in the military.

4. A ***developmentally-informed application of the Risk-Needs-Responsivity model*** can guide understanding of each youth in this very heterogeneous group, identify risk factors to address as well as protective or mediating factors to support, and help tailor interventions to take into account the individual characteristics of each JSO and their social context (e.g., peers, family, school, community)

The Risk-Needs-Responsivity (RNR) model was originally developed for adult offender populations to better target assessments and more effectively match interventions to the needs and individual characteristics of each offender. It has been adapted for use with juvenile offender populations and is best used when it is also developmentally informed.

For example, the "Risk" category should include both evidence-based risk factors for general and/or sexual recidivism and evidence-based positive youth development factors in efforts to support a trajectory of desistance from sexual and non-sexual offenses.

The "Needs" category in adults focuses on so-called "criminogenic needs" such as housing, employment and substance abuse. The "Needs" category in youth should include both juvenile "criminogenic" needs to be met but also identification of positive youth development assets[10] which can be incorporated into treatment and risk management strategies.

[10] These include: positive school engagement and climate, developmentally appropriate parenting, activities that support a sense of community engagement and contribution, basic physical safety at home and in the community, active and positive involvement of adults in the life of a youth, and others.

The "Responsivity" category allows for an individualized response tailored as much as is practicable to each youth. Youth who commit sexual offenses are a very heterogeneous group and the only significant thing that some youth may have in common is that they committed an act of sexual misconduct for which they were charged and adjudicated a JSO. In every other relevant aspect of their functioning they may vary greatly. This includes multiple domains including cognitive capacities, developmental maturity, learning styles, ethnic and cultural background, socio-economic status, peer group characteristics, the nature and characteristics of their sexual offense(s) and other offending, and the kind(s) of intervention they may need.

The RNR model holds that "treatments are most likely to be effective when they treat offenders who are likely to reoffend (moderate or high risk), target characteristics that are related to reoffending (criminogenic needs), and match treatment to the offender's learning style and abilities)…."[11] The model also emphasizes the importance of evidence-based models of assessment and intervention, the need to focus available resources upon those most likely to reoffend, and the need to avoid "over-intervention" among those less likely to reoffend. This is consistent with research and innovation in juvenile justice seeking to address the negative consequence of ***inadvertently increasing recidivism*** when youth are unnecessarily detained, subject to prolonged periods of facility-based care or incarceration, are poorly matched with interventions, or fail to have basic behavioral health, educational or other needs met.[12]

5. ***Assessment, treatment and management of Juvenile Sexual Offenders has dramatically changed in recent years*** with the emergence of research and innovations in policy and practice.

Assessment and treatment for juvenile sexual offenders was largely taken from—and shaped by—assumptions and practices relied upon in treatment of incarcerated adult sexual offenders. Twenty years ago, practice was shaped by assumptions that are now demonstrably either not accurate or yield a poor practice model for work with JSOs. These assumptions and practices have been increasingly replaced by other approaches. These include:

Traditional Model	Emerging Model
JSO have very high sexual recidivism rates	Recidivism is about 7 – 13%
JSOs are driven by deviant sexual arousal	JSO rarely involves deviant sexual arousal
JSO are about "power and control"	Sometimes, but other motivations exist
Treatment is to replace JSO behaviors	Yes, but also teach replacement behaviors
Only "relapse prevention"(RP) works with JSO	RP –without more-largely ineffective in JSO

[11] Hanson, et al. *The principles of effective correctional treatment also apply to sex offenders.* Crim Just and Beh, vol. 6, no. 9 (September 2009).

[12] The Department of Youth Services in Massachusetts is among the national leaders in juvenile justice in attempting to drive down unnecessary detention, rely upon best-practices interventions in it secure treatment settings, create an infrastructure for community-based supervision and intervention for most youth committed to them, and develop re-entry strategies to lower risks of early or deep penetration into the criminal justice system.

Ignore trauma—it will be the "abuse excuse"	Address trauma immediately and ongoing
"One size fits all" JSO treatment in groups	Individualize treatment (Responsivity)
Assessment not tied to scientific support	Assessment guided by evidence-base
Assess and treat individual JSO	Assess/treat JSO's within social ecology
Offense-driven treatment/case planning	"Whole child" lens on treatment/case plan

The established and emerging evidence-based models for JSO have moved from facilities-based intervention and management strategies to ones which target the social ecology of the JSO. Evidence- based interventions for JSO include Multi-Systemic Therapy (MST), Functional Family Therapy (FFT), and the Oregon Model of Therapeutic Foster Care. These community-based interventions have demonstrated effectiveness for higher-risk delinquents, including youth adjudicated with JSOs.

Massachusetts has not incentivized community-based providers to develop capacities for evidence-based interventions with higher risk delinquents/JSOs and so current access to these services is extremely limited or non-existent.[13]

6. ***Policies and practices regarding registration and community notification for JSO have come under increasing scrutiny nationally*** and warrant review in Massachusetts

Other than hearing delinquency or Youthful Offender cases involving alleged sexual offenses in Juvenile Court, Massachusetts law has not followed other states in distinguishing adolescents and children from adults. This is particularly the case for post-adjudication registration and management of youth.
The information below was derived from the Center for Sexual Offender Management (CSOM) and downloaded on 10.17.14 in anticipation of the presentation before the Commission.

The original goals for creating systems for registration and community notification of sexual offenders included deterring potential sex offenders, reduce sexual offense recidivism, make information available to law enforcement, and share information with communities about known sexual offenders so they could take protective measures collectively and individually.

Almost from their inception, concerns were raised about including adolescents in registration and notification systems. These concerns included the potentially negative consequences of "labelling" adolescents, absence of research regarding efficacy of these systems when applied to youth, and the failure of some states to differentiate which offenses trigger registration and notification requirements for JSO. Concerns were also raised that the potential consequences of registration or notification requirements may skew charging decisions or plea bargaining to avoid these outcomes.[14]

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[13] For example, we are aware of one MST program but it is contracted through DCF and youth must reportedly be in the custody of DCF to be eligible.

[14] Letourneau, E. (2009) researched juvenile JSO registration in South Carolina and found that: (a) JSO registration had no impact upon rates of JSO recidivism; (b) registration increased risk of subsequent arrest for "nuisance" offenses; (c) there were increases in arrests for new juvenile sexual offenses but

In response, five states created separate registration laws governing juveniles or adopted other approaches to differentiate responses to JSO. For example, Texas amended its statutory scheme to permit Juvenile Courts to waive registration requirements, to terminate registration requirements for JSOs already registered, or to limit information on registered JSOs to be used only by law enforcement investigating a subsequent investigation of a new sexual offense. Oregon permits juveniles to petition the court for relief of registration two years after the end of the term of probation or other supervision. Idaho and Missouri maintain JSO information in separate databases which have limits upon access. In Alabama, JSO are not subject to automatic community notification but are required to receive treatment and register upon release from facility-based care; prior to release an assessment is provided guide in each case the most limited yet effective notification process is to be used.

Implications for Policy and Practice and Recommendations for Consideration

The substantial differences between youth and adults has been increasingly recognized over the past decade, fueled in part by emerging developmental neuroscience, research regarding the general trajectory of self-desistance among all types of delinquent offenders, and increasing recognition that adapting approaches for adult offenders to juvenile offenders often does not yield intended results and, in fact, may inadvertently increase recidivism and thereby undermine public safety. Massachusetts has an opportunity to rely upon the best available research and practice regarding JSOs, consider what other states have done, and to consider a framework of law, policy and practice geared to prevent sexually abusive behavior among juveniles and to effectively respond to it when it does occur.

The following recommendations were developed for consideration by the Commission at the time of the October 2014 presentation which this document summarizes:

1. Assessment and treatment of juvenile sexual offenders is increasingly a highly specialized field with its own well-developed research and practice literature. There is currently no specific certification process for professionals providing these services in clinical or forensic contexts. As a result, actual professional practice in this area varies widely from facility to facility, and from practitioner to practitioner.

Recommendation: Development of a basic certification process for persons providing clinical or forensic services with JSOs. Additional certification may be warranted for services to special population JSOs such as those with Intellectual Disabilities, Autism Spectrum Disorders, children under age 10, or those with severe mental illness. A model currently exists through which the Department of Mental Health collaborates with University of Massachusetts Medical School and the Trial Court to certify persons who conduct court-ordered forensic evaluations in the adult (Designated Forensic Professional—DFP) systems and the juvenile court (Certified Juvenile Court

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not increase in adjudications or convictions on those charges; (d) registration served to deter prosecution of both first offense and repeated JSO cases, and (e) led to a three-fold increase in plea bargains in which the sexual element was dropped from sexual offense charges.

Clinician—CJCC) system. A similar certification process may involve other collaborating entities but the training model exists. This training model is widely viewed has having improved and standardized forensic mental health practice with court-involved adults and juveniles. Certification might include community and facilities-based providers of specialized JSO assessment and intervention.

2. The current statutory scheme requires the Juvenile Court to determine within 14 days of the final adjudication of a juvenile sexual offender case whether or not to waive the obligation to register with the Sex Offender Registry Board (SORB)

Recommendation: The current framework presumes that an adolescent adjudicated on an eligible sexual offense will be subject to SORB registration unless a Juvenile Court determines otherwise. The Commission should consider an alternative approach given the significantly lower rates of sexual recidivism among adolescents, the high "false positive" error rates in reliably identifying youth rated "medium – high –very high" for sexual reoffending, and the far-reaching collateral consequences of SORB registration for youth.

This approach would involve a rebuttable presumption that these adjudicated youth would *not* have an obligation to register unless a Juvenile Court determines otherwise. This determination by the Juvenile Court would occur at the end of any period of supervision (court-based probation) or commitment (DYS commitment). This would allow the Juvenile Court to review the case following adjudication and disposition to gauge whether the youth has responded to: (a) any interventions imposed as conditions of court-based probation; or, (b) as part of sexual offender-specific programming while committed to DYS (facilities-based care or on conditional release). The Court would also have information regarding any new sexual or non-sexual charges, the opportunity to order an updated evaluation through the Juvenile Court Clinic, and review information about the youth's general functioning. The Juvenile Court's ability to make an informed determination about a SORB registration obligation would certainly be enhanced by making a decision informed by the youth's post-disposition behavior and responses to intervention. The Commonwealth would also have an opportunity to make the case for registration with the SORB in the event it determined that it could make the case.

3. Massachusetts has very limited infrastructure of evidence-based programming with demonstrated effectiveness with high-risk violent delinquent youth, including some JSOs. The Department of Youth Services has been innovative and the Department of Children and Families is currently engaged in reviewing and revising the assessment process that is mandated by statute before a sexually abusive youth can be placed with other children in substitute care. However, most JSO are youth adjudicated on lower-level sexual offenses and in the community (often on probation or conditional release by DYS).

Recommendation: This Commission consider reporting to the Legislature and the Governor that there is a compelling need to develop and fund a community infrastructure of evidence-based programs (such as MST, FTT, Oregon model Therapeutic Foster Care). These programs are more

cost-effective than traditional juvenile justice responses for high risk violent juvenile offenders as well as JSOs, and youth served in these models have demonstrably lower recidivism rates.

4. Massachusetts currently has a review process for JSO that is embedded in the SORB statutory scheme and may not yield the best outcomes for public safety or individual youth.

Recommendation: This Commission consider a separate procedural framework for children and adolescents whose cases are heard and disposed of in the Juvenile Court that reflects: (a) a rebuttable presumption that children or adolescents adjudicated on a sexual offense will not be placed on the registry or subject to community notification unless they are deemed dangerous to the community; (b) a separate classification process based upon research-based risk, protective and mediating factors that are specific to youth adjudicated on sexual offenses; (c) juvenile-specific determinations for whether or how to implement community or other notifications for cases heard and disposed of in the Juvenle Court; (d) protecting information on JSO from public scrutiny in the absence of a determination under (c) to disseminate a JSO's information; and, (d) identifying a specific term of time after which a JSO who has had no further adjudications for a sexual or non-sexual offense could be relieved of an obligation to register and the history of registration sealed unless ordered otherwise by a Juvenile Court. For example, MASOC has recommended that youth registered with SORB for a sexual offense committed as a juvenile and heard in Juvenile Court be subject to a case review and an updated risk assessment at age 25.

5. Nationally, one in eight sexual offenses reported to law enforcement are committed by youth under age 12. Many of them have themselves been victims of maltreatment and are often described as "sexually abuse reactive" to that maltreatment. Many of them are too young and developmentally immature to be a good match for services available through the juvenile justice system, and charging them with a sexual offense often complicates their participation in school, organized social and recreational activities, and other "normalizing" experiences.

Recommendation: The Commission consider recommending to the Legislature and the Governor that statutes be amended to create a rebuttable presumption that youth under age 12 will not be charged with a sexual offense as a delinquency matter, and will instead be handled as a Child Requiring Assistance (CRA) unless a Juvenile Court determines otherwise upon the Commonwealth's showing on specific factors. These factors may include: (a) physical harm to the victim; (b) use of a weapon to enforce victim compliance; and (c) clear and convincing evidence of a broader pattern of misconduct that would yield charges of physically aggressive/violent felonies against a person if charged.

6. Currently, the Department of Children and Families is mandated to conduct a risk assessment (the so-called ASAP) evaluation through an approved clinical provider. This ASAP is required prior to further placement with other children in substitute care in cases where a child in the custody of DCF has been sexually abusive or set fires. The ASAP protocol is currently in the process of revision to incorporate the research and practice which has emerged since it was incorporated into legislation in 1998. On occasion, defense counsel have barred evaluation of their juvenile client—either because the youth has been

charged for a sexual offense or there are concerns the youth will be. This has at times led to DCF being put in the position of not being able to make a determination about safe placement because it cannot get the ASAP required by law. In the past, this has been addressed by an informal policy from the Juvenile Court that it would not allow statements made by the juvenile to be introduced by the prosecution as "confessions" in the Commonwealth's case in chief.

Recommendation: Amend the statute to clarify that statements made by the adolescent to the evaluator retained by DCF to conduct this mandatory "safe placement and planning" evaluation may not be used by the Commonwealth in a delinquency, Youthful Offender or criminal prosecution of the juvenile for the alleged misconduct triggering the mandatory evaluation. Amend the statute or DCF regulations to require the implementation of the most current version(s) of the assessment protocol to be relied upon.

7. There is currently wide variation in practice among District Attorneys in responding to cases alleging statutory rape.

Recommendation: Amend the statute to create a rebuttable presumption that "statutory rape" will not be charged if: (a) the individuals are within two years of age of each other; and, (b) there is no indication that any of the participants in the sexual activity were coerced or forced.

8. Adolescents are increasingly identified as being involved with social media activities that can constitute illegal activity (such as "sexting," sending images of persons under age 18 that could legally constitute child pornography, harassment by sending nude or sexual images of oneself or others). Many of the relevant laws, especially those involving possession or transmission of child pornography, were crafted with adults in mind who are involved in child sexual exploitation or production/collection of child pornography. The meaning and impact of one 15 year old taking an eroticized "selfie" and sending it to another 15 year old is very different that an adult taking an eroticized picture of a 15 year old and then distributing it to other adults interested in child pornography. There are other examples of developmental differences and impact that illustrate the difficulty with which these legal frameworks interact with youth in the era of social media and other electronic technology.

Recommendation: The Commission or a subgroup of this Commission be tasked with specifically looking at the involvement of adolescents in actions involving electronic technology that could be charged as sexual offenses, including possessing of child pornography. Alternatively, the Commission might recommend to the Legislature or Governor's Office that a working group attending to this matter be constituted if there is not already one serving this purpose. This is a complex area and the working group should include professionals reflecting law and public policy, child and adolescent development, social media and other electronic technologies, and others with relevant subject matter expertise.

Thank you for the opportunity to provide this summary of the presentation in October 2014 to the Commission for its review and consideration.

Swomley & Tennen, LLP
Attorneys At Law
227 Lewis Wharf, Boston, MA 02110
(617)227-9443 (617)227-8059(f)
www.swomleyandtennen.com

John G. Swomley*
Eric Tennen

*Also Admitted in New York

Devon D. Hincapie
Scott A. Katz
Rachael A. Michaud

Of Counsel
Matthew E. Cole

Testimony of Eric Tennen

1) Treatment Center/Preparation for release

There is no Community Access Program. There is no realistic release planning and absolutely no safety net or guidance once the men are released.

Most men who have been committed for a long term have lost all connections to friends or family. Thus, they have little options available upon release. There is no transitional housing. Many choose to come to Boston, live in shelters, and try and build their life up again.

But released individuals are not prepared for the realities of life on the outside. They are given no guidance or instruction on the following: how to get an identification, how to sign up for food stamps, how to navigate around Boston, how to find where the shelters are or how to actually get a bed at the shelter, where to get a meal, how to cash the check they are given (for whatever savings they have) upon release, how to take the T; where to find their probation officer, or how to register.

2) Supervision

Supervision does little to help, and much to interfere. This is primarily because the conditions imposed on probation are not normally appropriate for the individual. Instead, they create more red-tape for the offender and more ways in which to violate probation. Additionally, for those generally low-risk offenders, supervision is not necessary. If someone poses a low risk, there is no need to have them strictly supervised. Rather, supervision creates stress and series of unnecessary conditions that may result in an otherwise law-abiding person to get snagged again in the criminal justice system.

We know that for low risk offenders, intensive or sustained probation is extremely stressful and can create the kind of emotional states that led men to offend in the first place. But we do not tailor probation to actually meet the needs of the individual; and when we require monitoring for life, or even extended periods (like 10 or 15 years), we do not allow the individual to ever normalize his life.

3) GPS

Mandatory GPS of all sex offenders on probation is simply unnecessary. GPS monitoring does not prevent crimes; it does not decrease recidivism. There have been studies confirming this.

But GPS is extremely limiting and prevents men from living anything close to a normal life.

The equipment is horrible. It is unreliable. Most men on GPS have been arrested for violating the conditions of GPS; but these arrests are not because they were somewhere they could not be; they are for equipment malfunctions. It is not at all unusual for the police to find men exactly where they are supposed to be—in their home—but still arrest them because a warrant has issued.

For many men, you cannot hide the stigma of the bracelet. Pants can barely cover it. You cannot wear different clothes or shoes because they do not fit right. I have clients with medical conditions in which the bracelet can be painful.

The SJC has already held that the imposition of GPS is undoubtedly a punishment. If that is the intent of the law, to add an extra layer of punishment to every person convicted of a sex offense regardless of the circumstances, then it is working. But if the intent is to improve public safety, it is a sadly misguided law.

There is one very simple solution: restore discretion to judges as to whether or not to impose GPS. For judges who want to use it as a form a punishment, they can; for judges who believe it is necessary for public safety (e.g. to monitor if an offender is somewhere he is forbidden from being), then they can use it for that; and for judges who recognize the offender poses a low risk to reoffend and is not prohibited from being anywhere (e.g. someone convicted of an internet only offense), they need not impose GPS.

4) Registration

What does it mean to be a high-risk, level 3 offender? There is no real definition. But it cannot possibly mean these are the most dangerous men. Because the most dangerous men are those who are civilly committed. If you are not committed, then by definition, you are not one of the most dangerous.

At best, a Level 3 is a relative term that compares those offenders to the other men who are in the community. Level 3's are more likely to reoffend than Level 2's, who in turn are more likely to reoffend than Level 1's. But that still does not tell you or the public just how likely a Level 3 offender is to reoffend.

But the perception of Level 3's (or just that people are classified generally) is far from that. Men who participate in years of treatment, and are released when doctors unanimously say they are no longer dangerous, are Level 3's.

So the language we use is horribly prejudicial. The public does not see the language of registration as relative; they see Level 3, high risk, and presume these men should still be in jail.

In turn, Level 3's or anyone outed as a sex offender cannot get work or find housing. They lose jobs (when they have them) and are not protected in any way. They are fired and cannot even collect unemployment, normally, because they were fired for being a sex offender.

5) SORB Reclassification:

Another real problem with SORB is that it is supposed to represent a present assessment of the person's risk. But once SORB classifies someone, the only time their level will change is if SORB petitions to increase it or the offender requests to decrease it.

Because SORB does not unilaterally review classifications on a regular basis, there is nothing showing that someone's classification is current. Once again, this results in poor information being transmitted to the public. If someone is classified as a Level 3, but they have been in the community long enough that they are now less of risk, their classification should reflect that.

Further exacerbating the problem is that when an offender now does seek to be reclassified, the process can now last as long as two years.

So there are many, many men who have classifications that are over 5 years old; some over 10. These are men who have done everything right. And SORB itself recognizes how risk decreases the longer you are out and the older you get. But unless these men ask SORB to change their classification, it remains.

Summary of testimony given by Fred Smith to the Special Commission to Reduce the Recidivism of Sex Offenders on May 28, 2015

The following is a summary of the testimony given by Fred Smith, former Director of Program Development for St. Francis House, a large day shelter in downtown Boston and virtually the only human service provider that welcomed people convicted of sex offenses into its full array of services including medical, food, clothing, job readiness and, most significantly, its single room occupancy housing. Based on the Shelter's and Mr. Smith's 16 + years of actively working with this population these are his observations:

- Of the hundreds of men (and several women) served from this population, only one individual who received shelter services including housing, committed another sex offense. (It should be noted, that crime involved internet pornography and that individual served another 5 years in prison. He is now working and living in the community as a productive citizen.)
- Of all the Leveled offenders Mr. Smith worked with, at lease 3 chose to commit suicide under the burden of the registration and reporting system.
- Many of the older offenders Mr. Smith worked with were products of the Commonwealth's institutional "care" system. The now mostly dismantled system of State Schools for the Feeble Minded, Insane Asylums, Industrial Schools for Recalcitrant Children, Group Homes and the Foster Care System all contributed to their residents' maladjustment socially, behaviorally and their difficulty securing stable employment and housing. Thus, you have the Commonwealth contributing significantly to these folks aberrant behaviors and decision making and then the Commonwealth punishes them for these behaviors and then, upon release, further exacerbates their dismal lives by driving them into the shadows using registration laws in the name of public safety.
- Citing a major study by University of Michigan Law Professor J. J. Prescott in 2012 that looked at SOR practices in 10 states over 15 years that concluded these Registries contribute to greater sex offender recidivism. Remember, the sex offender registry movement was spurned by one high profile crime involving a stranger on stranger offense, an exceedingly rare occurrence.
- There are virtually no resources provided for the reintegration of sex offenders. (Most of the existing re-entry programs, especially housing, specifically forbid serving sex offenders.)
- Like with most of us, the two most critical elements of a stable and productive life are housing and jobs (not to mention having someone who cares about you) Without family support, this population is effectively unemployable and unhouseable. Since approximately 80% of all Level 3 sex offenders in the City of Boston use a shelter, or the streets, as their address, clearly the sex offender registry is the major contributor to this crisis.

The following are Mr. Smith's recommendations to the commission:

1. Create Support and Accountability Centers with the ability to provide a variety of services including access to benefits, introduction to peer support groups, acquiring basic documentation for Identification and referrals to appropriate resources including intensive Circles of Support and Accountability.
2. Indemnify housing providers and employers to reduce the perceived risk of providing housing and employment to registered sex offenders.

3. Continue to develop the self employment/micro enterprise model of employment through homeless incubators.
4. Eliminate the SORB, (remember you already have a Criminal Offender Record Information Board that also provides offender information to those with a need to know). If not elimination, at the very least recommend a best practices, actuarial tool to identify those at a real risk of reoffending and make sure they take advantage of support and accountability centers, electronic monitoring and other supervisory tools that have demonstrated their effectiveness.
5. Provide more training and guidance to Probation and Parole Officers so they do not hinder the reintegration process by overreaching their authority by imposing unnecessary restrictions.

The Impact of Sex Offender Registration on Adolescent Development and Adult Behavior:

A Psychological Presentation of Three Clinical Cases that Involved Adolescents Who Were Convicted of Sex Offenses.

As you listen to each of these cases, keep in mind the characteristics that distinguish adolescence. Adolescents are more impulsive than adults. Often, they live in the moment. They fail to plan ahead. They do not consider and appreciate consequences. Adolescents are naïve and often lack judgment. They tend to be action-oriented rather than reflective. They gravitate to risk-taking and thrill-seeking behavior. They experiment. Their day-to-day behavior is affected by the onset and throes of puberty. Within the context of this psychological soup, adolescents may engage in sexual misconduct.

The first case pertains to a man (Damien, a pseudonym) who contacted me when he was 32 years old. After working full-time for the last six years at a suburban lumber company, he was fired after he was arrested in 2010 for Failure to Register as a Sex Offender. In 1992 when he was 14, Damien was charged with one count of Indecent Assault and Battery on a Child under 14. This charge involved an incident that occurred in the summer of 1991 between Damien (when he was 13) and a 9 year-old male acquaintance. On the advice of his attorney, Damien waived his right to a jury trial, admitted to sufficient facts, and was found delinquent on 10/28/92. He was placed on two years of probation, ordered to undergo a juvenile sex offender evaluation, and to participate in treatment if necessary. He successfully completed his probation in 1994. In 1996 at the age of 18, Damien began registering as a sex offender at the insistence of the Watertown police long before he was classified as a sex offender and obligated to register.

Throughout his adolescence and adulthood, Damien felt inordinately shamed and stigmatized by one mistake that he made when he was just 13. Moreover, he never anticipated being compelled to register as a sex offender when he turned 18. He lived in a state of latent apprehension, and worried about being publicly identified and vilified as a sex offender. Being registered as a sex offender and branded for sexual misconduct as a young teen has stunted and marginalized his self-esteem and relationships, and always detracted from his achievement with respect to his employment.

The second case pertains to a 22 year-old young man (Ronnie, a pseudonym) whom I evaluated for Aid-in-Sentencing 10 years ago. On 3/01/05, Ronnie was adjudicated delinquent in regard to Rape of a Child (5 counts), Indecent Assault and Battery, and Indecent Exposure. These offenses occurred on diverse dates from July 2003 to October 2003 and involved four well-acquainted boys whose ages ranged from 7 to 11 years old. Ronnie was ten years old when these offenses occurred.

Following his conviction at the age of 12, Ronnie was ordered to register as a sex offender. Aware of his SORB status as a sex offender, the local police would periodically stop by Ronnie's house to ascertain if he still lived at this address. These unannounced visits would alarm Ronnie, and intensify his anxiety. He lived with the gnawing fear that his peers would find out that he was a sex offender. He was hyper-concerned about being accused of subsequent sexual misconduct, and about getting into any kind of trouble. He was afraid of sitting next to a girl on the school bus for fear that she could claim that he did something inappropriate.

As Ronnie progressed through adolescence, his social life was constricted because of his reluctance to interact with his peers. Although he played football in junior high school and high school, and formed friendships with teammates, he avoided getting together with them outside of football practice. He couldn't sublimate the reality of being listed as a sex offender. At the age of 22, he was offered a position as an assistant manager at a convenience where he had worked as a cashier. Fearful that a background check would reveal his status as a registered sex offender, Ronnie declined the promotion.

The third case pertains to a 14 year-old (Josh, a pseudonym) who was referred to me in 2015 by his attorney for a psychological evaluation and risk assessment. On 9/11/14, Josh was charged with Rape of a Child with Force (10 counts), Indecent Assault and Battery on a Child under 14 (12 counts), and Aggravated Rape of a Child (2 counts). These offenses occurred on diverse dates between 1/01/10 and 4/04/14 and involved Josh's younger step-brothers who were four and six years younger than Josh. Josh was 10 to 13 years old when these offenses occurred.

Josh suffered from a longstanding history of gastrointestinal illness that inhibited his physical growth. At the age of 13, his small stature and body weight of 70 pounds made him appear more like a 10 year old boy rather than the adolescent he actually was. Furthermore, he had been diagnosed with a number of learning disabilities that impaired his academic achievement, psychological maturity, and judgment.

After the victims disclosed to their mother that Josh had involved them in inappropriate sexual activity and Josh had to face these allegations, he became overwhelmed and suicidal. He was hospitalized for several weeks. The stress of waiting more than a year for his case to finally reach a

denouement in court was not as great as the anguish he felt about being compelled to register as a sex offender if so ordered by the court. In a palpably emotional plea colloquy, Josh pled guilty to many of his charges with the understanding that he would not be required to register as a sex offender. Being relieved of the burden to register was an enormous godsend for him. He had seriously contemplated suicide as a remedy if he had been compelled to register at any age as a sex offender. Even if Josh's registration had been deferred until he was 18, Josh had already decided that life after 18 as a registered sex offender was not worth living.

Being compelled to register with the SORB can interfere with critical tasks of adolescent development. All adolescents face self-confidence vs. self-doubt. Being classified as a sex offender undermines self-confidence and can lead to an anxiety disorder. All adolescents struggle with self-awareness vs. self-denial. When the awareness of being a registered sex offender becomes too acute, some teenagers opt for self-denial through substance abuse. All adolescents face the challenge of social integration vs. withdrawal and isolation. When an adolescent socially withdraws because of the stigma of being on the SORB, depression and suicidal impulses often result. Adolescents struggle with acceptance vs. rejection. When they experience the wave of rejection that comes with being a known sex offender, a sense of pervasive alienation can occur. A major task of adolescence entails the formation of healthy relationships rather than pathological relationships. Being a known sex offender can marginalize a teen and cause him to form codependent, abusive and destructive relationships.

Teenagers are inherently self-conscious. They want to fit in and belong to a peer group. A young teen lives with chronic worry and dread of being publicly shamed and humiliated. It is very difficult to overcome a negative stereotype. There's almost a universal hatred for pedophiles and the lay public does not distinguish being sex offenders and pedophiles, or even know the difference. (A pedophile is at least sixteen years old, and five years older than the victim.)

Being placed on the SORB for sexual misconduct that occurred before puberty, on the cusp of adolescence, or later in adolescence contradicts the prevailing neuropsychological understanding of childhood and adolescent brain development which asserts that the maturation of the brain is incomplete and not predictive of future behavior. As such, juvenile conduct must be viewed through a less judgmental and more mitigating lens because the behavior of a child is, by definition, immature, often impulsive, misguided, and ill-conceived without satisfactory forethought, and without a full appreciation of the consequences and ramifications. Whether a person is ordered to register as a teen, or at the age of 18, the impact of sex offender registration is psychologically corrosive.

Presented on May 28, 2015 by Dr. Eric Brown to the Special Commission to Reduce the Recidivism of Sex Offenders

The Commonwealth of Massachusetts
MIDDLESEX DISTRICT ATTORNEY
15 COMMONWEALTH AVENUE WOBURN, MA 01801
WWW.MIDDLESEXDA.COM

MARIAN T. RYAN
DISTRICT ATTORNEY

TEL: 781-897-8300
FAX: 781-897-8301

September 10, 2015

The Honorable William N. Brownsberger
Senate Chair - Special Commission
to Reduce the Recidivism of Sex Offenders
State House Room 504
Boston, MA 02133

The Honorable Paul Brodeur
House Chair - Special Commission
to Reduce the Recidivism of Sex Offenders
State House Room 160
Boston, MA 02133

Re: Commission to Reduce the Recidivism of Sex Offenders

Dear Chairmen Brownsberger and Brodeur:

I write regarding this Office's January 14, 2015 presentation to the Commission regarding prosecutions pursuant to G.L. c. 123A, "Care, Treatment and Rehabilitation of Sexually Dangerous Persons." The law, which provides a one-day to life commitment of a person found to be a "sexually dangerous person," was enacted by emergency legislation on September 10, 1999, to protect members of the community from sex offenders.

In prosecuting cases under the law, the Commonwealth is required to prove beyond a reasonable doubt that the person (1) has been convicted of a "sexual offense" as defined in G.L. c. 123A, § 1; (2) suffers from a mental abnormality or personality disorder and as a consequence of which (3) is likely to commit sexual offenses if not confined to a secure treatment facility. See Commonwealth v. Fay, 467 Mass. 574, 580 (2014); Commonwealth v. Boucher, 438 Mass. 274, 275 (2002).

Definitions of Terms in the Law

The law defines "sexually dangerous person" is "any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility, (ii) charged with a

sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility, or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires."

The law defines "mental abnormality" as "a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons." The law defines "personality disorder" as "a congenital or acquired physical condition or mental condition that results in a general lack of power to control sexual impulses."

The term "sexual offense" includes a number of crimes, such as indecent assault and battery on a child under 14, indecent assault and battery on a mentally retarded person, rape, rape of a child, kidnapping, enticing a person for prostitution or sexual intercourse, drugging a person for sexual intercourse, inducing a person under 18 into prostitution, open and gross lewdness and lascivious behavior, dissemination of matter harmful to a minor to a minor, posing a child in a state of nudity, and possession of child pornography.

Prosecution Process

Six months before an inmate convicted of a sexual offense is due to be released, the Office receives notice from the DOC, HOC and Parole Board. The Office reviews materials to determine if the inmate is "likely" a sexually dangerous person. If making this determination, this Office reviews the facts of the sexual offense crime, any sex offender treatment records, risk and protective factors, any disciplinary reports of the inmate while incarcerated, and the inmate's version of the sexual offense crime. If the Office determines after review that the inmate is "likely" a sexually dangerous person, a petition is filed in Superior Court setting out sufficient facts to support the allegation.

Pursuant to G.L. c. 123A, § 12(c), (d), the person named in the petition is entitled to a probable cause hearing before a Superior Court Justice to determine whether the case should proceed to trial. At the hearing, the person has the right to be represented by counsel, to present evidence, to cross-examine witnesses, and to view and copy all petitions and reports in the court file.

If the Court finds probable cause that the person is a sexually dangerous person, he is committed to the Massachusetts Treatment Center for a period of up to 60 days for examination and diagnosis. Two "qualified examiners," defined in G.L. c. 123A, § 1, are appointed for this purpose. The person named in the petition has the right to counsel, and counsel is appointed for indigent persons. The person named in the petition may retain his own expert(s).

If one or both of the qualified examiners find that the person is a sexually dangerous person, the Commonwealth may file a trial petition pursuant to G.L. c. 123A, § 14. The person named in the trial petition is entitled to counsel, which is appointed for indigent persons, and to retain experts. The trial may be before a judge or a jury, which must find "unanimously and beyond a reasonable doubt that the person named in the petition is a sexually dangerous person." Upon such a finding, the person is committed to the Massachusetts Treatment Center for one day to life.

A person found to be a sexually dangerous person may appeal that finding. The person is also entitled to file a petition for examination and discharge pursuant to G.L. c. 123A, § 9 once every twelve months. In addition, the DOC may file a discharge petition if it believes that a person is no longer a sexually dangerous person. Under § 9, a petitioner has the right to a speedy hearing before a Superior Court Justice. A petition is examined by two qualified examiners. Unless the trier of fact concludes that such person remains a sexually dangerous person, it "shall order such person to be discharged from the treatment center."

Cases Handled by the Middlesex District Attorney's Office

The Middlesex District Attorney's Office handles a substantial number of Sexually Dangerous Persons cases. Between November 1999 and January 2015, the Office reviewed 2,132 referrals for prosecution. Of those cases, probable cause petitions were filed in 114 cases. Of these, no probable cause was found in 2 cases. In the cases that proceeded to trial, 23 persons were found not to be sexually dangerous persons; 36 persons were found to be sexually dangerous persons; and 52 trial petitions were withdrawn. As of January 2015, the Office had 4 sexually dangerous persons cases pending.

Please feel free to contact me with any questions regarding this Office's handling of Sexually Dangerous Persons matters.

Sincerely,

Marian T. Ryan
District Attorney
Middlesex County

Summary of Presentation- Raymond Knight (Prevention)

Putting Sex Offender Specific Legislation in Perspective:

The Importance of Primary Prevention

To date in an effort to protect the public and reduce sexual violence, Massachusetts has allocated the vast majority of available resources to implementing specific sex-offender crime control strategies that focus on reducing the recidivism of identified sex offenders. Evaluating the efficacy of these efforts is the primary purview of the Sex Offender Recidivism Commission (SORC). The current brief presentation attempts to contextualize the focus of the state's efforts within a broader overview of the estimated problem of sexual aggression in general and to evaluate the extent of the state's initiatives. We then examine how effective the sex offender specific legislation has been in achieving its goal of reducing recidivism and decreasing the frequency of sexual aggression.

Contextualizing the Focus of Sex Offender Specific Legislation within the General Problem of Sexual Aggression

Sex offender specific legislation includes registration and community notification laws, residency restrictions for sex offenders, electronic monitoring laws, and sexually violent persons (SVP) civil commitment statutes. All of these laws target offenders who have been convicted of sexual crimes, and they strive to protect the public by reducing the likelihood that these offenders will recidivate.

For a clear perspective on the overall effect of these policies, it is essential to place the present legislative efforts within the frame of reference of the overall problem of sexual aggression in the state. One way to do this is to consider the proportion of offenses each year that are

perpetrated by repeat offenders, who are the sole target of all these legislative efforts. We begin that contextualization by focusing on the proportion of all arrests in a state for sexual crimes that are committed by repeat offenders. Two studies assessing offenders in a total of five states (Sandler, Freeman, & Socia, 2008; Zgoba et al., 2015) suggest that this rate is approximately 5 percent. This means that if the current legislative strategies were completely effective, they would prevent only 5 percent of the arrests for sexual assaults in each year.

We know from other sources that arrests capture only a portion of the sexual violence problem. Only approximately a fifth of all *reported* sexual assaults lead to arrest (e.g., FBI, *Uniform Crime Reports, Arrest Data*: 2006-2010—22% of reported lead to arrest). If we assume that most reports involving repeat offenders would likely lead to arrest because of the high law enforcement profile of such offenders, we can estimate that only 1.1% of repeat offenders would be involved in reported sexual crimes, so current legislatives strategies would prevent only approximately 1 percent of reported sexual assaults.

Reported sexual assaults unfortunately represent only a small portion of all sexual crimes. It is estimated that 32% of actual sexual assaults are reported (e.g., Justice Department, *National Crime Victimization Survey*: 2008 - 2012). Here we would have no reason to believe that repeat offenders would be a smaller percent of reported than non-reported crimes, so their percent of all *estimated* crimes would remain at approximately 1%. Hence, we can conclude that all of sex offender specific legislation is focused on approximately 1% of the general problem of sexual aggression.

Efficacy of Sex Offender Specific Legislation

There is now a growing empirical literature evaluating the costs and consequences of recent sex offender specific legislative initiatives (cf. Calkins, Jeglic, Beattey, Zeidman, & Perillo [2014] for a review). The literature indicates that in addition to focusing on only a small part of the general

problem as documented above, current strategies to reduce the recidivism of known offenders have not been effective. We briefly consider these results for each legislative initiative in turn.

Registration and Community Notification Laws (RCNL). There is no evidence that RCNLs have reduced sexual recidivism (e.g., Zgoba & Bachar, 2009), and there are some data that suggest these laws may have increased recidivism (Prescott & Rockoff, 2011). The only advantage of such laws may be that they contribute to more rapid detection (Freeman, 2012), an advantage that would likely be achieved solely with law enforcement notification. RCNL's negative effects both on offender reintegration into the community and on their employment opportunities are factors that increase life stress and potentially contribute to increased recidivism.

Residency Restrictions. There is no evidence that links residential proximity to child-dense areas and sexual recidivism (e.g., Duwe, Donnay, & Tewksbury, 2008). Analyses of geographic locations of sexual crimes have indicated that few sexual offenses occur in child-dense areas (4.4%; Colombino, Mercado, Levenson, & Jeglic, 2011). Moreover, further analysis of offenses in child-dense areas has revealed that stranger perpetration against a minor in child-dense, restricted areas accounts for only .05% of sexual offenses (Calkins, Colombino, Matsuura, & Jeglic, 2015). The infrequent occurrence both of sexual crimes in child-dense locations and the extremely low prevalence stranger molestations in these areas question the usefulness of residency restrictions. Moreover, such laws make it difficult for sex offenders to find suitable housing, contribute to their homelessness, and remove offenders from the essential social services and personal supports that foster desistance (e.g., Levenson, 2008).

Global Position Systems Monitoring (GPS). The empirical assessment of the effects of the use of GPS technology on recidivism has been limited and mixed (cf. Calkins et al., [2014] for a review). Only one study (Gies et al., 2012) has found that the use of GPS reduces recidivism, and

several studies have found no effect (Calkins et al., 2014). All agree that the technology is expensive, substantially increases staff work time, is plagued by a serious false alarm problem, and falsely increases the public sense of security (Armstrong & Freeman, 2011; Payne & Demichele, 2011). Its negative consequences include isolating the offender and reducing offender employment opportunities, thereby precluding factors that increase desistance. Although the present data are inconsistent, even if its technological problems were to be solved, most agree that because of its cost GPS should be used sparingly on only the highest risk offenders with attention to individual offender proclivities.

Civil Commitment Statutes. The history of civil commitment of sex offenders has been considered in detail in another summary document submitted to the SORC, and its pros and cons have been discussed. Because it ultimately incapacitates so few offenders, it has negligible effects on overall sexual offense rates. It is a costly strategy with a high false positive commitment rate.

Conclusion

Current sex offender specific legislative strategies prioritize prediction over prevention and focus substantial resources on addressing a small part of the problem of sexual aggression. Unfortunately, the strategies thus far adopted have been aimed more at assuaging public fears than using empirical research to guide effective public policy. The SORC has the opportunity to recommend a change in direction and the beginning of a public policy that implements best practices in the management of sex offenders and encourages an increased focus on primary prevention. As indicated in the other presentations to the SORC, primary prevention offers the best hope for reducing the overall problem of sexual violence, and ultimately it will be the most cost-effective strategy.

References

Armstrong, G. S., & Freeman, B. C. (2011). Examining GPS monitoring alerts triggered by sex offenders: The divergence of legislative goals and practical application in community corrections. *Journal of Criminal Justice, 39(1),* 175-182. doi:10.1016/j.jcrimjus.2011.01.006

Calkins, C., Colombino, N., Matsuura, T., & Jeglic, E. (2015). Where do sex crimes occur? How an examination of sex offense location can inform policy and prevention. *International Journal of Comparative and Applied Criminal Justice, 39(2),* 99-112.

Calkins, C., Jeglic, E., Beattey, R. A., Zeidman, S., & Perillo, A. D. (2014). Sexual violence legislation: A review of case law and empirical research. *Psychology, Public Policy, and Law, 20(4),* 443-462.

Colombino, N., Mercado, C. C., Levenson, J., & Jeglic, E. (2011). Preventing sexual violence: Can examination of offense location inform sex crime policy? *International Journal of Law and Psychiatry, 34,* 160-167. doi:10.1016/j.ijlp.2011.04.002

Duwe, G., Donnay, W., & Tewksbury, R. (2008). Does residential proximity matter? A geographic analysis of sex offense recidivism. *Criminal Justice and Behavior, 35(4),* 484-504. doi:10.117/00938554807313690

FBI, *Uniform Crime Reports, Arrest Data*: 2006-2010

Freeman, N. J. (2012). The public safety impact of community notification laws: Rearrest of convicted sex offenders. *Crime & Delinquency, 58,* 539-564. http://dx.doi.org/10.1177/0011128708330852

Gies, S., Gainey., Cohen, M., Healy, E., Duplantier, D., Yeide, M., . . . Hopps, , M. (2012, March 31). *Monitoring high-risk sex offenders with GPS technology: An evaluation of the California supervision program.* Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/238481.pdf

Justice Department, *National Crime Victimization Survey.* 2008-2012

Levenson, J., (2008). Collateral consequences of sex offender residence restrictions. *Criminal Justice Studies, 21(2),* 153-166. doi:10.1080/14786010802159822

Payne, B. K. & Demichele, M. (2011). Sex offender policies: Considering unanticipated consequences of GPS sex offender monitoring. *Aggression and Violent Behavior, 16(1),* 177-187. doi:10.1016/j.avb.2011.02.002

Prescott, J. J., & Rockoff, J. E. (2011). Do sex offender registration and notification laws affect criminal behavior? *The Journal of Law and Economics, 54(1),* 161-206.

Sandler, J. C., Freeman, N. J., & Socia, K. M. (2008). Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law. *Psychology, Public Policy, and Law, 14,* 284-302.

Zgoba, K. M., & Bachar, K. (2009). Sex offender registration and notification: Limited effects in New Jersey. *In short: Toward criminal justice solutions.* U.S. Department of Justice. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/225402.pdf

Zgoba, K. M., Miner, M., Levenson, J., Knight, R., Letourneau, E., & Thornton, D. (2015). The Adam Walsh Act: An examination of sex offender risk and classification systems using data from four states. *Sexual Abuse: A Journal of Research and Treatment.* doi: 10.1177/1079063215569543 .

Summary of Presentation- Raymond Knight (Commitment)

Civil Commitment: Dubious Solution to a Serious Problem?

This presentation to the Sex Offender Recidivism Commission (SORC) was intended to give a cursory overview of the history of civil commitment laws for sex offenders in the USA in general and in Massachusetts in particular, to summarize the current status of such laws, and to discuss the pros and cons of this sex offender specific legislative initiative.

Brief History of Civil Commitment in the US and Massachusetts

Civil commitment laws for sex offenders have been enacted in two temporal waves. Both waves have been precipitated by salient, high profile sex offender cases that caught the attention of the press, who publicized the incidents and sparked a public outrage and demand for legislative action. The first wave started in the 1930s in California, Illinois, Michigan, and Minnesota, and at its height in the early 1960s there were sexual predator commitment laws in 26 states and the District of Columbia. Supported by a belief in the efficacy of psychotherapeutic interventions for sex offenders, this first wave created treatment centers that were alternatives to incarceration. These commitment laws were established under the *parens patriae* power to protect others from the violence of mentally ill persons. A current residual in commitment laws still requires that sex offenders must suffer from a "mental abnormality or personality disorder" that predisposes them to commit future acts of sexual violence.

This first wave waned in the 1960s and 1970s because of the growing conviction that sex offenders were not mentally ill, that treatment was ineffective, and that treatment centers for sex offenders were costly to maintain. There was a shift to determinative sentencing of sex offenders. The disapprobation with treatment coincided with the growing, now discredited "nothing works

era" in criminology in general (Andrews & Bonta, 2006; Martinson, 1974).

In response to a widely publicized case of an offender who sexually molested and killed two young boys shortly after being released from prison, Massachusetts passed its first sexually violent persons (SVP) law (in MA this law is commonly called the sexually dangerous persons law [SDP], but for consistency with the general literature SVP will be used here) and subsequently established the Massachusetts Treatment Center (MTC) in Bridgewater in 1959. This law was abolished in 1990 after a commission appointed by Governor Dukakis determined that the SVP law did not enhance public safety. During the 21-year tenure of the first enactment of this law in Massachusetts 5000 convicted sex offenders were referred for evaluation as SVPs in Massachusetts; 1900 of these were considered to have probable cause and were transferred to MTC for a 60-day evaluation. Of the 1900, 570 were committed from day to life, and 1330 were released back to prison.

In the same year that Massachusetts repealed its first SVP legislation, a high profile sexual crime in the state of Washington precipitated the beginning of the second national wave of sex offender civil commitment legislation. Currently, 20 states and the District of Columbia have SVP commitment statutes. It was estimated that in 2010 alone these states spent $500 million to detain 5200 offenders ("Sex Offender Confinement," 2010). In Minnesota it was recently determined that the per diem cost for each committed sex offender is $344 or $125,560 annually (Herbart, 2015, personal communication). Although there are substantial differences among the states in their SVP statutes, the criteria for commitment typically require (a) a history of sexual violence; (b) current mental disorder or abnormality; (c) likelihood of future sexual crimes; and (d) a link between the first two elements and the third (*Kansas v. Hendricks,* 1997). Because the mental "disorder" required in SVP legislation is not the gravely disabling type (e.g., psychosis) used to support traditional civil commitment (Mercado, Schopp, & Bornstein, 2005), and because the laws do not require proof of

imminent danger (Jackson & Richards, 2007), the criteria for SVP commitment are looser and more open to interpretation than the traditional civil commitment of the mentally ill.

In 1999 Massachusetts reestablished its SVP law. Since then it has been roughly estimated (generalized approximately from data from the Massachusetts District Attorney's Association [2010] and MTC records) that 20,270 offenders have been referred to the District Attorneys; 1095 were transferred to MTC for full evaluation; and of those transferred 251 were committed to MTC and 844 were released. Since 1999, 122 committed offenders have been released to the community as no longer sexually dangerous. The commitment process in Massachusetts involves multiple steps: (a) referral to the District Attorneys (DA); (b) filing of an SVP petition and transfer to MTC (5% of DA referrals); (c) determination of probable cause (75% of SVP petitions); (d) trial for SVP (41% of SVP petitions); and (e) determination of SVP (22% of SVP petitions and approximately 1.2% of DA referrals).

Pros and Cons of Civil Commitment

The use of civil commitment of sex offenders as a strategy for enhancing public safety has generated considerable debate in both clinical and legal circles (Douard, 2007; Janus & Prentky, 2003). Proponents see SVP commitment as an essential tool for incapacitating the highest risk subgroup of sex offenders, and some argue that it is a means to provide recidivism-reducing treatment interventions that would not be available in general prison settings. It is a solution that has "intuitive simplicity," if it were truly possible to identify with little error the most serious offenders. Assuming high predictive potency of assessment instruments, most court decisions in response to challenges (often involving due process, ex-post facto, and double jeopardy clauses) have upheld the constitutionality of SVP statues.

On the other hand, opponents raise a number of scientific, practical, legal, and philosophical objections to the strategy. Included among their criticisms are: (1) The clinical criteria for commitment have been defined by legislative bodies rather than by researchers and clinical scientists who study both criminal prediction and psychopathology. The mental "disorders" typically used in the commitment process (e.g., paraphilias, personality disorders, impulse disorders) have been found to be dimensional, not categorical, and the empirical bases for traditional cutoffs are limited or non-existent (e.g., Paraphilia, OSDP, nonconsent; Knight, 2010; Knight, Sims-Knight, & Guay, 2013). The links of specific mental disorders to the prediction of sexual coercion or its frequency are often tentative at best. (2) The available projected likelihoods for sexual recidivism are vague, often lower than popularly believed, and often sample-specific (Helmas, Hanson, Thornton, Babchishin, & Harris, 2012). For instance, the 2 to 25 year follow-up recidivism rate of *highest* category in Static 99R (6 or greater) for those committed to MTC in the first SVP wave was 34.9% (Knight & Thornton, 2007). Yet, the Supreme Court approval of civil commitment was predicated on the ability of actuarials to identify offenders with almost certain probabilities of recidivism. (3) Although the predictive potency of current empirical actuarials is adequate for differentiating among offenders for treatment and management, they are inadequate to the task of indeterminate commitment, even if done under optimal conditions (i.e., they are mechanically applied), because of the high cost of false positives and the low baserate of SVP (Knight, 2003). (4) Optimal practice for predicting recidivism (direct mechanical application of actuarials without clinical adjustment) is not implemented in SVP hearings. Adjustments by clinical evaluators inevitably yield lower predictive accuracy (Hanson & Morton-Bourgon, 2009). (5) The treatment of committed offenders is compromised, because offenders cannot demonstrate they have learned from past transgressions so that they can be judged fit for release unless they participate in treatment, but participation in treatment can lead to self-incrimination. Moreover, within the confines of incarceration it is difficult to judge improvement.

As we have seen the commitment strategy is very expensive, and because it ultimately involves so few committed offenders, it has little impact on the overall frequency of sexual coercion in the state. Consequently, it represents a substantial allocation of resources for an apparently small benefit. There are cheaper alternatives that do not rely on the dubious strategy of incarcerating someone on the basis of what we predict he might do. These include–(a) SVP status hearings at criminal sentencing to increase sentences and mandate treatment; (b) lifetime probation (e.g., Arizona); (c) an outpatient commitment program with careful community monitoring and therapeutic management (e.g., Texas, but there have been problems with this particular implementation); and (d) the circles of support strategy successfully implemented by Robin Wilson in Florida (McWhinnie & Wilson, 2005).

References

Andrews, D. A., & Bonta, J. L. (2006). *The psychology of criminal conduct* (4th ed.). Cincinnati, OH: Anderson.

Douard, J. (2007). Loathing the sinner, medicalizing the sin: Why sexually violent predator statues are unjust. *International Journal of Law and Psychiatry, 30*, 36-48. doi.org/10.1016/j.ijlp.2006.04.004

Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment, 21*, 1-21.

Helmas, L., Hanson, R. K., Thornton, D., Babchishin, K. M., & Harris, A. J. R. (2012). Absolute recidivism rates predicted by Static-99R and Static-2002R sex offender risk assessment tools vary across samples: A meta-analysis. □ *Criminal Justice and Behavior, 39(9),* 1148-1171. doi: 10.1177/0093854812443648.

Jackson, R. L., & Richards, H. J. (2007). Diagnostic and risk profiles among civilly committed sex offenders in Washington State. *International Journal of Offender Therapy and Comparative Criminology, 51,* 313-323. doi.org/10.1177/0306624X06292874

Janus, E. S., & Prentky, R. A. (2003). Forensic use of actuarial risk assessment with sex offenders: Accuracy, admissibility and accountability. *The American Criminal Law Review, 40,* 1443-1499.

Kansas v. Hendricks 521 U.S. 346 (1997). .

Knight, R. A. (2003). Risk assessment of recidivism: Discussion of the section, comments by Dr. Knight. In R. A. Prentky, E. Janus, & M. Seto (Eds.), *Sexual coercion: Understanding and management* (pp. 241-244). New York: New York Academy of Sciences.

Knight, R. A. (2010). Is a diagnostic category for paraphilic coercive disorder defensible? *Archives of Sexual Behavior, 39,* 419-426.

Knight, R. A., Sims-Knight, J. E., & Guay, J.-P. (2013). Is a separate disorder category defensible for paraphilic coercion? *Journal of Criminal Justice, 41,* 90-99. http://dx.doi.org/10.1016/j.jcrimjus.2012.11.002

Knight, R. A., & Thornton, D. (2007). *Evaluating and Improving Risk Assessment Schemes for Sexual Recidivism: A Long-Term Follow-Up of Convicted Sexual Offenders.* Final Report, NCJ 217618, http://nij.ncjrs.gov/publications

Martinson, R. (1974). What works? Questions and answers about prison reform. *Public Interest, 35,* 22-54

McWhinnie, A. & Wilson, R. J. (2005). Courageous communities: Circles of support and accountability with individuals who have committed sexual offenses. *Restorative Practices E Forum.* Retrieved from http://www.iirp.org/2005/11/03

Mercado, C. C., Schopp, R. F., & Bornstein, B. H. (2005). Evaluating sex offenders under sexually violent predator laws: How might mental health professionals conceptualize the notion of volitional impairment? *Aggression and Violent Behavior, 10,* 289-309. http://dx.doi.org/10.1016/j.avb.2003.12.003

Sex offender confinement costing states too much. (2010, June 22). Retrieved from http://www.cbsnews.com/stories/2010/06/22/national/main6605890.shtml

Summary of Presentation- Raymond Knight (Risk Evaluation)

Risk Evaluation: Maximizing Risk Accuracy

The first presentation to the Sex Offender Recidivism Commission (SORC) was intended to give a brief overview of the history and mechanics of risk assessment as it has been applied to managing sex offenders. The presentation attempted to place the practices currently used in Massachusetts in an historic, social/political, and methodological context in the hope of guiding discussion about strategies that might be pursued for improving the psychometric reliability and empirical validity of assessment in the state, so that dispositional decisions about the treatment and management of sex offenders might be improved, and public safety might be enhanced.

Brief History of Risk Assessment

Bonta (1996) identified the use of unstructured professional opinion as the *first generation* of risk assessment procedures. This strategy involved assessments that neither specified relevant items nor prescribed a method for combing items to determine risk level. Such unrestricted, unguided clinical prediction has long been recognized as an unreliable and undependable metric for predicting future violence (Monahan, 2007).

The introduction of empirical evidence to guide assessment demarcates Bonta's *second generation* of risk assessment. Hanson and Morton-Bourgon (2009) identified a number of strategies in this second generation. Structured clinical guidelines (SCG) address the issue of which items should be considered. The more sophisticated provide clear anchors and numeric values for recommended items, but none give guidance on how to combine these items. Consequently, SCGs provide no tables linking summary scores to recidivism rates. Empirical actuarials comprise

empirically derived items with well-defined, quantitative anchors for rating. They specify the method for combining these items into an overall score, and they provide tables linking the summary scores to recidivism rates. Mechanical actuarials are like their empirical counterparts in quantifying items and prescribing algorithms for combining items, but they do not provide tables linking the resultant summary scores to predicted recidivism rates. In a practical context empirical and mechanical actuarials can be applied directly, or evaluators can be allowed to adjust their scores using evidence purportedly external to the actuarial.

We are currently in the *third generation*, which is less well researched. The second generation focused on static risk factors, which are fixed or historical factors that cannot be changed. The third generation has introduced the assessment of dynamic risk factors or "criminogenic needs." Dynamic risk factors are characteristics that are both capable of change and their change is associated with modifications (up or down) in recidivism risk.

Historical and Socio-Political Context for Evaluating the MA SORB Classification Factors

The MA Classification Factors for sex offenders were developed in the mid 1990s. The instrument is a SCG because it suggests the domains that evaluators should consider in their judgments about assigning offenders to tiers or risk categories, but it does not have rules on how to combine or weigh items in reaching a decision. Moreover, its items do not have specific anchors, do not provide clear cutoffs for presence or absence of domains, do not result in the assignment of numerical values to item judgments, and at times conflate multiple domains within a single item. Thus, it is not possible to evaluate the reliability or predictive validity of these items or to use empirical research to improve the items or how they are combined in the instrument. One could only generally assess the reliability and predictive validity of the ultimate level recommendations of evaluators, if such independent judgment data were systematically recorded. It is less sophisticated

than the more quantitative SCGs, and thus although historically it would be classified as a second-generation instrument, it falls short of other SCGs and is significantly inferior to empirical and mechanical actuarials.

Massachusetts is not alone in its use of suboptimal instruments to classify sex offenders. De facto "tiering" (i.e., categorizing sex offenders in some manner for differential dispositional decisions) occurs in 98% of the states. Only 6% of states use standard mechanical actuarials to make their decisions about offender classification, and an additional 6% have generated their own mechanical actuarials. Two other states with MA (6%) use SCGs. The remaining 80% either do not specify criteria for decisions (17%) or simply use crime categories for classification (63%).

Comparing the Efficacy of Risk Assessment Strategies

The two essential determiners of whether a particular risk assessment strategy is viable are measures of reliability and validity. The former assesses the accuracy or freedom from measurement error of a strategy, which in this area is typically assessed by the agreement between independent raters and the covariations among items in a scale. Validity addresses the question about whether a construct measures what it is purported to measure. In risk assessment the ability of a strategy to predict recidivism is the critical test of validity that determines whether the strategy does what it purports to do.

The reliability of the MA Classification Factors has never been established. The lack of specification of judgment criteria suggests that in its current format it would not achieve adequate levels of interrater reliability. Covariation among its items cannot be calculated in its present format.

A recent meta-analysis by Hanson and Morton-Bourgon (2009) found that empirical and mechanical actuarials were significantly more accurate than SCGs and unstructured judgments in predicting sexual recidivism among sex offenders. This study also found that when clinicians

adjusted scores, the resultant scores showed lower predictive accuracy than unadjusted scores. Zgoba et al. (2015) found in their four-state follow-up study that the crime-based Adam Walsh Act (AWA) criteria either did not predict sexual recidivism at all or in the case of Florida significantly predicted in the opposite direction. This study clearly indicates that simple crime-based sorting of sex offenders, the most common classification process across states, is not a viable tiering strategy. The state-generated tiering systems examined in Zgoba et al. performed better than AWA criteria, but did not reach statistically significant levels of prediction accuracy. The Minnesota actuarial, the Minnesota Sex Offender Screening Tool Revised (MnSOST-R; Epperson, Kaul, & Hesselton, 1999) has been successful in other contexts (e.g., Knight & Thornton, 2007), suggesting that the poor performance of the state instruments in Zgoba et al. might be due to the practice of allowing clinical adjustment of their actuarials in determining tier assignment. A substantial literature has consistently found that mechanical actuarials are superior in predictive accuracy to both clinical judgments and judgments that allow clinical adjustments (Grove, Zald, Lebow, Snitz, & Nelson, 2000), and the reasons for this superiority have been documented (Grove & Meehl, 1996).

These studies, which are representative of the general empirical literature, provide a context both for evaluating the efficacy of the MA Classification Factors and for recommending strategies to improve it. They indicate that the current tiering classification strategy is suboptimal, and they provide two models for improving the accuracy of our decision making—(a) adopting an already well-validated Empirical Actuarial like the Static-99R (e.g., Oregon); or (b) attempting to transform the current criteria into an empirical actuarial (like New Jersey's Registrant Risk Assessment Scale).

Advantages and Disadvantages of Different Improvement Strategies

Adopting, as Oregon did, an already validated empirical actuarial has the advantages that one can choose a classification strategy that (a) uses items empirically supported by the current research literature based on extensive follow-up data, (b) provides specified, anchored criteria for items with quantitative item assignments, (c) has a specific algorithm for combining items into a total score, and (d) proposes recidivism rates based on specific scores. Moreover, the adoption of this strategy can be supplemented by the addition of standard dynamic risk assessment tools that, if applied mechanically, can both increase predictive accuracy and permit the assessment of risk change (e.g., Hanson, Helmus, & Harris, 2015; Thornton & Knight, 2015). The disadvantages of this strategy are that (a) the actuarial would not be fashioned specifically for the local state environment, and (b) because one would be tied to a standard instrument, one may be less likely to assess the instrument for continuous improvement. It is essential for accurate decisions to calibrate risk instruments to local samples and to continuously monitor such calibration (Helmas, Hanson, Thornton, Babchishin, & Harris, 2012).

Alternatively, if we begin with the current classification system as a point of departure and follow the example of those states that have attempted to generate their own actuarials, we would have the advantage of being able to create a classification tool that is (a) uniquely tethered to the local sex offender sample and matched to the state's individual decision processes, and (b) amenable to continuous improvement and responsive to ongoing feedback and evaluation. A model for how such a strategy could be implemented was discussed. The proposed implementation, however, illustrated the considerable disadvantages of this strategy. These included (a) the significant amount of resources that would have to be allocated to the process of revising the current criteria so that they are quantifiable, can be reliably applied, and have predictive validity, and (b) the long wait that

would be necessary to allow a prospective study of the new instrument's predictive accuracy (at least 5 years). Thus, the transformation of the current classification criteria into a reliable and valid instrument would be costly. Moreover, years would pass before it would be possible to gather sufficient evidence to support its validity and to allow calibration of its scores with recidivism frequencies. In contrast, if a standard empirical actuarial were adopted, there would be a considerably faster transition to functionality, and the implementation would be less costly.

Regardless of the strategy chosen, remaining with the status quo is not scientifically defensible. Whatever strategy is ultimately chosen, it must include the establishment of adequate reliability, clear mechanical rules for combining items to generate risk scores, clear mechanical rules for using dynamic risk assessments that would be useful in treatment and monitoring change, and built-in procedures for assessing efficacy and continuous improvement. Moreover, the New Jersey experience with implementing its risk assessment procedures has taught us that continuous monitoring of evaluator training and reliability is essential (Lanterman, Boyle, & Ragusa-Salerno, 2014). Subsequent presentations addressed the additional needs of taking into account special populations (e.g., juveniles, women, adults with either major mental illness or intellectual disabilities) when fashioning risk tools.

References

Bonta, J. (1996). Risk-needs assessment and treatment. In A. T. Harland (Ed.), *Choosing correctional options that work: Defining the demand and evaluating the supply* (pp. 18-32). Thousand Oaks, CA: Sage.

Epperson, D. L., Kaul, J. D., Huot, S. J., Hesselton, D., Alexander, W., & Goldman, R. (1999). *Minnesota sex offender screening tool - Revised (MnSost-R): Development performance, and recommended risk level cut scores.* Retrieved from www.psychology.iastate.edu/ faculty/epperson

Grove, W. M., & Meehl, P. E. (1996). Comparative efficiency of informal (subjective, impressionistic) and formal (mechanical, algorithmic) prediction procedures: The clinical-statistical controversy. *Psychology, Public, Policy, and Law, 2(2),* 293-323.

Grove, W. M., Zald, D. H., Lebow, B. S., Snitz, B. E., & Nelson, C. (2000). Clinical versus mechanical prediction: A meta-analysis. *Psychological Assessment, 12(1),* 19-30.

Hanson, R. K., Helmus, L., & Harris, A. J. R. (2015). Assessing the risk and needs of supervised sexual offenders: A prospective study using Static-99R and STABLE-2007. *Criminal Justice and Behavior.* doi: 10.1177/0093854815602094

Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment, 21,* 1-21.

Helmas, L., Hanson, R. K., Thornton, D., Babchishin, K. M., & Harris, A. J. R. (2012). Absolute recidivism rates predicted by Static-99R and Static-2002R sex offender risk assessment tools vary across samples: A meta-analysis. *Criminal Justice and Behavior, 39(9),* 1148-1171. doi: 10.1177/0093854812443648

Lanterman, J. L., Boyle, D. J., & Ragusa-Salerno, L. M. (2014). Sex offender risk assessment, sources of variation, and the implications of misuse. *Criminal Justice and Behavior, 41(7),* 822-843.

Knight, R. A., & Thornton, D. (2007). *Evaluating and Improving Risk Assessment Schemes for Sexual Recidivism: A Long-Term Follow-Up of Convicted Sexual Offenders.* Final Report, NCJ 217618, http://nij.ncjrs.gov/publications

Monahan, J. (2007). Clinical and actuarial predictions of violence. In D. Faigman, D. Kaye, M. Saks, J. Sanders, & E. Cheng (Eds.), *Modern scientific evidence: The law and science of expert testimony* (pp. 122-147). St. Paul, MN: West Publishing.

Thornton, D., & Knight, R. A. (2015). Construction and validation of SRA-Need Assessment. *Sexual Abuse: Journal of Research and Treatment, 27(4),* 360-375. doi: 10.1177/1079063213511120.

Zgoba, K. M., Miner, M., Levenson, J., Knight, R., Letourneau, E., & Thornton, D. (2015). The Adam Walsh Act: An examination of sex offender risk and classification systems using data from four states. *Sexual Abuse: A Journal of Research and Treatment.* doi: 10.1177/1079063215569543

Summary of Presentation- Stephanie Trilling

William N Brownsberger

Senate Chair

Special Commission to Reduce

The Recidivism of Sex Offenders

October 31, 2015

Dear Chairman Brownsberger:

I had the privilege of presenting to the Special Commission to Reduce the Recidivism of Sex Offenders on July 28th, 2015. The goals of my presentation, "Community Based Prevention", were to provide an overview of sexual violence prevention, describe a comprehensive approach, provide examples of evidence-informed strategies, and to allow time for discussion of challenges and implications for the Commission.

The Massachusetts Sexual Violence Prevention Plan[15] defines sexual violence as any sexual activity where consent is not obtained or freely given. It includes a broad continuum of violent and abusive behaviors including rape, sexual assault, sexual harassment, and non-contact sexual abuse such as verbal and cyber-harassment. Experiences of sexual violence are prevalent in Massachusetts and impact men, women, and transgender survivors. National and local data reflect that most survivors, regardless of gender, know their assailants. The Centers for Disease Control (CDC) uses the socio-ecological model to understand risk and protective factors for the primary prevention of sexual violence at the individual, relational, community, and societal levels.[16] Primary prevention focuses on the prevention of first time sexual offenses. A **comprehensive approach** to sexual violence prevention

[15] MA Department of Public Health. 2009. Massachusetts Sexual Violence Prevention Plan 2009-2016. Boston.. http://www.mass.gov/eohhs/docs/dph/com-health/violence/ma-has-plan.pdf

[16] CDC. (2015, February 10). *Risk and Protective Factors*. Retrieved October 31, 2015 from Sexual Violence: http://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html

includes interventions before violence has occurred (primary prevention) as well as the immediate responses to violence (secondary prevention), and long-term and systemic responses (tertiary prevention).

Two examples of evidence-informed approaches are Environmental Interventions and Bystander Skills Training:

- Environmental Interventions, such as the "Shifting Boundaries" intervention researched by Nan Stein in New York City public middle schools, combined classroom lessons with building interventions.[17] The research found that schools that used both, or only the building interventions, saw much lower rates of sexual and physical violence than schools that only used classroom lessons. The intervention called for creating changes in the environment based on information gathered from students mapping safe places in the school. They also trained students and staff to use the "Respecting Boundaries Agreement" when incidents occurred between students.

- Bystander Skills training has been shown to increase individuals' ability to intervene in situations before sexual violence occurs.[18] Bystander Intervention training (Massachusetts Department of Public Health, 2009) is successfully being used all over the country and in programs like Green Dot and Mentors in Violence Prevention (MVP).

Finally, there are many challenges to prevention work, most notably, the lack of a sustainable funding stream. Rape Crisis Centers in the Commonwealth receive Federal monies, Rape Prevention Education (RPE) funding, that is distributed by the Department of Public Health, however this funding does not cover the demand from communities for culturally relevant, evidence-based programming done to scale. To truly prevent sexual violence we must shift the culture, which requires sustained efforts over the long-term, anything else is a band-aid.

Sincerely,

Steph Trilling, LCSW

Manager of Community Awareness and Prevention Services

Boston Area Rape Crisis Center

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[17] Taylor, Bruce G., Nan D. Stein, Elizabeth A. Mumford, and Daniel Woods. 2013. "Shifting Boundaries: An Experimental Evaluation of a Dating Violence Prevention Program in Middle Schools." *Prevention Science* 14(1):64–76.

[18] Berkowitz, A. D. (2009). Response ability: A complete guide to bystander intervention. Chicago, IL: Beck & Co

Sex Offender Registry Board's Summary of Its Presentation to the Special Commission to Reduce Sex Offender Recidivism

The presentation of the Sex Offender Registry Board (SORB) provided an overview of its statutory and regulatory mandate and function. The Sex Offender Registry Law (SORL) was first established in the Commonwealth in 1996. Massachusetts was the last state in the U.S. to enact and implement a SORL as required by federal law, the Sex Offender Registry Notification Act (SORNA). To date, Massachusetts still has not yet substantially implemented SORNA. Massachusetts may never be capable of full SORNA compliance because the methodology we employ is so different than SORNA's crime-based preference for offender classification, coupled with limitations based on the Commonwealth's Constitution and related Court rulings. Massachusetts is one of only a few states to provide offenders such a significant and comprehensive degree of individualized analysis and due process. SORB operates under the Executive Office of Public Safety and Security.

SORB's Registration and Classification Process

SORB's primary function is the ongoing management of the registration and classification of approximately 11,500 sex offenders who reside, work, or attend an institution of higher learning across the Commonwealth. SORB must conduct an individualized and comprehensive assessment of an offender's "risk of reoffense and degree of dangerousness to the safety of the public." Offenders in Massachusetts are classified into three levels that determine the extent to which their identities and other limited information are disseminated. By statute:

> Level 1 offenders present a low risk of reoffense and the degree of dangerousness such that a public safety interest is not served by the public's access to any registration information.
>
> Level 2 offenders present a moderate risk of reoffense and the degree of dangerousness such that a public safety interest is served by public availability of limited registration information.
>
> Level 3 offenders present a high risk of reoffense and the degree of dangerousness such that a substantial public safety interest is served by public availability of, and active dissemination of, limited registration information.

At the time of our presentation to the Commission in March of 2015 there were 2,653 Level 1 offenders, 6,079 Level 2 offenders and 2,600 Level 3 offenders registered in the Commonwealth. Currently, in November of 2015, there are 2,726 Level 1 offenders, 6,120 Level 2 offenders and 2,642 Level 3 offenders registered in the Commonwealth.

SORB coordinates efforts between various public agencies across all 50 states and U.S. territories in order to compile a complete record of relevant information for all registered offenders to determine their classification level. One of seven governor-appointed board members from multi-disciplinary backgrounds then reviews the record, and based on the application of 24 regulatory factors, arrives at a preliminary classification. The factors are based on a balance of statutory requirements, research regarding sex offender recidivism, and the expertise of the Board. SORB's regulations, promulgated in 2001, are currently being revised.

Any offender who disagrees with the preliminary classification may request a de novo administrative hearing. A hearing examiner, with no prior involvement in the case, presides and then arrives at his or her own classification determination. These hearings are conducted at courthouses, correctional institutions, state hospitals, and local police and sheriff's departments across the Commonwealth. The hearings range from document-only proceedings that last less than one hour to hearings with testimony from multiple expert and character witnesses that can last for several days. The offenders are provided legal counsel if indigent, may elect to privately retain counsel, or may choose to represent themselves. The hearings are also closed to the public. A SORB attorney and the Petitioner both argue their cases and present evidence at the hearing. The presiding hearing examiner will often receive considerably more evidence from both parties than was available at the time of the preliminary classification. After the hearing, the examiner details his or her findings in a written report, determining SORB's final classification by applying the pertinent regulatory factors to the circumstances of the case.

It is important to note that this registration and classification process was designed as a quasi-legal qualitative, not quantitative, analysis, and was not intended to be limited to a clinical assessment of sexual recidivism risk alone. The offender has the right to appeal SORB's final classification to the Superior Court, which often occurs. The Court then makes findings as to whether the hearing examiner arrived at a legally-sound decision substantiated by evidence. Offenders also have the right to have their Superior Court decisions reviewed by the Massachusetts Appeals Court. In 2014, SORB conducted more than 430 classification hearings. Last year, of 40 unpublished Appeals Court rulings, SORB classifications were affirmed in court decisions 32 times, with four classifications vacated and four remanded for further Board action.

SORB recognizes that an offender's risk of reoffense and degree of dangerousness may change over time. SORB's regulations assure that the registration and classification process is fluid, and that the classification status of registered offenders is kept accurate and up-to-date. Offenders may periodically petition to have their classification status reduced due to new circumstances, including unforeseen, debilitating medical conditions. In addition, when new information is received that indicates that the offender may pose a higher risk and degree of dangerousness to the public, his or her classification status may be increased. Reclassifications are subject to an administrative hearing similar to that described above, including a written decision subject to appellate review. Certain offenders terminate from their obligation to register at statutorily delineated time frames.

The governing statute, regulations, and expertise of the Board also account for unique circumstances between cases. For example, there are multiple caveats and exceptions to registering and classifying juvenile sex offenders. Juveniles may be relieved of their registry obligations by the Trial Court before classification. All juvenile cases are preliminarily decided by the board member designated to have expertise with juvenile sex offenders. The duty to register terminates after 20 years, regardless of offense, for all offenders who committed their only sex offenses as juveniles. Similarly, juvenile sex offenders are not subject to the same time constraints regarding relief from their obligation to register as are adult offenders, and certain regulatory factors apply differently or do not apply at all to juvenile offenders.

Other SORB Operations and Functions

The SORB serves and performs numerous other functions across the Commonwealth related to its registry. First, SORB maintains a database aggregating timely updated information to 350 police

agencies, state criminal justice supervisory agencies, the FBI and the U.S. Marshals Service on a 24/7 basis. Second, it provides more than 10,000 address and name checks monthly for all licensed child care facilities, as well as tens of thousands of SORI (Sex Offender Registry Information) checks monthly to schools, youth organizations, day care centers, and other human services agencies in both Massachusetts and out of state. SORB also maintains more than 9,380 victims and their parents on file, who use provided information in their safety planning, who submit Victim Impact statements to aid in the classification process, and whom are apprised as cases move through our system. Lastly, SORB maintains a website to provide citizens daily updated information on active registered sex offenders as the law provides. SORB also provides regular trainings to human service agencies and law enforcement, and attends community meetings hosted within cities and towns across the Commonwealth.

SORB does not arrest, sentence, incarcerate, or impose probation or parole supervisory conditions or restrictions on offenders. SORB does not control where registered offenders live or work, or with whom they interact. We neither develop nor enforce any local jurisdictional ordinances or by-laws seeking to regulate sex offenders.

Conclusion

In abiding with the Sex Offender Registry Law, SORB strives to balance the rights of the individual registered offenders with legitimate concerns regarding public safety. SORB is often misunderstood and misrepresented as an Agency whose sole mission is to reduce recidivism. In fact, SORB is designed as informative tool for the general public, law enforcement and crime victims, to reduce the opportunity for further victimization through the dissemination of limited, pertinent information about offenders.

The Supreme Judicial Court has repeatedly upheld our classification methodology. While in recent years the SJC has commented on the need for SORB to update its risk factors, it has never suggested a wholesale overhaul to the system and process by which classification is performed. See, e.g., Doe v. Sex Offender Registry Board, No. 3844, 447 Mass. 768, 777 (2006) ("Although there may be other possible methodologies used to determine the risk of reoffense by offenders and the use of such alternatives may not pose additional fiscal or administrative burdens, the Legislature mandated the Board to designate and implement a specific, detailed methodology to be used in deciding offender classifications in this jurisdiction pursuant to G.L. c. 6, ss. 178C-178O . . . The regulations ensure adequate procedural safeguards and do not violate constitutional due process. Thus, because both the initial and final classification conformed to the regulations and guidelines properly promulgated by the board pursuant to G. L. c. 6, § 178K, presumptive or quantitative analysis in the decision-making process to identify the appropriate classification was not required.").

Recently, SORB's regulatory factors have been comprehensively updated to reflect accurately the current state of scientific knowledge on sex offender recidivism. SORB's revised regulations are currently in the promulgation process. Modifying the SORB classification process to become a more clinical assessment that utilizes minimally applicable tools that only moderately predict recidivism, and do not account for the high number of sex crimes that go unreported, would undercut SORB's critical mission to promote public safety.

Parole Board's Summary of Its Presentation to the Special Commission to Reduce Sex Offender Recidivism

- It has long been realized by community supervision professionals that sex offenders require different supervision and management standards than do non-sexual offenders

- In February of 1996, the Massachusetts Parole Board initiated the Intensive Parole for Sex Offenders (IPSO) unit. This was a pilot program, located in the Framingham Regional Parole Office, staffed by two parole officers with numerous years of experience in the supervision of adult offenders.

- The officers were assigned a special caseload of paroled sex offenders living in the Framingham area. The Unit developed and implemented stricter standards of supervision for these offenders.

- The IPSO team views its work as a collaborative approach to the management of sex offenders in the community.

- Their approach, known as the Containment Model, includes specially trained parole officers, a sex offender treatment provider, a polygraph examiner, and a victim advocate.

- The team's unifying goal is the safety of the general public.

- All members of the team have great respect for one another and trust that information is shared on a weekly basis. The flow of information works across the board from the time the offender is released on parole until he/she completes supervision.

- In August 2006, IPSO expanded to the Worcester, Lawrence and Springfield Regional Field Offices. With that expansion came further specialized training in computer forensics, treatment centered training, GPS training, digital camera and image training.

- The caseload of each IPSO officer is not to exceed 20 parolees, less than half the number carried by a non-IPSO officer.

- The IPSO teams uses the following enforcement techniques and supervision methods: sex offender registration, weekly, unannounced visits to the parolees home, work, counseling

and community, mandatory sex offender counseling, electronic monitoring, curfews, polygraph testing, random substance abuse testing for drug and alcohol use, travel, motor vehicle and driving restrictions, maintenance of mandatory daily diaries and interagency cooperation and collaboration.

- Common goals: #1 Public safety, ensuring that the offender is not engaged in risk activities, rapid recognition of warning signs (deviant cycle), enhancing offender's compliance and offender's disclosure in treatment.

- While there have been the expected technical violations, most frequently for drug or alcohol usage, to date not one IPSO-managed offender has been convicted of another sex offense while on parole.

- The loss of housing and employment opportunities has impacted offender stability and can adversely affect supervision but with continued collaboration transition back into the community is a possibility.

- SJC decision June 11, 2014 Lifetime Community Parole Supervision unconstitutional.

- Mandatory post supervision.

EOHHS INTERAGENCY COLLABORATION & PRACTICE RELATED TO PROBLEMATIC SEXUAL BEHAVIORS
March 2016

INTRODUCTION

Many EOHHS agencies have programs to assess and treat persons with problematic sexual behavior. Given the various missions of these agencies and the populations they serve, each agency's work is unique. While individuals with problematic sexual behavior have some commonalities, they are also different based on their age, comorbidities and other factors; therefore, each agency has its own treatment approaches. Clinicians, however, at our agencies consult each other regularly and work informally together frequently without any formal convening body.

It is also important to consider the number of people who receive services from an EOHHS agency and the extremely small percentage of those who have problematic sexual behaviors and even smaller number of SORB registered sex offenders.

For example:

- **Department of Mental Health (DMH):** Out of a population of approximately 20,000 adults, DMH serves 210 Sex Offender Registry Board (SORB) leveled offenders. Another 200-300 clients have been identified as having problematic sexual behavior but are not registered sex offenders and have differing degrees of involvement in assessment and treatment services.
- **Department of Developmental Services (DDS):** Serves about 33,000 adults with intellectual disabilities. Of this number approximately 89 are registered offenders. DDS estimates that it serves another 350 adults who have engaged in PSB, and who have not been charged or convicted.
- **Department of Youth Services (DYS):** Serves approximately 3,600 youth, about 630 of whom have been committed to DYS after an adjudication in a delinquency or youthful offender proceeding. As of 12/15/16, the DYS committed population included 22 youth who were committed on sexual offenses. Of the 22, 6 have been classified by the SORB, 9 are awaiting preliminary classification by the SORB, and 7 were relieved of the obligation to register. This figure does not include youth who have been committed on other offenses and who may exhibit sexualized behaviors requiring treatment.

As this document illustrates, EOHHS agencies have many programs and policies to appropriately assess and treat this small, high-needs population.

CURRENT INTERAGENCY WORK

EOHHS and SORB

The Sex Offender Registry Board (SORB) provides a list of Level II and Level III registered sex offenders to DMH on a monthly basis. This list is matched against the DMH client population so

that each Area is informed of clients we serve who have been so levelled. Clinicians that work with clients with mental illness and problematic sexual behavior (MI/PSB) use the lists to identify new clients who might need a full problematic sexual behavior assessment and/or specialized treatment and to stay informed about registration requirements. DMH clinicians assist clients in maintaining compliance with the SORB.

DDS and DMH

DDS and DMH have been meeting bi-monthly to collaborate. In 2015 this collaboration was solidified with a formal interagency committee on Autism. The Joint DDS/DMH Autism Committee was convened to provide overarching philosophy, policy and procedure development, oversight and monitoring of services needed and/or provided to those who are dually eligible. The first monthly meeting was in November 2015. Through the ISA with DDS, funds are available from DDS to procure problematic sexual behavior consultations by DMH contracted clinicians, as well as general clinical and risk management consultation.

In June 2016, a conference related to individuals with mental illness and problematic sexual behaviors will host a keynote address on the topic of Autism Spectrum Disorders, which has been the focus of DMH's recent collaboration with DDS.

DCF and DMH

DMH and DCF collaborate when a child is aging out of the DCF system. DMH psychologists evaluate clients in specialized settings (e.g., Stevens Home) when they are referred for MI/PSB issues prior to the transition to DMH as adults.

DMH and MCDHH

The DMH program to help individuals with mental illness and problematic sexual behavior has quarterly meetings with the Deaf Services division to address problematic sexual behavior with clients served by Deaf Services. MI/PSB clinicians have conducted full assessments for deaf clients in coordination with Mass Commission for the Deaf and Hard of Hearing, who provide interpreters.

CURRENT PRACTICES OF INDIVIDUAL AGENCIES

In general, each agency is responsible for its own supervision and assurance of standards. When a practice standard can be applied broadly, the experts from each agency are open to working together to develop a standardized approach. For example, an interagency clinical work group that consisted of representatives from DMH, DDS, MRC, DYS and DCF met between 2012-2013 and developed a set of guidelines for comprehensive assessments of clients with problematic sexual behavior that were accepted and adopted by all agencies (see Attachment 1: Guidelines-Comprehensive Assessment of Problematic Behavior)

1. DEPARTMENT OF MENTAL HEALTH

Mental Illness/Problematic Sexual Behavior Program

DMH has a statewide program specifically designed to address the assessment and treatment of persons with problematic sexual behavior. Additionally, each Area has developed programming that is responsive to the needs of their region. The statewide Mental Illness/Sexually Problematic Behavior (MI/PSB) Program target population includes: 1) persons who have past criminal charges and/or convictions for sex offenses and who have an obligation to register as a Sex Offender with the Sex Offender Registry Board (SORB) and 2) persons who demonstrate a variety of problematic sexual behavior(s) but with no prior or current involvement with the criminal justice system.

The services that are provided by the MI/PSB Program include:

- Assessment of persons in inpatient and community based setting
- Consultation to inpatient and community based mental health service provider
- Specialized treatment in inpatient and community based setting
- Coordination of specialized assessments and treatment services that are not available directly from the MI/PSB program for Department of Mental Health client
- Education and training for inpatient and community based service providers regarding the special needs of the population
- Participation in Area Risk Assessment Reviews and ongoing consultation regarding risk management

The role of the MI/PSB consultant is to provide an MI/PSB assessment to clients of the Department of Mental Health with co-occurring major mental illness and sexual behavior problems. The client's participation is voluntary. In addition, the MI/PSB consultant may provide consultation to the individual's primary treatment team regarding clinical issues related to MI/PSB issues. The MI/PSB consultant can:

- help provide information relevant to clinical decisions regarding MI/PSB clients
- make recommendations to the treatment team regarding the assessment, treatment and risk management needs of MI/PSB clients
- make referrals for MI/PSB-specific treatment after completion of the MI/PSB-specific assessment

The MI/PSB consultant works with the team to aid their clinical decision-making process regarding MI/PSB clients.

Approaches to Maintaining Professional Standards and Best Practices

DMH serves individuals with serious mental illness, who also have problematic sexual behaviors. The Program Director, Nancy Connolly, Psy.D. oversees the training of clinicians. Dr. Connolly is a licensed psychologist, a Designated Forensic Psychologist, a Qualified Examiner (for assessment of sexual dangerousness) and a member of ATSA. Dr. Connolly

previously was the Program Director for the Sex Offender Treatment Program at the Massachusetts Treatment Center for the Sexually Dangerous and the Department of Correction statewide prison sex offender treatment programs, including the program at MCI-Framingham for women. Dr. Connolly has been qualified in Superior Courts as an expert in sexual dangerousness.

DMH monthly MI/PSB trainings are offered by Dr. Connolly at 3 sites: Worcester Recovery Center and Hospital (WRCH), Taunton State Hospital inpatient unit and on-grounds program, and Tewksbury Hospital. Quarterly trainings are conducted at Metro Boston Mental Health Unit at Shattuck Hospital. Approximately 20 clinicians are involved in the monthly trainings. Three doctoral level psychologists conduct monthly group consultation to WRCH, supervise the DMH-contracted MI/PSB clinician for Western Massachusetts, oversee the supervision and training of MI/PSB clinicians at Mass Mental Health Center, and provide consultations with the outpatient clinicians and case management staff at Brockton Multi-Service Center outpatient MI/PSB program (opened in 2015) and Taunton on-grounds program.

DMH holds an Annual Conference where experts from around the country are invited to speak about sex offender issues and report on the current research. Approximately 75 clinicians attend the annual conference.

The 2015 Conference was on Sexual Offenses, Stalking and Internet Child Pornography: Reducing Recidivism by Making Important Clinical Distinctions with Dr. David Delmonico from Duquesne University as the keynote speaker. The 2014 Annual Conference on Recovery in an Uncertain and Changing World: Public Policy and Its Impact on Housing, Working and Living Among MI/PSB clients had Joan Tabachnick as the keynote speaker.

DMH has an Annual Treatment Retreat where updated treatment developments are reviewed. Approximately 30 clinicians attend the treatment retreat. The February 2016 retreat was a day-long training on the Sex Offender Treatment Needs and Progress Scale (SOTIPS) led by Robert McGrath, who co-developed the scale and revised it in 2015. His training to DMH was supported by a Department of Justice Federal Grant.

DMH is a sponsor of the NEARI press webinars that allows 15 DMH clinicians to participate in monthly webinars on sex offender issues. DMH is also a sponsor of the Annual MASOC/MATSA conference that allows 10 DMH clinicians to attend the conference for one day without cost.

DMH conducts an Annual Training for community providers at UMass Medical Center ("What Community Mental Health Providers Should Know") through the forensic training series. Also DMH provides training annually to the UMass Medical School forensic post-doctoral fellows and forensic psychiatry fellows on the assessment of individuals with problematic sexual behavior.

All of the DMH evaluators (state employees and consultants) are doctoral level psychologists required to have specified experience and who are licensed in Massachusetts through the state licensing board. MI/PSB treatment staff are licensed by their respective state licensing boards

and meet hiring requirements for their positions. Three of the MI/PSB psychologists have additional training as Designated Forensic Psychologists. The Designated Forensic Psychologists are required to maintain updated training on forensic/risk assessment issues in order to maintain their designation. DMH has two outpatient clinics for problematic sexual behavior, one at Mass Mental Health Center, which is affiliated with Harvard Medical School and the other at Brockton Multi-Service Center, which is Joint Commission accredited.

Approach to Incorporating Research-Based Methods of Assessment, Treatment and Risk Management into DMH/PSB Work

DMH works to assure that our psychologists, as part of their professional responsibility, stay apprised of the developments in the field. MI/PSB psychologists attend the annual ATSA conference, maintain continuing education through DMH and other programs, subscribe to professional journals, and participate in monthly assessment team meetings to discuss assessment issues. As stated above, the MI/PSB clinicians were trained in the most recent evidenced-based treatment progress assessment tool (2015 SOTIPS). At the 2015 treatment retreat, an Overview of Sex Offender Treatment (Relapse Prevention, Good Lives, Self-Regulation, and Risks-Needs-Responsivity) was presented, along with a presentation on The Skills System developed by Julie Brown, an evidenced-based treatment model for clients with developmental deficits. Clinical assessment and treatment tools are regularly introduced to our staff and discussed during our monthly trainings. As a group, individual cases are discussed by reviewing the assessment reports and scoring instruments, with subsequent discussion and recommendations for treatment and risk management. Case consultations and updated reviews are conducted regularly by our psychologists with our clinical teams at times with input from others such as Area Medical Directors; we also participate in area risk reviews.

From a program perspective, it is the DMH MI/PSB Program Director's responsibility to maintain evidenced-based practices. This is enhanced through various other levels of oversight including hospital credentialing and licensing requirements for our clinicians. Because the MI/PSB program is statewide, there is consistency in our delivery of MI/PSB assessments and treatment programs and the training provided to clinicians.

System for Measuring Progress and Evidence-Based Outcomes in Assessment, Treatment and Management

DMH assessment protocols include actuarial measures and structured professional judgment. Specifically, we use the Static-99R and the Risk for Sexual Violence Protocol (RSVP). These are evidenced-based and considered best practices for assessments. Progress in treatment is measured using the SOTIPS (see above) which we implemented in 2015. This is an evidenced-based instrument to assess an individual's progress in sex offender treatment. Risk management involves ongoing clinical consultation and development of treatment goals based on the clinical assessments we conduct. DMH uses a risks-needs-responsivity model in its work with individuals receiving MI/PSB services, with the highest risk clients receiving the most intensive services. As a person-centered agency, our programming is particularly attuned to individualized needs and developing treatment plans that are responsive to each person's learning styles.

2. MASSACHUSETTS REHABILITATION COMMISSION

Practice Regarding Problematic Sexual Behavior Assessment and Consultation Services

All clinical assessments, consultation, and treatment services funded by MRC (Community Living and Vocational Divisions) are performed by psychologists, neuropsychologists, social workers and other licensed mental health clinicians who are qualified through the Clinical Services RFR. This RFR stipulates qualification requirements for each licensed discipline. Clinicians who provide risk/forensic and PSB assessments are likewise qualified as service providers through this process; however, there are no specific qualifications for these clinicians contained within the RFR.

PSB evaluations are performed on a limited basis, and most often for individuals served by the Brain Injury and Statewide Specialized Community Services Department within the Community Living Division of MRC. Requests for such assessments are currently triaged by the Chief Neuropsychologist, who is responsible for making the referral to a clinical consultant who is skilled and experienced in PSB evaluations as documented in his/her response to the RFR.

Persons with a history of PSB, most of whom have not been adjudicated/leveled, may receive residential or other community-based services, also funded by MRC. Some of these individuals are Statewide Head Injury Program (SHIP)-eligible (i.e., exhibit a history of traumatic head injury) or Rolland Class Members. Clinical consultation to community-based programs, which may serve persons with PSB, is on an as needed basis and also provided by MRC-qualified clinical consultants on a case-specific basis. In addition, a subpopulation of individuals, with traumatic brain injury, who are eligible for Statewide Head Injury Program (SHIP) services are currently within the locked neurobehavioral unit at Kindred Hospital (Stoughton, MA). These individuals, whose placements are funded by MassHealth, have not been discharged to the community due to the lack of appropriate and funded residential options. Another subpopulation of individuals with PSB include youth who have transitioned from special education programs and whose adult services are co-managed and co-shared, with respect to cost, by MRC and other EOHHS agencies.

MRC also provides oversight, in collaboration with MassHealth, for the Acquired Brain Injury Waiver (Hutchinson v. Patrick lawsuit), and a subgroup of these eligible waiver participants exhibit a history of PSB and/or are adjudicated/leveled sex offenders. The first 24/7 residential program has recently been developed to serve 4 adult males who are ABI waiver participants and who exhibit a history of PSB.

3. DEPARTMENT OF YOUTH SERVICES

Management of Youth with Problematic Sexual Behavior

DYS currently has 22 youth committed on sex offense charges. DYS offers all youth a continuum of care. All committed youth are initially placed in an assessment unit, where an independently licensed Clinical Director, who is supervised by a licensed psychologist, oversees

the evaluation of each youth. A DYS caseworker is assigned. The clinician (a master's level clinician who is licensed or licensed eligible) and a DYS caseworker collect as much information as possible about the youth. Prior school and court records and any other assessments or information are collected. Interviews with parents, guardians, probation officers, therapists, teachers, etc. are done. The caseworker, sometimes with the clinician, does a home visit. The youth is interviewed a number of times, behavior and response to the unit are noted, and a comprehensive assessment, including a risk assessment is completed. In the case of a youth committed on a sex offense, an ERASOR evaluation is given. In a particularly complex case, an expert consultant might be asked to see the youth. Currently, the Department has contracts with nationally known adolescent sex offender experts, Dr. Frank DiCataldo and Dr. Phil Rich. Youths who are committed on non-sex offense charges that were pled down from a sex offense or who have a history of Problematic Sexual Behavior (PSB) are identified whenever possible to insure that these issues are addressed in treatment planning.

While a youth is in the assessment process, DYS ensures that the parents/guardians are aware that there will be a SORB and/or SDP process if the youth is subject to those statutes. DYS has an MOU with SORB regarding notification that a youth is in our custody. Thereafter DYS provides forms and information as required by SORB as the youth is given a provisional SORB level. If a youth appeals this level, the appeal hearing is held at a DYS office. DYS also notifies the CPCS office that assigns defense attorneys who represent the youth through the SORB process.

After assessment the youth is assigned to a treatment unit. Most youth are initially placed in a hardware secure treatment unit (locked access and tight security), although some youth might be placed in a long term staff secure treatment program (security is provided primarily by staff vigilance with few locked doors). In very rare cases, a referral to a non-contracted program outside DYS might be made. The Regional Review Team (RRT) decides which treatment unit fits the youth's needs based on the assessment by the assessment unit, the charges, and other factors. The youth's family or guardian and attorney are invited to the RRT meeting where this decision is made. The Regional Review Team consists of senior regional management staff including the Director of Operations, the Director of Residential Services, the Director of Community Services and the Regional Clinical Coordinator.

Youth committed to DYS on sex offenses are only assigned to units with clinicians who are trained in providing sex offender specific treatment. DYS had an ongoing consulting relationship with Dr. David Burton, a nationally known expert on adolescent sex offending from 2007 to 2012. In both 2007 and 2009, Dr. Burton provided a two semester graduate level course on sex offender treatment to DYS clinicians. In 2012, Dr. Burton provided all of the Assessment Unit clinicians with further training. In 2008, Dr. Burton provided trainings on the treatment and supervision of adolescent sex offenders to residential program staff and caseworkers. The treatment was cognitive behavioral, aimed at helping the youth recognize the factors involved in their offending, the thinking patterns that led to the offense(s), and how to manage these factors to avoid offending again. Work is done in both group and individual sessions along with family treatment whenever possible. In addition, the youths receive integrated educational services along with weekly DBT and substance abuse treatment groups in DYS programs.

From 2012 to the present, DYS has an ongoing consulting contract with Dr. Phil Rich, a juvenile sex offender expert, who has written books and workbooks on treatment and assessment for adolescent sex offenders. In the next three months, he will be providing eight all day workshops on treatment and assessment of sex offenders to DYS Clinical staff ranging from Licensed Mental Health Clinicians, Licensed Social Workers and Licensed Psychologists. Since 2012, Dr. Rich has also been consulting and providing treatment on specific cases.

DYS currently has 5 hardware secure units across the state and several staff secure units accepting sex offenders. Youth remain in their program until they have made sufficient treatment progress to step down either to the staff secure program and continue treatment or to the community. If going into the community, they continue in outpatient sex offender treatment. All youth in DYS residential treatment placements are formally presented at the Regional Review Team (RRT), 90 days prior to discharge from the program and 30 days prior to discharge from the program. The Regional Review Team has to approve the proposed service/treatment plan presented and agree that discharge from the program and the subsequent placement is appropriate. Again, the family or guardian and attorney are invited to these meetings.

DYS has custody of a youth until he/she turns 18 (straight commitment) or 21 (youthful commitment). Upon a youth's discharge from residential placement and prior to discharge, DYS provides community supervision and ensures that treatment and support services are available to the youth. DYS takes the youth to register with the local police and ensures he/she complies with SORB regulations as necessary. If a youth does not comply with their Grant of Conditional Liberty, DYS may bring him/her back into custody.

Seven months prior to a youth being allowed to have unsupervised access to the community, DYS prepares a packet of information to the District Attorney regarding the youth's progress. Each District Attorney's office decides whether they will proceed with a probable cause hearing regarding a Sexually Dangerous Person Commitment. If the District Attorney proceeds, then DYS does not allow community access. If probable cause is found, then the youth is transferred either to the MA Treatment Center in the case of a male or to Framingham in the case of a female.

4. DEPARTMENT OF DEVELOPMENTAL SERVICES

Risk Management for Problematic Sexual Behavior

The Department of Developmental Services (DDS) Risk Management system balances a responsibility to keep individuals safe with the Department's vision to promote personal independence and self-determination. In order to support the goal of taking a broad, pro-active approach to identifying risk, DDS understands that recognizing Problematic Sexual Behavior (PSB) is an on-going assessment for people with an Intellectual Disability (ID) who may lack social skills, be easily victimized and perpetrate a behavior that is naïve but which society views as criminal such as public nudity. While some conditions and risky behaviors are easily identified, the ability to discover and address less obvious potential risks is a more subtle and nuanced process. Supporters can utilize the wide array of information that is available that may be early warning signs of potential risk. Incident reports, restraint utilization, and investigation

reports are just a few examples of information that can point to issues that may indicate an individual at risk. In some situations, social skill building is needed with behavior planning and teaching. In others a more in depth assessment of an incident or pattern of behavior by a consultants to the Department, who are clinically skilled in the fields of ID/PSB, is requested through the Regional Risk Manager. Referrals to qualified clinicians follow the format and use standard forms as suggested by the PSB Interagency PSB Work Group.

Through the review of incident reports and a risk review with Area Offices simple but potentially dangerous risk factors are expected to be identified and addressed in the very early stages to avoid criminal involvement. A formal Risk Management Plan is developed after a clinical assessment is completed. This plan outlines supports and strategies, for housing, employment and health care to keep the individual and the public safe.

Regional Risk Managers and Area Directors are encouraged to follow the course of criminal complaints for any individual who is eligible for Department Services and is accused of a crime, as part of their risk management activity.

All individuals who have been found competent and have been convicted of a crime of a sexual nature and are required to register with the Sex Offender Registry Board (SORB) must have a Risk Management Plan and an evaluation by a DDS clinical consultant for PSB/ID. Risk Management Plans for these individuals are examined every six months to review current supports for the individual including health, housing and employment status. Individuals are encouraged to maintain annual registration with SORB on their own at their local police department, but are assisted to do this if access to transportation is difficult. In some cases where indicated, the Department supports on-going treatment with PSB/ID consultants for needed medical, psychiatric and group therapy as indicated for an individual's diagnosis of PSB.

5. DEPARTMENT OF CHILDREN AND FAMILIES

Problematic Sexual Behavior Risk Assessment

The Assessment of Safe and Appropriate Placement (ASAP) Program was developed in 1997 after legislation was passed (G.L.c.119, 33B) with the goal of preventing children with known risk of sexual behavior problems or fire setting problems "that might pose a risk for others in the community" from being placed in a community setting without safety planning and without the knowledge of the intended caretakers.

In response to the law, DCF worked collaboratively with MassHealth, and its contractor for mental health services MBHP, to develop the following process:

- MBHP established qualifications for "qualified diagnosticians" to conduct ASAP evaluations (includes both PSB and fire-setting);
- MBHP established contracts with Lead agencies to approve the qualified diagnosticians, take referrals from DCF area offices, arrange for the evaluations, and send the resulting reports to the referring area;

- DCF and MBHP jointly developed protocols and tools for the referral, evaluation and reporting from by *"qualified diagnosticians"*, and the development of safety plans.

Within twenty-four (24) hours after receipt of the DCF referral, the Lead Agency assigns a Qualified Diagnostician to complete a Juvenile Sex Offender and/or Juvenile Sex Offender and/or Juvenile Fire Setter/Arson Evaluation. Within ten (10) working days after receipt of the DCF referral by the Lead Agency, the Qualified Diagnostician completes and returns to the referring DCF supervisor and Lead Agency: The ASAP evaluation including the "Post Assessment Safety Plan" which is signed by the diagnostician, the DSS social worker, primary caregiver and the mature child. The evaluation and placement recommendations are reviewed by the child's social worker, supervisor and Area Program Manager. The DCF service plan is updated/revised to address the identified issues and to incorporate the ASAP evaluation recommendations.

ATTACHMENT 1:

COMPREHENSIVE ASSESSMENT OF PROBLEMATIC SEXUAL BEHAVIOR

Individuals may be referred for a comprehensive assessment of problematic sexual behavior in the context of a referral for psychological assessment or specifically in response to concerns regarding the individual's past or current problematic sexual behavior. In either case, it is expected that the clinician will utilize a structured clinical diagnostic interview that is consistent with the current standard of practice. The clinician is also expected to review the reasons for referral with the referring individual, and to review the clinical, psychosocial, and psychiatric history of the individual being evaluated. When appropriate, collateral information may be obtained from reliable informants. Pertinent medical, psychiatric, psychological assessments, treatment records and criminal history reports shall also be requested and reviewed with the informed consent of the person referred for the evaluation, and/or with the legal guardian.

ASSESSMENT PROTOCOL:

The Comprehensive Assessment of Problematic Behavior should include (but is not limited to) the following information:

- Identifying Information including Legal Status
- Sex Offender Registry Level (if applicable)
- Referral Question
- Sources of Information
- Review of Informed Consent and Limits of Confidentiality
- Mental Status Examination
- Family History
- Developmental History
- Medical History including history of Traumatic Brain Injuries
- Criminal History
- Psychiatric History
- Medical History including history of traumatic brain injuries
- Sexual History
- Relationship History
- Substance Abuse History
- Psychometric Testing (as indicated) and results
- Diagnostic Impressions with DSM-IV diagnosis (if requested)
- Assessment of Risk Management Needs
- Review of Static Variables related to sexual recidivism (if relevant)
- Review of Dynamic Variables related to sexual recidivism (if relevant)
- Presence of Risk Factors associated with sexual offending
- Protective Factors
- Clinical Opinions
- Recommendations

TEST REPORTS: A written report that summarizes the subjects mentioned above will be submitted to the Agency. Evaluators will determine which psychometric tests to administer based on the referral question and the individual's needs. Domains that may be considered for testing include: personality characteristics, thought processes, reasoning abilities, intelligence, cognitive functioning, sexual interests and sexual attitudes.

The test reports should include a summary of findings with respect to reasons for referral, current concerns, and referral questions. Recommendations, to include, when applicable:

- Additional clinical or diagnostic evaluation (e.g., neuropsychological testing, penile plethysmograph, pharmacology, neurology
- Recommendations for treatment and/or behavioral intervention
- Vocational or rehabilitation recommendations
- Housing and living situation considerations
- Development of crisis plans
- Risk mitigation strategies
- Safety and supervision plans
- Coordination of services with clinical provider
- Coordination of services with criminal justice and public safety personnel

QUALIFICATIONS OF EVALUATORS:

Qualifications for evaluators will be outlined in each Agency's Masters Service Agreements, Request for Proposals and/or Job Descriptions. Evaluators will be independently licensed mental health professionals with at least 3 years of clinical experience in working with persons with sexually problematic behavior.

Commission Statement on Sentencing

(Joined by Commissioners Gallagher, Brownsberger, Kinscherff, Knight, Guidry, and Levy)

The Commission by a close vote has decided not to make significant recommendations in the area of sentencing and correction policy, but rather to make this minimal statement regarding sentencing policy. Some Commissioners feel that exploring this area is beyond the scope of the Commission, that the Commission lacks the time to examine this area of policy in sufficient detail to take a position or make recommendations, or that the Commission has not heard or received any testimony on this topic that would allow the Commission to formulate a position or to make informed recommendations.

The Commission, however, does take note of the following:

1. Incarceration can be a tool for prevention of recidivism. Sex offenders cannot reoffend while incarcerated against members of the public. Incarceration can, however, increase the risk of recidivism upon release in some circumstances.
2. Treatment and monitoring while incarcerated[19] and while under the supervision of parole or probation provide strong incentives and controls on offenders who may benefit from such programs and policies.
3. Assuming reliable assessment and treatment is available, literature suggests that having that information available to a judge at sentencing is critical.[20]

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[19] The U.S. Department of Justice Federal Bureau of Prisons Sex Offender Programs serves as one example of programs seeking to provide treatment to incarcerated sex offenders. These particular programs seek to establish "Treatment Programs that provide sexual offenders [in Bureau institutions] the opportunity to change behaviors, thereby reducing criminality and recidivism; Specialized correctional management practices to address behavior that indicates increased risk for sexual offenses upon release; Evaluation services to appraise risk of sexual offenses upon release and provide recommendations for effective reintegration into the community; and Transition services for sexual offenders releasing to the community." (U.S. Department of Justice Federal Bureau of Prisons PROGRAM STATEMENT OPI: CPD/PSB; NUMBER: 5324.10; DATE: February 15, 2013- Sex Offender Programs.

[20] *See, e.g.*, The Importance of Assessment in Sex Offender Management: An Overview of Key Principles and Practices, The Center for Sex Offender Management (US DOJ) 2007, *available at* http://www.csom.org/pubs/assessment_brief.pdf ("Following an individual's conviction or adjudication for a sex offense, the judge bears the responsibility for determining the most suitable disposition. Yet for a number of reasons, judges report experiencing more difficulty making disposition decisions in adult- and juvenile-perpetrated sex offense cases than in other types of criminal or delinquency cases (Bumby & Maddox, 1999; Bumby, Talbot, West, & Darling, 2006). Therefore, at this early phase of the criminal or juvenile justice process, formal assessments such as presentence reports and psychosexual evaluations (which identify level of risk and intervention needs) can be helpful for judges as they consider the disposition of these cases.").

4. Supervision and treatment should complement each other to maximize public safety. These are practices that can be accomplished through sentencing.
5. Having good risk evaluation and pre-sentencing analysis available at sentencing will allow a judge to target higher risk offenders with more intensive court-ordered treatment strategies including longer periods of supervision or treatment. It should also be noted that it is widely accepted that over-supervision of low-risk offenders can have the unintended consequence of increasing recidivism risk.
6. Recidivism prevention is only one potential consideration a judge may take into account in sentencing.

While the Commission did not endeavor to address these areas during its work, sentencing is clearly an important area of consideration for policymakers considering strategies to reduce recidivism.

[20] Caldwell, M., Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offender, *Sexual Abuse: A Journal of Research and Treatment*, 19(2), 107-113 at 112 (2007).

Commission Statement on Collateral Consequences

(Joined by Commissioners Gallagher,
Brownsberger, Kinscherff, Knight, Guidry, and Levy)

While the Commission did discuss the public safety benefit of public access to information on sex offenses (and how challenging it is to quantify that benefit in light of the fact that it is impossible to track how many individuals, for example, may have chosen not to allow their children to interact with known sex offenders, thus possibly preventing some unknown number of incidents), this statement focuses on the collateral consequences of conviction, registration, and notification.

Many sex offenders have difficulty securing employment and housing, and find that their social, emotional and physical well-being are compromised. The impact of the collateral consequences of conviction, registration, and notification on youth can be especially severe. Because of their developing brains and susceptibility to outside pressures, the humiliation of being labeled as a sex offender can be alienating and destabilizing, undermining rather than supporting rehabilitation efforts.[21] Other effects of registration, classification and notification on youth may include:

- Stunted development of healthy social relationships and the alienation of youth by peers and family;
- Creation of overwhelming barriers to educational and employment opportunities;
- Exacerbation of psychological difficulties;
- Physical harm as a result of suicide attempts and violence at the hands of vigilantes and harassment.[22]

Registration may also have the unintended consequence of increasing "the likelihood of future criminal behavior" by "restrict[ing] adolescents from the prosocial activities and developmentally appropriate affiliations that are necessary for normal, successful transitions from adolescence into adulthood."[23] Children are further impacted when their families experience increased fiscal strain, difficulty finding and maintaining stable housing and stressed or severed relationships as a result of registration and notification laws.[24]

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[21] Caldwell, M., Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offender, *Sexual Abuse: A Journal of Research and Treatment*, 19(2), 107-113 at 112 (2007).

[22] Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US, *Human Rights Watch*, 1-110 at 5, 50-80 (May 2013)(harm to youth can be severe and may include being stigmatized, isolated, depressed, suicidal, harassed and subject of violence).

[23] Miner, M., The Fallacy of Juvenile Sex Offender Risk, *Criminology & Public Policy*, 6(3) (2007) 564-572, 569.

[24] Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law*, 20(4), 443-462 at 452 (2014); Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US, *Human Rights Watch*, 1-110 at 5, 50-80 (May 2013).

Current national research similarly recognizes negative collateral consequences of registration and notification on adult sex offenders.[25] In addition to the debilitating social and emotional effects suffered from the stigma of the sex offender label, many offenders find it difficult to maintain lifestyle stability, an important factor in reducing recidivism.[26] Adults are known to experience:

- difficulty acquiring and sustaining stable housing resulting in frequent moves, inability to reside with supportive family, and homelessness[27]
- difficulty obtaining and sustaining stable employment[28]
- destabilizing psychosocial stressors including[29]:
    - Financial hardship;
    - Emotional distress including shame, alienation, isolation, and lack of social supports;
    - Living farther away from employment opportunities, treatment and support services, family and friends[30];
    - Exacerbation of mental health symptoms such as depression, anxiety and substance abuse
    - Physical harm including violence at the hands of vigilantes and suicide[31]

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[25] Letourneau, Levenson, Caulkins; No Easy Answers: Sex Offender Laws in the US, *Human Rights Watch* 19(4G), pp.1-134 at 80-99 (September 2007).

[26] Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 452 (2014).

[27] *Doe No. 380316 v. SORB*, 473 Mass. 297, 306 (2015), citing Platt, Gangsters to Greyhounds: The Past, present , and Future of Offender Registration, 37 N.Y.U. Rev. L. & Soc. Change 727, 762 (2013)(housing discrimination forces many offenders "to live in shelters or be rendered homeless"); Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 452 (2014); Prescott, J.J., Do Sex Offender Registries Make Us Less Safe? *Crime & Law Enforcement*, pp.48-55 at 55 (2012).

[28] *Doe No. 380316 v. SORB*, 473 Mass. 297, 306 (2015), citing *Commonwealth v. Canadyan*, 458 Mass. 574, 577 n.8 (2010)("extraordinary obstacles facing offenders attempting to secure employment"); Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 452 (2014); Prescott, J.J., Do Sex Offender Registries Make Us Less Safe? *Crime & Law Enforcement*, pp.48-55 at 55 (2012).

[29] Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 452 (2014).

[30] Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 452 (2014).

[31] Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 452 (2014).

Some studies show that "publicly revealing the identity and criminal history of a released offender seems to increase the likelihood of his returning to crime."[32] To protect public safety and enhance offender stability, the Commission recommends the creation of best practices strategies and options in housing, treatment, employment and other support services for sex offenders and their families. [33]

[32] Prescott, J.J., Do Sex Offender Registries Make Us Less Safe? *Crime & Law Enforcement*, pp.48-55 at 54 (2012); Sandler, J., Freeman, N. and Socia, K., Does a Watched Pot Boil? *Psychology, Public Policy, and Law,* 14(4), 284-302 at 299 (2008).

[33] Calkins, C., et al., Sexual Violence Legislation: A Review of Case Law and Empirical Research, *Psychology, Public Policy, and Law,* 20(4), 443-462 at 457 (2014) ("[E]very dollar spent on housing a civilly committed offender, electronic monitoring, and administering and enforcing [registration and community notification laws] is a dollar that is not spent somewhere else, whether on evidence-based treatment of sex offenders, primary prevention efforts, victim services, or research aimed at bettering secondary prevention efforts, including early identification of those who exhibit behaviors associated with sexual violence."

Statement on Actuarial Risk Assessment and Data Collection Offered by SORB and Joined by Commissioners Bennett, Brownsberger, Brodeur, Connolly, Kennedy, Hayden, and Ryan

Sex Offender Registry Board's Statement Regarding Development of an Actuarial Instrument and the Collection of Outcome Recidivism Data

The Sex Offender Registry Board (SORB) operates under the Executive Office of Public Safety and Security (EOPSS). SORB's primary function is the registration and classification of more than 11,000 sex offenders who reside, work, and/or attend an institution of higher learning in the Commonwealth. Its classification of sex offenders determines different levels of access to offender information made available to the community. When classifying an offender, SORB considers factors related to risk of reoffense, as well as factors related to the degree of dangerousness to the community upon reoffense. Thus, SORB's classification determinations are not merely an assessment of statistical likelihood of reoffense. The Sex Offender Recidivism Commission has focused its attention, in part, on whether to make recommendations that SORB should: 1) change its current classification process to a mechanized actuarial system which would result in a empirically validated numeric value to determine a sex offender's level of classification, and 2) engage in an ongoing analysis of outcome data for the purpose of studying sex offender recidivism in the Commonwealth.

Development of an Actuarial Instrument:

By statutory enactment required pursuant to the Federal Sex Offender Registry Notification Act ("Adam Walsh Act"), our legislature mandated that the Commonwealth's mechanism for the registration of sex offenders necessitated a highly individualized classification process utilizing a detailed quasi-legal analysis of an individual sex offender's history and personal circumstances. The process currently involves the application of 38 factors, which are a blend of up-to-date scientific research and statutory requirements. The application of the factors must be sufficiently supported by evidence, every offender is entitled to a full evidentiary hearing with representation by counsel, and final classification decisions are now determined under the "clear and convincing evidence" standard. SORB classification decisions are further subject to appellate review in the courts. Every offender classified in the Commonwealth is afforded exhaustive due process rights designed to ensure fairness and equity in their final classification.

SORB recognizes that a mechanized, actuarial approach to determine sex offender recidivism is favored by some statisticians, clinicians and researchers. However, research has shown such measures to be only moderately predictive of recidivism at best. The non-numerical decision making analysis used by the SORB provides an appropriate, fair and just balance of science and public policy, and is buttressed by exhaustive due process for every offender. SORB's mandate and primary mission to inform the public about the presence of convicted sex offenders that live, work or go to school in their neighborhoods overlaps, but does not and should not align perfectly with known recidivism rates. While some may criticize the structured clinical judgment and quasi-judicial analysis SORB employs in classifying offenders, SORB and EOPSS still consider it to be the best balance of science and public policy.

The Supreme Judicial Court (SJC) has repeatedly upheld SORB's classification methodology. Recently in January 2016, SORB answered the SJC's call to update its regulatory risk factors to

appropriately recognize and implement current scientific research along with statutory requirements. However, the SJC has never suggested a wholesale overhaul to the system and process by which classification is performed. *See, e.g., Doe v. Sex Offender Registry Board, No. 3844*, 447 Mass. 768, 777 (2006) ("Although there may be other possible methodologies used to determine the risk of reoffense by offenders, . . . the Legislature mandated the Board to designate and implement a specific, detailed methodology to be used in deciding offender classifications in this jurisdiction pursuant to G.L. c. 6, ss. 178C-178O . . . The regulations ensure adequate procedural safeguards and do not violate constitutional due process. Thus, because both the initial and final classification conformed to the regulations and guidelines properly promulgated by the board pursuant to G. L. c. 6, § 178K, presumptive or quantitative analysis in the decision-making process to identify the appropriate classification was not required.").

Empirically validating an actuarial tool that could be used by the Commonwealth for purpose of classifying sex offenders would be an extensive and complex process. Validation of such a tool would take an estimated eight to ten years (perhaps longer). There is little guarantee that it would significantly change the classification level distribution, would be more than moderately predictive, or would reduce sexual recidivism in any meaningful way. Respectfully, we have not been persuaded that an overhaul of our statutory process is necessary, or that the current classification process is ineffective in its mission to provide information to law enforcement and the public about sex offenders within the Commonwealth's jurisdiction.

Collection and Analysis of Outcome Data on Recidivism:

Since SORB classifications are not merely an assessment of the risk or likelihood of reoffense, any direct correlation between classification level and reoffense rates will be attenuated. The consideration of dangerousness, or harm likely to befall a victim in the event of reoffense, is an equally important part of the SORB's legislative mandate and is critical to public safety concerns. An offender with a very high risk of reoffense (such as a repetitive exhibitionist) might not receive a Level 3 designation given the lower risk of harm upon reoffense, whereas an offender with a single offense, but who committed a violent act against a stranger or raped a young neighborhood child might be classified at a higher level based upon his risk of significant harm should he reoffend (dangerousness).

In addition to erroneously tying the Registry Board's effectiveness to known recidivism rates, an outcome study on sexual recidivism across classification levels would be unable to reveal whether registration and classification of sex offenders prevents further sex crimes from occurring. Moreover, recidivism rates are not the same as true offense rates. Depending on how a study defines and measures recidivism (e.g., by rearrest, by reconviction, by self-report, by credible allegation, by probation/parole violation, etc.), the duration of the follow-up period (e.g., five years, ten years, twenty years), and the risk level of the sample followed, different estimates of reoffense rates are produced. Offenders who have reoffended after twenty or more years and/or who have been reoffending without having been charged or reconvicted often appear before the SORB, but are rarely included as recidivists in scientific studies. These offenders clearly present a long-term risk to public safety.

It is also undisputed that it is impossible to collect all relevant reoffense data. Many sexual assaults are not reported or prosecuted, and records of investigations of sexual offenses, which do not result in criminal charges, are typically unavailable. While it cannot be determined exactly how many

offenders reoffend without detection, there is reason to believe that number is substantial. Furthermore, many sex offenses are resolved with guilty pleas to non-sexual offenses and would be absent from a criminal record or unidentifiable as a sexually motivated offense. A recidivism study would not capture the large number of sexual assaults that are not detected, reported, or did not result in criminal charges or convictions.

Given the scope and magnitude of any worthwhile process of data collection, analysis, and study of recidivism, SORB, in consultation and collaboration with EOPSS, would first have to engage in an exhaustive feasibility study as to the ability to collect data amidst its ongoing classification process, particularly the logistics and resources involved, the type of data to be collected, and any impact on caseload and timely classifications. In light of SORB's recent promulgation of new risk factors incorporating current scientific research and recognized distinctions between juvenile, female and adult male offenders, and the SJC's recent decision raising the standard of review in classifications proceedings to clear and convincing evidence, SORB maintains that the undertaking of data gathering at this time would be neither feasible nor worthwhile. Furthermore, SORB maintains that any data gathering regarding sex offender recidivism would necessarily have to go beyond SORB and would have to include the gathering of statistics and information from other agencies and entities, including but not limited to, the Trial Court, Juvenile Court, the Probation Department, Parole, the Correction Department and the Department of Youth Services, district attorney's offices, the U.S. Attorney's Office, other law enforcement agencies, various EOHSS agencies, and rape crisis centers.

SORB will continue its focus on the importance of information sharing, critical to assessing re-offense risk and determining classification level, by entering into MOUs with stakeholder agencies that have data relevant to sexual misconduct and recidivism. In addition, SORB will continue in its efforts to proactively engage with agency and community stakeholders on public education initiatives about sexual abuse prevention. Lastly, SORB is also committed to a routine and regular update of its regulatory risk factors to appropriately recognize and implement evolving and current scientific research with regards to sex offending and recidivism, along with its statutory requirements just as critical to reoffense assessment and determining classification level.

Actuarials

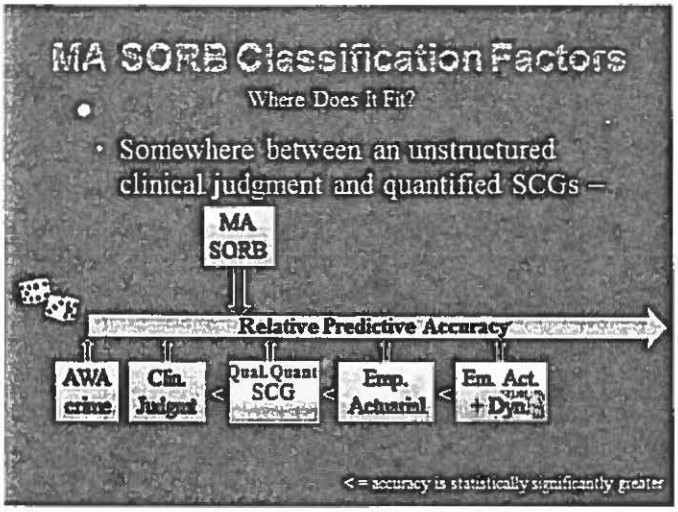
Offered by Commissioners Dr. Laurie Guidry; Dr. Robert Kinscherff; Dr. Ray Knight; Larni Levy, Esq. and Joined by Commissioner Maureen Gallagher

In 1999, the Massachusetts legislature created the current criteria (SORB's Risk Factors) and its process for classification. These criteria were established in response to Massachusetts Supreme Court decisions finding that due process under the Massachusetts constitution requires an individualized rather than an offense based process for classifying levels of risk for sex offenders.[1] These criteria were established 17 years ago based upon what was known about best practices for the assessment of adult male sex offenders. Based upon this mandate, the SORB created the MA Classification Factors assessment strategy and provided guidelines for decision-making (i.e., factors in SORB's regulations).

Over the last two decades there have been significant advancements in the strategies implemented to create and assess risk instruments for sexual aggression. In fact, "the criminal justice community [ ] has recognized that crime control efforts, prevention strategies, and treatment methods based on scientific evidence are far more likely to be effective and cost-beneficial."[2] Since these criteria were established, however, the Massachusetts criteria have never been empirically tested. Therefore, the reliability and predictive validity of the instrument and its application have never been fully established. Furthermore, the SORB does not provide rules on how to combine or weigh items in reaching a decision, and individual "factors" neither have specific quantitative anchors nor provide clear cutoffs for presence or absence of the risk factors. It relies on individuals (e.g., evaluators, SORB board members or hearing examiners) to use their discretion to determine the presence or absence of factors and then to subjectively weigh factors individually and cumulatively in arriving at their risk judgment. This is known as Structured Clinical Judgment (SCJ). Although better than risk assessments that are not anchored to empirically-based factors, an SCJ classification strategy is vulnerable to distortions of clinical judgment, has difficulties achieving adequate levels of interrater reliability, and has been consistently shown to have predictive validity that is inferior to empirical actuarials.[3] It is essential that the reliability and validity of the MA Classification Factors as well as the process to weigh these factors be tested empirically, as has been done in other states,[4] and modified if found unreliable or invalid.

Given the Commission's mandate to determine "the most reliable protocols for assessing and managing risk of recidivism of sex offenders" the current SCJ process does not appear to meet this threshold. The chart below depicts the predictive value of various risk assessment processes, and indicates that an offense based system, such as the Adam Walsh Act (AWA crime), is literally no better than a roll of the dice, whereas an empirical actuarial tool combined

with standardized assessment that combines both static and dynamic factors (Em. Act. + Dyn.) is the most reliably predictive system.[5] The scale in the chart is an ordinal one, representing the order of significant differences among assessment procedures, but not the magnitude of these differences. SORB's current classification process would fall on the low end of the predictive validity chart, slightly more predictive than unstructured clinical judgment.[6] Empirically validated, mechanical, and quantitative procedures (procedures that compile scores for individual items into a final total) are currently available and offer the most accurate risk assessment strategies. [7]



i. SORB Classification Factors

SORB's enabling statute was established 17 years ago and was based upon what was known about risk factors for sexually abusive behaviors. Although current research supports the predictive validity of many of the domains that the factors attempt to assess, this research also indicates that the existing regulations contain factors that have proven to be poor predictors of recidivism[8]. Among those factors are:

- Released from civil commitment vs. not committed[9]
- Maximum term of incarceration[10]
- Documentation from a licensed mental health professional specifically indicating whether an offender poses a risk to reoffend based on clinical judgment[11]
- Recent behavior while incarcerated[12]

- Recent threats[13]
- Victim impact statement[14]

Although the victim impact statement may not be a predictor of recidivism, we fully recognize its role in sentencing and in notification decisions.

The Commissioners joining this statement recommend replacing the portions of SORB's enabling statute, G.L. c.6, §178K(1)(a-l), that require consideration of certain enumerated factors, with a more general requirement to use research-based best practices in classification determinations.

In sum, we recognize that the SORB's Classification Factors assessment strategy must respond to the criteria established by the enabling legislation, but it does not take advantage of the superior reliability and predictive validity of empirically derived actuarials. SORB also relies on a "guided" clinical judgment model to arrive at a final risk judgment, whereas other strategies have been shown to yield superior predictive accuracy.[15] Moreover, the SORB process cannot be determined to be either reliable or valid, until a process is put into place to ensure that it is empirically tested.

ii. Are Accurate Classifications Possible?

Accurate classification of sex offenders is one significant strategy to ensure public safety and the efficient and effective management of sex offenders in the state.

There is precedent in Massachusetts for actuarial approaches. The Department of Probation currently uses actuarial assessments and evidence based best practices as a means to identify and separate those requiring more intensive supervision from those requiring less supervision. As such, probation implements a validated, sex offender specific risk/needs assessment to supplement the general risk/needs assessment[16] that is already being used by probation offices across the state. In addition, probation seeks to develop and implement supervisory protocols that identify specific individualized treatment and management targets grounded in evidence-based practices.[17]

Follow up studies are needed to determine whether the assessment systems employed by state agencies, such as the MA SORB's classification regime, are effective. The Supreme Judicial Court notes that "it is troubling that little emphasis has apparently been placed by SORB on assessing the accuracy of its classifications. This is especially true given the enormity of the

consequences of such classification decisions." [18] Massachusetts should follow the lead of other states (e.g., Minnesota, New York, New Jersey, Washington State, South Carolina and Florida) that have studied the effectiveness and reliability of their systems.[19]

This assessment of the SORB current classification system could be carried out in a timely, but empirically effective, scientifically valid way employing a retrospective strategy that uses trained evaluators to code a selective sample of the 11,000 offenders classified over the last two decades on the SORB's newly proposed 40 factors and following them until the present. Greater details about such a strategy and how it can address criticisms of the need to assess a broader conceptualization of "dangerousness" have been proffered in documents previously submitted to the Commission.

The Commissioners joining this statement believe that a predictively valid sex offender classification process will enhance public safety.

iii. Conclusion

Accurate and current classifications are advisable both because they advance the safety of the community[20] and are required to satisfy constitutional due process. [21] "[T]he State [ ] has 'an interest in ensuring that its classification and notification system is both fair and accurate.'.....[It] has no interest in making erroneous classifications and implementing overbroad registration and notifications."[22] Overclassification "both distracts the public's attention from those offenders who pose a real risk of reoffense, and strains law enforcement resources." [23]

The Commissioners joining this statement conclude that best practices to arrive at current classification levels, as recognized in the scientific community, should be added to the SORB classification process. Empirically based best practices for adult male offenders would involve the use of actuarials that provide an objective assessment of risk based on static and dynamic factors. Furthermore, the Commissioners joining this statement recognize the need for using different criteria and different assessment tools for juveniles, females and other special populations "A more reasoned approach[24] [ ] to sex offender policies [ ] would utilize empirically derived risk assessment tools to create classification systems that apply more aggressive monitoring and tighter restrictions to those who pose the greatest threat to public safety. In this way, a more cost-effective allocation of fiscal and personnel resources could be

achieved."[25] "Most sex offenders will ultimately be returned to the community, and when they are, it behooves us to facilitate a reintegrative approach that relies on empirical research to inform community protection strategies."[26]

Assessment and Disposition of Special Populations

Offered by Commissioners Dr. Laurie Guidry; Dr. Robert Kinscherff; Dr. Ray Knight; Larni Levy, Esq. and Joined by Commissioners William Brownsberger and Maureen Gallagher

Part of the Commission's mandate is to develop "the most reliable protocols for assessing and managing risk of recidivism of sex offenders" in Massachusetts including "special assessment protocols for juveniles, female offenders and persons with developmental, intellectual, psychiatric and other disabilities." Best practices recognize the importance of creating empirically based assessment methods, including those specifically designed for special populations such as juveniles, females, and individuals with developmental, cognitive, and psychiatric impairments.

i. Juveniles

Juveniles are developmentally different from adults and require special consideration.[27] In the past ten years substantial research has focused on the developing adolescent brain and the social, academic, and developmental impact that registration has had on this special population. The courts continually recognize the "distinctive attributes of youth."[28] Factors that distinguish youth such as "immaturity, impetuosity, and failure to appreciate risks and consequences" [29] are associated with the developing brain. This explains, in part, why sexual recidivism rates for juveniles are so low and juveniles' response to treatment is so strong.[30] SORB's revised regulations recognize that "[a]dolescence is a time of rapid social, sexual, physical, cognitive and emotional developmental changes."[31]

As a group, juveniles who engage in sexually abusive behaviors evidence substantially lower risks for sexual recidivism than adults, with rates of 4.3% to 6.8% as compared to 13.7%.[32] Juveniles reoffend at much lower rates because the factors that contribute to sexually abusive behavior by juveniles normally disappear as they mature into late adolescence and early young adulthood, and are readily ameliorated by effective treatment.[33]

Many of the factors that lead to juvenile offending are common to all juveniles, regardless of behavioral problems. "[S]ome of the issues that [therapists] pathologize in adolescents who enter [sex offender] treatment also exist, to a greater or lesser degree, in most adolescents and may diminish or resolve without significant therapeutic intervention."[34] Because adolescence is a time of rapid social, sexual, physical, cognitive, and emotional development, "juveniles, 'as far as practicable...shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.'"[35]

The Commissioners joining this statement recognize the research finding that placing youth on the internet for public notification of their sex offenses may have the unintended consequence of actually increasing the likelihood of delinquent behavior.[36] Furthermore, the Commissioners joining this statement recognize the new proposed guideline established by the Department of Justice SMART Office that acknowledges the differences between adolescents and adults. Youth publicly identified as "sex offenders" are often alienated from their peers, family and support networks and have difficulty staying in school and securing employment. (See footnote 64). Current research documents the deleterious effects of registration on a young person's social, emotional, and intellectual development, and the responsiveness of youth to treatment. While the Commissioners joining this statement recognize that there is a very small percentage of adolescents who are highly concerning, it is time to question whether public safety in Massachusetts is served by the registration and public dissemination of information on juveniles.[37] Currently, approximately twenty-three other states do not allow for children or adolescents adjudicated delinquent in juvenile court to be a part of public disclosure of their private information, [38] and eleven states that do not require these juveniles to register.[39] Massachusetts currently has a process by which there is a presumption that youth adjudicated must register with SORB unless this obligation is waived by the Juvenile Court. The Commissioners joining this statement recommend changing the process in Massachusetts towards a process in which the assumption is that all youth are free of any obligation to register unless -- following adjudication on a sexual offense and a registration hearing requested by the prosecution -- a Juvenile Court Judge makes the decision to impose an obligation to register upon a juvenile who is found to pose a substantial risk of sexual re-offense by clear and convincing evidence.

To the extent that youth are required to register, the Commissioners joining this statement recommend that risk assessments and classification procedures incorporate research-based best practices specific to juveniles. The assessment and classification process should be separate from that used for adults and not a simple an exemption for certain factors. In addition, research has shown that the risk and protective factors for juveniles are not the same as those for adults. For example, many of the static risk factors in adult are still dynamic risk factors for adolescents, meaning that these can be changed. Therefore, the factors established by legislation 17 years ago, which were targeting adult males, may not be applicable to the assessment of adolescent boys and girls. When a juvenile (or an adult who was convicted for a juvenile offense) is assessed, different factors as well as different risk assessment tools designed for use with adolescents should be utilized.

ii. *Females*

Like juveniles, females have extremely low recidivism rates that are not reflected in the general recidivism data based on studies of adult male populations. Females comprise only 5 percent of those who sexually offend, and they recidivate at the low rates of 1 to 3 percent.[40] Extant research findings on female sexual offenders "provide clear evidence that female sexual offenders, once they have been detected and sanctioned by the criminal justice system, tend not to reengage in sexually offending behavior. Most female sexual offenders are not convicted of new crimes, and of those who are, they are 10 times more likely to be reconvicted for a nonsexual crime than a sexual crime."[41] Recent court decisions as well as research studies of female offenders highlight the necessity to examine females as a distinct group for the purpose of risk assessment.[42] The significant differences noted in research recognize those factors that reflect gender-specific vulnerabilities and propensities associated with risk among female offenders, as well as identifying those factors that are shared between male and female offenders but which manifest differently in women.[43] The best practice consensus in the field indicates that because of these differences (e.g., differences in female offense processes[44] and their gender-specific cognitions[45] regarding offending behavior), female sex offenders should not be assessed by employing male sex offender generated risk factors and decision procedures. Additionally, female sex offenders differ among themselves in important ways that should be taken into account when assessing risk for sexual re-offense. For instance, women who promote prostitution differ from those who engage in contact sexual offenses,[46] as are females who commit sexual offenses in partnership with male offenders distinct from those who offend alone.[47] The Commissioners joining this statement recognize that females require assessment practices that differ from males and attend to the gender-specific and within-group differences identified to date.

iii. Other special populations

Similarly, determining the recidivism risk for individuals suffering from mental illness, developmental disabilities, and/or acquired brain injuries requires specialized assessment based on scientific research that takes these issues into account. Sexual offenders who present with co-occurring significant disabilities often present with a complex constellation of issues, both individual and systemic, that impact their risk potential.[48] Best practices with these special populations dictate that professionals working with them, even those with experience evaluating and treating non-disabled sex offenders, receive additional training and recognize

the limits of their knowledge.[49] Research on these special populations highlights more than the obvious differences between them, and sex offenders without substantive disabilities. For instance, although current research indicates that "(i)t is reasonable to expect the STATIC instrument to predict sexual...recidivism in a forensic (major mentally ill) population...",[50] it is equally important to identify and take in to account meaningful psychological factors specific to those sex offenders who are diagnosed with a severe and persisting mental disorder to most accurately identify the level of risk with which they present.[51] Similarly, research on individuals with intellectual developmental disorders emphasizes the critical importance of identifying both individual as well as contextual or environmental factors in assessments of risk for sexual re-offense in this and other disabled sexual offending populations. The overwhelming consensus is that sexual offenders with co-occurring major mental illness, intellectual developmental disorder, and/ or acquired brain injury require a comprehensive and individualized approach to the assessment of their risk for sexual re-offense.

The Commissioners joining this statement recommend that SORB's regulations include research-based best practices for assessing risk levels for juveniles, females, and special needs populations that require differential empirical attention because of their distinct characteristics and needs.

iv. Conclusion

Juveniles, females, and individuals suffering from mental illness, developmental disabilities, and acquired brain injuries are special populations that require differential assessment strategies and dispositional decisions because of their marked empirical differentiation from adult male offenders. The consequences of the developmental stage of juveniles, the low recidivism rates of juveniles and females, and the substantially different psychological needs of disabled populations demand assessment procedures and dispositional strategies that address their unique characteristics and maximize their management and reintegration into society.

Data Collection

Offered by Commissioners Dr. Laurie Guidry; Dr. Robert Kinscherff; Dr. Ray Knight; Larni Levy, Esq. and Joined by Commissioner Gallagher

The Supreme Judicial Court notes that "it is troubling that little emphasis has apparently been placed by SORB on assessing the accuracy of its classifications. This is especially true given the enormity of the consequences of such classification decisions."[52] Other states such as Minnesota, New York, New Jersey, Washington State, South Carolina and Florida have successfully studied the effectiveness and reliability of their systems. [53] [54] [55] Similar follow up studies are needed in Massachusetts to determine whether the assessment systems employed by state agencies, such as the MA SORB's classification regime, are effective.

The collection of data serves to assess an agency's reliability, effectiveness and impact. To evaluate effectively the accuracy of the SORB's classification system as discussed in this report, data must be collected. Ideally, data would be collected to allow for the analysis and quantification of individual factors, so that their relevance and the reliability of their ratings can be evaluated. Minimally, data collection should keep track of trends, disparate impact of classifications, and recidivism. To allow maximum transparency and enhance empirical investigation, de-identified data sets with the algorithms that were used to generate measures and the details of the sources of measures should be made available for public examination.

The Commissioners joining this statement recommend that SORB submit an annual report and that the data used to generate this report be made available to the public upon request.

This assessment of the SORB current classification system could be carried out in a timely, but empirically effective, scientifically valid way employing a retrospective strategy that uses trained evaluators to code a selective sample of the 11,000 offenders classified over the last two decades on the SORB's newly proposed 40 factors and following them until the present. Greater details about such a strategy and how it can address criticisms of the need to assess a broader conceptualization of "dangerousness" have been proffered in documents previously submitted to the Commission. Because the SORB has neither the resources to gather and process such data, nor the expertise to apply state of the art statistics to analyze such data, resources should be allocated for an independent research group to conduct this initial study, working with the SORB to assure congruence of ratings with SORB practices.

The first report shall include data from the previous five calendar years, broken down by year, after which the annual report will include data from only the preceding calendar year. The initial report can only include global final level decisions, but subsequent reports should include item and total score information. All data and a description of the methods relied upon in generating this report shall be contained in the report or, alternatively, made available to the public upon request.

The following data should be reported on an annualized basis:

1. Number of Registrants on registry as of date of report

    a. Number of individuals on registry as of the date of the report, broken down by Level 1, Level 2 and Level 3.

2. Final classifications by level

    a. Number of individuals finally classified by the SORB during the calendar year as not required to register, finally classified as Level 1, finally classified as Level 2, and finally classified as Level 3, broken down for each level by adult males, females and juveniles (at the time of adjudication) and those identified as being served by DMH and DDS. Juveniles are defined as individuals whose sex offense(s) occurred when under the age of 18.

3. Differences between recommended and final classifications

    a. Number of Level 1, Level 2 and Level 3 recommended classifications per year with number that were increased in final classification, number decreased in final classification and number that remained the same, broken down by the number of individuals at each recommended level whose classifications were raised to Level 3, raised to Level 2, lowered to a Level 2, lowered to Level 1, lowered to not required to register and remained the same.

4. Remands

    a. Number of cases remanded to SORB from the Superior Court or Appellate Courts, broken down by classification level before remand and classification level after remand to include number of individuals whose classifications increased to Level 3, increased to Level 2, decreased to Level 2, decreased to Level 1, were not required to register, and remained the same.

5. Reclassification

    a. Reductions: Number of registrants who sought to reduce their classification levels claiming a diminished risk of re-offense and danger to the public pursuant to 803 CMR 1.37C, broken down by classification level before request for reduction and final classification level of those individuals after request for reduction was considered.

    b. Increases:

        i. Number of petitions initiated by SORB for any reason to increase a registrant's classification level, broken down by classification level before the request to increase and final classification level for those individuals after request to increase became final.

        ii. Number of petitions initiated by SORB to increase a registrant's classification level because of a new sex offense arrest or conviction, broken down by arrests and convictions.

6. Recidivism

    a. Number of individuals classified as Level 1, Level 2 and Level 3 who were convicted of a new sex offense within five years of the final classification, broken down by classification level.

    b. Number of individuals classified as Level 1, Level 2 and Level 3 who were convicted of a new sex offense within ten years of the final classification, broken down by classification level.

    c. In all subsequent years after the quantification of the factors has been completed—the correlation and AUCs of the total scores and individual item scores with recidivism; the reliabilities of total scores and individual item scores; and a covariation matrix of all items and the total scores.

a. *Other Agencies*

Most governmental agencies would benefit from improved data collection. With effective data collection, agencies can more accurately and easily report on progress and improvements.

Probation, for example, has reported success (1% sexual recidivism in Dudley District Court program, following 115 probationers over past ten years and 3% sexual recidivism in Worcester Superior Court program, following 63 probationers over past three years) in some of its regional specialized programs supervising sex offenders using evidence based supervisory models. In its presentation to the Commission, parole indicated the success of its specialized sex offender monitoring program, IPSO (intensive parole for sex offenders), but lacks supporting data. It would be helpful for other agencies and the public to know the statistical, rather than anecdotal, success of programs that reduce recidivism and how this is achieved, as well as programs that may be less effective.[56] [check and add cite? – I will search if someone else does not have a ready citation]

Endnotes

[1] See *Doe v. Attorney General*, 426 Mass. 136 (1997); *Doe No. 972 v. SORB*, 428 Mass. 90 (1998).

[2] Sex Offender Management Assessment and Planning Initiative, *DOJ Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking* (October 2014).

[3] Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment, 21*, 1-21.; Grove et al., (2000), Clinical Versus Mechanical Prediction: A Meta-Analysis. *Psychological Assessment*, 12(1), 19-30.

[4] Zgoba, et al, *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act*, NCJRS, United States Department of Justice pp. 8-10 (2012).

[5] *Id.; Risk Evaluation: Maximizing Risk Accuracy, MATSA and MASOC Presentation to SORB;* Special Commission Briefing Book Created by MATSA and MASOC, September 11, 2014, *citing*, Hanson, R.K. & Morton-Bourgon K.E., *The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. Psychological Assessment, 21*, 1-21 and Grove et al., (2000), Clinical Versus Mechanical Prediction: A Meta-Analysis. *Psychological Assessment*, 12(1), 19-30.

[6] Presentation by Ray Knight, Ph.D. to the Commission on Sex Offender Recidivism, October 8, 2014

[7] Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment, 21*, 1-21.

[8] Presentation by Ray Knight, Ph.D. to the Commission on Sex Offender Recidivism, October 8, 2014; *Risk Evaluation: Maximizing Risk Accuracy, MATSA and MASOC Presentation to SORB;* Special Commission Briefing Book Created by MATSA and MASOC, September 11, 2014.

[9] 803 CMR 1.33(5); (Knight & Thornton, 2007)

[10] 803 CMR 1.33(6)

[11] 803 CMR 1.33(35)

[12] 803 CMR 1.33(12)

[13] 803 CMR 1.33(14)

[14] 803 CMR 1.33(38)

[15] Presentation by Ray Knight, Ph.D. to the Commission on Sex Offender Recidivism, October 8, 2014; *Risk Evaluation: Maximizing Risk Accuracy, MATSA and MASOC Presentation to SORB;* Special Commission Briefing Book Created by MATSA and MASOC, September 11, 2014 citing (Hanson& Morton-Bourgon, 2009) and Grove et al., (2000), Clinical Versus Mechanical Prediction: A Meta-Analysis. *Psychological Assessment*, 12(1), 19-30.

[16] The Ohio Risk Assessment System-Community Supervision Tool (ORAS-CST)

[17] See Probation Statement attached to Commission reports.

[18] *Doe No. 380316 v. SORB*, 473 Mass 297, 321, n. 21 (2015).

[19] See note5, *supra.*

[20] *Doe No. 7083 v. SORB*, 472 Mass. 475, 484 (2015)

[21] *Doe No. 972 v. SORB*, 428 Mass. 90, 100 (1998); *Doe v. Attorney General*, 426 Mass. 136, 143-144 (1997)

[22] *Doe No. 972 v. SORB*, 428 Mass. 90, 107 (1998) (Marshall, J, concurring in part and dissenting in part).

[23] *Doe No. 380316 v. SORB*, 473 Mass. 297, 313-314 (2015).

[24] Tabachnick, J. & Klein, A. (2011), A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse. *Association for the Treatment of Sexual Abusers*, 1-50.

[25] Evidence-based Recommendations for Florida's Sex Offender Registry System, p.5, drafted by Jill Levenson, Ph.D. and approved by Florida Association for the Treatment of Sexual Abusers (October 2015) (copy attached).

[26] See n. 82.

[27] See generally *Miller v. Alabama*, 132 S. Ct. 2455, 2464-65 (2012); *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013); *Brief of Amicus Curiae, American Medical Association, et al.*, in *Roper v. Simmons*, 543 U.S. 551 (2005).

[28] *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 663 (2013). *See also Commonwealth v. Hanson H.*, 464 Mass. 807 (2013) *Commonwealth v. Humberto H.*, 466 Mass. 562, 575-76 (2013); *Commonwealth v. Walczak*, 463 Mass. 808, 811 (2012) (Lenk, J. concurring); *Commonwealth v. Magnus M.*, 461 Mass. 459, 461 (2012).

[29] *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 675 (2013) (Lenk, J. concurring).

[30] Research indicates that juvenile offenders may be more amenable to treatment. 803 CMR 1.33(c) (SORB regulations).

[31] 803 CMR 1.33(29)(c).

[32] *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.*, Human Rights Watch, pp. 30-31 (2013); Caldwell, M.F. *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism,* International Journal of Offender Therapy and Comparative Criminology, 54(2), 197-212 (2010); Letourneau, E.J., et al., "The Influence of Sex Offender Registration on Juvenile Sexual Recidivism," Criminal Justice Policy Review, 20(2),, 136-153 (2009) (less than 3% sex offense reconviction rate after 9 years); Caldwell,

M., *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, Sexual Abuse: A Journal of Research and Treatment, 19, pp. 107-113 (2007)(6.8% new sex charges in 5 year follow-up of 249 juveniles); Vandiver, D.M., *A Prospective Analysis of Juvenile Male Sex Offenders*, Journal of Interpersonal Violence, vol. 21, no. 5, 673-688 (2006) (13 of 300 rearrested for sex offense in 3-6 years following adulthood); Hanson, K. and Morton-Bourgon, K, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004); Zimring, "The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study" (2006). See also Kinscherff, Robert Ph.D., Report to Commission (October 22, 2014) (85% to 95% of juveniles have no prior or subsequent arrests for sexual offending.)

[33] Despite these low rates and the research that has shown registration's lack of deterrent value for juveniles, juveniles in Massachusetts remain subject to registration and the deleterious effects of public disclosure. See Letourneau, et. al., *Expensive, Harmful Policies that Don't Work or How Juvenile Sex Offending is addressed in the U.S.*, International Journal of Behavior Consultation and Therapy, 2013, v. 8, No. 3-4, p. 26; *Raised on the Registry, The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.*, Human Rights Watch (May 2013) (documenting harmful effects of registration on children including, but not limited to, physical attack, homelessness, and lack of educational and employment opportunities).

[34] Creeden, K., *Taking a Developmental Approach To Treating Juvenile Sexual Behavior Problems*, International Journal of Behavioral Consultation and Therapy, 2013, Vo. 8 No. 3-4, pg. 12; *see* Pratt, R., *A Community Treatment Model for Adolescents Who Sexually Harm*, International Journal of Behavioral Consultation and Therapy, 2013, V. 8 No. 3-4, pg. 38.

[35] *Commonwealth v. Humberto H.*, 466 Mass. 562, 575-576 (2013)(citations omitted). See the recent revision to SORB's regulations at 803 CMR 1.33(29(c): "Adolescence is a time of rapid social, sexual, physical, cognitive and emotional developmental changes."

[3636]"The Negative Impact of Registries on Youth: Why are Youth Different Than Adults?" *Justice Policy Institute* (September 2, 2008).

[37] A youth "subject to sex-offender notification will have his entire life evaluated through the prism of his juvenile adjudication...It will define his adult life before it has a chance to truly begin." *In Re C.P.*, 967 N.E. 2d 729, 742 (Ohio 2012).

[38] "Beitsch, R., "States Slowly Scale Back Juvenile Sex Offender Registries," Pew Charitable Trust, available online at http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/19/states-slowly-scale-back-juvenile-sex-offender-registries.

[39] "Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S., *Human Rights Watch*, p. 18.

[40] Cortoni, F. & Hanson, K., "The Recidivism Rates of Female Sexual Offenders are Low: A Meta-Analysis," *Sex Abuse: A Journal of Research and Treatment*, v. 22, p.387 (2010); Cortoni, F. & Hanson, K., "Review of the Recidivism Rates of Adult Female Sexual Offenses," *Correctional Service of Canada*, May 2005 (http://www.csc-scc.gc.ca/research/r169-eng.shtml)

[41] Cortoni & Hanson at p. 396 (2010).

[42] 803 CMR 1.33 "The Board recognizes that adult female sex offenders generally have lower recidivism rates than adult male sex offenders. *Cortoni, et al., 2010.* The Board shall apply mitigating weight to the lower recidivism rate, along with the other relevant regulatory factors, in determining the final classification level.

[43] deVogel, V., & deVries Robbe, M. vanKalmthout, W. & Place, C. (2014) FAM Additional guidelines to the HCR-20V3 for assessing risk for violence in women. Van Der Hoeven Kliniek.

[44] Gannon, et al "Women Who Sexually Offend Display Three Main Offense Styles: A Reexamination of the Descriptive Model of Female Sexual Offending." *Sexual Abuse: A Journal of Research and Treatment* 26(3):207-214 (2013).

[45] Gannon, et al "A Descriptive Offense Process Model for female sex offenders appearing in B. Schwartz, (Ed), *The Sex Offender* Vo. 7, pp. 16-1-16.21 (2012) Kingston, NJ: Civic Research

[46] Cortoni, Sandler and Freeman, "Women Convicted of Promoting Prostitution of a Minor are Different from Women Convicted of Traditional Sexual Offenses: A Brief Research Report" (2014). *Sexual Abuse: A Journal of Research and Treatment* 1-11.

[47] Gillespie et al., "Characteristics of Females Who Sexually Offend: A comparison of Solo and Co-Offenders (2015). *Sexual Abuse: A Journal of Research and Treatment* 27(3) 284-301.

[48] Guidry, L .L. & Saleh, F. M. (2004). "Clinical considerations of paraphilic sex offenders with co-morbid psychiatric conditions." *Sexual Addiction & Compulsivity Journal*, 11 (1-2), 21-34.

[49] ATSA Adult Practice Guidelines, p.4 (2014)

[50] Kelley, S.M. & Thornton, D. "Can Current assessment tools accurately predict risk among sex offenders with major mental illness? A review of recent research findings." *Annual MASOC/MATSA Conference, Marlborough, MA* (2013)

[51] Kelley, S.M. & Thornton, D. "Sex offenders with major mental illness: Integrating research into best practices." *Journal of Aggression, Conflict, and Peace Research, 7*(4), 258-274; Guidry, L. (2015, October); "Can existing risk measures be used with SOMMI?" In D. Thornton (Chair), *Criminogenic needs of sex offenders with major mental illness (SOMMI).* Symposium conducted at the 34th Annual ATSA Research and Treatment Conference, Montreal, Quebec (2015).

[52] *Doe No. 380316 v. SORB,* 473 Mass. 297, 312 n.21 (December 11, 2015), *see* Tewksbury, R., Jennings, W. and Zgoba, K., *Sex Offenders: Recidivism and Collateral Consequences*, NCJRS, U.S. Dep't of Justice (2012).

[53] New York State Division of Probation and Correction Alternatives (DPCA) Research Bulletin: Sex Offender Populations, Recidivism, and Actuarial Assessment, p. 3 (2007)(Of 19,458 male sex offenders on the 48% were arrested for a new offense within eight years, but only 8% were arrested for a new sex offense); Tewksbury, R., Jennings, W. and Zgoba, K., *Sex Offenders: Recidivism and Collateral Consequences*, NCJRS, U.S. Dep't of Justice, p.10-11 (2012)(evaluating the efficacy of New Jersey's sex offender registry, SORN, and finding that SORN status

"was not a significant predictor of which sex offenders would reoffend in general, including non-sexual recidivism.") Zgoba, K. M., Miner, M., Levenson, J., Knight, R., Letourneau, E., & Thornton, D. (2015). The Adam Walsh Act: An examination of sex offender risk and classification systems using data from four states. *Sexual Abuse: A Journal of Research and Treatment*. doi: 10.1177/1079063215569543

[54] *Sex Offender Sentencing in Washington State: Notification Levels and Recidivism*, Washington State Institute for Public Policy (December 2005) (Washington revised tool after discovering that it did not "classify sex offenders into groups that accurately reflect[ed] their risk for reoffending.")

[55] Zgoba, et al, *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act*, NCJRS, United States Department of Justice pp. 8-10 (2012).

[56] Babchishin, K. M., & Hanson, R. K. (2009). Improving our talk: Moving beyond the "low", "moderate", and "high" typology of risk communication. Crime Scene, 16(1), 11-14. This presents an opportunity for the MTC to provide information about the success of its treatment model with an assessment of recidivism rates of individuals who have been found no longer sexually dangerous and been released from the treatment center.

Commission Statement on Prevention

(Joined by Commissioners Bennett, Carvalho, Gallagher, Ryan, Brownsberger, Brodeur, Kinscherff, Knight, Guidry, Levy, Connolly, Kennedy, Hayden)

In the interest of ensuring public safety and reducing sexual violence, Massachusetts has invested valuable resources in implementing sex offender crime control strategies that focus on monitoring and controlling identified sex offenders. The Commission recognizes that the Massachusetts Probation Service, parole officers, and the law enforcement community share a collective mission of reducing sexual violence in Massachusetts through their work in prevention.

The Commission focused some of its attention on primary prevention as a tool to achieve its ultimate goal of reducing sexual violence in the Commonwealth. Primary prevention focuses on preventing first-time perpetration of sexual violence. This concept is part of what the Centers for Disease Control and Prevention considers a comprehensive approach that includes interventions before violence has occurred (primary prevention), as well as the immediate response to violence (secondary prevention), and the long-term and systemic responses (tertiary prevention) to violence.

Primary prevention offers the best hope and the best investment for reducing the overall problem of sexual violence. By focusing on secondary and tertiary prevention, however, Massachusetts has invested nearly all of its resources and legislation at stopping repeat offenders – people who have been reported, arrested, and successfully prosecuted. Research has shown that only 32% of sexual assaults are ever reported (National Crime Victimization Survey, 2008-2012) and only 22% of those reports lead to an arrest (FBI Uniform Crime Reports, Arrest Data, 2006-2010). Of those prosecuted, half are convicted.[34] Although these numbers are estimates, they do reveal that only a small fraction of actual offenders are targeted by current sex offender management practices such as registration, notification, and civil commitment.

A seminal study by the Centers for Disease Control and Prevention[35] has corroborated the hypothesis that children who have experienced various adverse conditions in their childhood and youth, including sexual abuse, are at higher risk when they become older to engage in high-risk health behaviors (e.g. substance abuse, over-eating, smoking, to cope with the trauma of their abuse). These behaviors, in turn, may lead to the most frequent and costly causes of disease and death in the U.S. In addition to health and mental health costs, our courts, law enforcement, child protection agencies, and prisons spend hundreds of millions each year dealing with the *aftermath* of child sexual abuse. **A strong investment in prevention holds the best promise of ending the epidemic and reducing these significant fiscal and human costs.**

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[34] Abel, G. G., Becker, J. V., Cunningham-Rathner, J., Mittleman, M. S., Murphy, M. S., & Rouleou, J. L. (1987). Self-reported crimes of nonincarcerated paraphiliacs. Journal of Interpersonal Violence, 2, 3–25.

[35] "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults," published in the *American Journal of Preventive Medicine* in 1998, Volume 14, pages 24S–258.

The Commission recommends a change in direction to begin a public policy that implements best practices in the management of sex offenders and an increased focus and investment in primary prevention. Massachusetts has developed some national models for prevention that explores both preventing victimization and perpetration of sexual violence, some examples of which are more fully described in the Massachusetts Sexual Violence Prevention Plan created by a coalition of organizations throughout the Commonwealth. While the Commission does not endorse any of these models in particular, they serve as examples of primary prevention-focused programs.

One of the most notable challenges to primary prevention is the lack of sustainable funding. To make significant progress towards preventing sexual violence, the Commission recommends a comprehensive approach sustained over time that emphasizes primary prevention as the best investment and the best opportunity for public safety.

Final Statement of Chair Brownsberger

I joined the Sex Offender Registration Board's statement on the issue of actuarial analysis and data collection, because I believe it is well-grounded in reality and practicality. I do believe the science behind the statement by Commissioner Guidry, Kinscherf, Knight, and Levy on these issues: If one wants to predict the recidivism of offenders with known histories, one will get the best results by using a vetted quantitative instrument .

I was unable to join the recommendation that the SORB move to such an approach and/or, at a minimum, lay the empirical foundation for doing so by collecting more data, for the following reasons:

1. The greatest challenges in assessing recidivism risk are (a) actually ascertaining the offender's true history and (b) monitoring changing dynamic risk factors. The SORB has a substantial backlog in the primary task of assembling and vetting the facts of hundreds of cases.
2. While a retrospective or prospective study of the SORB's predictive accuracy would be of substantial academic interest, it would inevitably add to the overload of SORB and especially of SORB's management team. Now does not seem like a prudent time to undertake such a study.
3. Additionally, I was unconvinced that the incremental predictive accuracy afforded by a more quantitative methodology would be material. No predictive methodology offers high accuracy. It seems more important for the SORB to maintain its focus on getting the facts right than to add quantitative methods that offer little incremental benefit over getting the facts right in the first place.
4. Further, I was unconvinced that the research science has a handle on offense severity. From the standpoint of the public, the probability of re-offense is not the only variable that matters. The other variable is the severity of the offense that is likely to be committed. Researchers have not operationalized severity. Researchers could, of course, easily define an operational scale of severity, and, if they did so, the quantitative approach would optimize the predication of that scale. However, that operationalization would have no political legitimacy – there is no public agreement (and never will be) on how to weigh the relative severity of different sex offenses.
5. Finally, in a practical sense, the impact of marginally improving accuracy in our ranking of offenders is much less than the impact of the policy choices we make about how to handle offenders at different points on the scale: Should medium risk offenders – the middle 50% of those coming before the SORB (ranked by whatever methodology) – be up on the internet? How does the public safety benefit of having them there compare to the possible increase in recidivism risk that results from marginalizing them? As a commission, we did not reach these larger issues.

I was very grateful to all the members of the commission for all of their thoughtful contributions over the course of our meetings. We did not reach consensus, but we moved understanding forward.

Final Statement of Chair Brodeur

The Centers for Disease Control and Prevention have recently noted, "Sexual violence is a serious problem that can have lasting, harmful effects on victims and their family, friends, and communities."

I believe the main task of the Commission was to analyze the possibility of creating a more effective tool for classifying offenders. It is important to note that during the time the Commission was deliberating, the Sex Offender Registry Board (SORB) did promulgate new regulations after an extensive process that included opportunities for interested parties to offer testimony at a public hearing. The new regulations recognize the need to apply rating factors that consider the offender's age, gender, and disability. While I did not agree with the scope of the data collection proposal suggested by some commissioners, there are opportunities for data collection and analysis that will allow SORB to test the reliability of the new regulations over time. I believe the Commissioners were unanimous in their desire for the most accurate assessments possible. However, we disagreed on the methodology to pursue improved accuracy and the potential for developing a significantly better instrument.

Most importantly, the work of the Commission made clear to me the need to focus additional resources on primary prevention. Here is what we know:

- Sexual offenses are dramatically underreported. A 2013 report by the National Research Council indicates that 80 percent of sexual assaults are not reported to law enforcement, and other studies confirm the underreporting of sex crimes.
- Given this underreporting, it is very difficult to establish reliable recidivism rates.
- Among the reasons cited for underreporting are the following:
    - Self-blame or guilt;
    - Shame/embarrassment/desire to keep the incident a private matter;
    - Fear of the perpetrator;
    - Fear of not being believed or being blamed for being complicit in the incident;
    - Lack of trust in the criminal justice system.
- Checking the sex offender registry or conducting a criminal background check does not guarantee that a person will not sexually offend. Relying solely on these resources can provide a false sense of security.
- The concept of "stranger danger" is misleading. Most victims of a sex crime know the perpetrator.

The Sex Offender Registry Board focuses on a small group – convicted perpetrators. The most important public policy steps we can take lie in the areas of primary prevention and survivor support. This includes building on our efforts to empower survivors to report incidents without judgment and to improve access to services and supports. Regarding prevention, the CDC has identified three evidence-based prevention programs deemed to be effective after rigorous methodology analysis and three pilot programs. The Commonwealth will improve the lives of survivors and their families by supporting implementation and expansion of programs using the principles of effective prevention of sexual violence. In addition, by improving reporting, we will get better data on the scope of the problem and be better equipped to address recidivism.

I would like to thank all of the Commissioners, other presenters and interested parties for their work on this Commission. While we did not arrive at a consensus on a range of issues considered by the membership, I was impressed by each Commissioner's commitment to public safety.

Final Statement of Massachusetts Probation Service

The Massachusetts Probation Service (MPS) has appreciated the opportunity to be a part of the Special Commission to Reduce the Recidivism of Sex Offenders (SORC) and contribute to its important work. We would like to thank fellow stakeholders who participated and worked together throughout the Commission's existence. Special thanks are due to Senator Brownsberger and Representative Brodeur for taking on the responsibility of co-chairing SORC and Anne Johnson Landry and Patrick Prendergast for supporting them in those duties.

As the Commonwealth's largest community corrections agency, we're committed to reducing recidivism across the state. Doing so will result in less victims, safer communities, more law-abiding and productive lives for probationers and better return on investment for taxpayers. In order to achieve these results, the MPS is dedicated to its ongoing efforts to build an evidence-based organization. Evidence-based organizations employ empirically proven strategies to achieve positive outcomes in their work.

A significant part of building an evidence-based MPS is providing our Probation Officers with more time to spend with the highest risk probationers, sex offenders included. In spending more time with the riskiest people, understanding what dynamic factors are driving their behavior and case planning to intervene with those dynamic factors, Probation Officers will be able to more effectively influence positive behavior change in probationers. Structuring, planning and implementing such behavior change with fidelity requires significant effort and resources on behalf of the MPS.

While building an evidence-based MPS is an ambitious undertaking, it is more importantly, a worthwhile endeavor. Whether it be in the area of supervising sex offenders or other groups of probationers, positive outcomes in the realm of community corrections go far beyond statistics. More than anything, achieving positive outcomes for the MPS means less victims of crime and safer communities for the citizens of the Commonwealth. Despite SORC ending, the MPS is committed to collaborating with all stakeholders in an effort to continuously improve the delivery of public value to Massachusetts.

Final Statement of Commissioners Connolly and Kennedy

The Special Commission's representatives from the Department of Mental Health (DMH), Nancy Connolly, Psy.D and the Executive Office of Health and Human Services (EOHHS) Robyn Kennedy declined to endorse the Commission Statement on Sentencing, Commission Statement on Collateral Consequences, Statement on Assessment and Disposition of Special Populations, and Statement on Data Collection and Actuarial Risk Assessment Offered by Commissioners Guidry, Kinscherff, Knight and Levi. Commissioners from DMH and EOHHS joined in support of the Statement on Actuarial Risk Assessment and Data Collection Offered by SORB, Statement on Sentencing and Statement on Prevention.

While declining to jointly support several statements, this was not an indiscriminate rejection of all elements of each statement or the report in its entirety. Rather, it was in response to certain perspectives, conclusions and recommendations that are included in the documents. DMH and the EOHHS endorse evidenced-based practices for the assessment and treatment of persons with problematic sexual behavior and/or histories of sexual offending. While the percentage of clients served in EOHHS who have problematic sexual behavior is proportionately small, the treatment needs and risk management needs often require a significant allocation of resources. Through interagency collaboration, the development of staff training programs and the hiring of qualified staff and consultants, EOHHS agencies are able to proactively identify and incorporate best practices into their programming (see EOHHS Interagency Collaboration & Practice Related to Problematic Sexual Behaviors, March 2016). We endorse the risks/needs/responsivity approach to treatment of problematic sexual behavior and we endorse the need for incorporating emerging research into the development of our programs to meet the needs of our special populations.

Further, we support the need to introduce primary prevention programs for sexual violence, however, we also believe it would be a mistake to deplete funding for programs for persons who have already been convicted of sex offenses (where there is at least some risk for recidivism) in order to develop programs for the general public or for targeted populations in the community (e.g., schools, youth programs), where base rates for sex offending are reportedly quite low. Primary prevention is an important component of reducing sex offending, however, directing resources at identified high risk offenders, who often have multiple victims, is equally important. The highest risk offenders will continue to require the highest level of resources. As stated in the letter to the Chair of the Special Commission by the Boston Area Rape Crisis Center, "A comprehensive approach to sexual violence prevention includes interventions before violence has occurred (primary prevention) as well as immediate responses to violence (secondary prevention), and long-term and systemic responses (tertiary prevention)."

Because we serve vulnerable populations, a victim-centered approach to sex offender risk management is an important perspective for our agencies. In conjunction with public safety entities and other stakeholders, we look forward to continued collaboration on the important issues raised by the Special Commission to Reduce Recidivism of Sex Offenders. We thank the Commission for inviting our participation.

Jane Doe Inc.
The Massachusetts Coalition Against Sexual Assault and Domestic Violence

14 Beacon Street, Suite 507 Boston, Massachusetts 02108 Tel 617 248 0922 Fax 617 248 0902 www.JaneDoe.org

Jane Doe Inc (JDI) was honored to participate on the Special Commission to Address Sex Offender Recidivism. Our charge was complex and the path to consensus challenging. While the Commission membership held diverse beliefs about strategies and processes to address recidivism, the shared commitment to the prevention of sexual violence was strong. The only unanimous recommendation of the Commission is to significantly and intentionally address sexual violence primary prevention. JDI and the rape crisis centers in Massachusetts that work daily to serve survivors of sexual violence and to prevent sexual violence are emboldened by the consensus on this issue.

Sexual violence is both a public health and public safety problem. In MA, **nearly 1 in 2 women and 1 in 4 men** have experienced sexual violence other than rape; **nearly 1 in 3 women and 1 in 5 men** experienced rape, physical violence, and/or stalking by an intimate partner; **nearly 1 in 7 women** have experienced rape over the course of their lifetimes.[1] In FY2015, rape crisis centers in Massachusetts answered more than 14,000 hotline calls related to sexual violence.[2] Rape remains one of the most under-reported crimes.[3] Most individuals who perpetrate sexual violence are not identified by law enforcement, successfully prosecuted and placed under the purview of the criminal justice and the Sex Offender Registry system.

JDI joined in Commission report sections that reflect the position broadly supported by the sexual violence movement, including the National Alliance to End Sexual Violence. This position advocates the use and continuous evaluation of the most accurate, evidence-based tools available to identify risk, and to collect the necessary data to evaluate their effectiveness. We must also pay special attention to the variables that could impact risk assessment and understand that juveniles, women, and individuals with disabilities may need to be assessed and responded to in a different way than subjects of current research. Research will continue to grow and should be constantly reviewed and integrated into practice. JDI's support of these sections is not meant to undermine the SORB's efforts, but rather reflect support for considering additional options. Further, while JDI supports the concept of data collection/evaluation, we are not prepared to endorse any specific research design at this time.

JDI joined in the collateral consequences portion of the report as recognition of the broader scope of the issue and impacts of the systems currently in place. We strongly support offender accountability and also recognize that poorly conceived or poorly implemented consequences might increase risk and have implications for survivors' lives. This section makes no specific recommendations and simply highlights the areas that should be considered as we review current systems. Any such review should reflect the complexity and diversity of survivors' experiences and perspectives.

Submitted by: Maureen L. Gallagher, Policy Director

[1] National Intimate Partner Sexual Violence Survey, 2010
[2] MA Department of Public Health, 2015
[3] National Crime Victims Survey, 2008

Supplementary Statement on Need for Separate Sexual Offender Policies for Children and Adolescents

Submitted by Robert Kinscherff, PhD, JD as MASOC Representative and subject matter expert in problematic sexual behavior among children/adolescents and juvenile sexual offending
May 15, 2016

It is difficult to come to consensus about public policy about sex offenders. Nonetheless, we believe this Commission missed a valuable opportunity regarding adolescents and children with sexual behavior problems.

Research and experience show that only a very small percentage of adolescents charged with a sexual crime re-offend sexually. Community safety is *increased* when higher-risk adolescents or children are provided quality specialized treatment and positive youth development is supported. However, Massachusetts has not followed other states in clearly distinguishing youth from adults, particularly in post-adjudication registration and management of youth.

The Department of Justice is responsible for the oversight of SORNA (registration and notification implementation). DOJ recently released new guidelines ***allowing and encouraging*** states to develop different policies for youth and adults. These guidelines recognize the unique developmental issues of youth. Massachusetts registration and notification policies were developed largely with adult sexual offenders in mind and before research demonstrating key developmental differences between youthful and adult sexual offenders. They have not been amended to take adequate account of those differences or new forms of youthful offending ("sexting").

This Commission missed an opportunity to strongly recommend clear distinctions in sexual offender policy between youth and adults. The SORB has made exceptions for leveling adolescents and children, but **Massachusetts legislators can create policies that encourage families to reach out for help without the very real concern of their child being placed on the sex offender registry.**

We recognize that a very small percentage of youth would be charged as Youthful Offenders and potentially incarcerated in the Department of Corrections if found to have committed a sexual offense and are deemed dangerous to the community and at high risk to sexually reoffend. They can be classified by SORB as high risk, dangerous offenders. But these cases would be exceptions rather than the current broad inclusion now legally permissible.

We support:

1. A recommendation to the Legislature and Governor that statutes be amended so that children age 12 and under are not charged with a sexual offense and instead are addressed as Children Requiring Assistance (CRA) unless a Juvenile Court determines that a child is dangerous and at high risk to reoffend sexually.

2. A recommendation to the Legislature and Governor that youth adjudicated of a sexual offense will not be placed on the SORB registry or subject to community notification unless ordered by the adjudicating Court. The current system by which the Juvenile Court must

"waive" an obligation to register is replaced by registration only if the Juvenile Court finds the youth dangerous and high risk of sexual re-offense. Youth registered for a juvenile sexual offense who have not sexually re-offended are removed at age 25 unless the SORB demonstrates by clear and convincing evidence that registration is required to protect the public.

There is increasing consensus that youth are different from adults. Their developmental differences should be the basis for sexual offender policy and practice demonstrably different for children and adolescents than for adults.

Final Statement of Commissioner Knight

Supplementary Statement on the Significant Problems in the SORB 's Solutions to Classification and Data Collection

Raymond Knight, Ph.D.

There are two statements in the Commission's report on actuarial risk and data collection, one written by the SORB and one proposed by Guidry, Kinscherff, Knight, and Levy. The latter proposal did not prescribe any changes to the current procedures used to categorize sex offenders, but rather simply asked that empirical data be gathered to assess the reliability and validity of current practices. The commissioners representing the SORB and many of the other state agencies rejected this minimal request for empirical validation. In reality, the SORB's statement, couched in red herring criticisms of follow-up research and a naïve understanding of the possibilities of measuring "dangerousness," represents a rejection of the widely accepted scientific methodology for assessment in criminology, psychology, and psychiatry.

In the actuarial subgroup negotiations about the actuarial statement, the SORB representatives were unwilling to endorse as a starting point for compromise the basic psychometric principal that a measurement instrument cannot be considered to be reliable or valid unless it is empirically tested. Neither the original SORB 24-factor risk instrument nor their recent 38-factor revision has ever been tested for either reliability or validity. The use of such untested instruments to make critical decisions that have significant consequences for public safety and that result in serious collateral consequences for offenders is scientifically unconscionable.

One serious inaccuracy proffered in the SORB actuarial and data collection statement is that the recent revision of their classification methodology represents an implementation of "current scientific research." The purported "revision" did nothing to improve the psychometric characteristics of the instrument's individual factors or its rules for combination. The unquantified factors of the revision, like its predecessor, are often vague, riddled with potential clinical adjustments, and lacking concrete anchors for judgments of presence or absence. From a psychometric perspective few of these factors are likely to attain even minimal levels of interrater reliability, much less predictive validity. The SORB would not even agree to a simple, time-limited, inexpensive study to assess the reliability of their instrument.

The major claim that the 38 factors constitute an "updating" of the prior instrument rests on the claim that supportive empirical references have been made more current. Unfortunately, the SORB implemented an unscientific "cherry picking" strategy of simply searching for studies to support their factors. No consistent criteria were provided to indicate why a particular supportive study was chosen or rejected. A close analysis of their "support" studies reveals that a number do not even provide evidence for the factors they are said to support.

The current revised instrument is significantly psychometrically flawed. We proposed a variety of scientifically sound, retrospective studies that could serve as a basis for improving the decision criteria and process. These do not require the "eight to ten years" claimed by the SORB in their statement. The rejection of any steps to gather data to guide the improvement of a

significantly flawed instrument and a questionable decision process is scientifically unacceptable and rejects the principle of best practices in decision making.

Final Statement of Commissioner Guidry

May 16, 2016-Supplemental Statement, submitted by L. Guidry, Psy.D.

As President of MATSA, I want to comment on three important issues unresolved by the commission:

Ensure Accountability. Professionals, legislators, and the general public are all adamant about stopping known offenders from ever abusing again. We know that a very small percent of adult sex offenders, and an even smaller percentage of adolescents, manifest the characteristics that we find most frightening and in need of the most intensive and comprehensive management/intervention. We must target our resources towards this small percentage; until then we will not create the highest level of safety possible. We cannot, however, afford to get this wrong. **The distinctions we are making about the risk to abuse *must* be as accurate as possible.**

Research-Based Best Practices. There is a growing trend across criminal justice, public health, child protection fields towards the use of "research-based practices." The move in this direction has been successful because doing so will both save money and improve outcomes. Although many of the commissioners supported a premise that the research is not strong enough to consider changing current practice, MATSA respectfully disagrees. Although the research is not perfect, it clearly shows that for adults, using an actuarial risk assessment tool will more accurately reflect the risk to reoffend. The current practices used by the SORB have never been validated, and there is no assurance that it accurately or inaccurately levels sex offender. **MATSA continues to fully support the use of research-based best practices, as it has done for decades, in order to increase safety and reduce sexual offense recidivism.**

Separate the Children/Adolescents from Adults. In Massachusetts, we have the dubious distinction of being only one of several states that does not separate juveniles from adults in our sex offender statutes. This lack of differentiation has resulted in resources that are needed for the most dangerous adults being spent on children and youth who do not require that level of intervention. Research demonstrates that this lack of differentiation in our public policy not only decreases safety and positive outcomes and is fiscally inefficient, but also punishes our children and teens at a level that cuts off their ability to grow into healthy productive adults. Adolescents should be held accountable for their sexual abuse crimes, but they also must be given a chance to learn what it means to live productive lives. **Research shows that in almost all cases at this age with appropriate treatment a second chance will work.**

The Recidivism Commission was established as a measured response to the horrific Burbine case. In this instance, a sex offender identified as a level one by SORB sexually abused a number of infants and young children in his wife's daycare service. The legislature established this commission to recommend changes to ensure that this kind of crime would never happen again. I am truly saddened that the full commission could not come up with one recommendation that would correct the system that is making critical public safety and human rights decisions based substantially on chance.