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Florida's Sexually Violent Predator Program

An Examination of Risk and Civil Commitment Eligibility

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Sex offender civil commitment (SOCC) has been enacted in 16 states amid widespread controversy. A critical component of civil commitment is the risk assessment process that determines recommendations for civil confinement once a prison term has expired. This study analyzes the first stage of a two-stage risk assessment process that determines whether eligible sex offenders are referred for clinical evaluation in Florida's Sexually Violent Predator Program. A sample of 773 offenders referred to the program between July 2000 and August 2003 is examined to identify group differences between released and referred sex offenders and the unique effects of legal, clinical, and other factors on the decision to refer for clinical evaluation. Despite considerable discretion given evaluators in assessing risk, the findings indicate substantial and salient group differences between those released and referred and that the primary factors informing referral decisions are consistent with legislative intent, actuarial instruments, and sex offender recidivism research.

Keywords: *sex offender; civil commitment; risk*

Crime legislation in the past decade has become increasingly focused on sex offenders, juvenile and adult (Zimring, 2004). National efforts to get tough on the perpetrators of sex crimes have resulted in a number of policy shifts, including increased conviction rates and longer prison sentences. The average time served for rape has increased from approximately 3.5 to 5 years. For example the number of prisoners sentenced for violent sexual assault other than rape has also increased faster than any other category of violent crime and all other crime categories except drug trafficking (Greenfeld, 1997). Overall, the number of sex offenders in prison between

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1993 and 2002 has increased by 74%, compared with a 49% increase in the total state prison population.

The toughened stance toward sex offenders is seen most clearly in the proliferation of sexual predator statutes (Lieb, Quinsey, & Berliner, 1998; Sample & Bray, 2003; Tonry, 2004). These various statutes depart from the more traditional approaches to deterring crime, such as increases in convictions and prison terms, by responding to the problem of sexual violence in a way that is unparalleled for nonsexual violent offenses. Most notable are the sex offender notification and registration laws that have been implemented nationwide. Generally speaking, these laws require that persons convicted of sex offenses register with local police departments and that citizens be notified, or have a means of knowing, when a sex offender resides in their community (Edwards & Hensley, 2001; Pallone, Hennessy, & Voelbel, 1998; Wright, 2003).

Sex offender civil commitment (SOCC), the focus of this study, provides another example of this unique brand of get-tough legislation. SOCC laws permit the incarceration of certain sex offenders in prison and mental health systems when commitment to prison alone has been the presumptive sentence for offenders deemed competent to stand trial. For sex offenders classified as "sexually violent predators," SOCC authorizes indeterminate custody in separate treatment facilities once prison sentences have been served. SOCC laws have been enacted in 16 states, with 20 other states considering civil commitment laws of their own (Lucken & Latina, 2002; Terry, 2006).[1]

Although it enjoys popular support, SOCC has been widely criticized in the legal and mental health communities. Challenges to SOCC laws have revolved around the controversial assumptions that sex offenders suffer from a mental abnormality that makes them more likely to recidivate than nonsex offenders and that sex offenders as a group can be differentiated by risk. Although legislators have been quick to accept the direct relationship between sexual violence, mental disorders, and recidivism, many experts have rejected or expressed reservations about this premise and the promise of SOCC (Alexander, 1995; Boruchowitz, 1992; Schopp & Sturgis, 1995; Winick, 1998). For many critics, the key question is whether behavioral science can function as an adjudicator of fact (Janus, 2000), when experts are debating how best to assess the risk that earns one the label of "sexual predator," and whether such a label is even justified from a clinical or legal perspective.

Despite the ongoing controversy since the laws' passage, surprisingly little is known about SOCC in practice. A large body of literature exists on the factors predicting sex offender recidivism, which relates to the hypo-

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thetical question of what civil commitment decisions should be based on, but the operational question of what civil commitment decisions are based on has scarcely been considered. The need for this type of research is apparent for the simple reason that sexual predator laws are credible and effective only to the extent that the risk assessment process in practice is known, measured, and ultimately validated. The greater the understanding of the assessment process, the greater the understanding of SOCC's potential to decrease threats to public safety or increase unwarranted and costly incarceration.[2] Janus (2000) has best communicated the need for this type of research by observing that needed changes or constraints in the use of civil commitment are not likely to come from constitutional litigation—the laws have already survived numerous legal challenges—but from the organizational and clinical structures that govern decisions to release or commit sex offenders.

In this study, we examine these structures by examining the bases for release and referral decisions in Florida's Sexually Violent Predator Program (SVPP). We focused on the first stage of a two-stage risk assessment process that determines eligibility for SOCC. This stage is a significant piece of the overall risk assessment process because, at this point, roughly 85% of all commitment candidates in Florida are disqualified and released to the community; this has resulted in 11,266 sex offenders' being released between 2000 and 2003. Given the weighty implications of the risk assessment decisions, we analyze whether salient differences exist between released sex offenders and those referred for further clinical evaluation. We also consider whether the factors accounting for the hypothesized difference are consistent with legislative intent and, more specifically, predictor variables common to actuarial instruments and the sex offender recidivism literature.

Prior Literature

Much of the literature on SOCC has been developed by legal and mental health scholars. Legal scholarship in particular has been decidedly critical in its assessment of the laws, claiming that they are disingenuous in their intent. For example, Boruchowitz (1992) and others (Becker & Murphy, 1998; Erlinder, 1993; Reardon, 1992; Schopp & Sturgis, 1995; Wettstein, 1992) have claimed that dubious terms such as *mental abnormality*, *psychopathic personality*, and *personality disorder* have enabled the civil system to accomplish what could not be done lawfully in the criminal justice system (see also Alexander, 1995; LaFond, 1992; Rollman, 1998;

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Winick, 1998). Many legal scholars have also interpreted the courts' willingness to accept this ambiguous terminology as a new and dangerous form of control that threatens a number of constitutional protections (Alexander, 1995; Falk, 1999; Grabowski, 1988; King, 1999; LaFond, 1992; Smith, 1995). A number of lawsuits have charged that SOCC violates double jeopardy, due process, and self-incrimination rights (e.g., *Allen v. Illinois*, 1986; *Foucha v. Louisiana*, 1992; *In re Blodgett*, 1992; *Kansas v. Hendricks*, 1997).

Taking exception to these legal positions, Brooks (1992) has argued that the laws provide a corrective measure to a system that has allowed dangerously violent sex offenders to roam free. However, he was mindful of the fact that this system oversight can be corrected only if the laws are "properly administered." Brooks's reminder of the need for a properly administered law is in and of itself a reminder of the need for empirical research on SOCC.

The need for empirical research has been met in small part by the mental health literature. For example, Meyer, Molett, Richards, Arnold, and Latham (2003) and Quinsey (1992) have evaluated the treatment program component of SOCC but not the risk assessment component that determines involuntary placement in the program. While some literature has addressed the risk assessment component (e.g., Doren, 2002; Funderburk, 1999), the approach has been more prescriptive (i.e. how to use it) than empirical (i.e. how is it being used). Still other literature has engaged in empirically based discussions of the operational tensions that might arise in the SOCC risk assessment and referral process, given the limitations of actuarial instruments and research on sex offender recidivism (Rogers & Jackson, 2005). A classic example of this body of work is Doren's (2002) and Wollert's (2001, 2006) debates on the potential for underpredicting sexual violence in civil commitment cases.

Empirical accounts of SOCC risk assessment do exist, but they are by far the exception rather than the rule. To the best of our knowledge, only two studies (Janus & Walbek, 2000; Levinson, 2004) have pursued this line of research. These two studies, coupled with the sex offender recidivism research, provide an empirical and theoretical framework for the current study.

Sex Offender Recidivism Research

Discussions of risk assessment in SOCC have been largely informed by research on sex offender recidivism. Although a substantial body of research shows that sex offenders are no more likely to recidivate or be specialists than nonsex offenders (Beck & Shipley, 1989; Langan & Levin, 2002; Miethe, Olson, & Mitchell, 2006; Sample & Bray, 2003; Scheingold,

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Olson, & Pershing, 1992), the burden of risk assessment in SOCC is to differentiate one sex offender from another.

The notion of intergroup distinctions has received strong support in the literature, though the research has generated varying results. For example, research has shown that rapists recidivate more quickly than pedophiles (Furby, Weinrott, & Blackshaw, 1989; Quinsey, Rice, & Harris, 1995) but that pedophiles have higher reoffense rates than rapists (Lussier, LeBlanc, & Proulx, 2005; Prentky, Lee, Knight, & Cerce, 1997). Hall (1990) and Quinsey et al. (1995) found that rapists may be more likely to recidivate than other types of sex offenders but that they are not high risk as a whole. It has also been reported that incest offenders have lower recidivism rates than other pedophiles (Furby et al., 1989; Hanson, Steffy, & Gauthier, 1993; Quinsey, 1986, as cited in Kruttschnitt, Uggen, & Shelton, 2000). Hanson (2006) further argues that child molesters with extrafamilial male victims have substantially higher recidivism rates at 5, 10, and 15 years.

Various differences in sex offender recidivism have been explained by a number of predictor variables. Harris (2000) categorizes predictors of violent recidivism for sex offenders and nonsex offenders as big, medium, and small. The primary, or what he terms big, factors include actuarial scores, psychopathy, violent history, juvenile delinquency, separation from parents, childhood aggression, antisocial peers, and alcohol abuse. At the medium range of predictive accuracy, Harris identified nonviolent criminal history, adult criminal history, substance abuse, marital status, age, and psychotic diagnosis. At the low or small end of predictive accuracy, he identified clinical opinion, self-esteem, IQ, offense seriousness, and certain psychotic symptoms.

Hanson and Bussière's (1998) meta-analysis of 61 studies of sexual offender recidivism identifies three major categories of risk factors: criminal lifestyle, sexual deviance, and psychological maladjustment. They argue that sex offenders who recidivate with nonsexual crimes tend to be young and unmarried and have histories of antisocial behavior. However, though general criminal lifestyle factors, such as unemployment, young age, and substance abuse can predict sexual recidivism, Hanson and Bussière claims that the strongest predictors of sexual recidivism are factors related to sexual deviance (e.g., deviant sexual interests, male victims, prior sexual offenses). Their meta-analysis also shows that with the exception of personality disorders, psychological maladjustment factors have little or no relationship to any type of recidivism.

Although the results of these various studies support one assumption underlying SOCC, namely, that sex offenders as a group exhibit varying patterns of recidivism, the findings are neither simple nor absolute.

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Additional findings from Hanson and Bussière's (1998) meta-analysis and other studies complicate simple sex offender categorizations and recidivism conclusions. For example, research shows that risk factors can operate independently and interactively (Hanson & Bussière, 1998) and that predictive value increases when criminological variables are combined with sex offender–specific variables (Becker & Murphy, 1998). Moreover, other studies have shown only the following factors to be significant in predicting sex offender recidivism: younger age at time of arrest and release from custody, a prior record of two or more sex offenses, male victim or dual sex preference, offender relationship to victim, paraphilic diagnosis, and deviant sexual arousal (Becker & Murphy, 1998; Gretton, McBride, Hare, O'Shaughnessy, & Kumka, 2001; Malcolm, Andrews, & Quinsey, 1993; Rice & Harris, 1995; Roberts, Doren, & Thorton, 2002; Serin, Mailloux, & Malcolm 2001).

The formula for predicting sex offender recidivism is complicated not only by the controversy over which risk factors should be included but by the relative priority of these factors and the manner in which they should be organized and interpreted. A significant point raised by Harris (2000) is that in assessing a sex offender's risk to recidivate, greater weight should be given to results generated by actuarial instruments. Harris gave far less credence to clinical professional opinion and called for the ongoing development of actuarial instruments. Although clinical opinion is being interweaved with quantitative assessment tools, actuarially based judgments are regarded by some as equal or superior to subjective professional judgments (Grove & Meehl, 1996).

Although risk factors indicated by actuarial instruments are clearly associated with offender recidivism, some claim that only minimal predictive capability can be expected. In general, the expectation is that for any given offender who has a certain set of attributes, the propensity to recommit a rape, for instance, increases as the number of attributes increases. Although this would make the task of referral for civil commitment simple, the methodology is murky. Even prior to the development of actuarial instruments, Kozol, Boucher, and Garofalo (1972) concluded that with respect to classifications of dangerousness, the results from natural experimentation do not provide defensible grounds for the belief that prediction is sufficiently accurate for policy makers to be confident that the number of "false positives" is low. Janus and Meehl (1997) also argued that unless there is a high base rate of recidivism and high accuracy for a specific cohort, the probability of accurately predicting future behavior is less than 50% (see also Grubin & Wingate, 1996; Wollert, 2006).

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Empirical Research on SOCC

Varying opinions on how best to predict a sex offender's likelihood to sexually reoffend are part of the vulnerability of the risk assessment process and, ultimately, the reliability and validity of SOCC practices and procedures nationwide. Janus and Walbek's (2000) and Levinson's (2004) research illustrate how this vulnerability might be manifest in the context of SOCC programs.

Janus and Walbek's (2000) descriptive study examined 116 sex offender commitments in Minnesota between 1975 and 1996.[3] The authors found that during a 21-year period, the SOCC program was applied with a "striking degree of variability" with respect to offender demographic characteristics, criminal record, victim demographics, and the clinical and institutional histories of sex offenders. In short, Janus and Walbek reported substantial variation in the characteristics of committed offenders in any given year. These wide variations remained across measures of age (18 to 75 years), prior criminal record (0 to 12 prior offenses), prior sex crimes (0 to 11), and prior mental health, substance abuse, and sex offender treatment. The authors concluded that Minnesota's statute is explicitly aimed at the "most dangerous," but the high variability in factors associated with recidivism indicates that there may be high variability in the risk for recidivism among those committed. Although they found that over time, the number of commitments and the ages of those committed had increased, and that those committed were more likely to have substantial and serious criminal health histories unrelated to mental health problems, it was unclear whether a core set of predictor variables was consistently indicated in the referral decision process.

Levinson's (2004) study examined the differences in risk factors displayed by sex offenders recommended for release compared with commitment in Florida's SVPP. Her study was based on archival data on 450 adult male sex offenders evaluated for civil commitment between July 1, 2000, and June 30, 2001. Her analysis targeted the 450 offenders who met the commitment criteria at the first stage of evaluation and were referred to the second stage of evaluation involving face-to-face clinical interviews. Consistent with prior research findings, the variables of interest included actuarial risk assessment scores, empirically validated risk factors, clinical based risk factors, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed.) diagnoses, and demographic characteristics.

To determine if significant differences existed between those recommended for commitment and those released, Levinson (2004) used independent-samples t tests to compare the means of continuous variables and χ^2 tests to

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compare the frequencies of occurrence for categorical variables. She found that offenders recommended for commitment scored higher on actuarial risk assessment instruments and that significant differences existed between the two groups on mental health diagnoses and risk factors empirically correlated with sexual recidivism. Levinson concluded that the referral practices associated with the Florida SVPP were both evidence based and consistent with statutory requirements.

The present study of Florida's SVPP advances this empirical literature in two ways. First, in addition to assessing group differences, our study provides an examination of the relative weight of various predictor variables in the risk assessment process. Second, in contrast to Levinson's (2004) study, our study examines the first stage of risk assessment in Florida's SVPP. This particular empirical focus provided the opportunity to examine risk assessment under a different set of diagnostic conditions. The information typically available to evaluators at the first stage of assessment is often limited and incomplete, and referral decisions are rendered without the benefit of actuarial scores or personal contact with sex offenders. Nevertheless, as previously mentioned, roughly 85% of all SVPP referrals are released at the first stage of risk assessment for not meeting commitment criteria.

Methods

This study was guided by two research questions. First, is there a significant difference between sex offenders released after the initial evaluation and those referred for clinical evaluation? Second, are the risk factors accounting for the projected difference consistent with legislative criteria and the risk factors identified by sex offender recidivism research and actuarial instruments designed for predicting sex offender recidivism (i.e., Rapid Risk Assessment for Sexual Offense Recidivism [RRASOR], STATIC-99, and the Minnesota Sex Offender Screening Tool–Revised [MnSOST-R])?

Both research questions were addressed within the broader context of legislative intent and SVPP operations. Legislative intent establishes the basic eligibility criteria for Florida's SVPP and therefore the general parameters for release and referral decisions. Internal program operations necessarily affect release and referral decisions as well, through the adoption of specific policies, procedures and risk assessment tools, and the quality and quantity of sex offender background information available to program evaluators.

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Data Sources

Information on legislative criteria was obtained from the *Jimmy Ryce Act Enforcement Task Force Final Report* (Florida Legislature, 2000). This report discusses legislative intent and reproduces the SVPP statute in its entirety, including definitions of the various statutory elements. Knowledge of program operations was gleaned from a series of personal open-ended interviews with SVPP staff members. Personal interviews were conducted with the program director, chief clinical evaluator, and data management specialist over a period of 2 days. Follow-up interviews were conducted by phone to clarify previously obtained information. External audit reports authored by Florida's Office of Program Policy Analysis and Government Accountability (2000, 2004) aided in clarifying specific program procedures and actual operations. Altogether, documents and interviews were key to understanding the mechanics of the program's risk assessment process, the availability of sex offender background records, and the construction and meaning of the data contained in the computerized SVPP offender management system.

The data source for the statistical analysis was the SVPP offender management system. This SVPP database contains personal and legal information on all sex offenders referred to the program since its inception in 1999. On average, 95% of the SVPP referrals came from the Florida Department of Corrections (FDOC).

Two types of information were compiled in the database. The first type was recorded in fixed fields and entered on a purely objective and routine basis. Of the information recorded in these fields, seven fields were theoretically relevant to the analysis of sex offender recidivism risk: offender's age at referral, race, weapon use in the sexual offense, number of prison disciplinary reports, number and types of prior convictions, number and types of current convictions, and most serious crime of current conviction.

The second type of information contained in the SVPP database was case narratives. The case narratives section recorded required as well as miscellaneous facts on each sex offender. Although any facts deemed relevant by the evaluator could be recorded, two categories of background information were required. One was criminal history items obtained from police records and other available official documents. Narratives on criminal history detailed the nature of the sex offenses committed and included victim information (e.g., number of victims, age, race, gender, and relationship to offender) to the extent that it was provided in the police records or other obtainable official documents. The second category of background information required in the

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case narratives was a sex offender's clinical history. Clinical history narratives reported evidence of sexual deviance on the basis of the results of FDOC's sex offender screening tool and/or any other previously conducted professional assessments.

In addition to these two required categories of information, the case narratives typically reported offenders' probation and parole violation histories, any general mental health diagnoses, and treatment participation histories (i.e., substance, mental health, and sex offender). Because some discretion was permitted in the recording of the case narratives, and differences in the availability of certain background information were inevitable, the type and degree of information in these fields varied by case. However, a close review of the case narratives revealed a high degree of consistency in the recording of these discretionary items of information, such as the probation and parole violation histories, nonsexual mental health diagnoses, details of sex offenses, and so on.

Nine criminal and clinical history variables were ultimately coded from the case narratives in the SVPP database[4]: probation and parole violations, harm to victim, nature of the sexual offense, sex acts multiple times, victim gender, victim-offender relationship, number of victims, nonsexual disorder diagnosis, and sexual disorder diagnosis. The coding scheme for probation and parole violations is reflected in the variable characteristics reported in Tables 1, 2, and 3. The number of victims was simply coded as a continuous variable. Victim gender was coded as "male victim" if at any time in the offender's sexual offense history there was a male victim, regardless of the presence of female victims as well.

A more complicated coding scheme was needed for the remaining variables. Harm to the victim involved the degree of physical injury, if any, suffered by the victim. Only if the narratives explicitly stated that no harm had occurred was the variable coded "no harm." "Harm" was recorded if the narrative specified that a physical injury was done to any sexual and/or nonsexual part of the body. "Harm unknown" was recorded in all other circumstances. This did not mean, however, that the data were missing, in the traditional sense, only that references to injuries were not indicated one way or the other in the narrative. This scenario was highly possible given that the narratives were based primarily on arrest reports, which lack uniform standards regarding the inclusion of various items of information.

The nature of the sex offense was coded as follows: Exposure and other noncontact activity (i.e., Internet, solicitation, photographs, and magazines) were designated as "no sexual contact." Oral sex and sexual penetration of any kind, differentiated by the instrument used by the

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offender and the location on the victim's body, were designated as "sexual contact—major." A victim fondling the offender and vice versa, differentiated by body part, and the offender's being masturbated by the victim were designated as "sexual contact—moderate." If the offender undressed the victim only or masturbated in the presence of the victim, a designation of "sexual contact—minor" was given.

Victim-offender relationship was coded "familial" if the offender was a stepfather, father, stepmother, mother, stepbrother, brother, stepsister, sister, uncle, or aunt. The designation "extrafamilial" was given to boyfriends, girlfriends, acquaintances, babysitters, friends, or family friends. A designation of "stranger" was given if the victim and offender had absolutely no prior relationship, and "unknown" was recorded if the relationship was not indicated in the case narratives. Sex acts multiple times was coded "yes" if a sexual offense occurred multiple times in one incident or over a period of time. Last, nonsexual mental disorder diagnoses was designated "yes" if there was a history of schizophrenia, bipolar disorder, post-traumatic stress disorder, nonsexual hallucinations, or antisocial personality. Sexual disorder diagnoses was coded "yes" if there was a history of paraphilia, sadism or masochism, sexual fantasizing or hallucinations, or exhibitionism.

Sampling Procedure

The SVPP database contains records on all sex offenders referred to the program from its inception in 1999. Since that time, 13,649 individuals have been referred to the program. To collect the most accurate and complete data possible, the SVPP data management specialist advised that the study population of sex offenders be limited to referrals from the FDOC, beginning in fiscal year (July) 2000. Referrals that were excluded from this population were female sex offenders, juveniles, those deemed "not guilty by reason of insanity," and sex offenders being considered for parole release. These cases were excluded because altogether, they amounted to approximately 2% to 5% of all referrals, and they were evaluated in a distinctly different manner. For example, juvenile cases were assessed with significantly more background information on hand, and parole cases were decided in a few days compared with the 45 days (later extended by law to 180 days in 2002) stipulated for nonparole cases.

The resulting population of sex offenders consisted of the 6,346 adult referrals from the FDOC between July 2000 and August 2003. Of these referrals, 5,931 (93.5%) were designated by the program as not meeting statutory requirements (released). The remaining 415 (6.5%) met the statutory

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requirements and were forwarded to the second stage of evaluation performed by contracted clinical evaluators (referred).[5] Due to heavy time and resource constraints associated with coding several thousand lengthy and detail-specific case narratives, a random sample was taken from the population of released and referred sex offenders. The sample procedure was based on achieving a 95% confidence level for each group.[6] This resulted in a sample of 546 sex offenders from the released population and a sample of 246 sex offenders from the referred population, yielding a final sample of 792 cases. Because of missing data on the offenses of conviction in 6 cases and data coded as "other" with no further description in 18 cases, the sample size was ultimately reduced to 773.

Statistical Analysis

Between the fixed and narrative SVPP database entries, a total of 16 independent variables were obtained for the analysis and then grouped into the following categories: offender demographic characteristics (2), legal factors (9), victim characteristics (3), and offender clinical characteristics (2). The specific variable characteristics for each category are listed in Tables 1, 2, and 3. The dependent variable captured the risk assessment decision to release from custody or refer for second-stage clinical evaluation.

The analysis began with descriptive statistics on the dependent and independent variables in the study model (see Table 1). Group mean and percentage differences between those who were released and those who were referred were then calculated for each of the 16 independent variables. Statistical significance for continuous variables was based on *t* tests, and χ^2 tests were used for dichotomous variables (see Table 2). Multivariate logistic regression was used to determine the unique impact of the 16 explanatory variables on the referral decision (see Table 3).

Results

SVPP Overview

As previously mentioned, statistical analysis of Florida's SVPP risk assessment process is best understood in connection to legislative intent and basic program operations. The expressed intent of the Florida Legislature in passing the Jimmy Ryce Act (which created SVPP) was to target a very specific type of sex offender, namely, the "small but extremely dangerous

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number of sexually violent predators" (Florida Statute § 394.910; Division of Statutory Revision of Florida Legislature, 1999, p. 628). According to the Jimmy Ryce Act, a sexually violent predator is

> any person who has been convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. (Division of Statutory Revision of Florida Legislature, 1999, p. 628)

Contained within this statutory language are stipulations for eligible offenders, eligible offenses, likelihood standards, and required mental condition.[7]

Eligible offenders include any sex offender over the age of 18 years, including first-time offenders with no known histories or patterns of sexually violent behavior (Jimmy Ryce Act Enforcement Task Force [JRAETF], 2000). Eligible offenses fall into five categories: "murder of a human being while engaging in a sexual battery"; "kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery or a lewd, lascivious, or indecent assault, or act upon or in the presence of the child"; "lewd, lascivious, or indecent assault, or act upon or in the presence of a child"; "any attempt, criminal solicitation, or conspiracy" of a sexually violent offense; and sexual battery, which includes "any conviction of a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense," "any federal conviction in another state for a felony offense" that in the state of Florida "would be a sexually violent offense," or "any criminal act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings, that has been determined to have been sexually motivated" (Division of Statutory Revision of Florida Legislature, 1999, p. 628).

If these basic eligibility requirements are met, the likelihood standard is applied to determine whether a sex offender qualifies as a sexually violent predator. Any eligible offender deemed "likely to engage in acts of sexual violence so as to render him, or her, a danger to the health and safety of others" meets the likelihood standard (JRAETF, 2000). However, a civil commitment candidate must also possess an active mental abnormality or mental condition that is linked to his or her sexually violent behavior. The required mental abnormality is defined by Florida statute as a "mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses" (JRAETF, 2000, Appendix A).

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A noteworthy feature of this legislation is that it specifically states that only a "small but extremely dangerous number" of sex offenders will ultimately be given this predator designation, but it casts a very wide net in terms of the conditions that would allow such a designation to be applied. The pool of commitment candidates extends to first-time offenders with no known histories of sex offending, those committing sex offenses of any kind, and those who are "likely" to engage in future offenses because of "mental abnormalities" that amount to "emotional or volitional impairments." Given these broad and vague criteria, it is clear that determinations of risk are intended to be discretionary in nature. Terry (2006) accentuated this point in her observations about SOCC, when stating that "the most important step of this process is the risk assessment, which is, inherently, a subjective evaluation of an individual to determine what he or she might do in the future" (p. 209). For example, when asked what was most important when screening a case, the SVPP's chief clinician responded that "four principal questions were kept in mind": What has the sex offender done? What level of violence was used? Is the offender predatory or opportunistic in seeking out victims? and What is the offender's frequency of offending as determined by his or her in/out of system flow, or what clinicians call versatility? The chief clinician concluded that in making their assessments of risk, staff relied on clinical opinions but were informed by actuarial scores as well.

The identification of the small number of sex offenders targeted by the SVPP legislation is shaped not only by risk assessment methodology but by the mechanics of the screening process and the quality and quantity of data available at the time of the assessment. Screening for potential sexually violent predators begins with referrals from the FDOC to the Department of Children and Families. All offenders who are statutorily eligible (i.e., if they have ever been convicted of one of the eligible offenses in their lifetimes, in any state or country) are referred for initial review to the Department of Children and Families; no sex offender can bypass this process if deemed eligible by statute. FDOC referrals are to be made 365 days (later increased to 545 days as of 2002) prior to inmates' release, on the basis of qualifying prior or current offenses as specified by statute. This notification requirement is intended to allow sufficient time for the SVPP to conduct its assessments and the state to complete any judicial proceedings prior to the expiration of the prison sentence.

To determine whether a sex offender is a potential sexually violent predator, SVPP evaluators review a number of documents. At this stage of the assessment, they do not have contact with the sex offender or results

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from actuarial assessments; as actuarial assessments are not performed until the second stage. According to interviews with the chief clinician, arrest records obtained from the National Crime Information Center and law enforcement agencies are the primary data source. The chief clinician remarked that more detailed information on a sex offender may also be obtained from FDOC classification and presentence investigation records. However, it was stated that classification records from FDOC may be available only in part. The psychological intake portion of classification "may or may not" be included in the referral file, and "there is usually not much on the biopsychosocial." The chief clinician also stated that presentence investigation information was "rarely" included in the referral file materials. This was largely because presentence investigations were being conducted less and less by the state. It was indicated that evaluators often had to hunt down and order additional documents to acquire the information needed to determine eligibility.

The various conditions under which SVPP risk assessments take place clearly leave room for departures from legislative intent, disparate referral patterns, and overreliance on referrals given ongoing political and public demands to lock up sex offenders for life, as called for in Florida's newly implemented Jessica Lundsford Act.[8] Yet in the absence of empirical study, it is unclear whether legislative and scientific standards have prevailed or been weakened in the midst of various organizational and political pressures.

Data Analysis

Table 1 presents descriptive statistics on the final sample of 773 cases. The statistics report on the referral decisions, as well as offender demographic, legal, victim, and clinical variables. Of the 773 offenders in the sample, 31.2% were referred for second-stage clinical evaluation, 60.5% were White, and 24.8 percent were aged 30 years or younger at the time of referral.[9]

Descriptive statistics on legal variables indicated that 12.7% of the sex crimes involved the use of a weapon, but in 69.5% of the cases, weapon use was unknown. Also, sex offenders acquired, on average, five disciplinary infractions while incarcerated. The most common (sex) offense of current conviction was a lewd and lascivious act on a child aged 16 years or younger (34.4%), followed by sexual battery with violence or with a child (30%). The vast majority of cases (81.4%) did not involve probation and parole violations, and the degree of harm or injury to the victim was unknown in 79.3% of the cases. Finally, the percentage of sex offenses involving major sexual contact was 52.1%, whereas the percentage of sex

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offenses involving multiple sex acts during one incident or over a period of time was 28.8%.

Statistics on victim variables showed that 14.7% of the sample had at least one male victim and that 43.1% of all the sex crimes involved either a victim who was not a family member or was a stranger to the offender. The average number of sex offense victims was 1.3. The findings on clinical variables showed that non-sex-related mental health disorders had been previously diagnosed in 7.5% of the offenders, whereas only 2.2% had been previously diagnosed with sexual deviance disorders. These percentages do not reflect how many offenders actually had such disorders, only how many had diagnoses that were known to the evaluators because they were indicated in the acquired documents.

A final and critical point in interpreting these descriptive statistics, especially the statistical analyses that follow, is the meaning of the variable designation of “unknown.” Three variables, weapon use, harm to the victim, and victim-offender relationship, had high percentages of cases designated as unknown. As indicated in the “Methods” section under “Data Sources,” coders were instructed to record certain variables as unknown if the information was not provided in the case narratives. However, this designation should not be interpreted as missing data in the conventional sense. If the information is not in the case narrative, which is based primarily on information contained in arrest reports, it is possible that it is not available to the evaluator conducting the risk assessment either. The decision to release or refer, then, must also take into account the fact of not knowing certain details about the sex offender’s history. Consequently, “weapon use unknown,” “harm to victim unknown,” and “victim-offender relationship unknown” were retained as variables in the analysis of risk assessment decisions.

Table 2 compares the mean and percentage differences between released and referred sex offenders. For dichotomous and continuous independent variables, the reported figures reflect the percentage of offenders among the released or referred sex offenders who exhibited the risk factor of interest. For dichotomous independent variables, statistical significance was based on χ^2 tests. For continuous independent variables, statistical significance was based on *t* tests.

With regard to offender demographic variables, referred offenders, as a group, were less likely to be 30 years of age or younger (16.2% fewer were referred, $p < .001$). This runs counter to expectations given that actuarial instruments and much of the prior research consider those who are 30 years of age or younger to be at higher risk for recidivating. However, Beck and Shipley (1989) contended that there is no relationship between age and

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sexual recidivism, and Grunfeld and Noreik (1986) differed in their interpretation of how age functions as a risk factor. They argued that older sex offenders have become more fixated in their sexual deviance and therefore are more likely to continue that pattern of behavior.

Analyses of legal variables showed that significantly higher proportions of referred offenders had used weapons in the commission of sex crimes (22.8 vs. 8.1, $p < .001$). Among those referred for further evaluation, the average number of prison disciplinary reports was also significantly higher than for those who were not referred (8.5 vs. 4.0, $p < .001$). The average number of prior convictions for all crime types was higher among those referred for clinical evaluation as well. The number of current convictions was also consequential to the referral decision. The average number of current convictions for sex crimes against adult victims for referred offenders was 0.61, compared with 0.21 for those not referred ($p < .001$). The number of current convictions for violent nonsex crimes was also a significant factor in the referral decision. The average number of current convictions for violent nonsex crimes for those referred was 0.64, compared with 0.27 for nonreferred cases ($p < .001$). Taking only the most serious offense of current incarceration into account, those who had committed lewd and lascivious acts on children constituted 38.5% of all released offenders and 25.3% of those referred ($p < .001$). By contrast, 45.2% of referred cases had committed sexual battery with violence or against children, compared with only 23.1% of those who were not referred ($p < .001$). Offenders whose most serious offenses of current incarceration were property or drug related were not significantly different in terms of their prevalence in the referred and nonreferred populations.

Referred offenders were also more likely to have had prior probation or parole violations for new sex crimes (5.0% vs. 1.7%, $p < .01$). Conversely, those with technical violations made up a significantly smaller proportion of those who were referred. Significantly higher proportions of released sex offenders had also not physically harmed their victims (20.5% vs. 4%, $p < .001$). In cases in which harm to the victim was unknown, sex offenders were more likely to be referred. As with the variable of weapon use unknown, statistical significance may reflect evaluators' tendency to err on the side of caution when harm to the victim is unknown.

Findings on the level of sexual contact (i.e., none, minor, moderate, or major), which captures the more detailed aspects of what was done to the victim, show that cases with no sexual contact made up a higher percentage of the referred group (22.4% vs. 13.0%, $p < .001$). Although this seems counterintuitive, there are plausible explanations for this finding. First, sex

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offenders engaged in child pornography and Internet solicitations of children and minors may be seen as particularly predatory, secretive, and isolated (Barbaree, Seto, Serin, Amos, & Preston, 1994) and therefore more in denial and resistant to change and treatment (Sperber, 2003; Winn, 1996). Second, Marshall and Barbaree's (1990) review of the literature shows that the recidivism rates of exhibitionists are between 41% and 71%, which is the highest among all categories of sex offenders.

On the other hand, those who had committed sex acts multiple times on the same occasion on the same victim, or over time on the same victim, were more likely to be among those released. This finding may reflect the fact that multiple acts on the same victim probably involve incest, which is regarded as less of a threat to broader public safety. This diminished threat is assumed for a couple of reasons. First, the offenders are viewed more as opportunists, with possible boundary confusion with those with whom they have already established relationships, rather than predators seeking various unknown victims in the community at large (Marshall, Marshall, Sachdev, & Kruger, 2003). Second, research has shown that incest offenders are less likely to recidivate than other types of pedophiles (Furby et al., 1989; Hanson et al., 1993; Marshall & Barbaree, 1990; Quinsey, 1986, as cited in Kruttschnitt et al., 2000).

Victim variables that significantly affected the referral decision included male victim, offenses committed in the context of family, and the number of victims. Those who had male victims were significantly more likely to be in the referred group (23.2 vs. 10.9, $p < .01$), as were those with greater numbers of victims (1.6 vs. 1.2, $p < .01$). Sex offenders who were released were also more likely to have familial victims (22.9 vs. 13.7, $p < .01$). Finally, clinical diagnoses of any type were also more likely to be indicated in those who were referred. All in all, significant differences existed between released and referred sex offenders across 15 theoretically relevant variables.

Table 3 presents a logistic regression model estimated to identify the unique effects of offender demographic, legal, and victim variables and evidence of past sexual deviance diagnoses on the decision to refer to the second stage of risk assessment.[10] Although White sex offenders were significantly more likely to be referred than non-Whites (0.585, $p < .05$), race has not been identified as a substantive or statistically significant factor in prior research or actuarial instruments. However, age at release has consistently been regarded as a primary risk factor for recidivism, but it was not statistically significant in this model.

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Findings on the effects of legal variables were highly consistent with expectations. For example, for a sex offender who used a weapon the odds of being referred for clinical evaluation were 3.037 times greater than for an offender who did not use a weapon. Sex offenders who had incurred more disciplinary reports while incarcerated were also more likely to be referred (0.029, $p < .01$). The number and types of prior convictions were all positively and significantly associated with a greater likelihood of being referred for clinical evaluation. With each prior conviction for a sex crime involving adult victims, the odds of referral increased by 2.557. For sex crimes involving minors, the odds of referral increased by 1.897. The least influential types of prior convictions were violent, nonsex crimes (0.258, $p < .01$) and nonviolent, nonsex crimes (0.315, $p < .05$).

The effects of the number and types of convictions that resulted in the offenders' current incarcerations were, for the most part, also consistent with expectations. Each additional current conviction for a sex crime against an adult or a minor was associated with a significant increase in the odds of referral (3.679 and 1.786, respectively). When isolating the most serious current conviction, sexual battery with violence or a sex crime against a child increased the odds of referral by 1.856. If the most serious current conviction was for a violent, nonsex crime, the likelihood of referral decreased (–1.138, $p < .05$). Taking both prior and current offense record into account, the number of prior convictions for any offense type was more consequential to the referral decision than the number and types of current convictions.

Additional legal variables included probation and parole supervision violations, harm to the victim, and the nature of the sex offense. The likelihood of referral was not statistically significant across any of the different categories of the types of supervision violations. Harm to victim and harm to victim unknown, however, were both significant and similar in their relative weights in the referral process. When harm was present or unknown, the odds of referral increased by about 15 times (15.872 and 13.259, respectively). The similarity of these effects possibly suggests that when evaluators do not know if specific harm (physical injury) has occurred, they err on the side of caution in their risk assessments. The nature of the sex offense also failed to reach statistical significance, as did sex acts committed multiple times on the same victim in one incident or on the same victim over a period of time.

Findings on the unique effects of victim variables were mixed. As expected, the presence of a male victim significantly increased the odds of being referred to the second stage by 2.154 ($p < .05$). With each additional

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Table 1
Description of Variables Used in Analysis (n = 773)

Variable	% or *M*	*SD*	Minimum	Maximum
Referral decision (0 = no, 1 = yes)	31.2%	0.46	0	1
Offender demographic characteristics				
Age at referral ≤30 years (0 = ≥31 years, 1 = ≤30 years)	24.8%	0.43	0	1
White (0 = non-White, 1 = White)	60.5%	0.49	0	1
Legal factors				
Weapon use in sex crime				
Not used (0 = no, 1 = yes)	18.0%	0.38	0	1
Used (0 = no, 1 = yes)	12.7%	0.33	0	1
Use unknown (0 = no, 1 = yes)[a]	69.5%	0.46	0	1
Number of disciplinary reports in prison	5.40	12.10	0	136
Number of prior convictions				
Sex crimes, adult victims	0.49	0.92	0	7
Sex crimes, minor victims	0.32	0.72	0	5
Violent crimes, nonsex	0.66	1.39	0	10
Nonviolent crimes, nonsex	0.28	0.75	0	5
Number of current convictions				
Sex crimes, adult victims	0.33	0.63	0	5
Sex crimes, minor victims	0.79	0.89	0	8
Violent crimes, nonsex	0.38	0.84	0	7
Nonviolent crimes, nonsex	0.67	1.48	0	21
Most serious current type of crime				
Lewd and lascivious behavior on child (0 = no, 1 = yes)[a]	34.4%	0.48	0	1
Sexual battery with violence/child (0 = no, 1 = yes)	30.0%	0.46	0	1
Sexual battery, other (0 = no, 1 = yes)	13.3%	0.34	0	1
Violent, nonsex (0 = no, 1 = yes)	8.0%	0.27	0	1
Property or drug (0 = no, 1 = yes)	14.2%	0.35	0	1

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Probation and parole violations				
No violations (0 = no, 1 = yes)[a]	81.4%	0.39	0	1
Arrest for sex crime (0 = no, 1 = yes)	2.7%	0.16	0	1
Arrest for nonsex crime (0 = no, 1 = yes)	4.5%	0.21	0	1
Technical (0 = no, 1 = yes)	9.2%	0.29	0	1
No reason recorded (0 = no, 1 = yes)	2.2%	0.15	0	1
Harm to victim				
No harm (0 = no, 1 = yes)[a]	14.2%	0.35	0	1
Harm (0 = no, 1=yes)	6.5%	0.25	0	1
Harm unknown (0 = no, 1 = yes)	79.3%	0.41	0	1
Nature of sex offense				
No sexual contact (0 = no, 1 = yes)[a]	15.9%	0.37	0	1
Sexual contact—major (0 = no, 1 = yes)	52.1%	0.50	0	1
Sexual contact—moderate (0 = no, 1 = yes)	6.5%	0.25	0	1
Sexual contact—minor (0 = no, 1 = yes)	25.5%	0.44	0	1
Sex acts multiple times (0 = no, 1 = yes)	28.8%	0.45	0	1
Victim characteristics				
Victim male (0 = no male victim, 1 = male victim)	14.7%	0.35	0	1
Victim-offender relationship				
Familial (0 = no, 1 = yes)[a]	20.1%	0.40	0	1
Nonfamilial (0 = no, 1 = yes)	34.7%	0.48	0	1
Stranger (0 = no, 1 = yes)	8.4%	0.28	0	1
Other or unknown (0 = no, 1 = yes)	37.0%	0.48	0	1
Number of victims	1.3	0.76	1	5
Clinical variables				
Nonsexual disorder diagnosis (no = 0, yes = 1)	7.5%	0.26	0	1
Sexual disorder diagnosis (no = 0, yes = 1)	2.2%	0.15	0	1

a. Variable is the omitted reference category in the multivariate analyses presented in Table 3.

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Table 2
Group Mean or Percentage Differences in Independent Variables by Referral Decision ($n = 773$)

Independent Variable	Not Referred (% or *M*)	Referred (% or *M*)	Difference
Offender demographic characteristics			
Age at referral ≤30 years	29.9%	13.7%	–16.2%***
White	59.2%	63.5%	4.3%
Legal factors			
Weapon use in sex crime			
Not used	25.2%	2.1%	–23.1%***
Used	8.1%	22.8%	14.7%***
Use unknown	66.9%	75.1%	8.1%*
Number of disciplinary reports in prison	4.00	8.50	4.50***
Number of prior convictions			
Sex crimes, adult victims	0.29	0.93	0.64***
Sex crimes, minor victims	0.25	0.49	0.24***
Violent crimes, nonsex	0.49	1.02	0.53***
Nonviolent crimes, nonsex	0.20	0.48	0.28***
Number of current convictions			
Sex crimes, adult victims	0.21	0.61	0.40***
Sex crimes, minor victims	0.76	0.88	0.12
Violent crimes, nonsex	0.27	0.64	0.37***
Nonviolent crimes, nonsex	0.71	0.60	–0.11
Most serious current type of crime			
Lewd and lascivious behavior on child	38.5%	25.3%	–13.2%***
Sexual battery with violence/child	23.1%	45.2%	22.1%***
Sexual battery, other	13.9%	12.0%	–1.9%
Violent, nonsex	8.7%	6.6%	–2.1%
Property or drug	15.8%	10.8%	–5.0%
Probation and parole violations			
No violations	80.5%	83.4%	2.9%
Arrest for sex crime	1.7%	5.0%	3.3%**
Arrest for nonsex crime	4.5%	4.6%	0.1%
Technical	10.7%	5.8%	–4.9%*
No reason recorded	2.6%	1.2%	–1.4%
Harm to victim			
No harm	20.5%	0.4%	–20.1%***
Harm	6.0%	7.5%	1.5%
Harm unknown	73.5%	92.1%	18.6%***
Nature of sex offense			
No sexual contact	13.0%	22.4%	9.4%***
Sexual contact—major	53.4%	49.4%	–4.0%
Sexual contact—moderate	7.3%	4.6%	–2.7%
Sexual contact—minor	26.3%	23.7%	–2.6%
Sex acts multiple times	32.3%	21.2%	–11.1%**
Victim characteristics			
Victim male	10.9%	23.2%	12.3%***
Victim-offender relationship			
Familial	22.9%	13.7%	–9.2%**
Nonfamilial	37.0%	29.6%	7.4%*
Stranger	8.3%	8.7%	–0.4%
Other or unknown	32.0%	48.1%	16.1%***
Number of victims	1.20	1.60	0.40***
Clinical variables			
Nonsexual disorder diagnosis	5.8%	11.2%	5.4%**
Sexual disorder diagnosis	1.1%	4.6%	3.5%**

*$p < .05$. **$p < .01$. ***$p < .001$.

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Table 3
Logistic Regression Results of Sex Offender Civil Commitment Referral Decision ($n = 773$)

Independent Variable	*b*	*SE*	Odds Ratio
Offender demographic characteristics			
Age at Referral ≤30 years	–0.305	0.279	0.737
White	0.585*	0.254	1.796
Legal factors			
Weapon used in sex crime			
Used	2.999***	0.776	3.037
Not used	–1.889**	0.729	0.151
Number of disciplinary reports in prison	0.029**	0.009	1.029
Number of prior convictions			
Sex crimes, adult victims	0.939***	0.145	2.557
Sex crimes, minor victims	0.640***	0.163	1.897
Violent crimes, nonsex	0.258**	0.091	1.294
Non-violent crimes, nonsex	0.315*	0.160	1.370
Number of current convictions			
Sex crimes, adult victims	1.303***	0.269	3.679
Sex crimes, minor victims	0.570***	0.169	1.786
Violent crimes, nonsex	0.331	0.179	1.392
Nonviolent crimes, nonsex	–0.218	0.119	0.804
Most serious current offense type			
Sexual battery with violence/child	0.618*	0.310	1.856
Sexual battery, other	–0.377	0.449	0.686
Violent, nonsex	–1.138*	0.540	0.321
Property or drug	–0.600	0.460	0.549
Probation and parole violations			
Arrest for sex crime	0.766	0.690	2.152
Arrest for nonsex crime	0.580	0.545	1.786
Technical	–0.506	0.444	0.603
No reason recorded	–0.900	0.872	0.407
Harm to victim			
Harm	2.771*	1.239	15.872
Harm unknown	2.591*	1.190	13.259
Nature of sex offense			
Sexual contact—major	–0.450	0.307	0.893
Sexual contact—moderate	–0.758	0.527	0.468
Sexual contact—minor	–0.113	0.343	0.638
Sex acts multiple times	–0.293	0.263	0.746
Victim characteristics			
Victim male	0.767*	0.302	2.154
Victim-offender relationship			
Nonfamilial	0.110	0.330	1.117
Stranger	–0.187	0.495	0.830
Other or unknown	0.629	0.329	1.876
Number of victims	0.572***	0.145	1.771
Clinical variables			
Nonsexual disorder diagnosis	0.474	0.387	1.606
Sexual disorder diagnosis	0.697	0.710	2.006

Note: Model $\chi^2 = 423.31$ ($df = 34$), $p < .001$; Nagelkerke $R^2 = .593$.
*$p < .05$. **$p < .01$. ***$p < .001$.

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victim, the odds of an offender's being referred for a clinical evaluation also increased by 1.771 ($p < .001$). However, offender-victim relationship did not significantly influence the decision to refer.

Last, a nonsexual or sexual disorder diagnosis in an offender's past did influence the referral decision in a positive direction (0.474 and 0.697, respectively), though neither of these effects was statistically significant. The lack of significance for the sexual disorder diagnosis variable is likely because so few offenders had this diagnosis (2.2%).

Altogether, the regression model showed 9 of the 16 independent variable categories to be statistically significant in the decision to refer for clinical evaluation. The variables that were significant, in terms of their specific characteristics, were race (White), weapon used and not used, number of prison disciplinary reports, number of prior convictions for all offense types, number of current convictions for sex crimes on adults and minors, a most serious offense of conviction that involved sexual battery with violence or with a child, a most serious offense of conviction that was a nonsexual violent offense, harm to victim, harm to victim unknown, male victim, and the number of victims. More important than the mere number of statistically significant factors, however, is the significance of these factors in the context of prior recidivism research and actuarial instruments.

The findings presented in Tables 2 and 3 are consistent with actuarial instruments (i.e., RRASOR, STATIC-99, and MnSOST-R) and prior sex offender recidivism research.[11] Naturally, there is some overlap between the risk factors identified in research and those identified in actuarial instruments, because actuarial instruments are based partially on the results of meta-analyses of research on sex offender recidivism. Nevertheless, there are differences in the weight given to the various factors, and actuarial instruments have narrowed the list of core predictors to a much smaller number than those enumerated in the research.

For example, the RRASOR identifies only four factors as predictors of sex offense recidivism: the number and types of prior and current sexual or nonsexual charges and convictions (including probation and parole violations), the age of an offender at release (30 years or younger), victim gender (male), and victim relationship (unrelated or stranger). All of these risk factors were significant in the analysis of group differences, whereas two of the four risk factors were significant in the regression model (the number and types of prior and current charges and male victim). The STATIC-99 identifies the same factors as the RRASOR but breaks them down into several separate categories, with the additional factor of marital status or history. Data on marital status was not available for the analysis.

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The MnSOST-R identifies 16 risk factors, the following of which were included in the study model: number of prior sex or sex-related offense convictions, victim age, offender age at release, victim relationship to offender, weapon use or use of force, prison disciplinary infractions, and sex offense involving multiple acts on a single victim at one event.[12] Three of these factors were significant in the regression model, whereas all were significant in the analysis of group differences. The MnSOST-R factors that were not included in the model relate to employment, substance use and treatment history, sex offender treatment history, location of sex offense (public place), and length of sexual offender history.

It can be generally concluded that the referral practices of Florida's SVPP are consistent with actuarial instruments and the evidence-based research. As previously mentioned, Hanson and Bussière's (1998) meta-analysis of 61 studies identified the strongest predictors of sexual recidivism as deviant sexual interests, male victims, and prior sexual offenses. Furby et al. (1989) and others (Hall, 1990; Quinsey et al., 1995) have found that rapists may be more recidivistic than other types of sex offenders and that incest offenders have lower recidivism rates than other pedophiles. This may help explain why the number of prior and current convictions for sex crimes on adults has a greater effect on referral decisions than the number of prior and current convictions for sex crimes against minors. The most glaring departures from conventional wisdom on predicting sexual recidivism are the findings on the offender's age at release and the victim's relationship to the offender. Neither risk factor was statistically significant in the regression model, though both were significant in the difference in means test.

Summary and Discussion

SOCC laws have been a source of contention in the legal and scientific community since their enactment in the early 1990s. Empirical analyses of this "high science, low law" (Janus, 2000) approach to justice, however, are still exceptionally rare. This is problematic not only because of the complex relationships between mental health, sexual deviance, and recidivism but because the promise of SOCC depends on what Lidz and Mulvey (1995) characterize as the "uneven phenomenon" of risk assessment. In other words, the potential for SOCC to live up to its scientific expectations rests almost entirely on this "risky" risk assessment process (Rogers & Jackson, 2005).

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This study has illumined the process of risk assessment in Florida's SVPP by examining group differences between sex offenders released after the initial assessment and sex offenders referred for additional clinical evaluation and by identifying the variables that most predicted referral or release. The study has also considered whether the findings on observable differences between the two groups and the predictor variables are consistent with legislative intent and recidivism research and actuarial instruments more specifically.

On the basis of the totality of findings, we conclude that the proper application of SOCC laws is achievable. That is to say that risk assessment in Florida's SVPP is not arbitrary, in that the factors that most determine a referral to clinical evaluation conform to legislative and scientific standards. Simple program statistics show that only 6.5% of the 5,931 sex offenders initially referred to the SVPP between July 2000 and August 2003 were referred for further clinical evaluation; subsequent to the clinical evaluation, even fewer were ultimately recommended for civil commitment. Moreover, of the 6.5% referred, all had the requisite prior diagnoses for sexual deviance disorders. These findings suggest that there is adherence to the legislative intent that only a small number of sex offenders are to be targeted and that they must have mental abnormalities that are directly related to their sexually violent behavior (Florida Statute 394.910; Division of Statutory Revision of Florida Legislature, 1999, p. 628).

The findings of the group differences and regression analyses provide a compelling case that risk assessments are scientifically informed as well. As Janus and Meehl (1997) note, the categorization of sex offenders into those who appear "most dangerous" and those who do not should exhibit a substantial segregation on the basis of the salient risk factors. The risk assessments performed by the SVPP evaluators met this standard. Differences between the referred and nonreferred sex offenders were statistically significant in the expected direction across all theoretically relevant risk factor categories included in the model. Controlling for the individual effects of these variables, the factors that were significant in the assessment of risk included weapon used, number of prison disciplinary reports, number of prior convictions (sex and violent crimes in particular), number of current convictions for a sex crime, a most serious current offense of sexual battery with violence or a with child, harm to victim (known and unknown), male victim, and number of victims. All of these risk factors are considered primary predictor variables in the recidivism research and the three referenced actuarial risk assessment instruments (RRASOR, STATIC-99, and MnSOST-R). The only factors that were not statistically significant in the regression

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model, but are considered so in the recidivism research, actuarial instruments, or both, were age of offender at release, victim-offender relationship, and probation and parole violations (which in the MnSOST-R is counted apart from prior record).

Importantly, not all possible risk factors were included in the study model. Marital status was not recorded in the database, but it does appear in the STATIC-99 and is considered a medium range predictor in the recidivism literature (Harris, 2000). The specific age of the victim was also left out of the analysis because of a substantial amount of missing data. Victim age was accounted for, though, by collapsing crime categories (i.e., sexual offense against adult vs. child) according to the age groupings defined in Florida's criminal statutes (e.g., under 12 years, under 16 years). The frequency of sex offending, namely, the length of time between arrests, convictions, or incarceration, or what the chief clinician termed "versatility," was not measured either. Yet according to the chief clinician, it is one of the primary considerations in the assessment of recidivism risk.

Despite these limitations, it is not likely that the overriding conclusion has been meaningfully affected. Particularly, there is little in the findings that would give critics of SOCC cause for alarm. Strong public and political opposition to sex offenders in the community and evaluators' fear of liability do not appear to have led to patterns of overpredicting sexual recidivism at this first stage of evaluation. This is a key point, considering the ubiquitous media coverage of child abductions, the wide latitude given to evaluators, and the less than ideal conditions (limited and varying amounts of information across offenders) under which the initial assessments take place. Alexander (1993, as cited in Terry, 2006) noted that most clinicians admit that they err on the side of society in their assessments of risk, but the findings here on the percentages referred seem more in line with Doren's (1998) assertion that SOCC clinicians will likely underpredict sexual recidivism.[13] Certainly, patterns of underpredicting recidivism do not bode well for public safety, but precise determinations on such patterns are beyond the scope of this study.

For this reason alone, the need and opportunities for additional research on SOCC in Florida and elsewhere are extensive. It is vital that evaluations of a state's risk assessment process be followed up with research that compares the recidivism rates of released and referred sex offenders. Although the risk assessment decisions made in Florida may be scientifically credible, they have not been empirically validated. This line of research will generate knowledge that can better determine the effectiveness of SOCC programs, as well as ease the future research burden related to studying this sex offender classification problem.

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Interstate differences in referral patterns should also be examined to ensure that civil commitment referral decisions vary by recidivism risk rather than jurisdictional factors. For example, it would be important to know what effect, if any, organizational conditions, such as personnel changes, fiscal constraints, prison overcrowding, or agency policy, have on referral decisions. As with Florida's SVPP, other programs' assessments should delineate using at least the most powerful of the risk factors. This study begins the process of establishing a baseline so that various states can compare their assessment decisions and ultimately arrive at a "best practices" model for risk assessment and civil commitment procedure protocol. Such comparisons would yield information that helps isolate the relationship between particular risk assessment methods and procedures and various civil commitment outcomes. This is possible because SOCC statutory definitions and criteria for eligible offenses and offenders, likelihood standards, and required mental condition are the same across states—for constitutional purposes—but the actual risk assessment and civil commitment procedures adopted by each state are different.

Notes

1. States with sex offender civil commitment (SOCC) laws include Arizona, California, Florida, Illinois, Iowa, Kansas, Minnesota, New Jersey, North Dakota, South Carolina, Washington, District of Columbia, Missouri, Virginia, Massachusetts, Wisconsin, and Texas. In Texas, civil commitment operates on an outpatient basis (see Meyer, Molett, Richards, Arnold, & Latham, 2003).

2. The annual cost of operating the civil commitment program in Minnesota has exceeded $15.5 million (Janus & Walbek, 2000). In Florida, operating expenses for fiscal year 1999-2000 totaled $17.8 million (Florida Office of Program Policy Analysis and Government Accountability, 2000).

3. Minnesota has two sex offender commitment laws on the books, one of which was implemented in 1939. This accounts for the commitments prior to 1991, when the second civil commitment law was put into practice.

4. The nine criminal and clinical history variables were coded by two graduate students with educational or professional experience in clinical and forensic psychology. Both coders were given the same code sheet, with a specific list of variables to search for in the case narratives, step-by-step instructions on how to identify and interpret these variables, and clear coding response categories. The coders also consulted each other as they coded the narrative information. This cross-referencing further ensured consistency in the interpretation and coding of the narrative variables. The coders were also able to easily contact either author when coding questions arose, which they did on several occasions. We also exercised considerable oversight by repeatedly verifying their coding process.

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Examples of code sheet instructions on how to interpret variables include

> If sex acts occurred over time and range of the victim's age is indicated, record the youngest age. If notes indicate the age of the victim is between two ages, record the midpoint rounding to the lower end. Example—victim was 12 to 16 years old—record 14.

Other instructions included "Record up to 3 if necessary, if more than 3, record the most serious" in coding the nature of the sexual crime. On certain variables, coders were also instructed to differentiate between a response of "no," indicating that the narratives specifically stated that something did not occur, and a response of "not reported," wherein the information was not indicated one way or the other.

5. The SVPP contracts with private clinical psychologists statewide to perform the second-stage (face-to-face) assessments of sex offenders.

6. Because of the original imbalance of the two populations, the two sample sizes were imbalanced by necessity. Because only 415 sex offenders were referred, a sampling strategy based on an equivalent percentage of those referred and released (e.g., 10% of each group) would have yielded an insufficient number of referred cases for analysis (i.e., 41 cases).

7. The eligibility and other standards for SOCC in Florida are consistent with programs nationally. States have fashioned their laws using similar language to pass constitutional review.

8. The Jessica Lundsford Act mandates lifetime incarceration or supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of children under 12 years old. Similar legislation is being considered in other states.

9. The rationale for truncating age is that sex offender risk assessment instruments conceptualize age in terms of under or over 25 or 30 years of age. Moreover, when age was analyzed as a continuous variable, the significance did not change.

10. Weapon use unknown was used as the reference category in the logit model because multicollinearity was detected when it was incorporated into the model and "weapon not used" was the reference category. A multicollinearity diagnostic was conducted on an initial multivariate model, and it was found that weapon use unknown had a tolerance level of .241. According to Allison (1999, p. 50), tolerance levels below .40 are of concern and can lead to unreliable coefficients. Additionally, a comparison of the models with and without weapon use unknown indicated that minimal variation in the coefficients emerged. Finally the lowest tolerance level in the final model was .447, and the vast majority exceeded .600.

11. RRASOR was developed by Karl Hanson in 1997, using findings from Hanson and Bussière's (1998) meta-analysis, for the express purpose of having a "brief, efficient actuarial tool that could be used to assess the risk for sexual offense recidivism" (Hanson, 1997). This 4-item screening instrument was designed to assess the risk for sexual recidivism among men who have been convicted of at least one sexual offense. It relies on information obtained in files. The STATIC-99 was developed by Hanson and Thorton (1999), subsequent to the development of RRASOR. This 10-item scale was designed to assess the long-term likelihood of sexual recidivism among adult men. The MnSOST-R, developed by Epperson, Kaul, and Hasselton (1998), is used to predict sexual recidivism in rapists and intrafamilial child molesters. It uses 16 static and dynamic variables to identify three levels of risk.

12. Risk factors exclusive to the MnSOST are related to adolescent antisocial behavior, employment history, and substance abuse and sex offender treatment.

13. Doren remarked that in California, Illinois, Minnesota, South Carolina, and Wisconsin, final civil commitment rates have not exceeded 2.5%, 7%, 9%, 11%, and 8%, respectively.

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