

"I know how men in exile feed on dreams of hope." - Aeschylus, Agamemnon 1668

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Feedback? News? Write!

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Securus Loans 'Free' Tablets to TX Prisoners - But That's When the Paying Starts

Ed Lyon, "Securus Rolls Out 'Free' Tablets to Texas Prisoners," *The Echo, WFAA* (June 1, 2022)

Text excerpts: "Texas state prisoners have begun receiving free tablet computers from Securus Technologies. By Feb., 18, 2022, the state's privately contracted provider had distributed 3,500 'e-tablets' to prisoners in seven of its 61 state prisons...."

For TDCJ [the Texas corrections department], the deal means not only more control over prisoners but also more cash: Securus will kick back a portion of the fees that prisoners or their loved one's pay for content delivered on the tablets. The firm and its parent, Aventiv Technologies, clearly expects profits from those sales, as well, even after factoring in the cost of the 4-by-7-inch tablet, a protective cover and charger.... But what about prisoners?

Their tablets 'will be preloaded with education materials, some e-books, some religious materials,' according to TDCJ Executive



The free content Securus has promised includes 350 podcasts, 30 games, unlimited FM radio, a dictionary, a thesaurus, an encyclopedia and AP news updates. The entire Gutenberg library of 60,000 books is also available, though with copyright lasting up to 95 years, few recent titles are included. TDCJ, in its quest to become a paperless system, said it also plans to use the e-tablets to notify prisoners of administrative and medi-

cal appointments, accept grievances and take commissary orders. Everything else delivered over the tablets comes with a fee attached. But don't worry! Securus also offers subscription plans with a 'simple fixed-price monthly payment,' though you won't see prices until you sign up for an account. Also unclear is how much of the fee-based content might have been freely available at the prison library. What is clear, given the poverty most prisoners and their families face, is just how 'free' the e-tablets are not. [See Prison Legal News, March 2020, p. 44.]

Director Bryan Collier. 'They have radio. They can also have music on it. It'll come preloaded with some music. They will have an opportunity to buy some additional things to add to it.'

Editor's Note: Securus is the same firm that has contracted with MSOP to provide tablets and their fee-based services. Sometime soon, we will find out for ourselves just how much is free, and how much everything else in those services will cost. Bring your credit and debit cards and your checkbooks.

Treatment Isn't Blocked by Categorical Denial; It's Just Different. Is the Outcome Better? 'Could Be.'

Jayson Ware et al., "Are Categorical Deniers Different? Understanding Demographic, Personality, and Psychological Differences between Denying and Admitting Individuals with Sexual Convictions," *41(4) Deviant Behav.* 399-412 (April 2020)

Text Excerpts:
p. 399: "Large-scale meta-analyses have found no overall effect for denial as a predictor of sexual recidivism (Hanson & Morton-Bourgon 2005; Mann, Karl Hanson, & Thornton 2010). Despite this finding 91% of treatment programs in the US included 'offender responsibility' as a treatment target."
p. 400: "...Recently there has been evidence to suggest that denial may actually work as a protective factor for some sexual offenders. (Marshall, Marshall, & Kingston 2011) reported denial to be negatively related to items on three risk instruments (STATIC-99, VRS-SO, STABLE 2000), suggesting that denial may actually signal a lower chance of reoffending. Harkins, Beech, & Goodwill (2010) found that high risk high denial offenders were less likely to recidivate than low risk low denial sexual offenders. Harkin et al (2015) examined the relationship between denial, risk, and sexual recidivism among different types of sexual offenders. Denial of responsibility predicted lower levels of sexual recidivism, independent of risk level. For specific offender types, denial of responsibility was not significantly associated with sexual or violent recidivism. While denial may not have an effect on recidivism, it has been argued that denial still

represents an important responsivity factor and one which is important to understand (Levenson, David Prescott, and Jumper 2014).

p. 403: On average, deniers were significantly older (M = 52.73 years; SD = 10.74 than admitters (M = 46.03 years, SDS = 13.22, t (75) = 2.45, p = .017, d = 0.56. There was an over-representation of offenders with child victims among deniers, while this was not the case among those who admitted their offenses,....

p. 405: There was a significant multivariate effect, indicating some degree of difference between the two groups [admitter and deniers] across these measures. Examining each of the between-groups contrasts, significant differences were present in relation to ... shame proneness (with deniers scoring higher than admitters), and externalizing self-consciousness (with deniers scoring higher than admitters).

p. 406: Discussion

...Sex offenders were categorized as being in categorical denial only if they denied responsibility for all current and historical sexual convictions,.... Denials scored significantly lower on anti-social and sadistic, which may help to explain why some deniers recidivate at lower levels (Harkins et al. 2015). Interestingly, categorical deniers did not score significantly higher on self-deception scales (Lanyon & Lutz 1984)

p. 407: ...[T]he enacting of the 'moral' or 'desirable' selves often espoused by deniers

(Blagden et al. 2014; Ware and Mann 2012) can assist with promoting self-esteem and self-appraisals (Harter, Waters, and Whitesell 1998).

Implications for practice

Traditionally the first role for the clinician in working with individuals with sexual convictions has been to 'break down' or 'break through' the denial of their offenses (Northey 1999). However, given the function of denial, its role in identity management and shame reduction, and in maintaining family and peer networks, such a clinical role is untenable and likely to be met with resistance (Roberts & Baim 1999). The results of this study support the approach to treatment by Marshall and colleagues (Marshall et al. 2001; Ware & Marshall 2008) in which there is no immediate or default attempt to overcome denial. Instead, treatment commences with the strategy of helping the offender identify problems in his life that led him to be in a position where he could be accused of sexual offending. This engages the offender in treatment in the first instance and provides the therapist with the opportunity to develop a stronger therapeutic alliance built around mutual trust. It also allows the therapist the opportunity to understand the function of the denial for the offender and to develop strategies to address the actual issues that maintain the denial (such as the striving to maintain family support and/or a viable personal identity) without the therapist having to actually seek to chal-

(Continued on page 2)

lunge the denial. In doing so, this prevents the therapist from being perceived as confrontational or inflexible to the needs of the individual that they were engaged with. Given the shame linked with denial it is important that therapeutic relationship avoid confrontation and practices which may increase shame. The shift towards non-disclosure and non-confrontational practice with individuals with sexual convictions are consistent with contemporary, trauma-informed methods of SO treatment (Levenson, Willis, and Prescott 2016) and compassion-focused practices (Walton & Hocken 2018).

pp. 407-08: It has been argued that the quality of the therapeutic relationship is of primary importance in working with the experiences of both shame and guilt in any clinical setting (Clark 2012). Blagden et al. (2013) found that therapists who worked with sexual offenders recognized the importance of negative affective states, particularly shame, when treating such offenders. They argued that a therapist's reactions to shame may, in part, determine the level of defense mechanisms utilized by sexual offenders. For instance, a therapist who recognizes that the offender's offending behavior is the result of the person looking to pursue the human need/desire for specific experiences (albeit in maladaptive ways), rather than the offender being of 'bad' character, is likely to decrease shame responses in the form of denial (Ward, Vess, Collie, and Gannon 2006). Thus, a collaborative therapeutic alliance built on authentic approach goals is likely to breakdown resistance and facilitate a positive and predictive relationship. Indeed, given that many individuals with sexual convictions will have a history of abuse and trauma, the therapeutic relationship could be the most meaningful encounter they have ever had. (Levenson, Willis, & Prescott. 2016)."

References:

Blagden, Nicholas, Belinda Winder, Mick Gregson, and Karen Thorne. (2013). "Working with Denial in Convicted Sexual Offenders: A Qualitative Analysis of Treatment Professionals' Views and Experiences and Their Implications for Practice." *International Jour. Of Offender Therapy and Comparative Criminology* 57(3): 332-56.

Blagden, Nicholas, Belinda Winder, Karen Thorne, and Mick Gregson. (2014). "making Sense of Denial in Sexual Offenders: A Qualitative Phenomenological and Repertory Grid Analysis." *Journal of Interpers. Violence* 29(9): 1698-1731.

Harkins, Leigh, Philip Howard, Georgia Barnett, Helen Wakeling, and Ceri Miles. (2015). "Relationships between Denial, Risk, and Recidivism in Sexual Offenders." *Archives of Sexual Behavior* 44(1): 157-66

Harkins, Leigh, Anthony Beech, &

Alistair Goodwill. (2010). "Examining the Influence of Denial, Motivation, and Risk on Sexual Recidivism." *Sexual Abuse: A Jour. of Treatment and Research* 22: 78-94

Levenson, Jill S., Gwenda Willis, & David Prescott. (2016). "Adverse Childhood Experiences in the Lives of Male Sex Offenders Implications for Trauma-Informed Care." *Sexual Abuse* 28(4): 340-59.

Levenson, Jill S., David Prescott, and Shan Jumper. (2014). "A Consumer Satisfaction Survey of Civilly Committed Sex Offenders in Illinois." *Int'l Jour. of Offender Therapy and Comparative Criminology* 58(4): 474-95.

Mann, Ruth E., Karl Hanson, & David Thornton. (2010). "Assessing Risk for Sexual Recidivism: Some Proposals on the Nature of Psychologically Meaningful Risk Factors." *Sexual Abuse: A Jour. of Treatment and Research* 22: 191-217.

Marshall et al. (2001). "Treatment of Sex Offenders Who Are in Categorical Denial: A Pilot Project." *Sexual Abuse: A Jour. of Treatment and Research* 14: 205-15.

Marshall, William, Liam Marshall, & Drew Kingston. (2011). "Are the Cognitive Distortions of Child Molesters in Need of Treatment?" *Jour. of Sexual Aggression* 17(2): 118-29.

Northey, William. (1999). "The Politics of Denial: A Post-Morten Critique." In *The Sex Offender: Theoretical Advances, Treating Special Populations and Legal Developments*, Barbara Schwartz, ed.. Kingston, NJ: Civic Research Inst.

Roberts, Brom, & Clark Baim. (1999). "A Community-Based Programme for Sex Offenders Who Deny Their Offending Behaviour." *Probation Jour.* 46(4): 225-33.

Walton, Jamie, & Karensa Hocken. (2018). "Compassion and Acceptance as Interventions for Paraphilic Disorders and Sexual Offending Behavior." pp. 87-101 in *Assessing and Managing Deviant Sexual Interest and Arousal*, Geri Akerman, D. Perkins & R Bartels, eds. London: Routledge.

Ware, Jayson, & Ruth Mann. (2012). "How Should 'Acceptance of Responsibility' Be Addressed in Sexual Offending Treatment Programs?" *Aggression and Violent Behavior* 17: 279-88.

Ware, Jayson, & William Marshal. (2008). "Treatment Engagement with a Sexual Offender Who Denies Committing the Offense." *Clinical Case Studies* 7: 592-603.

Shaming the Constitution, Part 5:
Disordered Disorders

Michael L. Perlin & Heather Ellis Cucolo.

Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation (Philadelphia: Temple Univ. Press, 2017), Chapter 3: "History of Sexual Offender Laws," cont'd



Editor's Note: This is the fifth in a series of excerpts from *Shaming the Constitution*, a watershed book dispelling the fraud of sex offender civil commitment (SOCC) and calling for its immediate repeal everywhere. This portion addresses fraudulent junk-science diagnoses that are often relied upon to commit those targeted.

Text excerpts:

p. 32: **Paraphilia NOS**

"...The Washington Supreme Court, in *In re Williams*, highlighted the difficult task delegated to it by the U.S. Supreme Court:

Paraphilia not otherwise specified ('paraphilia NOS') is a diagnosis reserved for what might otherwise qualify as a paraphilia by virtue of the general criteria, but fails sufficiently to meet the standards for any of the eight specific categories. ...Professionals refer to paraphilia NOS as a wastebasket or a catchall category. Some sex offender treatment experts have identified more than fifty paraphilias in the NOS category in the literature, while others allege hundreds have been identified.

The entire SVPA process is cloaked in confusion and infused with fear, and differences in legal and medical definitions create imprecision and arbitrariness.

Hebephilia

Anticipation of the newest edition of the DSM (DSM-5) generated scholarly discussion and deeper investigation into the potential for new diagnostic inclusions. One suggested diagnosis – not included in the final edition of the DSM-5 – was hebephilia.

Hebephilia, simply an attraction to pubescents, has yet to be listed in the DSM as a credible, science-based diagnosis. Michael First and Allen Frances (the editors of the DSM-4 and co-chairs of the DSM-4 task force) rejected hebephilia as a valid diagnosis and maintained that hebephilia arose not out of psychiatry but rather to meet a perceived need in the correctional system. Frances and First found the misuse of psychiatry and the ill-trained evaluators most concerning with regard to hebephilia's use on SVP

proceedings.

p. 33: As an attorney in New Jersey, representing civilly committed 'sexually violent predators,' one of us (HEC) has seen cases in which hebephilia has emerged as a diagnosis in expert testimony. Under rigorous cross-examination, the expert usually concedes that the diagnosis was not listed in the DSM-4 but maintains that the DSM is used as a guideline for diagnosis and not as a hard and fast rulebook. By this rationale, 'experts can concoct and authorize any diagnosis that they deem appropriate'...

pp. 33-34: In *United States v. Carta*, the crux of the decision to release the defendant rested on the fact that the court was not convinced by the state expert's diagnosis of hebephilia. The court's opinion took note of the defense expert's statement regarding the use of hebephilia as a diagnosis: '[Lack of legal consent] is not what non-consent means there. The author of the DSM has written an article to clarify that, stating clearly that this diagnosis is only supposed to be used ...for things like exhibitionism, voyeurism and sadism. ...When you alter that ...to assign it to people who offend against teenagers who cannot give legal ...you are bastardizing that book and making it invalid.'

The court took issue with what age range qualifies as adolescence and identified a major issue with the dichotomy between legal and medical definitions of a mental disorder. The court reasoned that 'the age of legal consent is of no use to psychologists seeking a uniform diagnostic standard because the age of consent varies from jurisdiction to jurisdiction. It is one thing to criminalize conduct in one state that is legal in another. It is quite another to label a sexual interest pathological in Pennsylvania and normal in New York.' Thus, without a diagnosable mental disorder, it was unconstitutional to 'order indefinite commitment on the basis of the offensiveness of Respondent's conduct alone.'

p. 34: The Court of Appeals reversed the decision and found that the district court's concern over hebephilia was irrelevant because the government must show only that the defendant's sexual attraction to teenagers fell within the DSM definition of paraphilia not otherwise specified. Nonetheless, even if the court concluded improbably that the offender fell outside any DSM-recognized affliction, the reach of the statute is not limited to the specific conditions listed in the DSM.

This decision clearly reflects the overreaching capacity and constitutionally questionable intent of SVPA statutes. Without any clear, specified, and narrow parameters for commitment, courts are obliged to rely upon ever-changing and often 'undefined' opinions and expertise of psychologists and psychiatrists. Fur-

ther, judicial bias and heuristics in court opinions justifying indefinite commitment are easily camouflaged with unchallenged reliance on ambiguous psychological definitions.

pp. 34-35: Nearly a decade ago in *United States v. Shields*, a federal court barred the state's expert from testifying that the defendant suffered from hebephilia. The court gave a number of reasons why it rejected hebephilia as a 'mental disorder':

- The government does not point to any peer-reviewed literature recognizing either Dr. Doren's or Dr. Niklos Tomich's (the state expert) diagnostic definition of a mental disorder called hebephilia.
- The American Psychiatric Association had previously considered and rejected hebephilia as a diagnostic category for a mental disorder.
- There is no expert testimony in this record that psychiatric experts generally accept this definition of hebephilia as a mental disorder.

A footnote adds, 'The issue here is not whether adult sexual contact with minors is illegal (it is), but whether mere attraction to a pubescent minor is a mental disorder.'

p. 37: *Anti-social Personality Disorder*
Scholars have maintained that it is not clinically appropriate to diagnose someone as a sexually dangerous person subject to civil commitment on the basis of a diagnosis of anti-social personality disorder alone, without an additional diagnosis of paraphilia:

'Unquestionably, an individual with antisocial personality disorder may commit sexually violent offenses. However, this disorder afflicts 50 to 70 percent of the ordinary prison population and is far more likely to result in non-sexual criminal behavior. Again, the diagnosis of antisocial personality disorder alone, without an attending diagnosis of paraphilia, would almost never lead to a finding that an offender would be likely, or very likely, to reoffend with another sexually violent act.'

In *Crane*, Justice Ruth Bader Ginsburg acknowledged that an offender could qualify for a diagnosis of anti-social personality disorder, thereby qualifying under the statute, simply by not paying debts, not working, and having a reckless and irritable personality. Some courts have refused to uphold commitment based on the sole diagnosis of APD because it 'simply does not distinguish the sex offender whose mental abnormality subjects him to civil commitment from the typical recidivist convicted in an ordinary criminal case.'

p. 38: *Subsequent Issues with Lack of Control After Crane*

...[T]he *Crane* Court conclusively held that lack of control is essential to the constitutionality of the civil commitment of

sexual offenders. The Supreme Court confirmed there 'that *Hendricks* set forth no requirement of total or complete lack of control.' The Court pointed out that a less than absolute requirement was necessary to satisfy the phrase 'difficult to control. If a person can control his behavior, then civil commitment potentially becomes a "mechanism for retribution or general deterrence" — functions properly those of criminal law, not civil commitment.'

'The trend of state appellate courts, with Justice Antonin Scalia's blessing, has been to ignore *Crane*.'

Justice Scalia argued that 'difficulty to control behavior' was already assumed in the causal connection between future acts and present existence of a mental disorder and it was therefore unnecessary for a fact finder to make a separate finding of lack of control....

p. 39: ...The majority in *Crane* held that 'serious difficulty' is an additional element that the state must prove; thus it would follow that there must be a separate finding by the jury on the inability to control behavior.

pp. 40-1: The finding of future dangerousness, of course, continues to be highly problematic. Not only are such predictions notoriously inaccurate in the best of circumstances, but statutes typically also leave unspecified exactly what is being predicted. Humans are simply hard to predict, making assessments of future behavior impractical. Since no time frame is provided in mist statutes, predictions could encompass only the reasonably foreseeable future or the rest of the offender's life — the longer the predictive time frame, the less accurate any prediction can be.

[T]he worry about the tendency to overpredict criminality from past conduct is raised by virtually every theorist who discusses PD [preventive detention] of dangerous persons. [O]ur ability to predict future conduct is poor, and so there will be a high rate of 'false positives' included in the group to be detained. For every person who would commit acts of violence in the future if not preventively detained, many (perhaps even most) would not; they are detained based on a false prediction of future offending. [Susan Dimock, "Criminalizing Dangerousness: How to Preventively Detain Dangerous Offenders," 9 *Crim. L. & Phil.* 537, 546 (2015)].

Given the widely acknowledged bias that forensic mental health professionals have in the direction of overpredicting dangerousness, it is hard to imagine that a confined sexual offender will ever be classified as 'safe.'

SVPA Commitment in the 21st Century

pp. 41-2: The public's panic about the fear of recidivism if adjudicated sexual offenders are ever to be released to the community has not subsided, despite the

growing amount of information and statistically reliable data signifying a generally low risk of re-offense.

Our laws are based on the assumption that sexual offenders released from prison have a high reoffense rate for contract sexual crimes, and the current universe of sexual offender laws presumes that everyone is a recidivist. The programmatic goal of SVP laws was to focus society's attention on offenders who pose the greatest risk and likelihood of recidivism. However, information regarding 'who' fit the profile of the goal-directed group was uncertain and inconclusive at the time the laws were initially enacted. In fact, valid and reliable evidence tells us that incest and familial offenses are the most common occurrences of sexual violence. Without significant consideration of sexual offender prevalence and dynamics, laws were based on the 'stranger rapist/murderer' profile and were subsequently upheld through heavy reliance on expert opinions supporting empirical, then-current 'risk determinative' instruments and controversial science. The studies and statistics regarding risk of offender recidivism yielded inaccurate results when applied to individual offenders being evaluated for the likelihood of future reoffenses. A study released in 2003 by the U.S., Bureau of Justice Statistics found that within three years, 3.3 percent, or 141 of 4,295, of the released child molesters were arrested again for committing another sex crime against a child. From 3 to 5 percent is hardly a high repeat offender rate.

p. 42: A comprehensive study of sexual offenders committed in Nebraska concludes, 'No psychological test can decide whether an offender's risk level warrants a more or less intrusive disposition. Nor can any psychological test weigh the risk of sexual victimization against the competing interest of an offender's personal liberty.'

Given the data demonstrating low recidivism rates for sexual offenders (as compared with other criminals), it appears that bias and stigma surrounding the type of crime committed — sexual offenses — is what fuels our legislation. Thus, we ignore and disregard current studies and instead act on the basis of unfounded myths.

The regular demonization of this population as 'monsters' by district attorneys in jury summations, by judges at sentencing, by elected representatives at legislative hearings, and by the media has helped create a 'moral panic' that has driven the passage of legislation.

Other salient reasons contribute to this 'panic.' They include:

- Concern over rare yet horrific acts of sexual violence against children
- The public's frustration over the constraints in prosecuting sex crimes

oftentimes due to lack of both physical evidence and direct victim testimony, factors that frequently result in plea bargains for light sentences in prosecutions for these specific types of offenses

- The drastic increase in psychiatrists and psychologists willing and eager to provide expert testimony supporting prosecutorial applications for extended incarceration post-sentence
- The creation of numerous employment opportunities for psychologists and social workers within the civil commitment institutions for persons committed under sexually violent predator (SVP) laws
- Release of committed offenders has remained scarce and slow (in some jurisdictions, virtually non-existent), and thus much debate and controversy has swelled over the continued constitutionality of these laws.*

Virginia Report, #22:

Wrapping Up the Rest of the RAIs

(3) *The "SORAG"*
(Terence Campbell & Demosthenes Lorandos, *Cross-Examining Experts in the Behavioral Sciences* (Eagan, MN: West Group, 2001), § 9:39, pp. 464-65), outlines these fundamental problems with the SORAG:

'The SORAG is a 14-item actuarial instrument for assessing the recidivism risk of previously convicted sexual offenders. There is little, if any empirical support, however, for at least five of the SORAG items: history of alcohol problems, marital status, history of nonviolent offenses, meeting DSM-III criteria for Personality Disorder, and meeting DSM-III criteria for schizophrenia (coded as reducing recidivism risk)

The SORAG also includes Psychopathy Checklist-Revised (PCL-R scores in its overall assessment. Though it is a more objective procedure than not, there are elements of clinical judgment involved in using the PCL-R. Consequently, appropriate usage of the PCL-R appears to require specific training. Psychologists who use the SORAG without specific PCL-R training are at risk for violating Ethical standards 1.04(a) and 1.04(b) addressing "Boundaries of Competence...."

The SORAG relies on phallometric assessment to determine 'deviant sexual preferences. As previously pointed out, however, very few psychologists have been trained to do phallometric assessments. This consideration then raises the question of how does a psychologist using the

(Continued on page 4)

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SORAG assess deviant sexual preferences without the availability of phalometric data? Relying on UCJ, or other indices of deviant sexual preference, is inconsistent with the standardized procedure for the SORAG. In other words, deviations from standardized procedure mean that the SORAG no longer qualifies as a standardized instrument."

(4) The "SVR-20" (Sexual Violence Risk-20)

To begin with, Gregory DeClue, "Avoiding Garbage 2: Assessment of Risk for Sexual Violence after Long-Term Treatment," 33 *Jour. Of Psychiatry & Law* 179 (Summer 2005), clarifies that the SVR-20 instrument uses primarily dynamic claimed risk factors (discussed elsewhere herein). DeClue bluntly declares, at p. 185:

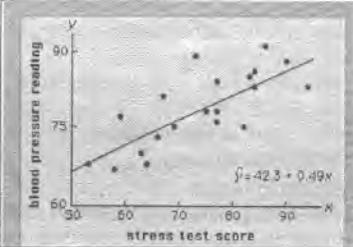
"An evaluator using a guided clinical approach utilizes an a priori list of risk factors such as the Sexual Violence Risk-20 (SVR-20)." (emphasis supplied) ...[T]he data of Hanson & Bussiere do not support at least five of the SVR-20 factors: victim of child abuse, substance abuse problems, employment problems, past nonviolent offenses, and extreme minimization and denial. The SVR-20 manual acknowledges 'there is little evidence supporting a specific link between [being a victim of] child sexual abuse and later sexual violence.' (p. 44)."

John Matthew Fabian, "A Literature Review of the Utility of Selected Violence and Sexual Violence Risk Assessment Instruments," 34 *Jour. Of Psychiatry & Law* 307 (2006), observes, at p. 332, "...Sjostedt & Langstrom (2002) did not find significant predictive validity between the SVR-20 and sexual violence and they assert that the instrument has similar weaknesses as the HCR-20 and at this point offers less research addressing its predictive capacities. The SVR-20 has not demonstrated great utility in assessing sexual recidivism for civil commitment populations (Doren, 2002)." (emphases supplied)

The SVR-20 is now deemed outdated because the factors that it employs have more recently been largely debunked, or have been concluded to merely be derivative of factors not used in that RAI. This is simply another way of concluding that the design of the SVR-20 is not merely old, but that it inevitably leads to scientifically invalid conclusions about any given sex offender.

(5) The "PCL-R"

As stated in Section III.A.2.c., supra, the PCL-R purports to measure a "heuristic...construct" called "psychopathy" - NOT any actual mental or personality disorder, or even anything that could be called an "abnormality" (given the vast percentage among the general population of humani-



Statistics are just a way to manage inaccuracy.

ty who exhibit at least some of the behaviors attributed by this "construct's" inventor, Robert Hare, to so-called "psychopathy." "No one is quite sure what psychopathy means.... The [PCL-R] instrument consists of twenty risk factors, ...: Glibness/superficial charm; grandiose sense of self-worth; need for stimulation/proneness to boredom; pathological lying; conning/manipulative; lack of remorse or guilt; shallow affect; callous/lack of sympathy; parasitic lifestyle; poor behavioral controls; promiscuous sexual behavior; early behavioral problems; lack of realistic long-term goals; impulsivity; irresponsibility; failure to accept responsibility; many short-term marital relationships; juvenile delinquency; revocation of conditional release; criminal versatility.... [T]hese factors appear to be rather subjective...." Erica Beecher-Monas & Edgar Garcia-Rill, "Danger at the edge of Chaos: Predicting Violent Behavior in a Post-Daubert World," 24 *Cardozo L. Rev.* 1845, 1873 (2003). Some of them would seem to apply to some attorneys. Information used to score these factors can be drawn from any portion of one's lifetime to date, so the PCL-R cannot measure changes over time; it treats subjects as stable 'statues.'

The PCL-R was designed to determine one's propensity to resort to physical violence, not to commit sex crimes. (Ibid.) "Psychopathy...is not an acknowledged psychiatric diagnosis in the DSM...." R.A. Prentky, E. Janus, H. Barbara, B.K. Schwartz & M.P. Kafka, "Sexually Violent Predators in the Courtroom: Science on Trial," 12 *Psychology, Public Policy & Law* 357, 368-69 (2006). *Mama J. Johnson*, "Minnesota's Sexual Psychopathic Personality and Sexually Dangerous Persons Statute: Throwing Away the Key," 21 *William Mitchell Law Review* 1139 (1996)), flatly states, at Footnote 10: "The term 'psychopathic personality,' however, was expunged from the psychiatric nomenclature in 1952."

Indeed, even merely as a predictor of the likelihood of future physical violence, it has been found that the PCL-R lacks fundamental validity and reliability. Thus, e.g., *United States v. Taylor*, 320 F Supp. 2d 790, 2004 U.S. Dist. LEXIS 10957 (N.D. Ind. 2004), banned its use even in the context of death penalty proceedings.

Katrina A. Rufino, Marcus T. Boccacini, Samuel W. Hawes, & Daniel C. Murrie, "When Experts Disagreed, Who Was Correct? A Comparison of PCL-R Scores from Independent Raters and Opposing Forensic Experts," 36 *Law & Human Behavior* 527 (2012), at 527, reported that:

"Researchers recently found that Psychopathy Checklist-Revised (PCL-R; Hare, 2003) scores reported by state experts were much higher than those reported by defense experts in sexually violent predator cases pursued for civil commitment (Murrie, Boccacini, Johnson, & Jahnke, 2008), which raised the question of which scores were more accurate...."

(p. 535-36): These findings contribute to the limited, but growing body of research suggesting that the field reliability of the PCL-R, and perhaps other measures used for risk assessment, is often lower than research reliability reported in controlled studies.... "[T]here is evidence that some evaluators tend to assign higher scores than others (Boccacini et al, 2008)...."

This confirms "...the pattern of adversarial allegiance Ruffino et al. "observed in the 44 Texas SVP cases with opposing expert scores...." (Id., p. 536). See *Daniel C. Murrie, Marcus T. Boccacini, Jeremy T. Johnson, & Chelsea Janke*, "Does Interrater (Dis)agreement on Psychopathy Checklist Scores in Sexually Violent Predator Trials Suggest Partisan Allegiance in Forensic Evaluations?" 32 *Law and Human Behavior* 352 (2008), reporting findings of scores differing as much as 20 points (out of a possible 44 maximum). Confirming this interrater variability problem due to party allegiance by PCL-R raters, see: *Marcus T. Boccacini, Daniel C. Murrie, Katrina A. Rufino, Brett O. Gardner*, "Evaluator Differences in Psychopathy Checklist-Revised Factor and Facet Scores," 38 *Law & Human Behavior* 337 (2014); *Murrie, D.C., Boccacini, M.T., Johnson, J. & Janke, C.*, "Does Interrater (Dis)agreement on Psychopathy Checklist scores in Sexually Violent Predator Trials Suggest Partisan Allegiance in Forensic Evaluation?" 32 *Law and Human Behavior* 352-362. doi: 10.1007/s10979-007-9097-5, 2008; *Murrie, D.C., Boccacini, M.T., Turnet, D., Meeks, M., Woods, C., & Tussey, C.*, "Rater (Dis)agreement on Risk Assessment Measures in Sexually Violent Predator Proceedings: Evidence of Adversarial Allegiance in Forensic Evaluation?", 15 *Psychology, Public Policy, and Law* 19, 53. doi: 10.1037/a0014897, 2009; and *David DeMatteo, John F. Edens, Meghan Galloway, Jennifer Cox, Shannon Toney Smith, Dana Formon*, "The Role and Reliability of The Psychopathy Checklist-Revised in U.S. Sexually Violent Predator Evaluations: A Case Law

Survey," 38 *Law & Human Behavior* 248 (2014).

There is also a very large divergence between Hare's claims of validity and results of field studies. See, e.g.: *Inge Jeandarme et al.*, "PCL-R Field Validity in Prison and Hospital Settings," 41(1) *Law & Human Behavior* 29-43 (2017).

Of separate note, *Haggard v. Curry*, 732 F. Supp. 2d 1003, 1013, 2010 U.S. Dist. LEXIS 91882 (N.D. Cal. 2010), observes:

"...Dr. Macomber wrote that the creator of the PCL-R test 'specifically notes that his tests should never be used on inmates over the age of 40, as his test is attempting to assess psychopathy which is a characteristic that decreases with age.'"

Not all, but most sex offenders ultimately committed, especially after long criminal sentences, are already in the post-age-40 category. Ergo, by definition, the PCL-R should not be used on them in any context. Surely this must apply with even more force to misuse of the PCL-R when the question is not physical violence propensity, but instead an attempt to predict future sex-crime recidivism.

The fact that this 'test' is used, together with its subjective interpretations, to condemn individuals to lifetime detention under SOCC laws is a classic example of the junk-science employed as a superficial 'justification for such commitments.

(6) The "SRA-FV/Light"

United States v. King, 2013 U.S. Dist. LEXIS 54655 (E.D. N.C. 2013), at Footnote 7, clarifies that the problems of the PCL-R apply with equal force to the SRA-FV and the SRA-FV Light:

"The Structured Risk Assessment-Forensic Version (SRA-FV) includes scoring from the Psychopathy Checklist (PCL-R). See Govt. Ex. 2, at 16. When the Psychopathy Checklist cannot be scored - as in this case because the Respondent cannot be interviewed - a modified version of the SRA-VA, the SRA-FV Light is used. See id."

A forensic risk assessment process presupposes that all instruments used in that process are themselves scientifically valid for assessing such risk. A classic example of a claimed RAI that violates this principle is the SVR-20, hailed by at least some MSOP risk assessors. *United States v. Lange*, 2012 U.S. Dist. LEXIS 159498 (E.D. N.C. 2012), more flatly declared the SVR-20 outdated and stated, "you can come to any conclusion with it...." The SVR-20 is now deemed outdated because the factors it employs have more recently been largely debunked, or have been concluded to merely be derivative of factors not used in that RAI. This is simply another way of concluding that the design of the SVR-20 is not merely old, but that it inevitably leads to scientifically invalid conclusions about any given sex offender.

(7) The "Level of Service Inventory" ("LSI")

Oliver, M.E., Stockdale, K.C., and Wormith, J.S., "Thirty Years of Research on the Level of Services Scales: A Meta-Analytic Examination of Predictive Accuracy and Sources of Variability," *Psychological Assessment*, 26, 156-176 (2014), <http://dx.doi.org/10.1037/a0035080>], found the LSI-R, which was developed on a sample of Canadian offenders, performs significantly worse for offender populations in the United States. Therefore, use of the LSI in the United States is unethical.

In general, see also the compendium of flaws in both CRA and ARA approaches and in certain RAIs, including Static-99 and MnSOST-3.1, in: *Lawyer X, Deviant Justice – The American Gulag*, pp. 32-89 (In Depth Media, 2014, avail.: www.amazon.com). Slicing the 'statistical pie' in ever-increasingly artful ways to find some combination of descriptors arguably applicable to a given individual to artificially inflate the predicted probability of recidivism by that individual ignores the whole person at present and worse, treats him like a statue, forever frozen in time with certain traits that are claimed to doom him to such recidivism

Comparative Criminology 4278-4294 (Oct. 2018)

Abstract:

Following the risk-need-responsivity (RNR) model, cognitive-behavioral therapy is considered most effective in reducing recidivism when based on dynamic risk factors. As studies have found differences of these factors across age, exploring this seems beneficial. The current study investigates the Central Eight (C8) risk factors across six age groups of outpatient sex offenders (N=650). Results showed that recidivism rates and age were inversely related from 19 years and up. Half of the C8 did not predict general recidivism at all, substance abuse, antisocial cognition, antisocial associates, and history of antisocial behavior in only one or several age groups. However, factors differed between age groups, with the youngest group demonstrating the most dysfunction in several areas and the oldest group the least. It is concluded that the C8 risk factors seem to lose significance in the older age groups.

Text excerpts:

p. 4279: "According to the risk-need-responsivity (RNR) model (Andrews & Bonta, 2006, 2010), the most beneficial effects are obtained when therapy matches the offender's risk level, target the criminogenic needs related to their offending behavior, and respond to the offender's learning style and abilities. Andrews and Bonta composed a list of eight broad risk factors (known as the 'Central Eight' [C8]) divided into the 'Big Four' (i.e., antisocial cognition, antisocial associates, antisocial personality pattern, and history of antisocial behavior) and the 'Moderate Four' (i.e., family/marital, school/work, leisure/recreation, and substance abuse).

p. 4283: Table 1. Operationalization of the Central Eight Factors Based on the

'Central 8' Dynamic Risk Factors of RNR & CBT Do Not Predict Recidivism by Those Age 55 or Above.

Julia Wilpert et al., "Comparing the Central Eight Risk Factors: Do They Differ Across Age Groups of Sex Offenders?", 62(13) *Int'l Jour. Of Offender Therapy &*

Central Eight Factors	Indicia
Antisocial cognition	Socio-political, religious, (sub)cultural, and personal beliefs/opinions supporting/condoning delinquency.
Antisocial associates	Associates who have a criminal record or are involved in criminal activities as well as a lack of prosocial associates.
Antisocial personality pattern	Impulsivity (mood swings, irritability, inconsistency) and anger management problems (expressions of negative, hostile affect).
History of antisocial behavior	Convictions, charges, misconduct, use of weapons/serious threats, imprisonment, escalation in frequency and severity of offenses, young age at first manifestation of antisocial behavior, and violation of probation.
Family/marital circumstances	Instability/conflict in relationships with partner, parents/caregivers, and other family members.
School/work	Problems with performance at and interest/involvement in education and employment.
Leisure/ recreation	Lack of involvement in prosocial leisure activities.
Substance abuse	Alcohol and drugs abuse and/or dependency in present (last year) or past.

Risk Assessment for outpatient Forensic Mental Health (RAF MH) (next column). p. 4286: ...[F]or the 55+ group, none of the C8 factors correlated with recidivism. p. 4288: ...**Strikingly, in the oldest group (55+), none of the C8 added to recidivism risk. Compared with the other groups, these individuals distinguished themselves as least maladapted on the factors antisocial associates, antisocial personality pattern, history of antisocial behavior, and school/work.** pp. 4291-92: ...[A]s ...it seemed that overall maladaptation declined in the older age groups, frequency of treatment could be adjusted accordingly, following the risk principle of the RNR-model. Subsequently, the question raised by Oliver, Nicholaichuk, Gu, and Wong (2013), if older sex offenders derive fewer benefits from sex offender treatment than younger, was added relevance by the result of this study..

References:

- Andrews, D.A. & Bonta, J.L., (2006). *The Psychology of Criminal Conduct* (4th ed.). Newark, NJ: LexisNexis.
- Andrews, D.A. & Bonta, J.L., (2010). *The Psychology of Criminal Conduct* (5th ed.). New Providence, NJ: Matthew Bender.
- Oliver, M.E., Nicholaichuk, T.P., Gu, D. and Wong, S.C.P. (2013). "Sex Offender Treatment Outcome, Actuarial Risk, and the Aging Sex Offender in Canadian Corrections," *Sexual Abuse: A Jour. Of Res. & Treatment*, 25, 396-422.

Talking to Those Who Desisted from Sexual Offending Four Desistance Experts Explain Why the Road to Lifetime Desistance Is Far Shorter Than 'Orthodox' Treatment Imagines It Is.

Editor's Note: Four leading researchers in the field of desistance as applied to sex offenders, examine in excerpts here from two incisive articles the phenomenon of desistance from sexual offending in detail, as described by those who have successfully done so. Approaches to desistance, whether with or without 'orthodox' treatment, have proven so successful, *ceteribus paribus*, as to suggest that all treatment modalities should, at the least, be extensively modified to emphasize throughout training for desistance. In turn, this can drastically truncate the period of treatment deemed

to suffice to prevent recidivism.

Danielle Arlanda Harris, "A Descriptive Model of Desistance from Sexual Offending: Examining the Narratives of Men Released from Custody," 60(15) *Int'l Jour. Of Offender Therapy and Comparative Criminology*, 1717-1737 (2016).

Abstract, p. 1717: "Despite an increasing interest in desistance from sexual offending, a comprehensive theoretical account of the process has yet to be provided. This study examines the narratives of 60 men interviewed in the community, who were incarcerated for sexual offenses and released. Recent findings from this research conclude that men desist from sexual offending, but they seldom follow the processes described by traditional criminology. In many cases, in fact, they desist in spite of their inability to pursue Sampson and Laub's 'informal social controls' or Giordano et al.'s 'hooks for change.' The relentless impact of current public policies such as community notification and electronic monitoring further impedes their likelihood of experiencing Maruna's 'Pygmalion effect' or achieving true cognitive transformation or agentic change. The descriptive model introduced here identifies four styles of desistance from sexual offending: 'age,' 'resignation,' 'rote,' and 'resilience.' Relevant implications are discussed.

Text, pp. 1717-18: "...[T]he body of literature on desistance from sexual offending remains small (Farmer, M. Beech, A. & Ward, T. (2012). "Assessing desistance in child molesters: A qualitative analysis." *Jour. of Interpersonal Violence*, 27, 930-50); Harris, D.A., (2014). "Desistance from sexual offending: Findings from 21 life history narratives." *Jour. Of Interpersonal Violence*, 29, 1554-1578. Doi:10.1177/0886260513511532; Harris, D.A., (2015). "Desistance from sexual offending: Behavioral change without cognitive transformation." *Jour. of Interpersonal Violence*, 30, 5159-5178. Doi:10.1177/0886260515596537; Laws, R. & Ward, T. (2011). *Desistance from Sex Offending: Alternatives to Throwing Away the Keys*. New York: Guilford Press. This is likely due to the persistent emphasis placed on risk and recidivism by the related fields of offender management and research (D.A. Harris, 2014, *supra*; Willis, G., Levenson, J. & Ward, T., (2010). Desistance and Attitudes Towards Sex Offenders: Facilitation or Hindrance?" *Jour. of Family Violence*, 25, 545-556).... pp. 1718-19: Sixty men were interviewed between 2011 and 2013 in the Northeastern United States. All participants had committed a sexual offense, had served a custodial sentence, and were living in the community. Consistent with much research conducted in the

(Continued on page 6)

field of sexual aggression, ...almost everyone (88%) identified as White. The men had an average age of 53 years. The average length of their most recent custodial sentence was 10.1 years for a sexual offense, and all participants had been living in the community for a mean of 4.1 years...

Almost all the participants (86%) had child victims. Most of the men had committed acts of extra-familial child molestation (n=28) or incest (n=14)....

Results

Desistance by Age

p. 1724: The first style resonated particularly well with seven participants but was mentioned to some extent by a number of other men. To be clear, although the concept of maturity was a key component in their interviews, it was certainly not unique to these men. They frequently emphasized the process of getting older and growing up in their explanations of desistance. Noticeably, these men did not mention any of the characteristics of the other styles mentioned above. They were certain they would never reoffend and attributed that certainty to being old, too tired, and to not having it 'in them' anymore.

"So I guess it was an epiphany. I just finally woke up ...I was tired of doing time ...but now I've decided I just don't want to do it anymore."

These men tended to use the 'old me/new me' language of knifing off (Maruna, S. (2001). *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington: Am. Psychol. Ass'n.) and some spoke of having had two lives.

[Describing the three models (other than age) for desistance, the article describes attributes of individuals thus:]

p. 1726: Resignation

These men ...provided little insight into how or why their crimes had occurred....

Many of these men ...were not confident about forming friendships or relationships in the future. They were pessimists with fairly defeatist views of themselves and of their restricted position in the community....

...Although they were adamant that they would never reoffend, they could seldom articulate why (beyond wishing to avoid prison). Even though this might be sufficient to effect behavioral change, it did not yet appear to be evidence of discernible cognitive change.

p. 1727: ...[T]hey ... were very much resigned to the fact that there was no escape and that this [the sex offender registry] was their life now.

p. 1728: Rote

A quarter of the sample (n=16) were ... adept at 'talking the talk' and parroting buzzwords they had learned during therapy.... As a group, they had the most persistent histories of sexual offending with seven men reporting post-release recidivism and having received multiple, separate custodial sentences



To live uprightly the rest of one's days in peaceful dignity is a human right.

for their sexual crimes. The dominant themes in these 'rote' narratives included the value of treatment and the applicability of this therapy to their behavior, but they were often delivered in a rehearsed (or even manufactured) style....

...[T]he messages of the Relapse Prevention Model (Pithers, W.D. (1990). "Relapse Prevention with Sexual Aggressors: A Method for Maintaining Therapeutic Gain and Enhancing External Supervision." In W. Marshall, R. Las & H. Barbaree (eds.), *Handbook of Sexual Assault* (pp. 343-361). New York: Springer.) and the standard 'cycle' of offending resonated strongly with them - they recognized and praised the benefits of treatment, and all spoke highly of their therapists, in a very socially desirable way. During the interviews, they were eager to demonstrate their newly gained insight regarding offending and self-governance. They willingly shared their knowledge of triggers, tools, and risk situations and spoke in the present tense about their ability and commitment to stay safe....

Like the other styles described above, most of these men were confident that they would not reoffend, but justified this certainty with a newfound personal insight and knowledge of triggers and risk situations."

p. 1729: When discussing the ways they keep themselves from offending, they tended to emphasize the situational nature of their risk and subscribed to a 'routine activities' approach that prioritized daily structure (Harris, D.A. & Cudmore, R. (2015). *Desistance from sexual offending: In Oxford Handbook of Criminology and Criminal Justice* (pp. 1- 15). New York: Oxford University Press, 2015):

'The warning sign for me is when I don't have a structure. Right now I have a structure. Right now I have a full-time job, I come to group, I go to probation, and there's a couple of other things I do during the week. I go and see my grandmother.... So for me, my biggest thing is giving myself a structure. 'Cos when I have structure that's when I succeed. When I lose a piece of my structure, that's when I start screwing up.'

...The strongest emergent theme and the narrative that really united the rote

style was ...the way they described staying safe as a kind of job....'

pp. 1729-30: Resilience

This final style ...was marked by a strong desire to move on from their offending past as well as emphasizing a demonstrated pattern of success upon release. Like the age desisters, the resilient desisters also spoke of having had two lives and of 'knifing off' (Maruna, 2001, *supra*). Akin to Giordano et al's (Giordano, P. et al. (2002). "Gender, Crime, and desistance: Toward a theory of cognitive transformation." *American Jour. of Sociology*, 107, 990-1064) 'complete desisters,' these men tended to describe their offending in the past tense, thus placing a 'great deal of distance between the old, discarded selves and those they currently claim.'

pp. 1733-34: Discussion

The process of desistance was articulated ...was most often viewed as a simple and visceral aversion to returning to custody (deterrence) or as a product of extensive sex offender-specific treatment....

Almost all participants in the sample described how individual therapy and group treatment meetings had helped them, but at times, the language they used felt forced or manufactured....

Limitations

p. 1735: "The important central point is that they each reported living offense-free lives regardless of 'where they were' (or rather, the themes that emerged in their interviews) and if our goal is to prevent sexual abuse, it seems futile to assess whether they have desisted 'enough.' In fact, the fear that they could never again be trusted was a strong emergent theme:

'You've gotta give me the chance. You've gotta give me the opportunity. No one is going to believe me until the day after I die. That's when they'll start trusting me again. That's when they'll look back and go "Wow, he did live another 40 years without doing anything wrong." But until then, until the day I die, they're going to keep watching me. And that's a rough way to live.'

Conclusion

...Support was found for natural desistance and aging out.... Of particular interest is the fact that three of the four styles (resignation, rote, and resilience) bore little resemblance to the emphasis in the criminological literature on the achievement of informal social controls or to the psychologically informed explanations of cognitive transformation. Furthermore, that the typical areas of emphasis in sex-offender-specific treatment (that emphasizes individual differences and etiology of offending) were seldom valuable is concerning and should be the subject of further study.

pp. 1735-36: Some people will desist from offending on their own, without needing formal intervention. Some ...

might profit simply from reconnecting with their family of origin, or from the opportunity to earn an honest living. Still others ...may decide quite rationally to never offend again, if only to avoid returning to custody. Furthermore, it seems that only a few appear to truly warrant the kinds of enhanced supervision or protracted treatment to which so many are now subject.'

Farmer, Mark, McAlinden, A.M., & Maruna, S., "Understanding Desistance from Sexual Offending: A Thematic Review of Research Findings," 62(4) *Probation Journal* 320-35 (2015), provides these confirmatory, insightful excerpts:

"There is no longer any debate in the field... that criminality is a pattern of behavior from which most individuals eventually desist. For non-sexual offenders this is illustrated by the 'age/crime curve' (e.g., Farrington, 1986; Sampson and Laub, 2003), which broadly demonstrates that crime is mainly committed by people in their teens and twenties, after which offending rates decrease with age.'

Desistance from Sexual Offending

A similar phenomenon appears to be the case for sexual offenders as well, despite widespread beliefs about the nature of sexual offending. Although the age-sex crime curve peaks later and tails off less dramatically than the age-crime curve for non-sexual crime, sex offending also decreases with age, contradicting the perception that sex offenders' risk levels are high, stable, and linear (Lussier et al., "Criminal Trajectories of Adult Sex Offenders and the Age Effect: Examining the Dynamic Aspect of Offending in Adulthood," 20 *Int'l. Crim. Just. Rev.* 147-68 (2010). Indeed, numerous studies now show that recidivism rates amongst sexual offenders are low (e.g., Kruttschnitt et al., 2000; Harris and Hanson, 2004; Thornton, 2007; Barnett et al., 2010), in fact lower than recidivism rates for other forms of non-sexual crime. Most people who have committed sexual offences, therefore, appear to desist from further sexual offending.

Despite this consistent finding in the literature, there has been little published research into how and why people desist from sexual crime. Kruttschnitt et al. (2000) conducted a retrospective study of 556 sexual offenders, looking at whether informal social controls, specifically employment and marriage, predicted desistance, and whether such bonds are conditioned by formal social controls such as probation and treatment. They found that job stability significantly reduced the probability of re-offending, but marital status had no significant effect....

More recently, Harris (2014) conducted a qualitative investigation into desistance amongst a group of 21 sexual offenders deemed to be desisting from crime. Harris found evidence that a small num-

ber (n=3) had simply aged out of crime, a process she referred to as "natural desistance." This group of individuals had considerable criminal histories, including sexual offending and other types of offending. The biggest group of desisting offenders (n=18), however, attributed their desistance to cognitive transformations, ranging from a simple recognition that the offender had caused harm, through to a full creation of a new, non-offending identity, combined in some cases with a desire to assist others to avoid crime.

Methodology

In our own research, we have sought to explore both the structural and the cognitive changes associated with desistance from sexual offending against children. For the purposes of this research, this is defined as those who have at least one conviction for sexual offences against children. The sample group is described in more detail below; it includes offences ranging from rape and indecent assault of minors to indecent exposure and engaging in sexual activity in the presence of a child. Individuals convicted of sexual assaults with adult victims were not included in the research as the literature considers these two types of sexual offending to be qualitatively different enough as to require separate treatment (see e.g., *Blumenthal et al.*, 1999; *Hanson*, 2001). A sample of 32 individuals were interviewed, all of whom had in the past been convicted of such offences. Our goal was to better understand how they were able to desist from re-offending, exploring both the social context of their post-conviction lives and, in particular, their cognitive framing of this context.

...[A]s previous research (e.g. *Hanson et al.*, 2014) has shown that sexual recidivism rates approximately halve after 5 years crime free in the community, and halve again after 10 years....

A Re-Appraisal of the Pros and Cons of Offending

Participants said that in the early stages of desistance they made a rational choice about their behavior based on a growing realization of the disadvantages of persistence. For some, this arose from concerns about the likelihood of being caught, for others it was related to a growing realization of the harm they were causing. Simplistic versions of rational choice theory as an explanation for crime and desistance have been criticized (e.g., *Farrall, et al.* 2014) for assuming that people can simply decide to stop crime and then stop, without any further process taking place. However, the desisting narrators' accounts in this research shared considerable themes with these rational choice accounts. Indeed, such a theme is largely consistent with the other aspects of the desistance narratives we heard. For example, when motivation is situational, when offending is not part of a

general antisocial lifestyle, and when the stakes and consequences for detection are high, then a rational choice to desist may indeed carry much more weight than in other circumstances.

This self-narrative is consistent with *Paternoster and Bushway's* (2009) distinction between 'an individual's 'working identity' as a person who will commit criminal acts, and their 'future possible self.' In this model, the start of the desistance process occurs when the identity of offender becomes less satisfying and fears of a bleak and unsatisfying future arise. Thus it is a rational choice, of sorts, when the individual is forced to contemplate between two, possible futures: that of the positive possible self and that of the feared possible self (*Paternoster and Bushway*, 2009: 1103). Where our participants' self-narratives differed from *Paternoster and Bushway's* theory is in the degree of change required. *Paternoster and Bushway* argue in favour of substantial cognitive change preceding desistance. In the current research study interviewees said they reverted to a previous, non-offending and conventional lifestyle.

Moreover, detection and conviction appear to have carried with them a significant deterrent effect, sufficient to start the process of cognitive transformation necessary for desistance. Interviewees repeatedly said that they were "shocked" into changing not just their behaviors but also their views about the abuse they were perpetrating and precipitated an end to any consideration of further abuse. A number of participants vividly described their shock at being arrested. Several said that arrest acted as a turning point after which they ceased offending.

Rehabilitation

The narratives of desisting offenders were also pro-rehabilitation. Desisting offenders were likely to describe how they took advantage of rehabilitative efforts provided for them. This manifested itself in several sub-themes in the research, and is probably related to a willingness to change and an ability to make use of formal 'turning points' provided by the criminal justice system (see *Giordano et al.*, 2002). Many of the desisting group talked generally about the usefulness of probation; in particular they seems appreciative of probation officers who were concerned about them but firm and realistic. Indeed, the personal characteristics of the probation officer seemed to be important, unsurprisingly those who showed a personal interest in the individual were perceived as particularly helpful. Others talked in a positive way about what they had learned in prison. Some participants described using prison as a 'college' to obtain qualifications and knowledge they would not otherwise have had access to. This can be seen as a form of a 'redemption script' (*Maruna* 2001) in which the individ-

ual seeks to make the most of a bad situation, cognitively turning it to their advantage.

Many of the desisting group talked about the usefulness of sex offender treatment programmes, sometimes provided in prison but mostly the men referred to those provided by probation. This may have been because the programmes provided by probation were more recent, and so easier to bring to mind, or it may be a reflection of the relative utility of community programmes compared to those run in prisons. They particularly appreciated the skills they learned from such programmes. One man who had undertaken his programme some time ago was nevertheless able to recall the tactics he had learned on the course. However, others talked about learning or being reminded of values, and understanding the perspectives of other people. A small number of the group reported disliking having to attend sex offender programmes, one stating he found hearing other men talking about their crimes to be 'repulsive.'

It is of note that participants talked, on the whole, of the advantages of probation at this stage. In some ways this appears at odds with the findings of *Farrall et al.* (2014). In their study, participants were not able to identify the usefulness of probation until some years after their initial desistance. *Farrall et al.* attribute this to a readiness to be receptive to the advice of probation officers – some individuals, who are not ready to receive this advice, nevertheless mentally 'store' such advice until they are more receptive to change. For our group, the stakes associated with reoffending were particularly high, and to reoffend would be contrary to the positive self-image they were trying to develop and maintain. It could be that the shock associated with conviction described above led to a desire to conform to rehabilitation efforts that were offered to the individuals.

Planning for the Future

One feature of the desisting sexual offenders' stories was that they nearly all contained substantial evidence that the participant had a clear sense of their future lives, where they wanted to be and what they wanted to do. In many cases, these aspirations and the expression of tangible goals related to finding employment or maintaining existing or building new relationships. In a way there was a sense of optimism similar to that of *Maruna's* (2001) desisting offenders. Although optimistic, most of the narratives contained plans for the future that were reasonably achievable and consistent with the individual's abilities and social capital. There was a sense of hope for the future that seemed to be related to desistance. Further support for this idea that planning contributes to desistance comes from the work of *Willis and Grace* (2009), who found worse

recidivism outcomes for a group of prison leavers who did not have firm plans for the future, compared with those who did. This suggests that the ability to form plans and maintain optimism is an important part of desisting from sexual crime.



From the most famous to the most obscure, in the end we all are remembered for the legacy we leave. What would you like to leave as your parting gift?

The Importance of Work

Research into desistance from non-sexual offending has consistently pointed to the importance of work in the initial stages of desistance (*Farrington et al.*, 1986; *Sampson and Laub*, 1993; *May*, 1999). Work is said to help provide meaning to individual lives and give individuals "Something to lose" by getting in trouble with the law again. Employment also involves new forms of new routine activities, informal social controls, social supports and the possibility of meeting role models who are not involved in crime.

Indeed, employment and careers did play a highly important role in the narratives of the desisting men in this study (and the potentially active ones as well). Almost all of them described lives that revolved around work of various forms. Some of them had built substantial careers from which they gained considerable satisfaction and financial gain. Others had a series of jobs, and seemed to recover from redundancy easily. In all cases, though, work seemed to be of primary importance to the men in the sample. Indeed, when asked to describe their lives, many of the group described little more than their work lives, as though they hardly existed outside of their work.

Overall most of the desisting group related employment to happiness and life satisfaction – they pointed to job satisfaction and occupying their time as key factors in this sense of satisfaction; but others also mentioned the social aspects of work and opportunities for advancement. One common theme was the importance of keeping busy, and the

(Continued on page 8)

relationship between this and the earlier themes relating to the situational nature of the sexual offending, in that keeping one's self busy could be an important part of desistance for some. This seemed to be particularly the case for men who had offended over the internet. These men were aware that if they were sitting at home doing nothing there would be temptation to access the internet in unhelpful ways.

Most of the desisting men in the study, therefore, wished to be seen as active people, not willing to waste their lives, and wanting to engage in a lifetime of work. Surprisingly, though, gaining employment did not seem to be related to desistance from crime in a direct way for most of the group. First, most of them had careers prior to and during their sexual offending. Second, several described desisting from further criminal activity despite losing their jobs as part of their convictions. Consistent with the literature (Brown et al., 2007), a number of participants reported the difficulties they had in obtaining work following their conviction. Some of them reported how employers would reject them when they learned of their conviction, and some had a resigned helplessness that they would never work again. However, this did not seem to affect the fact that they were desisting, and some men described quite innovative forms of self-employment they had devised in order to compensate for not being able to obtain formal work. Third and most importantly, comparison group (non-desisting) interviewees also described considerable attachment to employment in their self-understandings. Therefore as central as work was in their personal narratives, it is not clear that work played a necessary and sufficient role in the explanation of their ability to desist from crime....

Conclusion

...These emerging findings have a number of potential implications for current frameworks around sex offender risk assessment, management and treatment, and in particular for how professionals perceive of and respond to "risks" posed by sex offenders. While the preponderance of current work has centered on "risk" factors and examining why sex offenders re-offend, this study has inverted the risk paradigm by seeking to draw out why is it that they don't. As noted at the outset of the paper, the relevance of these research findings on desistance from sexual crime relate to the determination of the best and most effective means of working with people convicted of sexual offences. ...[T]he desisting narratives in this study which appear to be shaped by conventional lifestyles and planning for the future, ...tend to support a move away from confessional, back-

ward-looking approaches towards future-focused therapeutic interventions with sex offenders with an emphasis on optimism and hope."

References:

Blumenthal, S. et al. 1999. Cognitive Distortions and Blame Attribution in Sex Offenders against Adults and Children. *Child Abuse & Neglect* 23(2): 129-143.
Braithwaite, J. 1989. *Crime, Shame and Reintegration*. Sydney: Cambridge University Press.
Brown, K. et al. 2007. "The Reintegration of Sex Offenders: Barriers and Opportunities for Employment." *The Howard Journal* 46(1): 32-42.
Farrall, S. et al. 2014. *Criminal Careers in Transition: The Social Context of Desistance from Crime*. Devon: Willan Publishing.
Farrington, D. 1986. "Age and Crime." In *Crime and Justice: A Review of Research* 7: 189-250 (Chicago: Univ. of Chicago Press)
Hanson, R.K. 2001. "Age and Sexual Recidivism: A Comparison of Rapists and Child Molesters 2000-01." *Canada: Department of the Solicitor General*.
Hanson, R.K. et al. 2014. "High Risk Sex Offenders May Not Be High Risk Forever." *Journal of Interpersonal Violence* 29(15): 2792-2813.
Harris, D.A. 2014. "Desistance from Sexual Offending: Findings from 21 Life History Narratives." *Journal of Interpersonal Violence* 29(9): 1554-1578.
Harris, A.J.R. and Hanson, R.K. 2009. "Sex Offender Recidivism: A Simple Question." *Canada: Public Safety and Emergency Preparedness Canada*.
Kruttschnitt, C. et al. 2000. "Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Control." *Justice Quarterly* 17(1): 61-87.
Laub, J.H. et al. 1998. "Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process." *American Sociological Review* 63(2): 225-238.
Lussier, P. et al. 2010. "Criminal Trajectories of Adult Sex Offenders and the Age Effect: Examining the Dynamic Aspect of Offending in Adulthood." *International Criminal Justice Review* 20(2): 147-168.
Maruna, S. 2001. *Making Good: How Ex-Offenders Reform and Reclaim Their Lives*. Washington: American Psychological Association.
Paternoster, R. and Bushway, S. 2009. "Desistance and the "Feared Self": Toward an Identity Theory of Criminal Desistance." *The Journal of Criminal Law and Criminology* 99(4): 1103-1156.
Sampson, R.J. and Laub, J.H. 2003. "Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70." *Criminology* 41(3): 555-92.
Sampson, R.J. and Laub, J.H. 1993. *Crime in the Making: Pathways and Turning Points Through Life*. Cambridge,

Mass.: Harvard University Press.
Thornton, D. 2007. *Scoring Guide for Risk Matrix 2000.9 SVC*. Unpublished.
Willis, G.M. and Grace, R.C. 2009. "Assessment of Community Reintegration Planning for Sex Offenders - Poor Planning Predicts Recidivism." *Criminal Justice and Behaviour* 36(5): 494-512.

**Changing Focus —
From Recidivism
Risk Rates to
Desistance**

Cecelia Klingele, "Measuring Change: From Rates of Recidivism to Markets of Desistance," 109(4) *J. Crim. L. & Criminology* 769-817 (Fall 2019)

Excerpts:

Abstract: "...[R]ecidivism alone is a poor metric for gauging the success of criminal justice interventions or of those who participate in them. This is true primarily because recidivism is a binary measure, and behavioral change is a multi-faceted process...."

Text: p. 775, footnote 17: [John H. Laub & Robert J. Sampson, "Understanding Desistance from Crime," 28 *Crime & Just.* 1, at 11 (2001): "Termination is the time at which criminal activity stops. Desistance, by contrast, is the causal process that supports the termination of offending."] Shawn D. Bushway et al., "An Empirical Framework for Studying Desistance as a Process," 39 *Criminology* 491, 491-92 (2001) ("Most criminologists define desistance as the state of having 'terminated' offending. But recently, criminologists have begun to reexamine and expand the definition of desistance to include attention to the process by which people arrive at this state of nonoffending."); Shawn D. Bushway et al., "Desistance as a Developmental Process: A Comparison of Static and Dynamic Approaches," 19 *J. Quant. Criminology* 129, 133 (2003) ("defining desistance "as the process of reduction in the rate of offending from a nonzero level to a stable rate empirically indistinguishable from zero. The key to this definition is that it views desistance as a process, not a state").

p.790: "...[N]o retrospective study, or even any predictive tool, can tell us what any individual person will do in the future. It is impossible to know from a person's characteristics and past behavior whether the person's recent conviction will be the last or whether the person will go on to commit serious violations.⁹⁷ ...[G]iven the variation of human behavior,⁹⁹ no instrument can reliably predict whether any particular person will go on to re-offend or what specific form any future re-offense will take.¹⁰⁰

p. 796: In public health, the popular

'transtheoretical model' identifies six specific stages of change relevant to the abandonment of any maladaptive behavior.¹¹⁷ These stages, which follow one another in roughly sequential (though sometimes overlapping) order are pre-contemplation, contemplation, preparation, action, maintenance, and termination.¹¹⁸ ... Termination is the final stage...

'Termination is the stage in which individuals have zero temptation and 100% self-efficacy. No matter whether they are depressed, anxious, bored, lonely, angry, or stressed, they are sure they will not return to their old unhealthy habit as a way of coping.'¹²⁵

p. 814: In reality, when a program claims to work dramatic changes in the recidivism rates of its program graduates, it is likely that those individuals did not need the program at all.²¹¹ A far more likely inference is that they were already far along the path of desistance....

pp. 815-16: **Risk Aversion**

Finally, overreliance on recidivism rates encourages risk averse behavior by system acts, thus exacerbating mass incarceration and limiting opportunities for convicted individuals to master the skills that will ultimately lead to long-term desistance.

The modern criminal justice system is risk averse by any measure. Over the past half century, despite falling crime rates, criminal charges have increased.²¹⁵ Sentences have lengthened.²¹⁶ Parole and other forms of back-end release have been significantly restricted.²¹⁷ Revocations from community supervision have risen. Criminal justice bureaucrats are haunted by the fear that, on their watch, a released defendant, probationer, or parolee will commit a crime and wind up as front page news.²¹⁹ The result is a paralyzed system.

The emphasis that has been placed on recidivism rates and their reduction psychologically reinforces the idea that the job of the criminal justice system is to prevent crime at all costs, even if that means confining behind bars people whose conduct does not pose a serious risk of harm to others and those who have demonstrated that they are engaged in the process of behavioral change. To the worried parole board member or probation officer, a system that rises and falls on recidivism rates alone is one in which any infraction, however small, counts as failure. In such a world, it will always be easier to lock up the technical violator or never to parole the model inmate because such behaviors will always protect the political interests of agencies and administrators.

If, instead, success were gauged by more holistic metrics - including markers of desistance - incentives would shift. A chronic offender's minor violation, coming after a long period of good behavior, would be a cause for attention but not

necessarily alarm. Relapse by a chronic drug offender would not be reason to declare treatment a failure if it reduced use and associated new crime. Opportunities to celebrate success would increase for both individuals in the system and the criminal justice system itself. Judges and prosecutors, too, might begin to ask more critical questions about defendants' predicted risk of re-offense, system actors might ask important interpretive questions such as, 'What is this offender at risk of doing?', and 'Does the evidence suggest that this person is not on a path of persistence or desistance?' The answers to those questions would guide the use of predictive risk tools, placing recidivism risks into a larger, more holistic context that is likely to lead to yield sentences that would better advance fairness and public safety.

Conclusion: Toward Markers of Desistance

p. 816: In an article on recidivism, Robert Weisberg mused:

'Perhaps we should not be asking whether a criminal recidivates or not, or whether recidivist act occur or not. Perhaps we should not even be focusing on the frequency of recidivism for a person or a society ... [P]erhaps a better measure – or rough guide to a better measure – is to ask whether as a result of a state intervention the offender reoffends less frequently or less harmfully than he otherwise might, especially by comparison to the likely downward arc of criminality due to aging.'²²⁰

Indeed, given all that is known about how behavior change occurs and what the criminal justice system can do to help or hinder that change process, the present focus on recidivism rates misses the mark. It is only by looking at the pattern of behavior revealed by recidivism data that those within and outside the criminal justice system can begin to see the ways in which criminal justice interventions may be promoting desistance and ways in which they may be hindering it."

Notes:

97 Alfred Blumstein & Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," 47 *Criminology* 327, at 332-33 (2009)

99 There has been a resurgence in determinism among some neuroscientists and punishment theorists. See, e.g., Luis E. Chiesa, Punishing Without Free Will, 2011 *Utah L. Rev.* 1403, 1406 (2011). ... Nevertheless, the criminal justice system (and the public at large) continues to embrace the traditional view that variations in human behavior are best explained by free will and human agency – a factor life course criminologists have found to be a meaningful component of desistance from crime. ... *Laub & Simp-*

son [p. 775, footnote 17, in text *supra*] at 55. ("Given the role of human agency in the desistance process, we need to find a way to measure individual motivation, free will, and ultimately the decision to initiate and embrace the process of change.")

100 See *Sonja B. Starr*, "Evidence-Based Sentencing and the Scientific Rationalization of Discrimination," 66 *Stan. L. Rev.* 803, at 806 (2014) (explaining that instruments designed to predict recidivism employ 'underlying regression models [that] may provide reasonably precise estimates of the average recidivism rates for the group of offenders sharing the defendant's characteristics, but the uncertainty about what an individual offender will do is much greater, and when it comes to predicting individual behavior, the models offer fairly modest improvements over chance.'). ... In the main, actuarial tools are poor at predicting future violence, in large part because (happily) violent behavior is statistically aberrant. *Melissa Hamilton*, 'Adventures in Risk: Predicting Violent and Sexual Recidivism in Sentencing Law,' 47 *Ariz. St. L. J.* 1, 20 (2015)....

117 *James O. Prochaska & Wayne F. Velicer*, "The Transtheoretical Model of Health Behavior Change," 12 *Am. J. Health Promotion*, 38, 38 (1997).

118 *Id.* At 39.

125 *Id.* In its requirement of perfect abstinence from maladaptive behavior, termination sounds a lot like recidivism: black and white with no margins of error.

211 Francis T. Cullen et al., "Rehabilitation: Beyond Nothing Works," 42 *Crime & Just.* 299, 338 (2013).

215 *John Pfaff*, Locked in: *The True Causes of Mass Incarceration* 130 (2018) (describing proliferation of criminal charges leveled by prosecutors).

216 *Janice Williams*, "Serving Time: Average Prison Sentence in the U.S. is Getting Even Longer," *Newsweek* (July 22, 2017), <http://www.newsweek.com/prison-sentences-increased-2017-jail-639952> [archive] [<https://perma.cc/TY4DS-LFSA>].

217 *Nazgol Ghandnoosh*, *The Sentencing Project, Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences* (2017); *Cecilia Klingele*, "The Early Demise of Early Release," 114 *W. Va. L. Rev.* 1, 19 (2011).

219 *Jacob Rosenberg*, "Will Another High Profile Crime Derail Parole Reform?," *Ark. Times* (July 27, 2017), <https://csjjusticecenter.org/jr/arkansas/media-clips/will-another-high-profile-crime-derail-parole-reform/> [<https://perma.cc/2AXU-UJUF>].

220 *Robert Weisberg*, "Meanings and Measures of Recidivism," 87 *S. Cal. L. Rev.* 785, 804 (2014).

"Megan's Law" Nearly Totally Eliminates Legal International Travel by Sex Offenders

Jack Furlong, "Megan's Law and the Right to Travel Internationally," 24(1) *Sex Offender Law Report* 1-2, 7-10 (Dec. 2022 - Jan. 2023)

Excerpts & Summaries:

"...[T]here is no right to travel listed in either federal or state constitutions, but it has been recognized as fundamental' by SCOTUS as to travel between states. (*United States v. Guest*, 383 U.S. 745, 757 [1966]), and even enforceable against private interference (*Saenz v. Roe*, 526 U.S. 489, 498 (1999), at 643, concurrence)."

However, there is no corresponding constitutional right to travel outside the United States. If the government comports with due process in enacting restrictions on international travel, it can drastically restrict it (*Kahn, J.D.*, "International Travel and the Constitution," *UCLA Law Review*, 56(2) (2008). This has been flexed in modern times by creation of no-fly lists created by the Executive branch based on evidence of unknown veracity and uncertain origin).

In contrast, the U.N.'s High Commission on Human Rights, speaking through Article 13 of the Universal Declaration of Human Rights, declares: "2. Everyone has the right to leave any country, including his own, and to return to his country."

"In 2008, Rep. Chris Smith first introduced the international Megan's Law. It took another eight years to achieve Senate passage, and in February 2016, President Obama signed it into law."

The only ground under that new law for denying or revoking a United States passport is conviction of sex trafficking, that is, international travel to have sex with or to promote prostitution with minors. For those sentenced up to 30 years under that statute, or in some circumstances to life in prison, that additional penalty would seem the icing on the cake.

However, those convicted of other sex crimes involving juveniles, passports remain available, but include a "unique identifier" inside the rear cover of the passport of the traveler as a "covered sex offender" under the statute. (22 U.S.C. § 212b(c)(2)). Specifically, this imprint declares: "The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(1)." Except for the tiny percentage of sex offenders ever determined by the "Angel Watch Center" (an arm of the U.S. Immigration and Custom Enforcement division of the Homeland Security Depart-

ment) to no longer be required to register as a covered sex offender, all former "covered" sex offenders receiving a passport will find this notice in their passports, intended to be read by customs officers at airports and other ports of entry in countries one arrives in. Because the notice is too large to appear on a passport card, covered sex offenders are denied such cards and instead must carry the full passport booklet.

"In other words, the entire cohort of registered sex offenders who previously committed crimes against adults [not minors] are exempt from this pervasive regulatory scheme. Query whether the serial sociopathic rapist represents a less serious threat to a foreign population than a college freshman who had sex with a 17-year-old high school junior and is now require to register under most state statutes."



Regardless, the most severe aspects of this international Megan's Law are that it creates a crime of traveling abroad "without giving 21 days advance notice so that law enforcement has adequate time to vet the traveler and warn the destination country". Misreporting which countries a covered sex offender will visit is also a violation of federal law. This would appear to intimidate travelers from departing from their travel itinerary after they arrive in one foreign country, for fear that, upon return, they may face a criminal investigation as to whether they may have intended *ab initio* to visit a country not listed in that advance notice. How one would prove with certainty that such a decision was instead a mid-travel caprice seems unclear. At the least, the documentation required to show such a sudden change of plans in mid-travel seems intended to force revelation of plans for travel to law enforcement agents to fuel investigations of far more than notice omissions. This 21-day advance notice is far more particular than just this. It must also include the date and place of departure from the U.S. and the date and place of return to the U.S., airline and flight number identification, address or other contact information while abroad, and means and purpose of the international journey. The notice is also required of covered sex offenders who are thereby terminating their U.S. residence. These notices are forwarded to the U.S. Marshal's Office. Failure to comply is a federal crime. It should be obvious, however, that not just tourists,

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but also those seeking to find a happy place to permanently reside overseas or seeking to find relatives who may have moved from place to place without international ease of locating them, may find it effectively impossible to provide all required information in advance, given the countless mid-travel decisions that must be made that will change one's itinerary. Overall, the chilling effect is overwhelming and incalculable.

Of course, the passport notice is far from obtrusive. However, combined with the fact of lack of a passport card (in an age when such cards are used far more by other travelers to forego the inconvenience of carrying a passport on their person), the extra facts of U.S. persistent alerts about the existence of this new notice and its claimed necessity to protect foreign countries from presumed criminal intent by former sex offenders and that any customs officer in a foreign country will know exactly where in a passport to look for that notice is as close as needed to an emblazoned 'scarlet letter' intended to prompt last-minute denials of entry by foreign countries to such covered sex offenders despite having previously granted permission through a consulate to enter notwithstanding self-revelation of that criminal record by the visa applicant. Even more intimidating, a sex offender will likely have no knowledge of the laws of foreign countries (all of them along one's itinerary) as to entry. It is more than merely conceivable that what may simply have been a lack of spontaneous revelation in the absence of a question as to such past records on a consular visa application form may be treated as a presumptively deliberate attempt to gain forbidden entry into a country. One must bear in mind that foreign countries are not under the same constitutional standards that apply to U.S. laws. One could easily find oneself arrested by such a country for a mere innocently ignorant misstep.

Quite apart from such notices and qualifiers of crimes against minors, many countries bar entry by all former sex offenders. Currently, just as notable examples, this list includes the United Kingdom, Australia, Japan, Thailand, Japan, Russia, and China. Others, like Canada, require a lengthy preceding process to determine whether one is rehabilitated to their satisfaction before allowing entry of a convicted sex offender.

There is simply no data on whether this new hampering of international travel by former sex offenders has had any real effect at preventing sex crimes committed overseas by U.S. citizens. Indeed, despite the vociferous outcry used to justify the U.S. law against international sex tourism (target of the later law on all international travel by former covered sex offenders), only a few outrageous instances were used in support of that earlier bill.

To this date, no actual numerical data exists to confirm that sex tourism itself was anything more than a very unusual occurrence. It does appear that, in 2019, only one out of each 20,000 arrests by U.S. law enforcement concerned any aspect of such claimed sex tourism. Given the overpowering deterrent effect of aggressively enforced laws with massive prison sentences, that ratio is probably even less by now and still falling rapidly toward extinction, quite without any need for the more general international Megan's Law now discussed.

It is only clear that it bars many instances of travel outright, has an enormous chilling effect of travel that may still be possible, if incredibly difficult to carry out in compliance with these new requirements and restrictions, serves to 'nudge' foreign customs officers to launch impromptu intense investigations of every arriving covered sex offender in an aggressive attempt to find (or to manufacture) an alleged violation of any local law that may be utterly obscure and perhaps of uncertain applicability, often in a brazen effort simply to onerously harass a traveling sex offender. It is not yet known how often this last official abuse by such foreign officers occurs, but the universality of disgust at contemplation of sexual abuse of children would seem to suggest that this is not a rare occurrence.

Jack Furlong ends his article with this apt observation:

"We are approaching the 30-year anniversary of Megan Kanka's death. Chris Smith still represents her district, but many other politicians have long since moved on. Despite nearly three decades of empirical study revealing repeatedly that sex offenders are neither a monolithic group nor a highly recidivist one, the ambit of control continues to expand. These regulations come at considerable cost to taxpayers and enormous costs to former offenders, yet offer little relief to terms of reducing the likelihood of an offender acting out. We can now add international travel to the pantheon of pointless efforts...."

MN SOCC Detainees to Get General Assistance without Work Pay Deduction.

It's Official!! We are now able to receive the full General Assistance benefit (for institutionalized persons) without deduction for amounts we receive as pay for work within MSOP. MN DHS Bulletin # 23-04-01 "Unearned Income Policy for Public Assistance Programs" confirms this: Page 2: "This bulletin clarifies that the only unearned income sources that are

counted when determining eligibility or benefits for the ... General Assistance (GA) ... Program are those listed in Minn. Stats. Sec. 256P.06, subd 3(2)." [NOTE:

This statutory subdivision used to include subsection 3(2)(xiii), which stated:

"income and payments from service and rehabilitation programs that meet or exceed the state's minimum wage rate;" This was the provision always deemed to authorize deduction calculation of MSOP earnings against the GA monthly benefit amount we could get.

In the Bulletin's Section II, "Policy Clarifications Effective November 1, 2022",

Unearned income sources for purposes of being counted for eligibility and benefit amounts for General Assistance (among other programs) NO LONGER LIST THE ITEM ABOVE IN 3(2)(xiii). THEREFORE, MSOP WAGE INCOME, WHICH HAS LONG BEEN RULED "UNEARNED INCOME," CANNOT BE THE BASIS FOR ANY GA BENEFITS REDUCTION AFTER Nov. 1, 2022. Confirming this, the Bulletin (p. 4) states in bold: "Unearned income sources that are not listed above are not counted when determining eligibility or benefits for MFIP, DWP, RCA, GA, MSA, Housing Support, and CCAP."

The Bulletin also mentions "Recurring cash payments" and "recurring cash gifts" as not countable against GA benefits.

The meaning of these two other exceptions from countability against GA remains unclear, however.

The Bulletin cites (in addition to the statute above, Minn. Stats. Chapters 256J and Code of Fed. Regulations Title 7, section 273.9(c)(19) AS FURTHER BASES FOR THE CONCLUSION in this Bulletin.

Residential Restrictions Lack Rationality

Jayson Hawkins, "Studies Place 'Rationality of Residential Restrictions in Doubt,' *Criminal Legal News*, Vol. 31, No. 4 (Nov. 2022), p. 36

Excerpts:

"...One of the larger studies tracked 3,166 Minnesota sex offenders released from 1990 to 2002. By 2006, only 224 – about 7% – were in prison again for another sex-related crime. Grant Duwe, the Minnesota Department of Corrections research director, looked into the circumstances of the new crimes and determined that not a single case 'would likely have been deterred by a residency restriction law.' Duwe also found that the perpetrators of the new crimes 'rarely established direct contact with victims near their own homes' and that 'sexual recidivism was affected by social or relationship proximity, not residential proximity.'

Duwe concluded that 'a lack of stable, permanent housing increase the likelihood

that sex offenders will reoffend and abscond from correctional supervision.'

A University of Missouri study of sex offender data in both that state and Michigan came to a similar conclusion. Criminologist Beth Huebner and fellow researchers said their findings caution against the widespread, homogeneous implementation of residence restrictions.'

A study in Florida measuring recidivists against nonrecidivists likewise noted 'no significant relationship between reoffending and proximity to schools and day-cares.' Nearness to places children gather, the authors wrote, 'does not appear to contribute to sexual recidivism.'

A 2005 New York law requires 'level three' sex offenders live no closer than 1,000 feet from a school. They must also locate such a residence before being released from prison, even if it means they remain incarcerated beyond the length of their original sentence.

For prisoners planning to return to families and jobs in New York City, the prohibition has marked almost every residential area in the metropolis as off-limits....

New York Court of Appeals [the highest court in that state] Judge Rowan Wilson expressed doubt ...that the state's detention policy met the minimal standard of rationality. '[C]ourts and scholars alike have recognized that residency restrictions do next to nothing to prevent children from being victims of sex crimes,' Wilson wrote, adding that keeping people locked up because of such a policy 'irrationally thwarts the New York State and City legislatures' goals of fostering the successful reintegration of formerly incarcerated individuals into the community."