

**Six-Year Follow-Up of Released Sex Offenders  
Recommended for Commitment Under  
Washington's Sexually Violent Predator Law,  
Where No Petition Was Filed**

Cheryl Milloy, Ph.D.

December 2003



*Washington State  
Institute for  
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**WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY**

110 Fifth Avenue Southeast, Suite 214

Post Office Box 40999

Olympia, Washington 98504-0999

Telephone: (360) 586-2677

FAX: (360) 586-2793

URL: <http://www.wsipp.wa.gov>

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## EXECUTIVE SUMMARY

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Washington was the first state to pass a civil commitment law for violent sex offenders; the law was included in the state's omnibus legislative package, the 1990 Community Protection Act.<sup>1</sup> The Sexually Violent Predator statute<sup>2</sup> permits the indefinite involuntary civil commitment of persons found in civil court to be sexually violent predators. This study examines the recidivism of 89 released sex offenders referred by the Department of Corrections as meeting the filing standards for civil commitment petitions, but for whom no petitions were filed. These individuals were released into the community from prison during the first six years after this law's passage (between July 1990 and July 1996).

In this study, recidivism is defined to include all new convictions, both within and outside Washington State, from the date of release from prison to the end of a follow-up period. A uniform follow-up period of six years is used, with December 31, 2002, as the cut-off date.

### Key Findings

- A majority (57 percent) of the subjects were convicted of new felony offenses.
- A high percentage (40 percent) was convicted of a new felony against-person offense, including sex offenses.
- Almost one-third (29 percent) committed a new felony sex offense.
- Sixteen percent failed to register as sex offenders.

New sex offenses were committed throughout the follow-up period. The likelihood of members of the group committing a felony sex offense ranged from 24 to 45 percent during the six years following release from prison.

Almost one-half (44 percent) of the group were incarcerated at the end of the follow-up period. Six individuals had received new sentences of life without parole, all within Washington State. Another two were awaiting trial on a sexually violent predator petition, and one person had been civilly committed.

This study reveals that the group of individuals referred for possible commitment as sexually violent predators, but for whom no petitions were filed, have a high pattern of recidivism.

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<sup>1</sup> Roxanne Lieb, "State Policy Perspectives on Sexual Predator Laws," ed. B.J. Winick and J.Q. LaFond (eds.) *Protecting Society from Sexually Dangerous Offenders* (Washington, D.C.: American Psychological Association, 2003).

<sup>2</sup> RCW 71.09.020



## SECTION I: BACKGROUND

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Washington was the first state to pass a civil commitment law for violent sex offenders; the law was included in the state's omnibus legislative package, the 1990 Community Protection Act.<sup>3</sup> Washington's Sexually Violent Predator statute<sup>4</sup> permits the indefinite involuntary commitment of persons found by a jury to meet the statutory definition of a sexually violent predator. Currently, 16 states have enacted similar laws that provide for the civil commitment of sexually violent predators following their release from custody; one additional state has a similar law for juveniles (Pennsylvania) with Texas requiring outpatient treatment after release.<sup>5</sup>

### Washington State Civil Commitment Procedures

The Washington law is quite specific in its criteria for civil commitment:

- A "sexually violent predator" is a person who has been convicted of a sexually violent offense<sup>6</sup> or charged with a crime of sexual violence; and
- Suffers from a personality disorder or mental abnormality which is a congenital or acquired condition affecting the person's emotional or volitional capacity and predisposes the person to commit criminal sexual acts so that the person is a menace to the health and safety of others; and
- The mental abnormality or personality disorder makes a person, if not confined in a secure facility, likely to engage in future predatory acts of sexual violence directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists.<sup>7</sup>

The End of Sentence Review Committee (ESRC) was established in 1990 to review each potential sexually violent predator's case to determine whether the individual meets the criteria for civil commitment. The ESRC is comprised of staff from the Department of Corrections (DOC), the Department of Social and Health Services, the Indeterminate

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<sup>3</sup> Roxanne Lieb, "State Policy Perspectives on Sexual Predator Laws," ed. B.J. Winick and J.Q. LaFond (eds.) *Protecting Society from Sexually Dangerous Offenders* (Washington, D.C.: American Psychological Association, 2003).

<sup>4</sup> RCW 71.09.020

<sup>5</sup> Pennsylvania SB 521 P.N. 1108, Session of 2003; Art. 4, Title 11, Chapter 841 Texas laws.

<sup>6</sup> Sexually violent offenses include: (a) Rape 1, Rape 2 (by forcible compulsion), Rape of Child 1 or 2, Statutory Rape 1 or 2, Indecent Liberties (by forcible compulsion or involving a child under 14), Child Molestation 1 or 2, Incest Against a Child Under Age 14; or (b) a prior felony offense that is comparable to a sexually violent offense; or (c) Murder 1 or 2, Assault 1 or 2, Assault of a Child 1 or 2; or (d) an attempt, criminal solicitation, or criminal conspiracy to commit (a), (b), or (c), Kidnap 1 or 2, Burglary 1, Residential Burglary, and Unlawful Imprisonment, if it can be proven during commitment proceedings that the offense was "sexually motivated."

<sup>7</sup> The inclusion of "persons of casual acquaintance" was added to the statutory third definition of "predatory" by the 2001 Legislature (Chapter 12, 2001 2nd Sp. Sess.). Therefore, this third definition was not in effect during the time period that filing decisions were made on this group.

Sentence Review Board, and two members of law enforcement. Appendix A describes in detail the process used by this organization.

The ESRC reviews the records of all sex offenders under the jurisdiction of DOC approximately eight months before the offender’s anticipated date of release from incarceration. The committee then makes its recommendations to the attorney general, or in the cases of King and Snohomish Counties, the prosecuting attorney. It is the role of the attorney general or prosecuting attorney to file the petition for involuntary civil commitment.

If a petition is filed, a number of procedural protections are provided to the offender, including access to counsel, expert witnesses, and trial by jury. If the jury or court finds, beyond a reasonable doubt, that the individual is a sexually violent predator, then the individual is civilly committed to the state for the purpose of treating the mental condition that produced the predatory acts of sexual violence. The commitment continues until such time as the committing court or jury determines the individual is safe to be released to a less restrictive environment.

Since enactment, the law has been used to identify and civilly commit a select group of sex offenders. Table 1 illustrates the flow of cases reviewed by the ESRC during the study time period, with the outcomes for the petition decisions and commitments.

**Table 1**  
**Civil Commitment Cases: July 1990 – July 1996**

<b>Year</b>	<b>Cases Reviewed</b>	<b>Referrals to Prosecutors</b>	<b>Petitions Filed</b>	<b>Petitions Declined</b>	<b>Commitments</b>
1990 (Jul – Dec)	500	19	4	15	2
1991	607	33	7	26	6
1992	429	20	8	12	6
1993	391	20	5	15	4
1994	371	21	8	13	8
1995	406	14	5	9	5
1996 (Jan – Jun*)	430	18	11	7	10
<b>Total</b>	<b>3,134</b>	<b>145</b>	<b>48</b>	<b>97</b>	<b>41</b>

\* One subject was released July 10, 1996.

As this table demonstrates, the ESRC has reviewed a large number of cases; overall, 5 percent have been found to meet the statutory criteria for civil commitment referral. The attorney general and prosecuting attorney have declined to file on two-thirds of these referrals, because one or more of the statutory requirements cannot be proven. Of the cases reviewed by the ESRC during the first six years after the law was passed, the SVP commitment rate was 1 percent.

A previous study by the Institute reported the recidivism rates of a group of 61 released sex offenders recommended for civil commitment where a petition was not filed.<sup>8</sup> This study covers the same topic, but differs in several respects:

- The *follow-up period* is six years for all individuals. In the previous study, the follow-up times were shorter and not uniform for the entire group. The follow-up periods ranged from 5 to 70 months with an average of 46 months.
- The current study reports *conviction information*, while the previous study utilized arrest information to describe the recidivism of the group. Conviction information was used because it represents a more consistent (as well as conservative) form of measurement than arrest information.
- The earlier study used a sample of individuals where a formal action on the individual was taken by the prosecutor, typically in the form of a letter to the ESRC. Particularly for the first few years of the law's enactment, the decision by a prosecutor not to file a petition occurred without notice to the ESRC. In constructing the sample for this study, *all individuals who were recommended for filing by the ESRC were included*, whether or not a letter was sent to the ESRC indicating that the case would not be pursued.

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<sup>8</sup> Donna Schram and Cheryl Darling Milloy, *Sexually Violent Predators and Civil Commitment* (Olympia, WA: Washington State Institute for Public Policy, February 1998).



## SECTION II: METHODS

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### Subjects

A total of 97 sex offenders, released from the Washington State Department of Corrections, (DOC) were identified by the ESRC as having been referred for possible commitment as sexually violent predators during the first six years after passage of the law, where the outcome was a decision not to file a petition. The decision on petition filing (and non-filing) is made by a county prosecutor or, if requested by the prosecutor, the attorney general.

Of the 97 released sex offenders, five died before the end of the follow-up period. Three others were eliminated from the study because they were immediately reincarcerated and were never at liberty. Therefore, the final study group includes 89 released sex offenders; all were released from prison into the community between July 1990 and July 1996.

### Measuring Recidivism

Recidivism is measured in this study by recording all new convictions both within and outside the state of Washington during a fixed period of time after the date of release from prison. Recidivism data are available for all subjects up to December 31, 2002. A follow-up period of six years is used because all 89 released sex offenders were potentially at risk for at least this long, allowing a uniform analysis of recidivism. All subjects were followed for the same number of years even though they were released at different times. This definition follows the measurement standards for recidivism research developed by the Institute at legislative request.<sup>9</sup>

### Sources of Recidivism Data

Two data sources are used to track recidivism: the Institute's criminal history database, which is a combination of Washington State court and DOC information, and National Crime Information Center (NCIC) Interstate Identification Index reports.

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<sup>9</sup> Robert Barnoski, *Standards for Improving Research Effectiveness in Adult and Juvenile Justice* (Olympia, WA: Washington State Institute for Public Policy, December 1997).

## Data Analysis

This report contains descriptive statistics of recidivism findings. Reoffending is examined in several ways:

- First, recidivism is described by an individual's *most serious offense* committed during the follow-up period. The categories for this analysis are felony, misdemeanor, failure to register, and no new offense. Within these categories, the offense behavior is further divided into subcategories: sex, against-person, and other. Failure to register as a sex offender is reported separately, because it is a release condition that is unique to the sex offender population.
- Recidivism is then examined as the *number* who committed different types of crimes. In this case, a person can be counted more than once if convicted of more than one type of crime.
- Recidivism is also described in terms of the *number of offenses* by the categories of felony, misdemeanor, and failure to register, and then by the subcategories of sex, against-person, property, drug, and other.
- Next, the *specific sex offense charges* and the states where reoffenses took place are presented for those individuals with new sex offense convictions.
- The *period of time* during the six-year follow-up that new felony offenses were committed is displayed graphically by dividing the follow-up period into three two-year intervals. Felony reoffending is divided into the categories of sex, against-person, and other.
- Finally, the *group members' status at the end of the follow-up period* is examined. The specific information includes whether the subjects are incarcerated (in-state or out-of-state) or at liberty at the end of six years after release.

## SECTION III: FINDINGS

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### Most Serious New Offense

Table 2 presents the recidivism findings by the most serious new offense committed during the six-year follow-up period. Of the 89 released sex offenders studied, 67 (75 percent) were convicted of at least one new offense.

*Table 2*  
**Most Serious New Offense**

Type of Offense	Number of Subjects	Percentage of Subjects*
<b>Felony</b>		
Sex	26	29
Against-person	10	11
Other	15	17
<b>Felony Recidivists</b>	<b>51</b>	<b>57</b>
<b>Misdemeanor</b>		
Sex	3	3
Against-person	3	3
Other	7	8
<b>Misdemeanor Recidivists</b>	<b>13</b>	<b>15</b>
<b>Failure to Register</b>	<b>3</b>	<b>3</b>
<b>Total Recidivists</b>	<b>67</b>	<b>75</b>
<b>No New Offense</b>	<b>22</b>	<b>25</b>
<b>Total</b>	<b>89</b>	<b>100</b>

\*Totals may not add to 100% due to rounding.

More than one-half (57 percent) of the subjects had a new felony offense as their most serious new conviction. Within this category, 26 individuals (29 percent) were subsequently convicted of new felony sex offenses, while ten (11 percent) were convicted of against-person felony offenses. Thus, 40 percent of the group had at least one new conviction for an against-person (including sex) felony offense. Fifteen additional individuals (17 percent) had a nonviolent (property, drug, or other) felony offense as their most serious new conviction.

A misdemeanor was the most serious new offense for thirteen (15 percent) individuals. Only three of the recidivists (3 percent) had a failure to register as a sex offender as their only new conviction.

## Number Convicted of Each Type of New Offense

The number convicted of each type of offense during the follow-up period is presented in Table 3. Note that these categories are not exclusive, and many individuals were convicted of more than one type of crime. In fact, when compared with the results presented in Table 2, Table 3 demonstrates the criminal versatility of the group. Many of those convicted of new felony offenses also committed new misdemeanors. In addition, a total of 14 subjects failed to register as a sex offender; this was the sole new crime for three of these individuals.

**Table 3**  
**Number Convicted of**  
**Each Type of New Offense**

Type of Offense	Number of Subjects	Percentage of Subjects
<b><i>Felony</i></b>		
Sex felony	26	29
Against-person felony excluding sex felonies	13	15
Any against-person felony including sex felonies*	36	40
Property felony	14	16
Drug felony	10	11
Other felony	2	2
Any felony excluding against-person*	22	25
Any felony*	51	57
<b><i>Misdemeanor</i></b>		
Sex misdemeanor	4	4
Against-person misdemeanor excluding sex	14	16
Any against-person misdemeanor including sex*	18	20
Property misdemeanor	17	19
Drug misdemeanor	4	4
Other misdemeanor	15	17
Any misdemeanor excluding against-person*	30	34
Any misdemeanor*	36	40
<b><i>Failure to Register</i></b>	14	16

\* These categories are not the sums—they are counts of unique persons who committed any of the offenses defined by the category; i.e., when the same person committed crimes in each category, that person is only counted once in the “Any” category.

Almost one-third (29 percent) of the group was convicted of new felony sex offenses. Four individuals (4 percent) were convicted of new misdemeanor sex offenses. In addition, 13 individuals (15 percent) had new convictions for against-person (excluding sex) felony offenses, while 14 (16 percent) had new convictions for against-person (excluding sex) misdemeanor offenses.

One-quarter (25 percent) had at least one new conviction for a nonviolent (property, drug or other) felony offense. More than one-third (34 percent) of the group had convictions for new nonviolent misdemeanor offenses.

Sixteen percent of the group had at least one new conviction for failure to register. For the most part, these registration violations were independent of any other new crimes.

### Number of New Offenses by Type of Offense

Table 4 presents the new offenses by type of offense that resulted in a conviction. The group was responsible for 225 new felony and misdemeanor convictions, including 15 failure to register convictions, during the six-year follow-up period. Excluding the failure to register charges, there were somewhat more new felony (112) than misdemeanor (98) charges.

**Table 4**  
**Number of New Offenses by Type of Offense**

<b>Type of Offense</b>	<b>Number of Offenses</b>
<b><i>Felony</i></b>	
Sex felony	38
Against-person felony	19
Property felony	25
Drug felony	27
Other felony	3
<b><i>Total Felonies</i></b>	<b>112</b>
<b><i>Misdemeanor</i></b>	
Sex misdemeanor	4
Against-person misdemeanor	25
Property misdemeanor	34
Drug misdemeanor	4
Other misdemeanor	31
<b><i>Total Misdemeanors</i></b>	<b>98</b>
<b><i>Failure to Register</i></b>	<b>15</b>
<b><i>Total Offenses</i></b>	<b>225</b>

### Types of New Sex Offenses

Table 5 presents specific sex offense charges and the states where reoffenses took place for the 30 individuals with new sex offense (felony as well as misdemeanor) convictions. Twenty-one of the 30 committed offenses resulted in convictions in Washington State, while nine were convicted outside the state.

The most serious conviction charge for 12 of the recidivists (40 percent) involved rape, sodomy, or sexual assault or abuse. Two individuals (7 percent) were convicted of assault 2 with sexual motivation, while one person (3 percent) was convicted of unlawful imprisonment with sexual motivation. Another four individuals (13 percent) were convicted

of indecent liberties, child molestation, or immoral acts with a child, offenses which encompass a wide range of hands-on sexual misconduct with child victims. Seven individuals (23 percent) were convicted of communication with a minor for immoral purposes, sexual exploitation of a minor, or encourage child sexual abuse/possession of child pornography, offenses which often involve behavior that is preliminary to child molestation. Four individuals (13 percent) were convicted of misdemeanor sex offenses.

**Table 5**  
**Types of Offenses for the 30 Recidivists**  
**With New Sex Offense Convictions**

Conviction Charge	Number of Charges	Where Convicted
<b><i>Felony Offenses</i></b>		
Aggravated Sexual Abuse 2	1	Illinois
Assault 2 With Sexual Motivation	1	Washington
Assault 2 With Sexual Motivation	1	Washington
Child Molestation 1	3	Washington
Child Molestation 2	3	Washington
Communication With a Minor for Immoral Purposes	2	Washington
Communication With a Minor for Immoral Purposes	1	Washington
Communication With a Minor for Immoral Purposes	1	California
Communication With a Minor for Immoral Purposes	1	Washington
Communication With a Minor for Immoral Purposes	1	Washington
Encourage Child Sexual Abuse 2	2	Oregon
Possession of Child Pornography 1	2	
Immoral Acts With a Child	1	Wyoming
Indecent Liberties With a Child	1	North Carolina
Rape 1	2	Washington
Rape 2	1	Washington
Rape 2	1	Washington
Rape 3	1	Washington
Rape of a Child 1	2	Washington
Rape of a Child 1	1	Washington
Rape of a Child 1	1	Washington
Child Molestation 1	1	
Rape of a Child 3	1	Washington
Sexual Assault 1	1	Colorado
Sexual Assault of a Child	1	Colorado
Sexual Exploitation of a Minor	1	Washington
Sodomy 1	2	Oregon
Unlawful Imprisonment With Sexual Motivation	1	Washington
<b><i>Misdemeanor Offenses</i></b>		
Lewdness	1	Washington
Obscene Conduct	1	Idaho
Patronizing a Prostitute	1	Washington
Patronizing a Prostitute	1	Washington

Thus, 63 percent of the sexual recidivists were convicted of felony contact crimes such as rape, indecent liberties, and assault. The remaining recidivists were convicted of offenses that could be considered precursors to child molestation or consisted of less serious forms of sexual misbehavior.

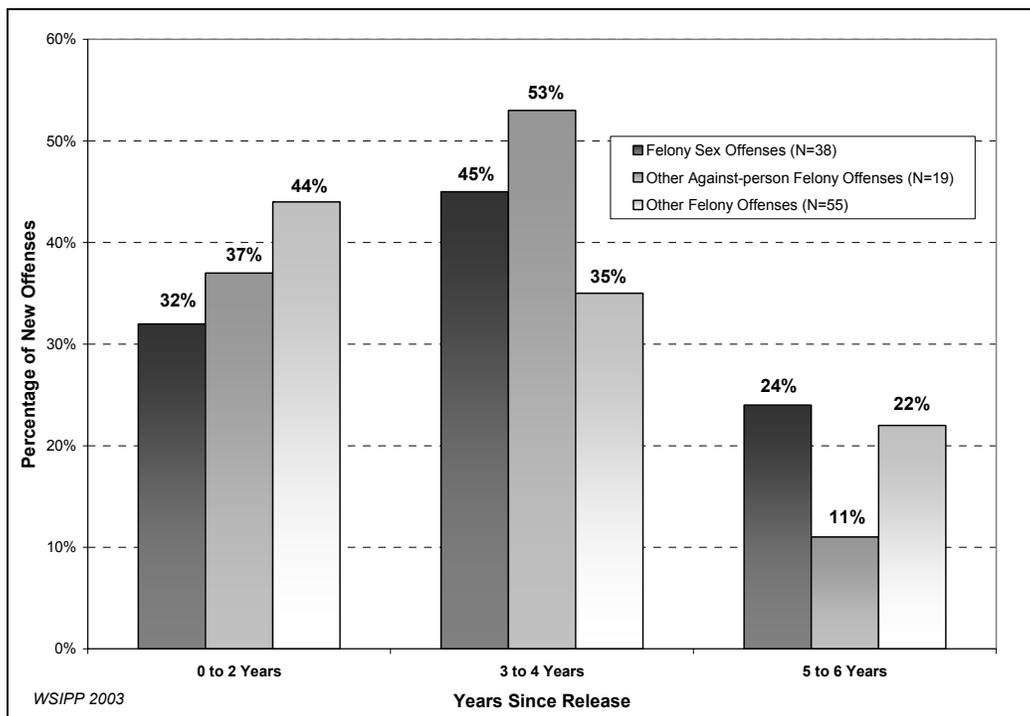
### Timing of New Felony Offenses

Figure 1 presents the distribution of felony offending during three time intervals within the six-year follow-up period. Note that of the 38 felony sex offenses committed, 32 percent were committed within two years of being released, another 45 percent between three and four years after release, and the remaining 24 percent in the last two years of the follow-up period. Thus, felony sex offenses were committed fairly evenly throughout the entire follow-up period.

The results for other against-person felony offenses, as well as not against-person felonies, are similar to those for sex offenses, but with a smaller portion (11 percent) of violent offenses (excluding sex) being committed during the last two years of the follow-up period.

New sex offenses were committed throughout the follow-up period. The likelihood of a member of the group committing a felony sex offense ranged from 24 to 45 percent during the six years following release from prison. That is, of the 38 new felony sex offenses committed during the follow-up period, 32 percent (n = 12) occurred during the first two years after release, 45 percent (n = 17) during years three and four, and 24 percent (n = 9) during years five and six.

**Figure 1**  
**Time Periods During Which New Felony Offenses Were Committed**



Note: Totals may not add to 100 percent due to rounding.

## Status of Group at End of Follow-up Period

The status of the 89 released sex offenders in the group was examined as of six years after their initial release. Table 6 summarizes this information.

**Table 6**  
**Status at End of Follow-up Period**

Status at End of Follow-up Period	Number of Subjects	Percentage of Subjects
Incarcerated in Washington State	27	30
Incarcerated in Another State	12	13
At Liberty in Washington State	37	42
At Liberty in Another State	13	15

Nearly one-half (44 percent) of the group was incarcerated at the end of the follow-up period. Most of these subjects (27) were incarcerated in Washington State, but 12 were serving new sentences in institutions in other states.

Of the 36 individuals who had been convicted of new against-person felonies (including sex), only five were at liberty at the end of the follow-up period. These five individuals had served their new sentences and been released.

The remaining 31 felony against-person recidivists were incarcerated. Of this group, six individuals had received new sentences of life without parole, all within Washington State. Another two were awaiting trial on a sexually violent predator petition and were housed at the Special Commitment Center, and one person had been civilly committed. The remaining 22 subjects were in prison (41 percent of them out-of-state) for their new felony against-person (including sex) offenses.

## Comparative Recidivism Data

Readers may be interested in knowing how the findings from this study compare with those from other sex offender recidivism studies. It is difficult to make a direct comparison to this select group of released sex offenders, for no other studies of these types of offenders have been conducted. However, findings from some recent research do illustrate the distinctiveness of this group.

The Institute analyzed recidivism records of Washington State sex offenders placed in the community in 1990. New felony convictions for 417 released sex offenders who had served prison sentences (as opposed to community sentences) were tracked for eight years. Nearly one-quarter (24 percent) of this population had been convicted of new felony offenses. In comparison, more than one-half (57 percent) of the sexually violent predator decline group had a new felony conviction six years after being placed in the community.

Thus, the subjects in the current study were far more likely to be convicted of new felony offenses than a typical group of the state's other sex offenders released from prison.

A recent study from the United States Department of Justice, Bureau of Justice Statistics<sup>10</sup> (BJS) of 9,691 sex offenders released from state prisons in 1994 found that 24 percent were convicted of new offenses of any kind by three years after release. Three-quarters (75 percent) of the subjects in the current study were convicted of new offenses. In addition, the BJS study reported that 3.5 percent were convicted of new sex offenses, compared with 29 percent in the current study.

As stated earlier, it is difficult to directly compare results due to differences in the groups of sex offenders, as well as follow-up times. Clearly, however, this select group of sex offenders who were referred for possible civil commitment during the first six years of the law has a high pattern of recidivism.

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<sup>10</sup> Patrick Langan, Erica Schmitt, and Matthew Durose, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, D.C.: United States Department of Justice, Bureau of Justice Statistics, November 2003).



## CONCLUSIONS

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This study examines the recidivism of 89 Washington State Department of Corrections (DOC) released sex offenders referred to the attorney general or prosecuting attorney for possible commitment as sexually violent predators by the End of Sentence Review Committee (ESRC) during the first six years after passage of the law, but for whom no petitions were filed. These individuals were released from prison into the community between July 1990 and July 1996.

Recidivism is measured by recording all new convictions both within and outside Washington State from the date of release from prison to the end of a follow-up period. A uniform follow-up period of six years is used, with December 31, 2002, as the cut-off date.

A high percentage (57 percent) of the subjects were convicted of new felony offenses, with 40 percent reoffending with an against-person offense, including sex offenses. Almost one-third of the group (29 percent) reoffended with a felony sex offense, and 16 percent failed to register as a sex offender. New sex offenses were committed throughout the follow-up period. That is, the likelihood of a member of the group committing a felony sex offense ranged from 24 to 45 percent during the six years following release from prison.

Almost one-half (44 percent) were incarcerated at the end of the follow-up period. Six individuals had received new sentences of life without parole, all within Washington State. Another two individuals were awaiting trial on a sexually violent predator petition, and one person had been civilly committed.

This study reveals that individuals referred for possible commitment as sexually violent predators by the ESRC, but for whom no petitions were filed, have a high risk of a subsequent conviction for a felony offense, particularly a new against-person (including sex) offense.



## **APPENDIX A: END OF SENTENCE REVIEW PROCESS**

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*(Source: Washington State Department of Corrections)*

The Department of Corrections (DOC) is mandated to establish and administer the End of Sentence Review Committee (ESRC) for the purpose of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The Community Protection Unit at DOC is responsible for administering the Department's ESRC.

The primary function of the ESRC is to review all registerable sex offenders prior to their release to determine their potential for civil commitment under RCW 71.09 as a Sexually Violent Predator. For those offenders who meet the criteria for civil commitment, the ESRC makes a recommendation to the prosecuting attorney for civil commitment proceedings. The ESRC also reviews, for potential civil commitment, those sex offenders who have been released to the community and commit a "recent overt act." If it is determined that the offender has committed a "recent overt act," the offender is referred to the prosecuting attorney for civil commitment proceedings under RCW 71.09.020(6). Additionally, it is the ESRC's responsibility to determine the risk level of sex offenders for community notification as defined in ESSB 5759, and for the distribution of notifications prior to the offender's release.

The ESRC reviews all offenders being released from DOC confinement, as well as those being released or transferring from other states with parole or post-prison supervision only, who have been convicted of a registerable sex offense, a registerable kidnapping offense, and all other registerable offenses in accordance with RCW 72.09.345.

The ESRC also reviews all offenders being released from DOC confinement who have committed an assault against a child, special needs offenders who are considered a high risk to reoffend due to their mental illness or developmental disability, and those offenders considered a high risk to reoffend in a violent way due to current threats they may be making toward past or future victims. The ESRC may elect to notify relevant agencies of the offenders pending release. Another function of the ESRC is to assess 6151<sup>11</sup> cases and make recommendations to the Indeterminate Sentence Review Board.

- In order to qualify for civil commitment, the offender must have either been:
  - a) convicted of a sexually violent offense;
  - b) found to have committed a sexually violent offense as a juvenile;
  - c) charged with a sexually violent offense but determined to be incompetent to stand trial; or
  - d) found Not Guilty by Reason of Insanity of a sexually violent offense.The offender must also suffer from either:
  - a) a mental abnormality, which is a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the offender to commit criminal sexual acts; or
  - b) a personality disorder *and* this makes the offender likely to engage in predatory acts of sexual violence.

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<sup>11</sup> ESSB 6151, Chapter 12, Laws of 2001 established a new sentencing system for certain sex offenders who committed their crimes on or after September 1, 2001. See RCW 9.94A.712.

- In 1995, House Bill 5088 added the following standard: An offender may be referred for civil commitment under RCW 71.09 if the offender has previously been convicted of a sexually violent offense, has since been released from total confinement, and has committed a “Recent Overt Act,” which is any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.
- ESSB 6151 determination—sex offenses committed after September 1, 2001, are subject to the ESRC’s consideration for screening as a possible civil commitment referral and determination of sex offender notification level. In addition, the committee assesses the offender’s risk of recidivism to the community. The ESRC recommends either for the offender’s release to the community or for the offender to be maintained in confinement based on the risk to the community. If the ESRC recommends for the offender’s release to the community, the ESRC will then recommend new conditions or modify conditions to the Indeterminate Sentence Review Board for the offender’s supervision in the community.
- The ESRC is an interagency committee comprised of individuals from various agencies, including: Department of Social and Health Services Juvenile Rehabilitation Administration, Child Protective Services, and Division of Developmental Disabilities; Mental Health; Department of Corrections’ Community Corrections, Law Enforcement, Victim/Witness, and Civil Commitment Manager; Attorney General’s Office; and the Indeterminate Sentence Review Board.

### **End of Sentence Review Process**

- The offender's prison counselor or work/pre-release Community Corrections Officer screens the file and submits the ESRC/Community Protection Unit Referral form 18 to 24 months prior to the offender's earned release date, or immediately if less incarceration time is remaining.
- The packet is received by the Community Protection Unit and a Community Risk Specialist reviews the file, enters pertinent information on the DOC’s Offender Based Tracking System (OBTS DT07), and obtains any documents needed to complete the file review. This is done by contacting law enforcement, DOC offices, and out-of-state entities for all documents that pertain to the offender and will help in the scoring of the offender’s level of notification.
- Designated Community Protection Unit Notification Specialists review all available documents and prepare a detailed narrative (file review). The narrative includes a summary of the current offense; criminal history; sexual deviancy history; psychological history; treatment history; infractions; employment and community resources. In addition, Notification Specialists complete a Risk Level Classification assessment for all sex offenders being released from DOC confinement and update the Risk Management Identification worksheet, both of which are incorporated into

the narrative as well. The prepared cases are then presented to the ESRC for review, as detailed above.

- ESRC/Level 1 Child Protective Services Committee then reviews and determines the offender's level of notification. The ESRC has the authority to mitigate or aggravate a sex offender's level of notification if deemed appropriate.
- The final ESRC decision, along with the Risk Management Identification score, is entered on the DT07, DT55, and DT37 OBTS screen, and the file is maintained in the Community Protection Unit.
- Thirty days prior to the offender's actual release date or maximum sentence date, the Community Protection Unit receives a CRR<sup>12</sup> and the notification specialist screens the file review, release address, and any additional information or concerns and completes the notification bulletin. The notification is then distributed to the prosecutor's office from the county of conviction; the sheriff's office in the county of residence; the police department in the city of residence; the DOC office where the offender will be supervised; Homicide Information Tracking System; and, if the offender has supervision and is being released to another state, that state's Interstate Compact Unit and local law enforcement agencies. Additional agencies may also be notified of the offender's pending release, including but not limited to Child Protective Services; Adult Protective Services; Division of Developmental Disabilities; Department of Licensing; Department of Health; and Immigration Naturalization Services.

**LEVEL I:** Those offenders whose risk assessment indicates a *low risk of reoffense within the community*. This level of notification may include the release of all relevant, necessary, and accurate information to other law enforcement agencies, victims, witnesses, or individual community members who reside near the offender being released.

**LEVEL II:** Those offenders whose risk assessment indicates a *moderate risk of reoffense within the community*. This level of notification may include, in addition to Level I, the release of all relevant, necessary, and accurate information to public and private schools; child daycare centers; family daycare providers; businesses; organizations that serve primarily children, women, and vulnerable adults; neighbors; and community groups near the residence of the offender being released.

**LEVEL III:** Those offenders whose risk assessment indicates a *high risk of reoffense within the community*. This level of notification may include, in addition to Level I and Level II, all relevant, necessary, and accurate information to the general public.

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<sup>12</sup> A Community Release Referral is an offender's release plan.