

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Sobel, Chair
Senator Hays, Vice Chair

MEETING DATE: Tuesday, September 24, 2013
TIME: 8:30 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Sobel, Chair; Senator Hays, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Detert, Diaz de la Portilla, Grimsley, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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This is a joint meeting with the Senate Committee on Judiciary

1	Presentations relating to sexual offenders and the civil commitment of sexually violent predators		Discussed
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Other Related Meeting Documents

SVPP Meeting Outline

Introduction

- Call to order.
- Roll call.
- Introductory remarks.

Overview of Sex Crimes and Sexually Violent Predator Program by Staff

Criminal Laws Relating to Sex Offenders & Sex Offender Registry

Mike Erickson, Chief Legislative Analyst, Senate Criminal Justice Committee

Legal Authority for the Sexually Violent Predator Program & Community Supervision of Sex Offenders

Scott Clodfelter, Senior Attorney, Senate Criminal Justice Committee

History and Overview of the Sexually Violent Predator Program

Marti Harkness, Chief Legislative Analyst, Senate Appropriations Subcommittee on Civil and Criminal Justice

Stakeholder Roles in the Sexually Violent Predator Program

Stakeholder Roles by Panel Members

Department of Children and Families

Esther Jacobo, Interim Secretary, Department of Children and Families

Prosecutors

Kristin Kanner, Assistant State Attorney, 17th Judicial Circuit

Public Defenders

Bob Dillinger, Public Defender, 6th Judicial Circuit

Judicial Branch

Judge Frank Sheffield, Second Judicial Circuit

Law Enforcement

Sheriff John Rutherford, Duval County, Florida

Victims' Advocates

Jennifer Dritt, Executive Director, Florida Council Against Sexual Violence

Researcher

Dr. Robin Wilson, Ph.D., ABPP

Question & Answer Session with/Discussion Among Panelists

Discussion Among Committee Members & Public Testimony

Adjourn

Other Experts in Attendance and Available for Questions

Experts

Mary Coffee

Planning and Policy Administrator
Offender Registration and Tracking Services
Department of Law Enforcement

Jenny Nimer

Assistant Secretary of Community Corrections
Department of Corrections

Lee Adams

Chief, Bureau of Admissions and Release
Department of Corrections

Gwen Steverson

Chief Probation Officer
Department of Juvenile Justice

Donald Sawyer

Facility Administrator
Sexually Violent Predator Program
GEO Care (Commitment Facility Operator)

Kathy McCharen

Economist/Criminal Justice Analyst
Office of Economic and Demographic Research

Bill Cervone

State Attorney, 8th Judicial Circuit

Mike Williams

Director of Investigation & Homeland Security
Duval County Sheriff's Office

Dr. Suzonne M. Kline, Ph.D.

Forensic Psychologist/Expert Consultant
Former Administrator, Florida's Sexually Violent
Predator Program

Areas of Expertise

- Sex Offender Registry
- Amber Alerts
- Role of DOC in the SVPP
- Supervision of Sex Offenders in the Community
- DOC SVPP referral process.
- Role of DJJ in the SVPP
- Supervision of Juvenile Sex Offenders in the Community
- Florida Civil Commitment Center
- Treatment of Persons Committed to the Civil Commitment Center
- Characteristics of Sexual Offenders
- Characteristics of Inmates Referred to SVPP
- Prosecution Perspective on SVPP
- Law Enforcement Perspective on Sex Offender Issues
- Public safety and development of effective sex offender management practices

Sex Offenders and the Civil Commitment of Sexually Violent Predators

PREPARED FOR SENATE COMMITTEE ON CHILDREN, FAMILIES, AND ELDER
AFFAIRS AND SENATE COMMITTEE ON JUDICIARY

SEPTEMBER 24, 2013



- I. **Criminal Laws Relating to Sex Offenders and Sex Offender Registry**
Mike Erickson, Chief Legislative Analyst, Senate Criminal Justice Committee

- II. **Community Supervision of Sex Offenders and Legal Basis for Civil Commitment**
Scott Clodfelter, Senior Attorney, Senate Criminal Justice Committee

- III. **History and Overview of the Sexually Violent Predator Program**
Marti Harkness, Chief Legislative Analyst, Senate Appropriations Subcommittee on Criminal and Civil Justice

I. Criminal Laws Relating to Sex Offenders and Sex Offender Registry

Mike Erickson, Chief Legislative Analyst, Senate Criminal Justice Committee

Criminal Laws for Sex Acts with Children

Capitol Felony
(Mandatory Life)

Life Felony
(25 Mandatory, plus
Lifetime Supervision)

1st Degree Felony
(Punishable up to
30 Years)

2nd Degree Felony
(Punishable up to
15 Years)

3rd Degree Felony
(Punishable up to
5 Years)

Sexual Battery or
Attempted Sexual
Battery, Victim Less
than 12, Offender 18 or
Older (s. 794.011(2)(a))

Lewd or Lascivious
Molestation, Victim
Under 12, Offender
18 or Older
(s. 775.082(3)(a)4.a.)

Sexual Battery, Victim
12 or Older, Offender
any Age, Victim
Physically Helpless or
Drugged
(s. 794.011(4))

Lewd or Lascivious
Battery, Victim 12 to 15,
Offender any Age (s.
800.04(4))

Lewd or Lascivious
Molestation, Victim
12 to 15, Offender
Younger than 18
(s. 800.04(5)(d))

Relevant Statutes

Most Florida sex offenses are located within 4 chapters:

- **Chapter 794 – Sexual Battery**

Sexual Battery by adult upon a child under 12 (capital felony) and sexual battery by an adult upon a minor with injury to sexual organs (life felony).

- **Chapter 796 – Prostitution**

Procuring a minor for prostitution (2nd degree felony) and selling or buying a minor into prostitution (1st degree felony).

- **Chapter 800 – Lewd Offenses**

Lewd battery by an adult on a child 12 or older but less than 16 (2nd degree felony).

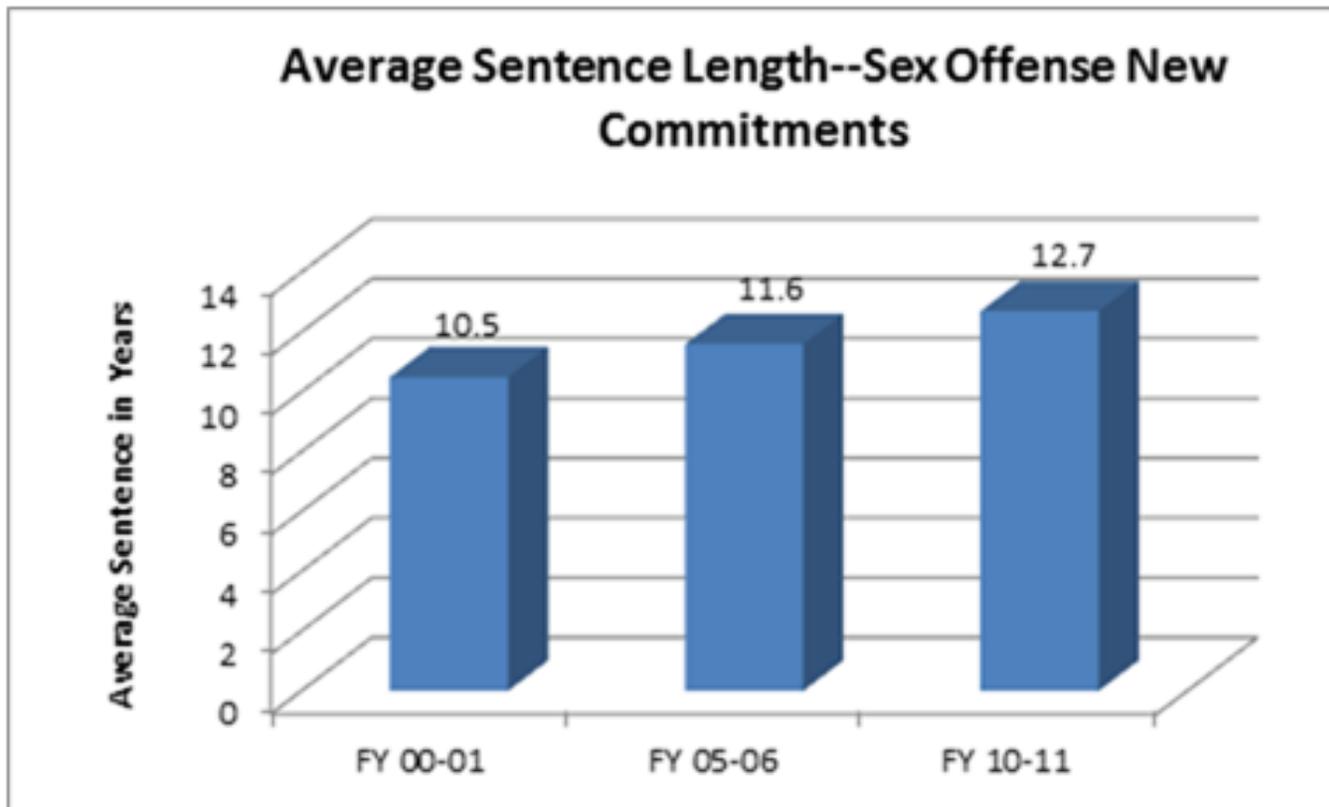
- **Chapter 847 – Obscenity and Pornography**

Examples: Selling or buying a minor to promote a visual depiction of the minor engaging in sexually explicit conduct (1st degree felony).

Most Common Sex Crimes Resulting in Incarceration (FY 2012-13)

	Number Admitted to Prison	Avg. Sentence Length (months)	Average Age at Offense	Percent with Prior Prison
Lewd/lascivious battery, sex with victim 12-15	308	97.6	27.3	30.9%
Sexual battery by adult/victim under 12	250	321.9	36.2	25.2%
Lewd/lascivious molestation, victim under 12/offender 18 or older	198	220.3	41.1	28.6%
Travel to meet juvenile met on Internet for sex	168	47.9	33.0	5.1%
Sexual battery with minor/family or custodial authority	150	211.3	38.6	18.6%
Possess photo – child sex performance	104	84.9	38.7	17.5%
Sexual battery/injury not likely	103	89.2	33.0	35.4%

Sentences for Sex Offenders Increased Since 2000



Registration of Sexual Predators and Sexual Offenders

As of September 11, 2013, there were 43,640 offenders located in Florida on the Registry. Fifty-two percent were under state or federal custody, control, or supervision.

Sexual predator: Court designated. Conviction of qualifying sex offense (first degree felony or greater) or two qualifying sex offenses or has been determined by the court to be a sexually violent predator. Twenty-one percent of Florida-based registrants are sexual predators.

Sexual offender: FDLE determines based on statutory criteria. Convicted of qualifying sex offense and/or other criteria.

Registration of Sexual Predators and Sexual Offenders – Basic Registration Obligations

Basic Registration Obligations:

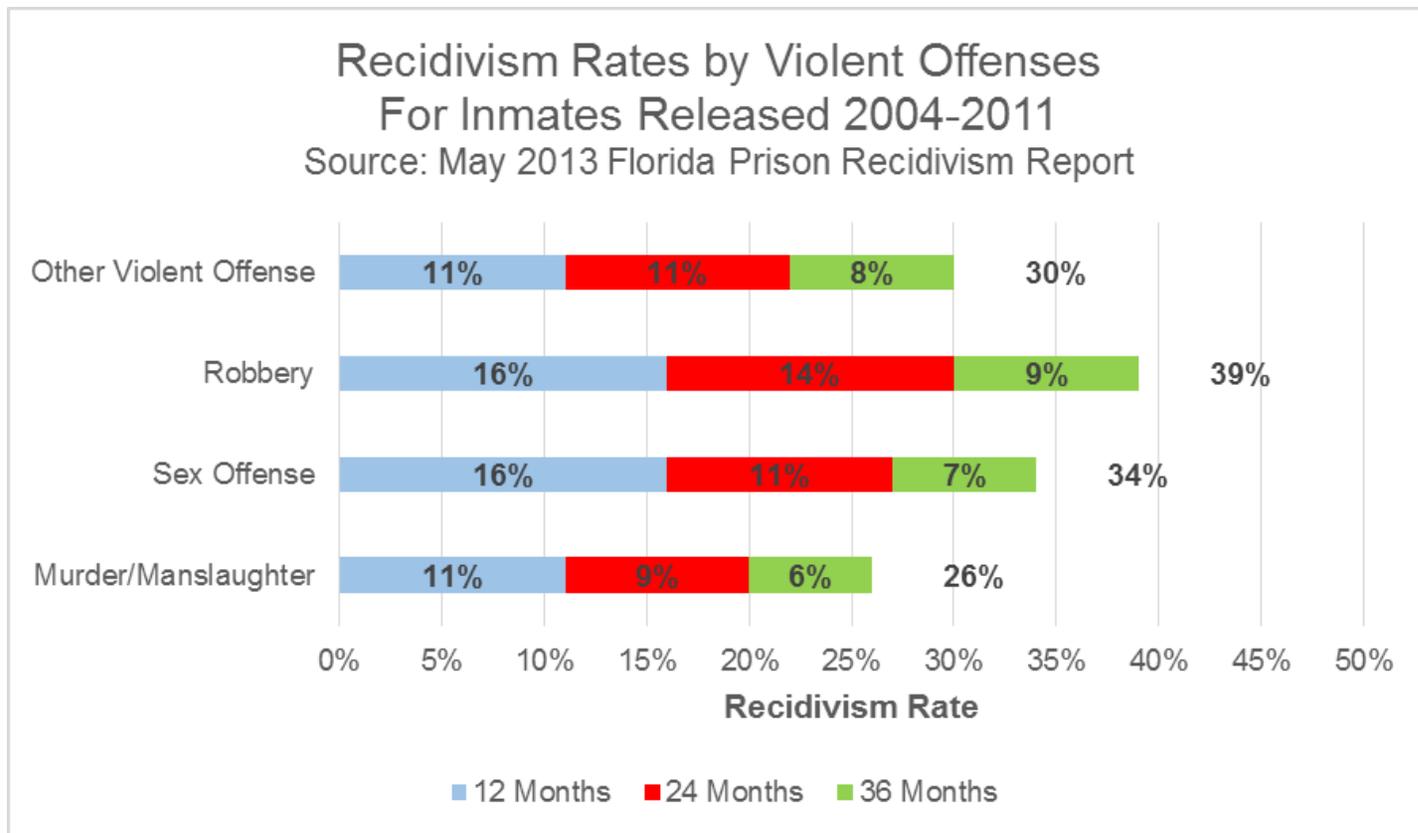
- Report to their local sheriff's office and provide identifying information.
- Update their driver's license or identification card within 48 hours after any change to their residence.
- Maintain registration for the duration of their life.
- Refrain from working or volunteering in any place where children regularly congregate.
- All qualifying sexual predators/offenders are listed on a public registry website maintained by FDLE.

II. Community Supervision of Sex Offenders and Legal Basis for Civil Commitment

Scott Clodfelter, Senior Attorney, Senate Criminal Justice Committee

Recidivism for Violent Offenses

(Source: DOC)



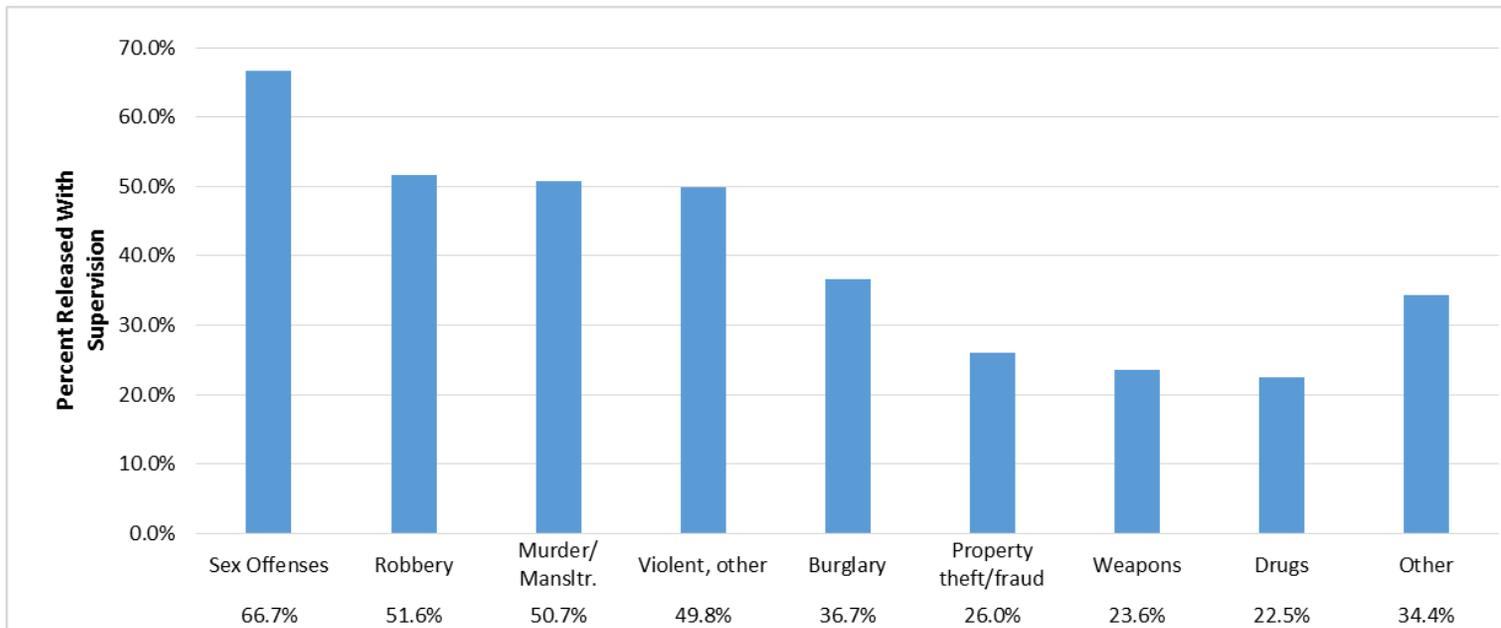
Sex Offender Recidivism Rates

5-yr any recidivism	37%
10-yr any recidivism	60%
5-yr sexual recidivism	5%
10-yr sexual recidivism	13.7%
Any technical violation	37%
Failure to Register	39%

Levenson, Jill S., Ph.D., and Ryan T. Shields, M.S. "Sex Offender Risk and Recidivism in Florida." *Lynn.edu*. Lynn University, 2012. Web. 18 Sept. 2013.

Prison Releases to Supervision

- Most offenders leaving prison **do not** have supervision to follow. Overall, 64.5% of offenders released during FY 10-11 had no supervision term to follow.
- In contrast, two-thirds of sex offenders had supervision upon release, higher than any other offender type.



Sex Offenders Under Community Supervision

- As of 8/30/2013, there were 6,327 offenders convicted of sex offenses under community supervision (4.4% of the total supervised population of 145,380).
- The vast majority of the 6,327 were under supervision via a judge's **original sentence** (5,926 or 94%). This means the judge directly sentenced the offender to supervision (e.g., sex offender probation) without prison OR the offender is serving a split sentence, meaning he/she served a prison sentence followed by a required supervision term.
- The remaining 401 offenders (6%) are serving a **post-prison** supervision term. In most cases, these are conditional release offenders who have served 85% of their prison sentences and are serving the remaining 15% under community supervision (see Section 947.1405, *F. S.*).

Electronic Monitoring and Sex Offenders

Most sex offenders are not tracked using electronic monitoring (GPS), including few of the capital/life sex battery offenders.

	Total Sex Offenders	Original Sentence	Original Sentence Offenders With Electronic Monitoring (%)		Post-prison	Post-prison Offenders with GPS (%)	
Capital sex battery	908	851	193	22.7%	57	26	45.6%
Life sex battery	267	214	47	22.0%	53	21	39.6%
1st degree sex battery	638	570	112	19.7%	68	38	55.9%
2nd degree sex battery	617	568	110	19.4%	49	24	49.0%
Sexual assault	50	39	2	5.1%	11	1	9.1%
Lewd & Lascivious	3,728	3,684	1,536	41.7%	163	89	54.6%
Total sex offenders	6,627	5,926	2,000	33.8%	401	199	50.7%

Legal Basis for Indefinite Civil Commitment

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

- United States Supreme Court recognized that states may provide for forcible civil detention of people who have a mental illness or mental abnormality that makes them unable to control their behavior, and who thereby pose a danger to the public health and safety.
- Kansas commitment statute was civil in nature, not criminal.
- Kansas took great care to confine only a narrow class of particularly dangerous individuals after meeting the strictest procedural standards.

Kansas v. Crane, 534 U.S. 407 (2002)

- United States Constitution requires proof that a sexual offender has serious difficulty in controlling behavior that is sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.

Westerheide v. State, 831 So.2d 93 (Fla. 2002)

- Florida Supreme Court noted that the Florida and Kansas statutes are similar in many respects and found that Florida's statute meets both federal and state constitutional requirements for involuntary civil commitment of sexually violent predators.

III. History and Overview of the Sexually Violent Predator Program

Marti Harkness, Chief Legislative Analyst, Senate Appropriations Subcommittee on Criminal and Civil Justice

Sexually Violent Predator Program (SVP)

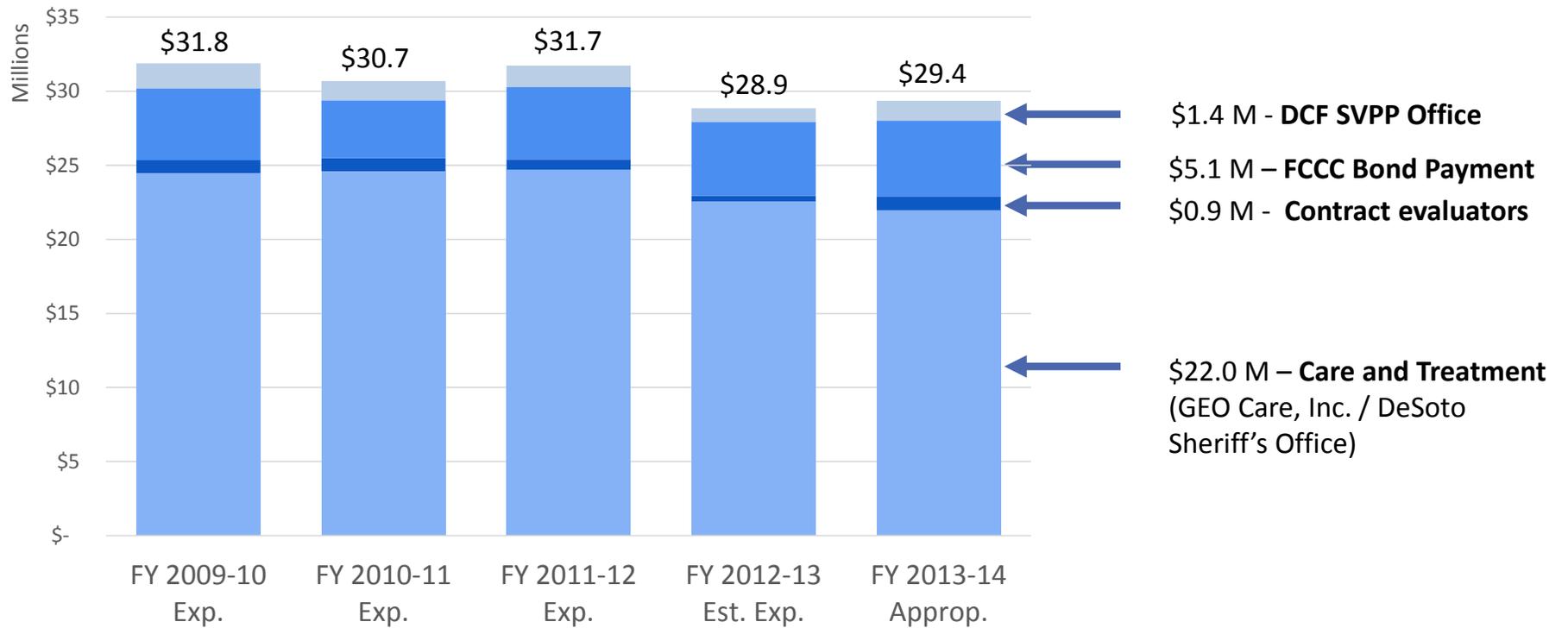
Chapter 98-64, *L.O.F.* - Involuntary Civil Commitment of Sexually Violent Predators Act

- Persons convicted of a sexually violent offense and
- Have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not securely confined

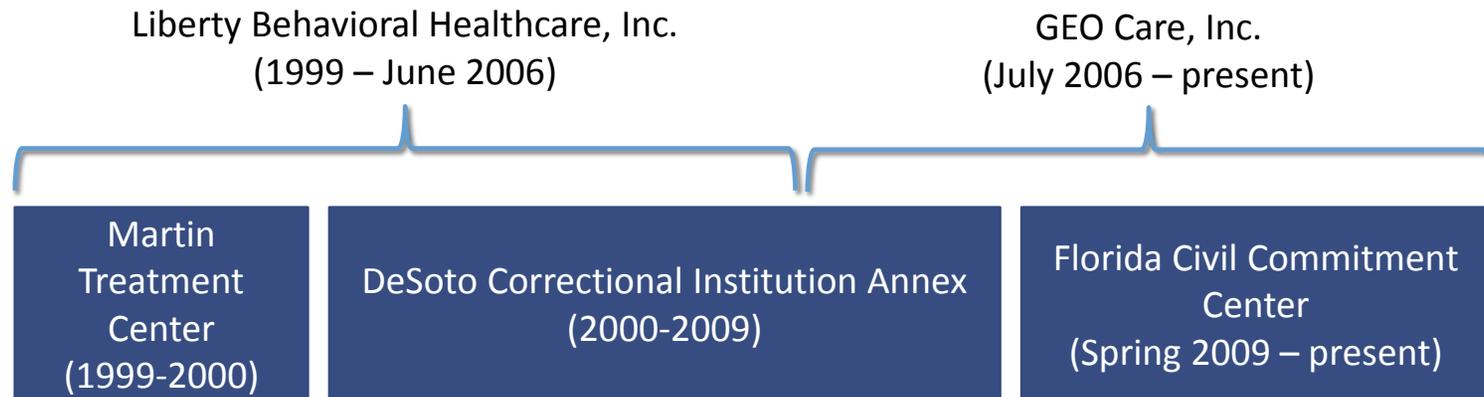
Program intended to address the treatment needs of these offenders

Sexually violent predators are confined until it is determined that they are no longer a threat to public safety

SVPP Funding



History of SVPP Facilities



- 90-bed facility was a former county jail
- Detainees held at South Bay facility (152 beds)
- Physical plant was not conducive to treatment

- 560-bed facility was a renovated prison
- Facility held both detainees and committed residents; resulted in security problems

- 720-bed treatment facility; \$62 million design/build contract with GEO Group
- Facility design supports therapeutic goals, improves security

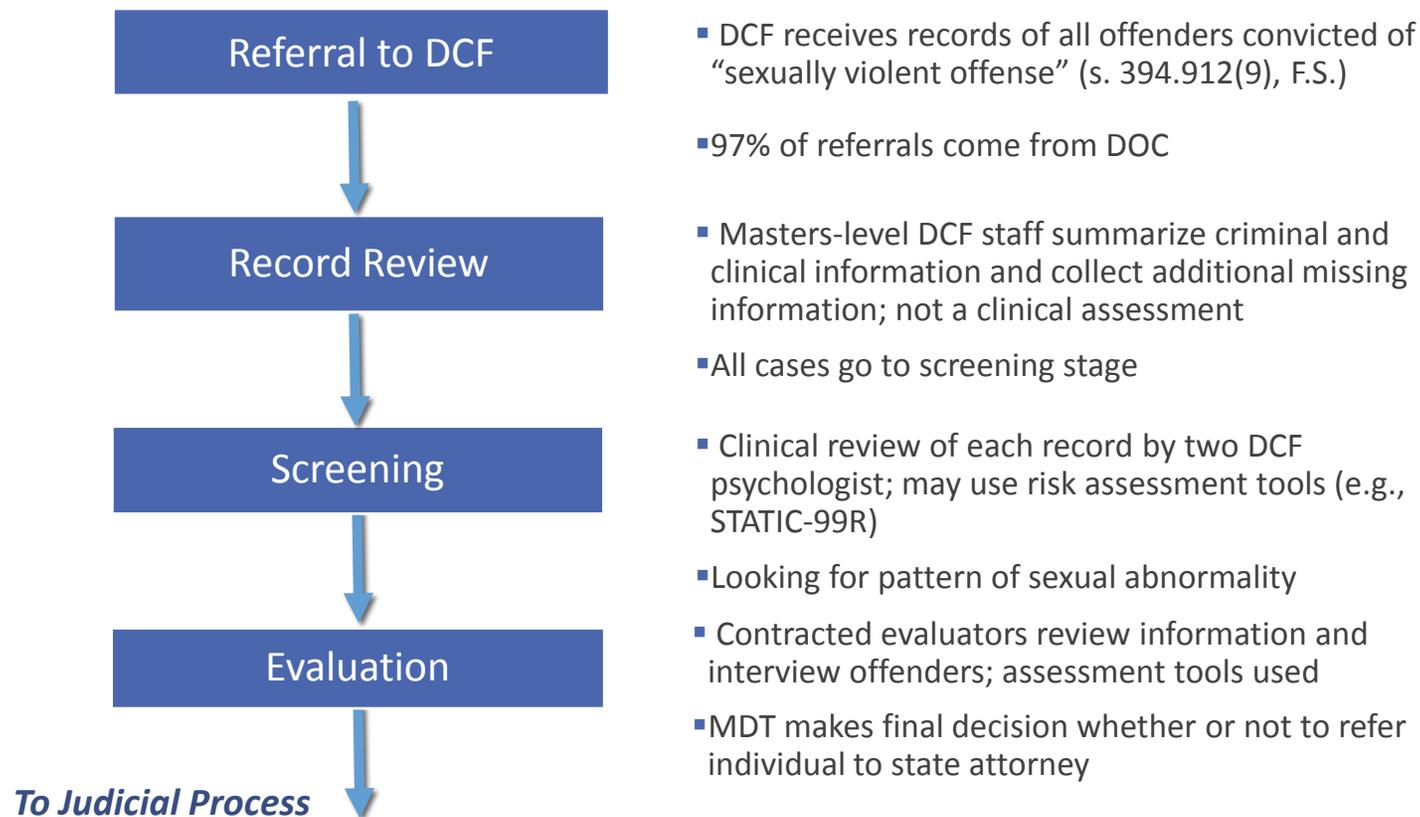
Statutory Criteria for Referral to SVP Program

Pursuant to s. 394.913(1), F.S., the referring agency (DOC, DJJ, DCF) shall give notice to the DCF's multidisciplinary team of offenders who have committed "**sexually violent offenses**", which includes:

- (a) Murder of a human being while engaged in sexual battery
- (b) Kidnapping 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;
- (c) Committing the offense of false imprisonment upon 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;
- (d) Sexual battery
- (e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);
- (f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;
- (g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or
- (h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

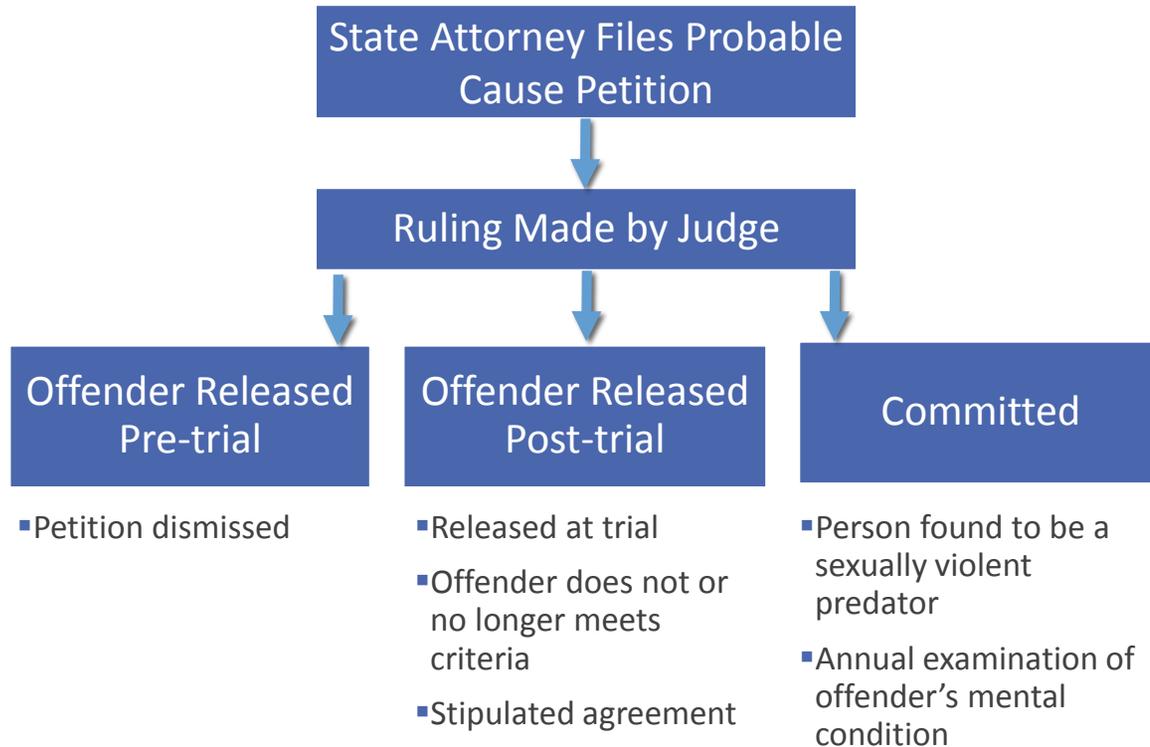
Civil Commitment Process

Screening and Assessment Process



Civil Commitment Process

Judicial Process





Rick Scott, Governor
Esther Jacobo, Interim Secretary



An Overview of Florida's Sexually Violent Predator Program

**Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families,
and Advance Personal and Family Recovery and Resiliency.**

Legislative History

- The Involuntary Civil Commitment of Sexually Violent Predators Act was passed unanimously by the Florida Legislature and signed by the Governor on May 19, 1998 (Chapter 98-64, Laws of Florida).
- The Act went into effect on January 1, 1999.

Section 394 F.S., Part V

“**Sexually violent predator**’ means 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.”

Sexually Violent Predator Program Process



Referral Process

Referral Sources:

- Florida Department of Corrections (97%)
- Florida Department of Juvenile Justice (2%)
- Florida Department of Children and Families (for Persons found Not Guilty by Reason of Insanity or NGI) (1%)

Referral Process

- Referred individuals have at least one sex offense conviction and are within 545 days of release from prison.
- The DOC cover letter on all files received by DCF indicates the person “appears to be a sexually violent predator.”
- This means the inmate meets the first criterion for commitment (a sex offense conviction).
- SVPP assesses mental abnormality or personality disorder and likelihood of engaging in acts of sexual violence if not confined.

File Review

- Clinical reviewers collect additional records from outside agencies.
- Reviewers summarize criminal and clinical information. They do not conduct assessments or make clinical decisions.
- Reviewers complete a Clinical Face Sheet.
- Reviewers send completed files to first level evaluators (licensed psychologists).

First Evaluation (Screening)

- At least two licensed psychologists independently assess each case.
- Each psychologist determines whether the person has a possible significant chance of meeting commitment criteria (or if there is a question).
- Files are sent for a second (“face to face”) evaluation if either psychologist selects the file for a second evaluation.
- If not, the state attorney is notified that the person is not recommended for commitment.

Second Evaluation (Face to Face)

- A private practice licensed psychologist on contract with DCF attempts a clinical interview in person at the facility where the person is confined.
- The evaluation is conducted even if the person declines interview per s. 394.913(3)(c), F.S. The evaluation is based on information in the file.
- The contract psychologist provides a written report to the Multidisciplinary Team (MDT) with an opinion about commitment eligibility and supporting rationale.

Multidisciplinary Team

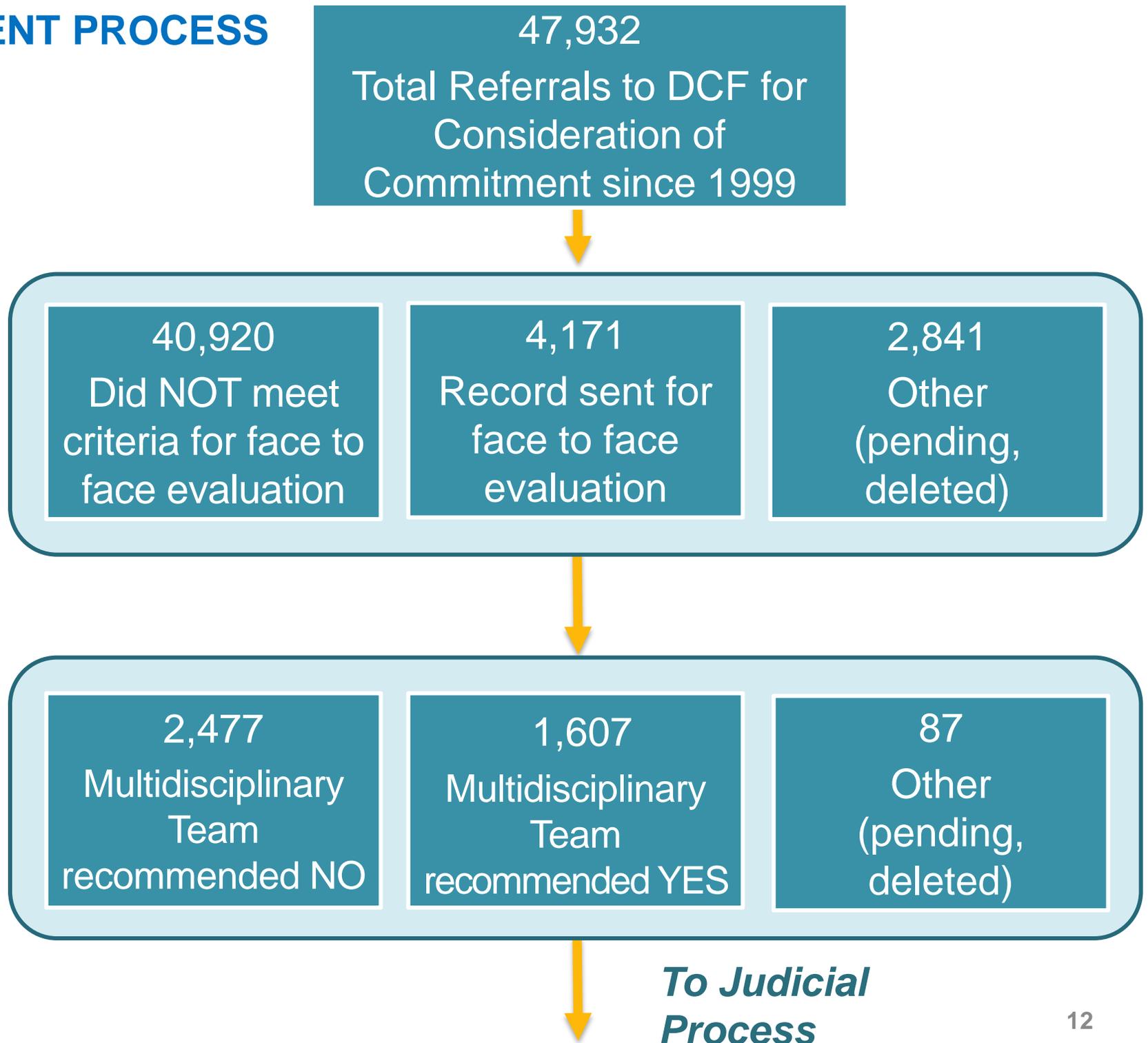
- The MDT reviews evaluation reports and makes final determinations about commitment eligibility.
- The Team is comprised of six licensed psychologists.
- Team members provide independent opinions on each case. Cases are discussed at a team meeting and members work toward consensus or majority opinion on a final determination.
- Based on consensus or majority vote, the MDT sends a letter to the state attorney recommending that a commitment petition be filed or not filed.

Commitment Process

- DCF is not involved in the commitment process past the point of recommendation.
- State Attorneys file commitment petitions on 95 percent of DCF's recommendations to file. Filing requires a recommendation to file.
- If the court finds probable cause to believe the person meets commitment criteria, a detention order is entered for transfer to the Florida Civil Commitment Center (FCCC) on release from incarceration.
- At the end of the sentence, the person is transported from detention to FCCC where the individual becomes a pre-trial detainee.

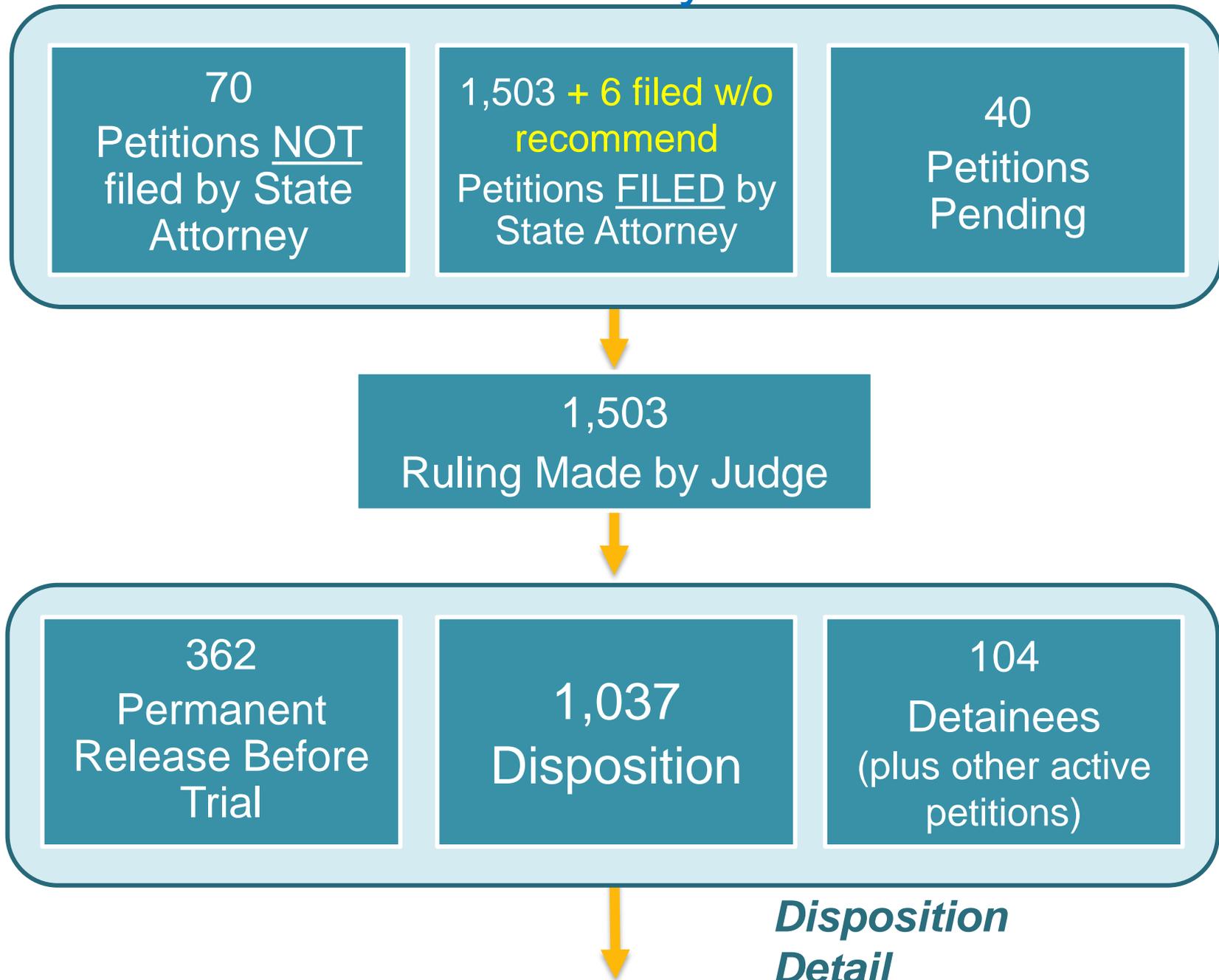
ASSESSMENT PROCESS

SVPP Staff



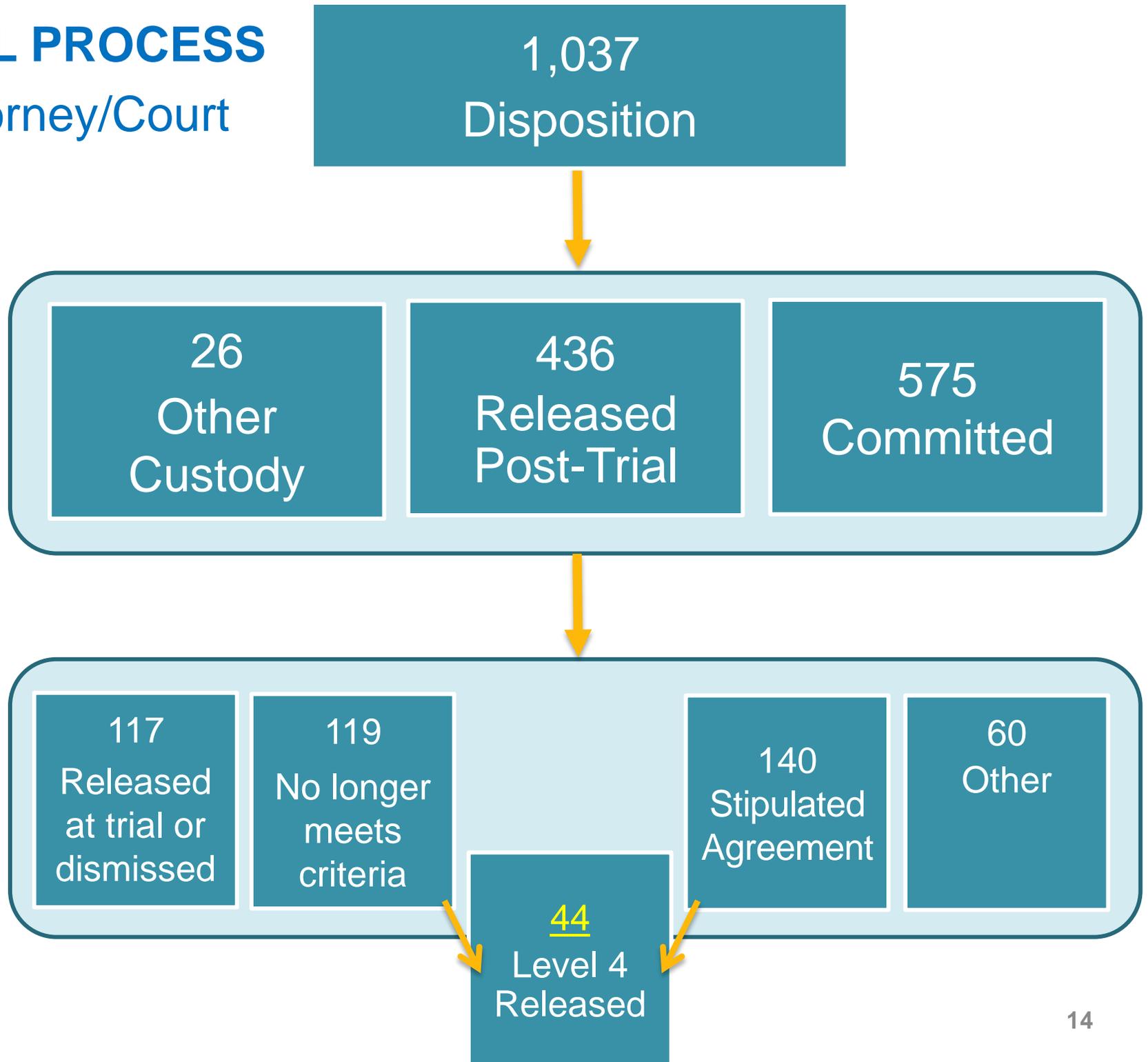
JUDICIAL PROCESS

State Attorney/Court



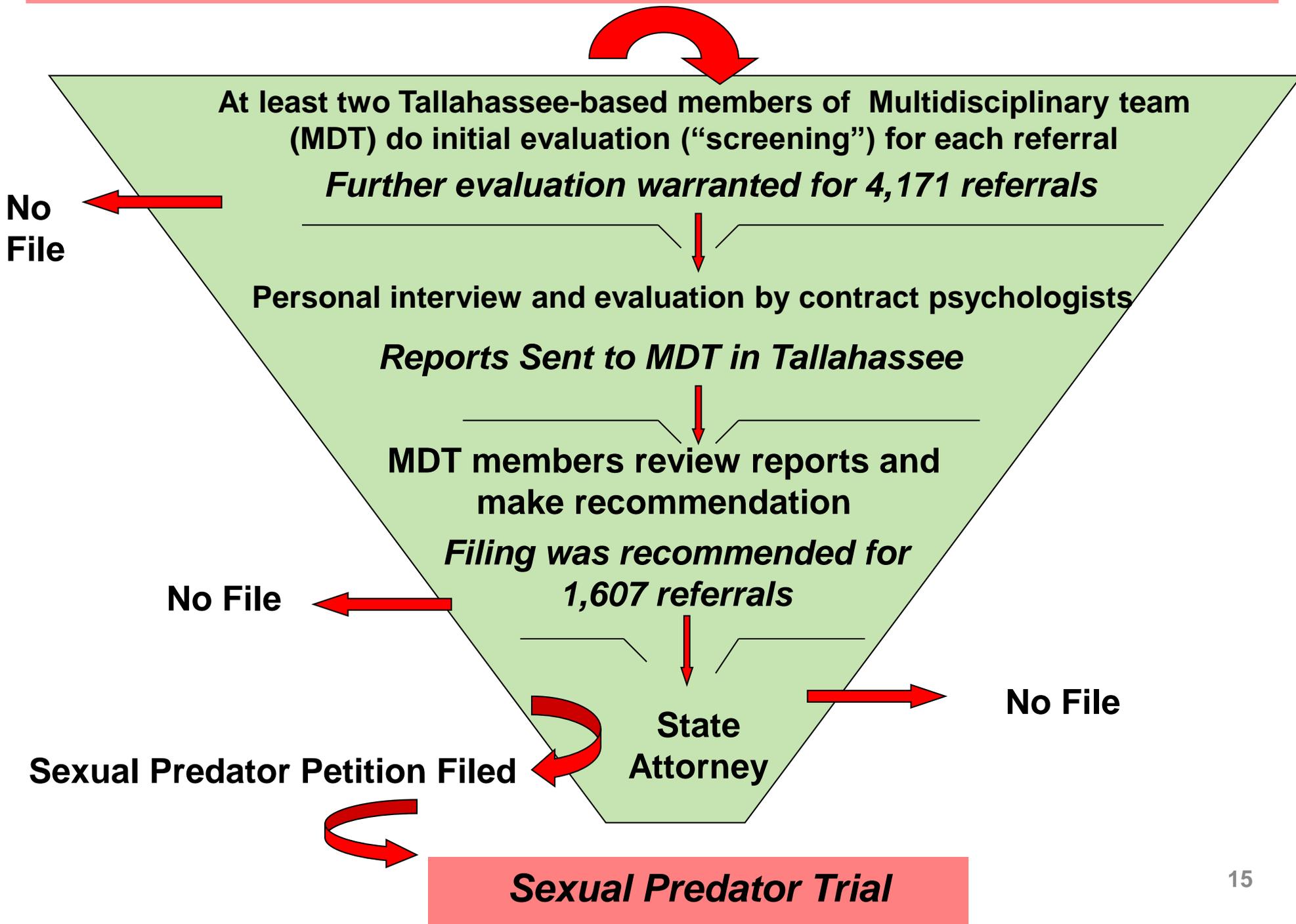
JUDICIAL PROCESS

State Attorney/Court



DOC/DJJ inmates and DCF (NGI) patients with sexually violent convictions

47,932 referrals received



Treatment Program

Phase I – Preparation for Change

15- 18 Months

- Moral Reconciliation Therapy
- Thinking for Change
- Treatment Readiness for You

Phase III – Healthy Alternative Behaviors

18 – 24 Months

- Development
- Relationship Skills
- Empathy and Emotional Awareness
- Consolidation

Phase II – Awareness

18- 24 Months

- Disclosure
- Discovery

Phase IV - Maintenance and Comprehensive Discharge Planning

6 – 9 Months

Treatment services are individualized for each consenting resident. On average, the full program can take five to seven years.

Sexually Violent Predator Program Review

- On July 19, DCF called for comprehensive review of the Sexually Violent Predator Program within DCF by team of mental health experts.
- Review Panel:
 - Chris Carr, Ph.D.
 - Anita Schlank, Ph.D., ABPP
 - Karen C. Parker, Ph.D.
- Final report of the Review of Florida's Sexually Violent Predator Program Office received September 23

Sexually Violent Predator Program Review

- Policies and procedures for the evaluation process should be reviewed and evaluated by a team of expert stakeholders.
- Screeners should be fully trained to understand the role of the courts in the civil commitment process.
- When two evaluators agree that an offender meets the criteria for commitment, the MDT should not be allowed to overturn that decision.

Sexually Violent Predator Program Review

- Cases that include “attempted” kidnapping and “attempted” murder should be automatically sent for evaluation.
- Contracts with forensic evaluators should be limited to one year with the option of renewal.
- A system for evaluating the evaluators and providing feedback about their reasoning should be implemented as standard practice.

Sexually Violent Predator Program Review

- Where possible, additional on-site visits for face to face interviews with offenders should be conducted.
- Actions to ensure more effective oversight and accountability of programs and fiscal practices

*What We Know About
Effective Sexual Offender
Management*

Robin J. Wilson, PhD, ABPP

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What Risk do Sexual Offenders Pose?

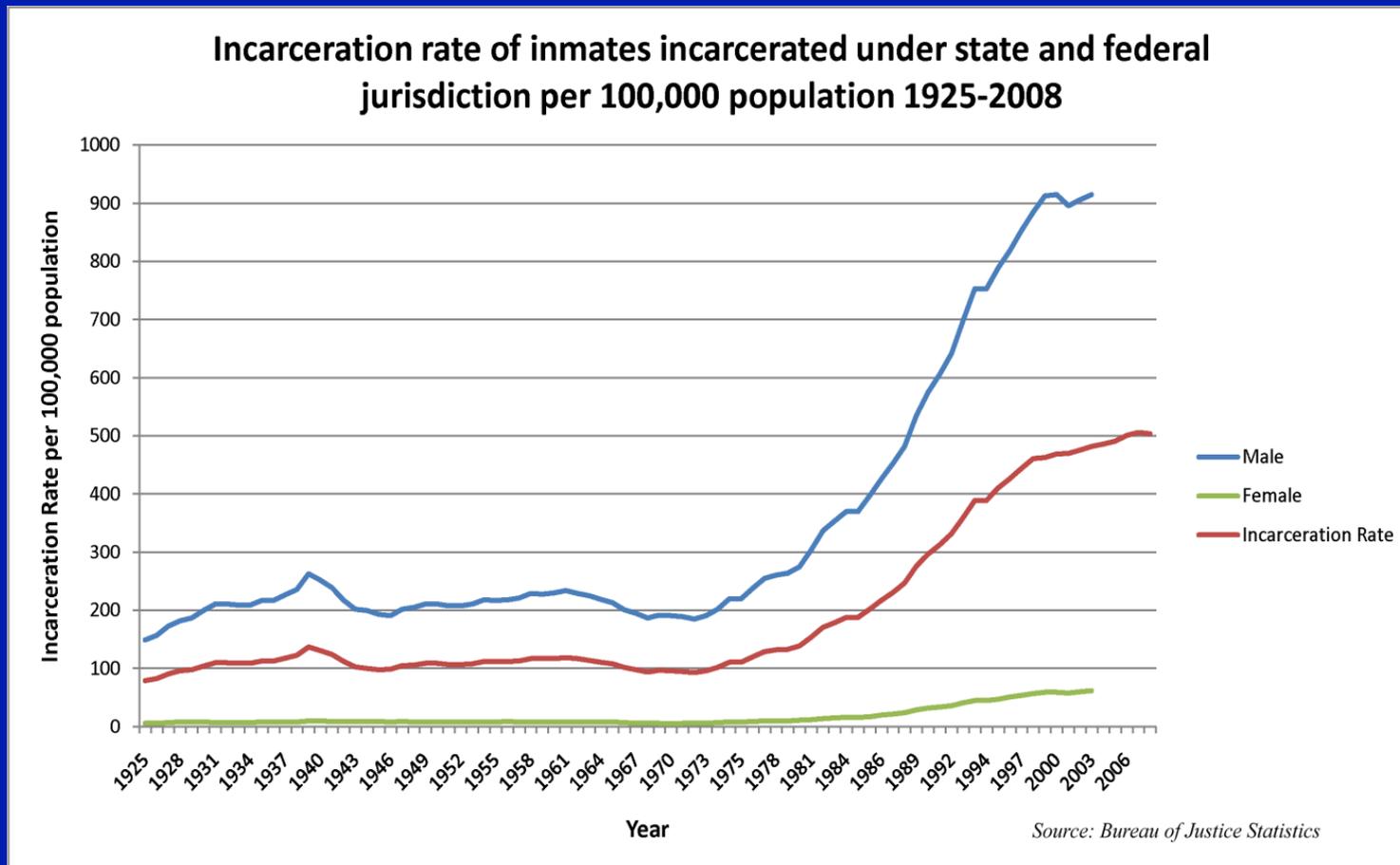
- ❖ At what rate do sexual offenders reoffend?
- ❖ Over what period of time are they likely to reoffend?
- ❖ How should a sexual offender be supervised?
- ❖ What are the person's rehabilitative or treatment needs?

Risk Management Philosophy

Sexual offending results from a complex interaction of offender specific and environmental factors which require competent assessment and, potentially, long-term treatment and follow-up.

Incarceration Rates

- ❖ Over the past 40 years, we have increasingly used incarceration as our principal risk management approach



Sanction vs. Human Service

Several very large-scale meta-analyses

- ❖ Smith, Goggin, & Gendreau (2002)
- ❖ Aos, Miller, & Drake (2006)
- ❖ Lipsey & Cullen (2007)

All arrived at the same conclusion:

- ❖ Punishment alone will not reduce bad behavior

Principles of RNR Model



(Andrews & Bonta, 2010)

Risk Assessment

- ❖ Risk potential in sexual offenders is mostly found in two over-arching domains:
 - Sexual deviance (e.g., paraphilias)
 - Core antisociality
- ❖ Assessment methods have progressed from unstructured clinical judgment pre-1990 to current methods emphasizing science-based approaches and greater objectivity.

Risk Assessment

- ❖ Current best practice combines actuarial risk assessment instruments (e.g., Static-99R) with measures of dynamic risk potential (e.g., Stable-2007, SRA-FV).
 - Other psychologically meaningful variables may be considered as needed (e.g., psychopathy)

Treatment

- ❖ Early approaches to SO treatment focused risk avoidance and abstinence.
 - Many programs were confrontational and shame-based
- ❖ Contemporary treatment models focus on the “whole person” and emphasizes development of balanced, self-determined lifestyles that are inconsistent with continued risk.
 - Focus is now on approach goals and desistance

Community Risk Management

- ❖ The community is where the rubber meets the road
- ❖ Best practice models emphasize collaboration between stakeholders
 - Statutory agencies (probation, parole, police, DCF)
 - NGOs (victims groups, healthcare providers)
 - Community-at-large, including faith-based groups
- ❖ Focus for re-entry needs to be support and accountability

Official Control

There are several “official” means by which to control offenders in the community ...

- ❖ Probation & Parole
- ❖ Court Orders / Orders of Prohibition
- ❖ Community Notification
- ❖ Sex Offender Registries
- ❖ 1000/2000/2500 feet rules
- ❖ Electronic/GPS Monitoring
- ❖ Long Term Supervision Orders / Lifetime probation
- ❖ 3 Strikes / Civil Commitment

Paying Attention to RNR

- ❖ I can't tell you that each and every one of these measures is good or bad all the time.
- ❖ Clearly, there are some offenders who require special attention, using the best tools and risk management options available.
- ❖ However, I would contend that we often fail to appreciate risk and need considerations when implementing policy and practice, at the risk of obscuring any potential gains.

What bang for our buck?

- ❖ Overall, little evidence exists that community notification, residency restrictions, or SORs reduce reoffending (CSOM, 2008)
- ❖ There may be unintended consequences for many offenders, including residence and job instability, and difficulties establishing social contacts (Levenson & Hern, 2007)
- ❖ The literature on dynamic risk management tells us that difficulties in these areas increase risk (Hanson et al., 2007)

Tips to Increase the Efficacy of Sexual Offender Risk Management

- ❖ Follow the RNR principles
- ❖ Be data driven when setting policy and practice guidelines
 - Evidence-based decision-making, not decision-based evidence-making
- ❖ Collaborate with partner groups

Recommendations for Florida

- ❖ We need clearly defined standards of practice for persons providing risk assessments and treatment (e.g., Qualified Practitioner)
- ❖ We should start “real” treatment in prison
 - Waiting until civil commitment is like taking an aspirin a week after you had a headache
- ❖ We should institute a Sexual Offender Management Board with representation from pertinent stakeholder groups

Contact Information

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September 17, 2013

Overview of Sex Crimes and the Civil Confinement of Sexually Violent Predators



Trends in Sex Offenses, Prison Sentences, and Recidivism

Over the last decade or so the prevalence of sexual violence in Florida, as measured by new prison admissions, has declined. This declining trend, however, reversed in the last couple of years. The largest increase in prison admissions for sex crimes is attributed to the offense of traveling to meet a minor met on the Internet for the purposes of sex. The steep rise for this particular crime (14 in FY 2010-11 to 154 in FY 2012-13) represented a 1100% increase which may, in part, be due to sting operations conducted by law enforcement officials.

Less than six percent of annual prison admissions are for a sex offense. The two most common sex crimes resulting in incarceration include: lewd and lascivious battery with the victim between 12 and 15 years of age; and sexual battery by an adult when the victim is under 12 years of age.

Criminal laws governing sex offenders are predominantly found in Chapters 794 (Sexual battery), 796 (Prostitution), 800 (Lewd offenses) and 847 (Obscenity and pornography), F.S.

The criminal penalties for sex acts with children range widely from a capital felony with a mandatory term of life for sexual battery with a victim under 12 years of age to a third degree felony punishable up to 5 years in prison for lewd or lascivious molestation of a victim 12 to 15 years of age and the offender is less than 18 years of age.

The average prison sentence for sex offenders is longer than in the past and is currently at 12.7 years.

The Department of Corrections' current three-year recidivism rate for sex offenders is 34%. In other words, 34% of the sex offenders released from prison did return to prison for another offense (not necessarily a new sex crime) within 3 years of their release.

According to 2012 research conducted by Jill S. Levenson, Ph.D., the 5-year sexual recidivism rate for sex offenders in Florida is 5.2%. In other words, after 5 years, 5.2% were re-arrested for a new sexual crime. This calculation was based on a sample of 500 convicted sex offenders.

Factors Relating to Prosecution, Conviction, and Sentencing of Sex Offenses

On March 1, 2006, the Legislature's Office of Economic and Demographic Research (EDR) released a report entitled *Factors Relating to the Sentencing of Sex Offenders*. In that report EDR found that a variety of factors influence prosecution, conviction, and sentencing of sex offenses:

- Sex offenses share some characteristics with other serious offenses such as murder and robbery. The defendants face potentially lengthy prison terms. Therefore, defendants are motivated to fight the charges with whatever resources are at their disposal. Trial rates are highest for these three offenses.
- Law enforcement and prosecutorial resources gravitate towards these most serious cases. With the attention and time devoted to these cases, any problems with the evidence or proceedings associated with the case are more likely to be revealed and utilized by the defense.
- Sex offenses are also different from other offenses. The type of sanction and the length of sentence is often mitigated, and high proportions of defendants have at least some counts dismissed.
- One unique difficulty in the prosecution and conviction of sexual offenses is the young age of most of the victims. Data reviewed by EDR indicated that the average age of the victims was 13.4 years old and that 83% were 15 or younger.

- EDR found that 85% of the victims knew the offender, which creates another difficulty in prosecuting many sexual offense cases.
- Successful prosecution usually requires the victim to testify in court. Since many of the victims are children, many of whom know the offender, victim's families often consider the trauma of repeatedly revisiting the crimes in a public forum too difficult. Also, many children do not possess the intellectual and emotional skills necessary for adversarial confrontation with the defense. Faced with these challenges, the prosecution often determines that the best outcome can be achieved by a plea bargain including a reduced charge or lesser sentence.
- Even though mitigation may result in a lower sanction than desired by the prosecution, the conviction may require the offender to register as a sex offender.

Sexual Predator/Offender Registration

Florida's registry laws seek to improve public safety by classifying sex offenders as sexual predators or sexual offenders and subjecting them to registration and notification requirements. All qualifying sexual predators/offenders are listed on a public registry website maintained by FDLE. The website provides the public with email notifications when an offender moves close to any address; and offers to the public various search capabilities.

The sexual predator designation in Florida is reserved for relatively few sex offenders. As of September 11, 2013, there were a total of 43,640 persons who were located in Florida and required to register as a sexual predator or sexual offender. Of that total number, 21% were designated sexual predators.

Who is a sexual predator or sexual offender?

A person is designated as a **sexual predator** by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Is subject to civil commitment.

FDLE determines a person is a **sexual offender** if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes/maintains a Florida residence and is subject to registration and/or community/public notification in another state/jurisdiction or is in the custody or control of, or under the supervision of, another state/jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.

What are some of the registration obligations of sexual predators/offenders?

- Registrants must report to their local sheriff's office and provide a photograph, personal identifying information, driver's license/state ID #, SSN, residence address (including transient addresses), employer information, email addresses and Internet identifiers, and crime information.
- Sexual predators and some sexual offenders must report to the local sheriff's office quarterly; other sexual offenders must report bi-annually.
- Sexual predators/offenders must update their driver's license or identification card within 48 hours after any change to their residence (permanent, temporary, or transient) or name.
- Generally, sexual predators/offenders are subject to lifetime registration. However, some sexual offenders may petition for removal of registration requirements if they have been released from the latest sanction for at least 25 years, are arrest-free since release, and do not have an adult conviction for a disqualifying offense. Additionally, a small number of persons who were convicted of a qualifying sex offense committed as a young adult may petition for removal of registration requirements if all statutory criteria are met.
- Sexual predators are prohibited from working or volunteering at any place where children regularly congregate.

Sex Offenders under Community Supervision

- An offender may be placed on community supervision after conviction of a felony, either immediately upon sentencing or after serving a prison sentence. Offenders on community supervision report to and are monitored by probation officers employed by the Department of Corrections. Of those sex offenders released from prison in Fiscal Year 2012-13, 66.1% had supervision upon release.
- Supervised offenders must comply with statutory terms and conditions as well as special terms and conditions imposed by the sentencing court or, for certain types of post-release supervision, by the Parole Commission.
- The vast majority of sex offenders (94%) under supervision were placed there by the judge at the original sentencing. Either the offender was sentenced directly to supervision and had no prison at all or the offender was serving a split sentence (prison with probation to follow).
- A small portion of the sex offenders (6%) under supervision were placed there because of a statutory requirement (conditional release).
- As of July 31, 2013, 7740 offenders who are required to register as a sexual offender or a sexual predator were on community supervision, which is 5.3% of the total community supervision population of 145,462 offenders.
- As of July 31, 2013, 6315 offenders were on community supervision for committing a sex offense. Of those, 2181 or 34.5% were tracked with electronic monitoring, which is a mandatory condition of supervision for certain sex offenses.
- Offenders on community supervision for a sex offense are more likely to have supervision revoked for a technical violation than are other offenders on community supervision. During Fiscal Year 2011-2012, 427 sex offenders had supervision revoked for misconduct, with 74% of them revoked for a technical violation and 26% revoked for a new crime. By contrast, 34,095 other offenders had community supervision revoked for misconduct during the same time period, with 39% revoked for a technical violation and 61% revoked for a new crime.

- Offenders on community supervision for certain sex offenses committed against a child have conditions restricting them from:
 - Living near schools and other places where children regularly congregate;
 - Working or volunteering at any place where children regularly congregate, or
 - Having unsupervised contact with a minor.
- Residency restrictions and employment restrictions apply to offenders who committed certain sex offenses even if they have completed their sentences and are not on community supervision. Local ordinances may impose additional residence restrictions, including wider exclusion zones and additional areas of exclusion.
- In recent years mandatory conditions of supervision for sex offenders were expanded to prohibit certain activities such as distributing candy at Halloween and visiting schools without the prior approval of the probation officer.

Legal Basis for Civil Commitment of Sexually Violent Predators

- Florida’s Sexually Violent Predator Program (SVPP) was modeled after the Kansas civil commitment statute that was found constitutional by the United States Supreme Court in *Kansas v. Hendricks*, 521 U.S. 346 (1997). The legislation authorizing civil commitment of sexually violent predators (ss. 394.910 – 394.932, F.S.) became effective on January 1, 1999.
- A sexually violent predator is an offender who has been convicted of an offense that is statutorily designated as a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.
- In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the United States Supreme Court held that the Kansas commitment statute was civil in nature, not criminal. Therefore, civil commitment of a sexually violent predator after the completion of criminal incarceration was not double jeopardy.
 - The Court recognized that states may provide for forcible civil detention of people who have a mental illness or mental abnormality that makes them unable to control their behavior, and who thereby pose a danger to the public health and safety.
 - The Court noted that the Kansas Legislature took great care to confine only a narrow class of particularly dangerous individuals after meeting the strictest procedural standards.
- In *Kansas v. Crane*, 534 U.S. 407 (2002), the Court held that the Constitution requires proof that a sexual offender has serious difficulty in controlling behavior, and that the proof must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.
- In *Westerheide v. State*, 831 So.2d 93 (Fla. 2002), the Florida Supreme Court relied upon *Kansas v. Hendricks* in finding that Florida’s civil commitment statute meets both federal and state constitutional requirements for involuntary civil commitment of sexually violent predators.

History of the Sexually Violent Predator Program and the Civil Confinement of Predators

- The Sexually Violent Predator Program (SVPP) was created by legislation passed in 1998 that became effective on January 1, 1999.

- The SVPP was originally housed in the Martin Treatment Center and operated by Liberty Behavioral Health Care under contract with the Department of Children and Families (DCF). Some detainees who were awaiting commitment proceedings were housed at the South Bay Sexually Violent Predator Detainee Unit, a unit of South Bay Correctional Facility operated by Geo Group, Inc.
- In late 2000, the program moved to the Florida Civil Commitment Center (FCCC) in Arcadia, Florida, a larger facility at which both detainees and committed Sexually Violent Predators (SVPs) were housed.
- During early years, the number of detainees significantly outnumbered the number of committed sexually violent predators. This caused problems because many detainees would not participate in sex offender treatment programs for fear of making incriminatory statements about their sexually violent activities that could be used against them during their commitment trial.
- There were reports of lax security resulting in violence, introduction of contraband, and general disorder within the facility. In late 2004, a number of inmates moved into the prison yard in protest of a fire marshal's directive that they have fewer personal items in their rooms. These inmates lived in the yard for months until they were forcibly removed by several hundred law enforcement and correctional officers.
- DCF terminated its contract with Liberty Healthcare Group in 2006 and selected Geo Group, Inc. as the new provider. In addition to operating the program, Geo Group was awarded a design and build contract to construct a new facility to replace the aging existing facility. The new FCCC, opened in April 2009, is a modern facility designed specifically for the SVPP. It has a population capacity of 720.
- There are currently 658 persons in the FCCC, including 577 sexually violent predators and 81 persons who are detained while awaiting their commitment trial.
- The current treatment program is a sequential program with four stages of treatment, each of which builds on the prior stages. Completion of the entire program takes at least 6 years. The SVPP is currently operated by Geo Care, LLC.
- From 2004 to 2009, DCF was a defendant in a federal class action lawsuit alleging unconstitutional conditions of confinement, violations of the ADA, and a lack of opportunities for treatment. The lawsuit was settled and voluntarily dismissed by the plaintiffs in 2009 because of the improvements in conditions and treatment opportunities since it was filed in 2004.

Referral and Commitment Process for Involuntary Civil Commitment of Sexually Violent Predators

Step 1 - Referral:

Referring agency gives notice to appropriate state attorney and DCF multidisciplinary team (MDT) of upcoming release of a person in total confinement who has been convicted, adjudicated delinquent, or found not guilty by reason of insanity of at least one of the sexually violent offenses listed in s. 394.912(9), F.S., at any time. Referring agency provides MDT with information and documentation about the referred person as required by s. 394.913, F.S.

- Department of Corrections notice at least 545 days before release from incarceration; Department of Juvenile Justice notice at least 180 days before release from residential commitment; DCF notice at least 180 days before hearing regarding release of person found not guilty by reason of insanity. Notice must be given as soon as practicable if confinement is shorter than these time frames.

Step 2 – MDT Review:

- DCF staff reviews documents provided by referring agency to ensure that information is complete, and obtains any missing or otherwise relevant information.
- Completed packet is reviewed by at least two persons, each of whom is a licensed psychiatrist or a licensed psychologist, to assess whether the referred person may meet the statutory commitment criteria of “suffer(ing) 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.”
- MDT reviews initial assessment. If MDT finds that the person may meet commitment criteria, a clinical evaluation is conducted by at least one licensed psychiatrist or licensed psychologist. The evaluation must include a records review, a personal interview if consented to by the subject, and a risk assessment using the Static 99 instrument.
- MDT makes recommendation to state attorney within 180 days after referral. Recommendation that person meets commitment criteria can be made only if majority of MDT, including at least one clinical evaluator, determines that person meets commitment criteria.

Step 3 – Commitment Trial:

- State attorney receives MDT recommendation and decides whether to file a commitment petition with the court.
- If petition is filed, court determines whether there is probable cause for commitment.
- If court finds probable cause, commitment trial must be held within 30 days. One continuance of no more than 120 days may be allowed by the court.
- If probable cause is found, person will be transferred to DCF secure custody in detainee status if trial is not held before release from current sentence or other confinement.
- Person is entitled to representation by counsel (public defender if indigent), and either party may elect trial by a six-person jury.
- Judge or jury determines whether there is clear and convincing evidence that the person meets sexually violent predator (SVP) criteria. Jury finding that person is an SVP must be unanimous.

Step 4 – After Commitment Trial:

- Person who is found to be an SVP is committed to custody of DCF upon expiration of sentence or, if detained by DCF, is moved to commitment status.
- Once in DCF custody, SVP is transferred to Florida Civil Commitment Center for secure custody and treatment. The SVP’s status is reviewed by the court at least annually. SVP may be discharged at any time if the court determines at a non-jury trial that his condition has so changed that it is safe for him to be at large and that he will not engage in acts of sexual violence if discharged.
- Person who is not found to be an SVP remains in custody of referring agency until expiration of sentence, or is released immediately if in detainee status. Any requirements for community supervision or sex offender/sex predator registration must be satisfied.

Number and Flow of SVPP Cases as of August 31, 2013

Since the beginning of the SVPP, 45,091 cases have been screened by DCF:

- Multidisciplinary team (MDT) screened out 40,920 cases as not meeting commitment criteria
- MTD determined that 4,171 cases required a clinical evaluation

Of the 4,171 cases that required a clinical evaluation:

- MDT recommended that 1,607 cases met commitment criteria
- MDT recommended that 2,477 cases did not meet commitment criteria
- 87 cases are pending or were deferred or deleted

Of the 1,607 cases for which the MDT recommended commitment:

- The State Attorney filed a petition in 1,497 cases
 - The State Attorney also filed petitions in 6 cases in which the MDT recommended that commitment criteria was not met
 - The State Attorney did not file a petition in 70 cases
 - A decision as to whether a petition will be filed is pending in 40 cases

Of the 1,503 cases in which petitions were filed by the State Attorney:

- 466 cases were disposed of before the commitment trial, or are pending trial:
 - 332 persons were released (no probable cause, petition dismissed, or released by court order)
 - 83 persons are detained in the Florida Civil Commitment Center pending trial
 - 21 petitions are otherwise pending trial
 - 30 persons are dead or out-of-state
- 1,037 cases have been disposed of by a commitment trial:
 - 574 sexually violent predators are committed to the SVPP Center
 - 1 person is in the SVPP Center by stipulated agreement
 - 4 sexually violent predators are awaiting the end of their prison sentence before commitment
 - 140 sexually violent predators were committed but have been released by stipulated agreement
 - 117 persons were completely released at trial
 - 8 persons were released at trial with conditions
 - 20 persons had their commitment overturned or dismissed
 - 119 persons were committed but later determined to no longer meet criteria
 - 32 persons are deceased or out of state
 - 22 persons were returned to prison for other reasons

Current status of the respondents in the 1,503 petitions that were filed:

- 700 are in some form of secure custody in Florida
- 741 have been released
- 62 are deceased or out of state

SunSentinel

sex predators unleashed

Florida sets rapists and child molesters free to strike again

By Sally Kestin and Dana Williams
Photos and videos by Mike Stocker

Another child is dead. This time, a brown-haired, brown-eyed girl, a year younger than Jimmy Ryce.

A 1999 law passed after Jimmy was raped and murdered at age 9 is meant to protect Floridians from sex offenders by keeping the most dangerous locked up after they finish their prison sentences.

But an eight-month Sun Sentinel investigation into the law named in Jimmy's memory has uncovered shocking failures. Florida's safeguards have broken down at every stage, setting hundreds of rapists and child molesters free to harm again.

Part I

RAPISTS SET FREE

The newspaper's investigation found:

For every sex offender the state has committed under the **14-year-old Ryce law**, two others have been released — only to be arrested again for a sex crime.

From South Florida to the Panhandle, these men have cut a fresh trail of pain, molesting more than 460 children, raping 121 women, and killing 14.

Many offenders attacked again only days after Florida let them go. Six found new victims the same day they walked out the prison gates.

"There are too many people like that out walking around the street," said Victoria, 32, of Central Florida, who was raped and tortured in 2001 by a sex offender the state released 11 months earlier. "This law isn't working."

After reviewing the Sun Sentinel's findings, the head of the agency that screens sex offenders said she would investigate what changes should be made.

Esther Jacobo said the Department of Children & Families would analyze a sample of reoffenders the newspaper identified to determine what went wrong as it reviews the program from top to bottom.

"The only thing I can hope is that we come up with something better so that we get a larger percentage of these guys not to hurt people anymore," said Jacobo, the agency's interim secretary. "The biggest wish would be that we could stop it all. I'm not naive enough to think that that's going to happen, but I think we can do better."

Some changes already are under way. The department has convened a team of mental health experts to review how Florida identifies sex predators. And, on a single day in June, the agency suddenly recommended continued confinement for 19 sex offenders — as many as it had in all of 2012.

Those actions came too late to protect 8-year-old Cherish Perrywinkle.

This summer, Jacksonville mourned the little girl who was abducted from a Walmart, raped and strangled, her 60-pound body dumped behind a church.

Her accused killer: A registered sex offender freed three weeks earlier.

"A beautiful 8-year-old girl - it shouldn't have happened," Pastor Steve Dobbs told the crowd assembled for Cherish's funeral.

Nearly two decades ago, a grisly discovery on a Miami-Dade avocado farm led to a law that should have protected Cherish.

In planters covered in cement, police discovered the dismembered remains of Jimmy Ryce. He'd been kidnapped, raped and shot, and though the farmhand who abducted him had no prior sex crime convictions, Florida's elected officials vowed to protect the public from predators.

The **law they named for Jimmy** requires the state to evaluate convicted sex criminals before they are released from prison, and to recommend dangerous predators — those with a mental disorder that makes them likely to reoffend — for lock up at a treatment center in Central Florida.

Offenders are court-ordered to the center after being identified through a screening by the state's Department of Children & Families, a psychological evaluation and a trial.

"No child should endure what Jimmy Ryce did," then-Gov. Lawton Chiles said when he signed the bill into law. But those solemn hopes have proved elusive.

Mining records in state databases, police reports and court documents, the Sun Sentinel found: At least 594 offenders

reviewed under the law and let go have been convicted of a new sex offense in Florida. Nearly one quarter of them attacked again within six months of being released.

And these numbers do not paint a complete picture. They do not include men convicted in other states or federal court, those who committed non-sexual violent crimes such as murder or home invasion, and those arrested but still awaiting trial for new sex crimes.

“One person reoffending when you have innocent victims is too many,” said Dr. Michal Harris, a North Florida veterinarian whose employee was murdered in 2007 by a sex predator who had been freed by the state.

“This will continue to happen until such a time as the community decides that they are tired of having their wives and their daughters and their sisters raped and beaten to death by people who have done it before and who were released.”

What follows are the stories of five predators the state had a chance to stop — but chose to set free.

“Some of us just don’t belong in society... I don’t”

GRACEVILLE — Inside a prison in this North Florida city, a twice-convicted rapist said the state never should have let him go.

“This is where I belong,” said Michael Dochterman, 43. “It’s the only way to keep control on me.”

Dochterman moved from Iowa to South Florida as a teenager when his father, a stuntman, got a job on the set of “Miami Vice.” He started stealing cars and bicycles at 11 and spent much of his youth in and out of lock-ups.

After robbing, raping and beating his former girlfriend, he entered prison in 1992 at age 22.

Before his release in 2010, the state looked at Dochterman under the Jimmy Ryce law and chose not to commit him to the state's sex predator treatment center. “I went to see my counselor,” Dochterman recalled. “He said, ‘Look, they’re just going to let you out.’ ”

Dochterman wound up in Pensacola and met a stripper with a 15-year-old daughter. He worked as a tattoo artist and bouncer.

“I had been 20 years in prison,” he said. “I hadn’t been around women in forever.”

One night in July 2011, less than a year after his release, Dochterman entered the bedroom of his girlfriend’s daughter.

“[He] started choking me and telling me to take off all my clothes,” she later testified. “I was kicking and scratching

and doing anything I can. . .He grabbed the knife and started stabbing me.”

Dochterman plunged the knife into her body nine times, puncturing her lung. High on pills and alcohol, he said, he now barely remembers the attack.

Convicted of rape for the second time, Dochterman is serving a life sentence at Graceville Correctional Facility.

In a jailhouse interview, he said the state should have looked closer at him under the Jimmy Ryce law before setting him free after his first prison term.

Sex offenders like Dochterman, with just one prior offense and a victim he knew, are considered less dangerous by screeners with the state Department of Children & Families. They didn’t even meet with him face to face. They simply reviewed his files and found he did not qualify as a sex predator.

“I take full responsibility for what happened,” said Dochterman. “Some of us just don’t belong in society. I mean, I’m being honest. I don’t.”

“I done ask for forgiveness a million times”

LAKE CITY — Anthony Brewton didn’t fit the state’s profile of a sex predator either, despite this note placed in his file by screeners trying to assess his threat to the public:

“Committed (sex acts) with 12-year-old victim at knifepoint in a wooded area. Threatened to cut her throat and bury her.”

But the state did look at him more closely than Dochterman. Screeners reviewed **Brewton’s files** and moved him to the second stage of the Ryce commitment process, which is testing and evaluation by a private psychologist under contract to the state.

Psychologist Ada Ramirez found Brewton did not qualify for commitment as a sex predator. The reasons are unclear; Ramirez declined to discuss specific cases.

After five years in prison, Brewton was a free man.

Three months later, in Atlantic Beach near Jacksonville, a 70-year-old woman found him naked in her kitchen.

Brewton grabbed a knife from a counter and stabbed her twice in the neck.

She screamed and pleaded: “Please don’t do this. I have a heart condition,” a police report said. “Please let me get to my oxygen.”

Brewton forced her into the living room and raped her. For his final act, he slit her throat.

Police found the woman, gasping for air, on a blood-soaked couch.

She survived. Brewton went back to prison, convicted of rape and attempted murder.

At Columbia Correctional Institution in North Florida, where he is now serving a 30-year sentence, Brewton told the Sun Sentinel that he and another man, who was never charged, broke into what they thought was an empty house to steal "what we could, get us some dope."

A high school dropout from Jacksonville, Brewton says his problems began when he quit school in 10th grade, left home and started selling drugs in the streets.

Now 41, he spends his time writing and reflecting on his elderly victim.

"Every day, I have regrets that she got hurt," he said. "I done ask for forgiveness a million times."

"He shouldn't have been released"

PAHOKEE — A neighbor found Ophelia Redden's body under a melaleuca tree two blocks from the home where she raised three children.

Suspicion soon turned to a local man released from the state's sex predator treatment center just seven months earlier.

"That guy there should have never been back out," said Edward Turner, Redden's lifelong friend.

James "Nardo" Harmon had long been "bad news" in the impoverished farm town, Turner said. A member of the South Side Boys gang, he ran afoul of the law early, breaking into homes and raping, court records show. One of his victims was just 11.

At 19, Harmon went to prison for two rapes. After serving 13 years, he was scheduled to get out, and prosecutors sought to commit him under the Jimmy Ryce law.

Two psychologists assessing Harmon for the state found him a high risk for attacking again. A Palm Beach County jury designated him a sexually violent predator, committing him to the treatment center in the summer of 2008.

But during an annual review of his case in 2010, Palm Beach Circuit Judge John Hoy ruled the state could no longer prove Harmon's "mental condition remains such that it is not safe for [him] to be at large."

Hoy, who has retired, could not be reached for comment.

By summer 2010, Harmon was a free man. He returned to Pahokee, moving into a nonprofit housing complex for sex offenders. He got married.

Harmon had been out about six months when Redden, 52, confided her fears to Turner.

She said Harmon was “threatening her” for sex, Turner recalled in an interview. “He told her he was going to take it.”

A week later, in January 2011, Redden was dead. Crime scene photos captured the brutality of the attack and a weapon the killer used — a bloodied, broken garden hoe.

Harmon told Palm Beach County Sheriff’s detectives that he had an alibi — he was home watching “Avatar” with his wife. The wife later revealed that to be a lie, provoking her husband’s wrath in jailhouse phone calls secretly recorded by police.

Harmon pleaded guilty in April 2012 to raping and killing Redden and received a 40-year prison sentence.

Jillian Sweet served on the Jimmy Ryce jury that committed Harmon years before. She was unaware he got out and murdered Redden until told by the Sun Sentinel.

“It’s awful,” said Sweet, formerly of Jupiter. “I definitely thought he needed some psychiatric help. . . He shouldn’t have been released.”

“You should get only so many chances”

ORANGE PARK — Michael R. Jackson was confined to the sex predator treatment center after attempting attacks on two women and raping a 14-year-old at knifepoint.

After five years of treatment at the center, two evaluators chosen by Jackson’s attorney concluded the danger he posed had diminished. In December 2005, prosecutors agreed to release him with certain conditions, including that he continue sex-offender treatment.

Thirteen months later, on a January morning, employees opened the Wells Road Veterinary clinic and found the partially clothed body of coworker Andrea Boyer in a pool of blood on the floor of the dog kennel.

“I think somebody raped her and killed her,” a sobbing coworker told a 911 operator. “She doesn’t have any pulse.”

Police said Jackson attacked the 25-year-old vet technician while she worked alone, prepping the clinic for surgery. He sexually assaulted her, bludgeoned her with a fire extinguisher, and strangled her so violently he broke her neck.

Jackson, now 43, was convicted of rape and murder and sentenced to die. But the Florida Supreme Court overturned his conviction because the jury heard improper evidence, and a retrial is scheduled this fall.

Boyer's boss, Dr. Michal Harris, knew little of the Jimmy Ryce law before her employee's murder but is now well-informed.

"The people who are deciding whether or not these guys get loose, they're gambling with people's lives," Harris said. "There aren't any higher stakes, are there? Innocent lives, innocent victims — children, women."

Dean Cauley, one of two mental health experts who endorsed Jackson's release, said the case epitomizes the shortcomings of the Jimmy Ryce law. Jackson scored low on commonly used risk-assessment tools and received favorable reviews from mental health staff who treated him, said Cauley, of Port Charlotte.

"This is why the law doesn't work because everything you look at with Mr. Jackson would tell you his risk had been reduced," he said.

The other evaluator, psychologist Harry Krop of Gainesville, told the Sun Sentinel: "Mr. Jackson was a pretty well-behaved person. He had gone through all the phases, didn't have anywhere else to go in terms of the treatment. . . . When you look back, obviously we didn't predict that well."

The girl Jackson raped years earlier learned that he had attacked again from the TV news. Now 42, she was just 14 when he broke in through a sliding glass door, held a pillow over her face and assaulted her.

"I was watching the news and his picture came up. I couldn't even talk," she told the Sun Sentinel. "The fact that he got out and was able to kill this girl, I think you should only get so many chances."

"We need to blame the law"

JACKSONVILLE — The man accused of killing Cherish Perrywinkle could be the poster child of the sexual predator the Jimmy Ryce law was designed to stop.

In and out of jail since the 1970s, Donald J. Smith had a history of exposing himself to children. He lured young girls to his car and tried to kidnap them. He made obscene phone calls to a child and impersonated a social worker, trying to persuade the girl's grandmother to bring her to a McDonald's to meet him.

The state had two chances to commit Smith to the sex predator treatment center. Both failed. In the first, Smith was released because prosecutors dropped the case in 2002 in return for Smith agreeing to certain terms, including outpatient counseling and injections of a drug known to reduce sexual urges in pedophiles.

Smith returned to prison in 2004 on a conviction for dealing in stolen property. He came up for scrutiny under the Jimmy Ryce law again in 2006 but went free after a psychological evaluation and a review by a team from the Department of Children & Families found he wasn't a sexually violent

predator. Records released by the agency do not provide a reason.

Smith could have been reviewed a third time, following his 2009 arrest for impersonating the social worker. But prosecutors reduced the charges from felonies to misdemeanors because the child's family did not want her to testify. That sent Smith to jail instead of prison, and only prison inmates get Jimmy Ryce reviews.

Smith had been out of jail on that case just three weeks when 8-year-old Cherish disappeared.

"Obviously, the law didn't work," Jacobo, the head of the Department of Children & Families, told the Sun Sentinel.

On June 21, Smith befriended the second-grader and her mother, Rayne, at a Dollar General store and drove them to a Walmart. He told the mother "he was going to buy clothes for [Cherish] and her because he saw they were having a hard time," a Jacksonville sheriff's report says.

After two hours of shopping, according to investigators, Smith told the mother he was taking Cherish to a McDonald's in the store. Instead, investigators said, he led the child to the parking lot and whisked her away in his van.

Police search dogs found her body 10 hours later in the woods behind a church.

"Why is he out? Why?" asked Beverly McClain, of Jacksonville, wiping away tears as she stood before a memorial to the little girl who loved to ride her bike, play school with her two younger sisters and draw pictures of smiling girls. "She was an innocent baby. When's it going to stop?"

At the Paxon Revival Center Church, where Cherish occasionally worshiped and sang in the children's ministry, her mother wailed at the sight of her daughter's lavender coffin.

From a stage with a full band and the congregation on its feet, Dobbs, the pastor, said Florida failed Cherish.

"I know you want to blame the judge and you want to blame mama and you want to blame the cops," Dobbs said. "But we need to blame the law, the law that allowed this man to go free."

Part II

HOW FLORIDA FAILS

Rapist Mark Watson had been out of prison just one day when he sexually assaulted another woman near Gainesville.

Freddie Clemons had been free only two months when he attacked and murdered a janitor in her Tampa middle school.

Lazaro Justiz, released from the state's sex predator treatment center, lasted three months before he molested a 12-year-old boy in Lake Worth.

These repeat sex offenders show how Florida's Jimmy Ryce law has failed at every level, a Sun Sentinel investigation found.

The law, enacted in 1999 and named after a murdered South Florida boy, was supposed to protect the public by sending the most dangerous rapists and child molesters to a treatment center after they finish their prison sentences.

But a series of shortcomings — missed opportunities, reluctant juries, and the imprecise science of evaluating sex offenders — have combined to turn dangerous predators loose.

Florida's Department of Children & Families is recommending fewer and fewer sex offenders for confinement, falling from a high of 228 in 2000 to a low of 19 in 2012, the newspaper uncovered.

Watson, Clemons and Justiz were among 594 men identified by the Sun Sentinel who were reviewed and set free in the 14 years since the law took effect, only to be convicted of another sex crime.

The newspaper examined those cases to determine what went wrong and found:

Florida now recommends confinement for so few suspected predators — just one of every 150 offenders screened last year — that its rate is the lowest of 17 states with similar laws.

As the treatment center filled up, the state changed its profile of who should be locked up.

Even when the Department of Children & Families identifies offenders as sexually violent predators, the chances of persuading judges and juries to lock them up are no better than the flip of a coin: 50-50.

The Jimmy Ryce law has cost Florida taxpayers more than \$450 million since it went into effect in 1999.

"I don't think the costs would ever be too much if we were being successful," said Esther Jacobo, interim secretary of the Department of Children & Families. "But it sounds to me like we don't know that we're getting our bang for the money, and we've got to figure out how to make that happen."

The goal: neutralizing the most dangerous

Set free and arrested again

Of sex offenders charged with sex crimes after being deemed safe for release under the Jimmy Ryce law, most were arrested within three years.



SOURCE: Florida Department of Law Enforcement arrest records of 1,384 sex offenders with 1,702 arrests.

The Ryce law grew out of a nationwide movement in the 1990s to stop repeat sex offenders. Called civil commitment, the concept is similar to involuntarily confining dangerous mentally ill patients for the protection of society: Sexual predators with impulses they can't control are sent to a treatment facility in Central Florida until they're considered safe for release.

Florida's law is aimed at the most dangerous sex offenders, those "who are just obsessed and not going to stop," said Fort Lauderdale psychologist John Morin, who has evaluated sex offenders for the state for more than a decade. "As the prison doors are clanging behind them, they're thinking about committing a new sex crime."

Critics say civil commitment unfairly deprives offenders of their freedom after they've served their sentences. But such laws have withstood constitutional challenges.

Before the Jimmy Ryce law, dangerous sex offenders got out of prison and returned only if they committed another crime. Now, they're supposed to be identified and kept locked up so they can't hurt anyone else.

The law is not intended to stop all sex offenders who might attack again, just the "small but extremely dangerous" group of violent repeat predators.

The process requires three steps — a screening by the Department of Children & Families, a psychological evaluation and a trial. Once committed, sex predators remain at the Florida Civil Commitment Center in Arcadia until a judge allows their release.

Repeat offenders: How they were freed

Most of the 594 sex offenders who were released and convicted of new sex crimes were set free at the first step of the process established by the 1999 Jimmy Ryce law, the Sun Sentinel found. A look at where the breakdowns occurred:

State screening	Psychological review	Court proceedings
After reviewing records, state officials decide if inmates are safe for release or should be further reviewed.	Psychologists and a review team decide whether to recommend offenders be locked up at a treatment center.	Judges and juries decide whether to designate inmates as sex predators and send them to the treatment center.
96 Offenders referred to next step.	32 Offenders referred to next step.	5 Predators locked up.
498 Offenders set free.	64 Offenders set free.	27 Offenders set free.

SOURCES: Sun Sentinel reports, Florida Department of Childr

To identify where the system fails, the Sun Sentinel looked at the 594 offenders released at any stage during the 14-year period and later convicted of new sex crimes. The paper's analysis showed:

84 percent of these men were released by state screeners at the first stage of the process.

11 percent were set free after state psychologists evaluated them.

5 percent made it to the final stage of the commitment process, but were freed by judges or juries.

All went on to sexually violate someone new.

Predators slip through

The Department of Children & Families, through its sexually violent predator program, is responsible for evaluating sex offenders before they're released from prison and determining whether inmates may be sex predators who warrant continued confinement.

Department psychologists screen offenders' psychiatric and criminal records and decide whether they should be referred to the next step: a face-to-face evaluation by an independent psychologist. Those evaluations are then reviewed by a team from the department that decides whether to recommend to prosecutors that inmates be confined in the state's 720-bed treatment facility.

For inmates to be committed to the center, prosecutors must convince judges or juries in civil trials that these men are likely to attack again if released.

The Sun Sentinel found dangerous offenders are freed at each step, starting at the initial screening by the Department of Children & Families. The agency applies a stricter definition of a sex predator than the one in the law, which requires a conviction for a violent sex crime and a mental condition that makes the inmate likely to reoffend.

Department screeners limit their search to inmates with multiple offenses, those who are "unusually prolific and/or egregious in their sexual offending," Sandi Lewis, a Department of Children & Families psychologist, stated in a [September 2012 email](#). The agency, Lewis wrote, looks for rapists with "multiple documented violent sexual assaults" and pedophiles with multiple victims who show "a pattern of cruising for victims or manipulating them with elaborate grooming rituals."

Other factors, including money and bed capacity at the treatment center, have influenced the department's screening decisions.

Suzonne Kline, former administrator of the sexually violent predator program, told the Sun Sentinel that when she took over in 2008, the state's new \$62 million treatment center in Arcadia was nearing completion.

"It was expected to be overpopulated before we moved in," Kline said.

She said she narrowed the predator profile used by department screeners, resulting in fewer sex offenders selected for further review and a savings to the state of \$500,000 to \$1 million a year on psychological evaluations.

"Budgetary concerns are always an issue when you're running a program," Kline said.

Predators the department missed in this initial screening phase include child molester William Salisbury.

Salisbury had been convicted of two child sex offenses when screeners reviewed his paperwork. Nine months after his 2002 release, Salisbury lured a kindergartner from a Naples park, promising him a scooter. He carried the child to his truck, drove to a wooded area and raped him.

Before police caught up to him, Salisbury had snatched a second child from his front yard. The 6-year-old boy was found hours later, wandering on a road, miles from his home.

"The reason we have these sex offender laws is for people like him," prosecutor Steve Maresca said at Salisbury's sentencing. "It's every parent's nightmare."

Dan Montaldi, current director of the state's sexually violent predator program, said screeners make the best decisions they can with the information available at the time. Signs of future violence are not always apparent.

"If somebody does a horrendous thing, you can always look into his history and say, 'Can't you see he was going to do that?'" Montaldi said. "What we all tend to forget, though, is if you take this out, the day before he did that...[he] could have looked like a thousand other guys."

Predators who make it to the second stage of review, an evaluation by a state-contracted psychologist, can still slip through.

The science behind sex offender evaluations is inexact. Tools used to score offenders' risk of continued sexual violence are considered by researchers to be "moderately accurate" statistically, and most inmates, aware that their liberty is at stake, lie about their sexual urges and attractions.

The best psychologists can do is fit them into groups according to risk factors, much like the insurance industry projects life expectancy based on a person's medical history or whether someone is a smoker.

"We never really know with any certainty," Morin said. "Every person is different, the evaluators are different and they're applying their own thinking."

A team of department psychologists reviews the evaluations and decides if inmates are predators likely to reoffend. Offenders the team found did not qualify include rapist Tommy Sailor.

Sailor had been to prison for raping two women in two weeks in 1994, and a third rape charge was dropped. He passed a psychological evaluation and a second state screening. Sailor was out of prison five months when in 2010 he offered a ride to a woman he'd just met, took her to his Port Tampa home and raped her.

A 911 call captured the woman begging for her life: “Please God, just let me go home ... Please let me wake up to my baby girl.”

Even when the department identifies an offender as a predator who should remain locked up, cases often don’t hold up in court.

Of the 1,500 the state has tried to commit to the treatment center since the Jimmy Ryce law took effect in 1999, nearly half have been freed by the courts.

Judges dismiss cases before trial because they do not meet the legal requirements for commitment. Prosecutors settle or decline to pursue hard-to-win cases, and juries vote to release inmates.

Unlike criminal trials, in which jurors are asked to judge guilt or innocence for something that’s already occurred, jurors hearing Jimmy Ryce cases must assess what convicts might do — after they’ve served their prison terms.

“A lot of people look at this law as punishment because they’ve done their time and now we’re locking them up again,” said Sheila Rapa, a Fort Lauderdale psychologist and Jimmy Ryce evaluator since 2006. “It’s a huge leap for juries to have to make.”

A Broward jury **released child molester Jack Love** in 2010. He was arrested in August 2012 on charges of molesting a 6-year-old Margate boy. “This man just raped my nephew,” the child’s aunt frantically told a 911 operator. Love is awaiting trial.

Florida last in commitment referrals

The number of predators Florida recommends for lock-up at the treatment center has steadily dropped.

In the first 11 years of the Jimmy Ryce law, the state identified an average of 128 potential predators each year. That number began declining in 2010 to an average of 49.

Last year, the Department of Children & Families reviewed 2,926 inmates and recommended commitment for 19.

Florida’s referral rate is the lowest of 17 states with comparable sex-offender programs and at least three times lower than that of such large states as California, New York and Illinois, the Sun Sentinel found.

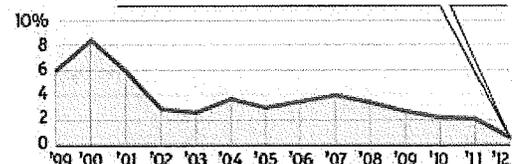
Florida’s dead-last ranking has the new head of the Department of Children & Families concerned that the state has missed predators who should have been confined. “I want to know exactly why that occurred,” said Esther Jacobo, interim secretary of the department.

Referrals dried up so much that prosecutors in Palm Beach County received no new cases in 2012, Broward just one, and Miami-Dade, the state’s most populous county, got two.

Florida recommends fewer predators for lock-up

An average of 3,000 inmates are evaluated each year. The percentage recommended for continued confinement has declined.

In 2012 only 0.6% were referred to prosecutors for civil commitment trials.



SOURCE: Florida Department of Children & Families

On May 24, the Sun Sentinel asked about the drop in referrals. Montaldi said it was a result of factors including research showing older offenders are less dangerous and an overall decline in sex crimes.

In early June, Miami-Dade State Attorney Katherine Fernandez Rundle also raised concerns about the shrinking referrals to Jacobo's predecessor.

On June 13, the department set a record for a single day, recommending 19 sex offenders for commitment, tying the total for all of 2012.

The spike followed an internal review "to ensure DCF is taking all measures to protect Floridians from sexual predators," department spokesman Whitney Ray wrote in an email to the Sun Sentinel.

Sixteen of the 19 men the department found eligible for commitment on that day in June had already been reviewed with a different outcome — the agency found they were not dangerous predators. They had not yet been released from prison, giving the state an opportunity to reconsider.

That sort of change is proof Florida needs a more uniform and objective method of deciding who makes the cut, said Robin Wilson, former clinical director at the state's treatment center.

"The process," he said, "shouldn't be so flexible as you can look at the file one day and then come up with a completely different decision the next day."

The Department of Children & Families noted that violent sex crimes have declined in Florida since the law took effect. "This decline cannot be directly attributed to the (Jimmy Ryce) program as there are far more factors in play, but it does show that ... sexually violent crime has decreased," Ray said.

Jacobo has ordered a review of her agency's handling of sex offender screenings that will include contacting other states to see how Florida compares. She also plans to ask prosecutors how the state can improve.

"Maybe it's bigger than just our evaluations," Jacobo said. "Maybe it's the whole way that we have written and applied the law."

Part III

"HOUR OF TORTURE"

These are the women who suffered at the hands of sex predators and a law that failed to protect them: A college student tortured to near death. A great-grandmother shot and raped in her own bed.

Never before have they publicly discussed the horror they faced. They agreed to speak to the Sun Sentinel with one hope — that Florida fix the failures that turned their attackers loose.

The state had a chance to stop those sex offenders and hundreds of others who went on to assault nearly 600 women and children over the past 14 years, a Sun Sentinel investigation found.

Victoria was one of them. “If nothing else, if I can just have a voice and say, ‘You know what? I’m one of those people that you forgot about,’” she said. “I don’t want anything to happen like this to anybody else, to anybody else.”

Beaten, stabbed, burned

A 19-year-old nursing student home alone in her Cocoa apartment, she awoke in the middle of the night to find a man straddling her with a knife to her throat.

“He raped me twice, and that wasn’t the worst part,” said Victoria, speaking on the condition that her last name not be disclosed. “The worst part was the hour of torture.”

Police and prosecutors were astonished that the state missed the chance to lock up the man who nearly killed her.

Chad Barger had attacked three women in two weeks when he was 14. His probation officer called him “the most dangerous individual this officer has supervised in his 11 years.”

As his prison release date neared in 2000, Barger came up for review under the Jimmy Ryce law, which allows the state to confine sex predators at a treatment center after their prison sentences end.

Florida’s Department of Children & Families concluded Barger wasn’t a sexually violent predator, so he went free.

He’d been out of prison 11 months when he broke into Victoria’s apartment in January 2001.

For 90 minutes, he raped and tortured her.

“He beat me with pool sticks, with bottles, with all kinds of stuff. He cut me for fun,” she said. “He poured nail polish on me to set me on fire. He hammered a (broken) bottle in my back. He cut my head off, or tried to. . . . What if he would have?”

She prayed and wondered whether she would ever see her family again. And then, she heard him unlock the door and leave. It was finally over.

Barely alive, she managed to call 911: “Please somebody help me,” she pleaded. “I’m bleeding to death.”

Airlifted to a hospital, Victoria underwent surgery for a collapsed lung and severed nerves. Doctors attached skin grafts to her neck, and repaired wounds to her head with 165 stitches and staples.

Barger wasn't caught right away. Nine months later he found another victim, attacking the manager of a Melbourne Wendy's as she opened the restaurant. He beat her so severely she lost consciousness, then drove her to a secluded area and raped her.

"How many more people would he have hurt if he wasn't caught?" Victoria asked.

Victoria never returned to her apartment. She moved in with her parents. "I immediately started counseling," she said.

Determined to carry on, within weeks she returned to her job as a hospital phlebotomist, and eventually went back to college but in a different field. Nursing, and the pressure of dealing with lives on the line, no longer appealed to her.

For Victoria, justice came slowly.

The evidence in her case didn't lead police to Barger until five years later. By then, he was already in prison for life for the rape and beating of the Wendy's manager.

Victoria insisted on a trial. "I wanted my day in court," she said. "I wanted to look him in the eye and show him you might have broken me, but you didn't break my spirit."

Her testimony last fall helped prosecutors win another life sentence for Barger.

"Clearly, he was a sexually violent predator, by any definition," said prosecutor Julia Lynch of Brevard County.

Said Barbara Matthews, the Cocoa police officer who tracked Barger: "What are they looking for that they missed this guy who showed over the years this pattern of aggression toward women, this history of violence and anger just constantly growing?"

Now 32, Victoria works as a graphic designer and lives in Brevard County, close to where she grew up. She and her high school sweetheart reconnected and married.

Twelve years after the attack, the daily pain in her back and neck are constant reminders. Her body is scarred, her emotions frail.

"I'm not wired right," says Victoria, who has been diagnosed with post-traumatic stress disorder. "I still have night terrors. There's nights where I cry."

She looks at strangers differently. What if one might hurt her?

"I hope that at the end of my time here on earth, I can say I overcame it," she said.

Victoria wants the state to review the Jimmy Ryce law, and why it has failed her and many others. "Can you imagine just one person getting saved, one person, how much of a difference that would be?"

"I used to go to church – until this happened"

Great-grandmother Eunice Alexander is still afraid to sleep in her own bed. That's where he raped her, three years ago.

As a juvenile, Dionte Davis raped a woman at knifepoint and later went to prison for attempting to break into a second woman's home. When he came up for review under the Jimmy Ryce law in 2008, state screeners judged him low-risk.

He'd been free three months when he broke into Alexander's house through a guest-bedroom window.

"I heard something," she recalled. "When I turned the light on, he was right there in my bedroom on his knees. I hollered, 'Oh my God, get out of here! Get out of here!'"

Armed with a .38-caliber pistol, Davis fired one shot into Alexander's cheek, below her left eye. A second bullet passed through the side of her face, exiting behind her ear.

"Oh my God! Lord have mercy!" she remembers screaming, each time he shot her.

Davis, 23, raped the bleeding, terrified Alexander. Then he set fire to her bed and clothes and handed her a towel to wipe away his semen. Before he left, he gave the 66-year-old a bread bag filled with ice.

"He told me, 'Put that on my eye. I'll be all right.'"

She was so badly injured she could hardly recognize herself in police crime scene photos.

"I was (his) third victim," Alexander said. "If they hadn't let him out, this wouldn't have happened to me."

Crimes so reprehensible rarely happen in rural Madison County, just south of the Georgia border. With her nearest neighbor a quarter-mile away, Alexander lived alone next to cornfields in a home where she raised three children and planned to one day retire.

"All these years I've been here by myself, ain't nobody bothered me," she said. "I just don't understand why that boy would want to come in here and hurt me."

Now 70, she spends her days at a senior center "to keep me from being home by myself, and make me feel better."

Friends encourage her to attend the church services she once loved, but her faith is shaken.

"People invite me. I tell them go ahead," she said. "I used to go to church — until this happened."

Her home is no longer the refuge it once was. There's a security system, peepholes in the doors and new locks. The window in her guest bedroom, where Davis entered, remains permanently closed.

"I don't mess with that window," she said. "It's locked now."

Most nights, she sleeps on her living room couch.

"I can't sleep in that room," she said. "I'll be laying down and I'll hear things... like somebody's coming down the hall."

A family suffers

Ophelia Redden isn't alive to tell her story.

The Pahokee woman was sexually assaulted, strangled and beaten to death by convicted rapist James Harmon.

The state had determined Harmon was a danger and committed him to the sex predator treatment center in 2008, but a judge found him safe for release two years later.

He had been out seven months when he attacked Redden, 52, as she walked home one night in January 2011.

The dual shock of losing Redden and the horrific way she died devastated her three daughters, and the two grandchildren she dropped off and picked up at the school bus stop every day.

"My kids just shut down," said daughter Tanzareka Redden. "They wouldn't talk. They didn't want to play."

The children, now 11 and 9, still cry for their grandmother and ask why she left them, the West Palm Beach woman said. "I'll say, 'It wasn't her. You got to remember she will always be in your heart. Your grandma will always love you.'"

A Fort Lauderdale native, Ophelia Redden was a gregarious woman, always ready to lend a hand or cook a meal for friends or family in Pahokee, a small farming community in western Palm Beach County. She collected coffee cups and teddy bears.

"She was a ball of energy," said daughter Shantoria Redden, of West Palm Beach. "She always supported us in everything we did."

When the pain of her mother's death becomes overwhelming, Shantoria Redden writes poetry or plays her clarinet.

"I will never get over it," she said. "Every day, I'm reminded of her. Every single day."

Family gatherings and traditions now are different. Every year in October, on the matriarch's birthday, relatives would gather for a family portrait.

"We didn't take one this year or last year," Tanzareka Redden said, "because she's not here."

Today, at the spot where her body was found, a white teddy bear sits, placed there by well-meaning neighbors.

The memorial has been a painful reminder for her daughters. Shantoria Redden, who had been living in her mother's home, moved out.

"I just could not stay in that house," she said. "If you go in that house now, her clothes are still in the closet."

"We have to continue to move forward."

Part IV

SOLUTIONS

The Sun Sentinel shared its investigative findings with experts, who said Florida could do more to protect the public from repeat sex offenders.

The newspaper's eight-month investigation found that Florida had missed opportunities to lock up sex offenders under the Jimmy Ryce law, which allows the state to confine the most dangerous rapists and child molesters at a treatment center. In the 14 years the law has been in effect, Florida

released at least 594 sex offenders who were later convicted of new sex crimes.

Experts — professors who have researched sex offenders, psychologists who have evaluated them, and those who have worked at sex offender treatment centers — suggested specific actions the state can take.

Track rearrests, failures

No agency is required to track sex offenders who are screened and released under the Jimmy Ryce law to see if they're arrested for new sex crimes, despite state audits recommending that as far back as 2000.

The Department of Children & Families just began looking at recidivism but has no results. Tracking thus far has consisted mainly of mining headlines in the news.

“Sometimes you read in the media of a sex offender being arrested, and then what we'll do is check to see if he was one of ours,” said Dan Montaldi, director of the agency's sexually violent predator program.

The state should examine cases resulting in rearrests, starting with those identified by the Sun Sentinel, experts said. The state will do that, said Esther Jacobo, interim secretary of the Department of Children & Families.

“Where we could do a better job is when cases fail to go back and really look carefully at the chain of events and figure out what could have been done differently,” said Jill Levenson, a Lynn University professor and sex offender researcher. “Was there a place where somebody erred, or where some more extensive assessment or background check might have revealed something telling?”

Assess costs, benefits

Each year, Florida spends about \$34 million on Jimmy Ryce screenings, commitment trials and confinement of predators at the treatment center. Since the law took effect in 1999, the total public tab has topped \$450 million, and the state cannot even say how effective the law has been.

That's akin to a company spending half a billion dollars on a product or strategy without any research on whether it works.

“From a business perspective, it's unconscionable,” said Daniel Mears, a professor of criminology at Florida State University.

More than 750 high-risk sex offenders have been ordered to the treatment center, potentially preventing crimes they would have committed. But twice as many were released and arrested again for sex offenses, the Sun Sentinel found.

“There's people getting missed that go on and do horrible things,” Mears said. For the money spent, “there's a lot of things we could be doing for a much larger swath of the sex offender population.”

Monitor released offenders

Florida should create a system for supervising all sex predators released from the treatment center. Now, they're simply freed and monitored only if they are still on probation for their criminal charges.

"There are a number of guys who will be released from the center who won't have any sex offender probation and won't have any mandated follow-up, which to me just sounds crazy," said Robin Wilson, a psychologist and former clinical director at the center.

Other states with civil commitment require community supervision for released sex predators that involves close monitoring and continued treatment, a step that legislative auditors have recommended for Florida but lawmakers have yet to approve.

Some offenders released from Florida's treatment center aren't even on the state's sex offender registry, the Sun Sentinel found.

Treatment — know what works

Civil commitment is still relatively new, and Florida has no evidence of how well the treatment being provided works.

"There needs to be a way of determining the effectiveness," said psychologist Harry Krop, who evaluates sex offenders under the Ryce law. The state should follow offenders released from the center "so we can really make a determination whether the recidivism rate is reduced."

To reach a broader group of offenders, treatment should start in prison, Wilson said. Waiting until an offender is so dangerous he's confined to the treatment center, he said, "is like giving a guy an aspirin five days after a headache."

Create an oversight system

Other states, including Illinois and California, have sex offender management boards that meet and recommend improvements in all areas, from supervision to treatment and civil commitment. The goal: keeping the public safe from sex offenders.

"We don't have one," Wilson said, "and we should."

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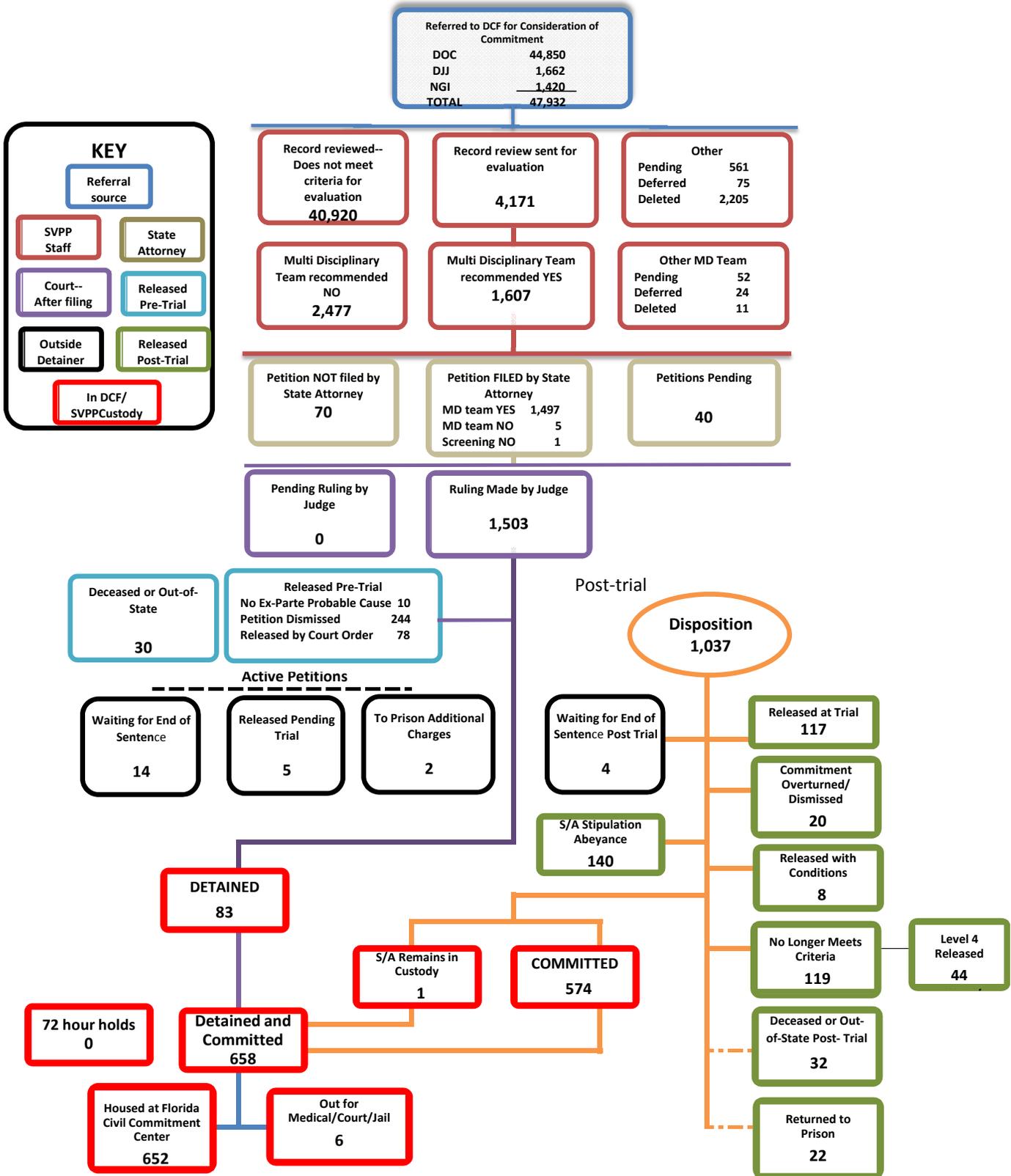
A Tribune Newspaper
website

CONTRIBUTIONS

Jon Burstein, staff writer

STATE OF FLORIDA

STATUS OF ADULTS REFERRED FOR COMMITMENT TO SVPP THROUGH August 31, 2013



Source: This flowchart was prepared by the Florida Legislature, Office of Economic and Demographic Research using a flowchart prepared monthly by the Department of Children and Families (DCF). Release reasons were changed on June 12, 2009 by DCF for twelve committed individuals.

FACTORS RELATING TO THE SENTENCING OF SEX OFFENDERS

March 1, 2006

Prepared by
Office of Economic and Demographic Research
111 W. Madison Street, Suite 574
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The Office of Economic and Demographic Research would like to thank the Department of Corrections, the Office of the State Courts Administrator, the Florida Department of Law Enforcement, and the Office of Program and Policy Analysis for their generous assistance in the preparation of this study.

Table of Contents

Executive Summary	i
Chapter 1—Introduction.....	1
Chapter 2—Demographic Profile of Sentenced Offenders.....	3
Chapter 3—Sexual Offense Victims.....	11
Chapter 4—Criminal Code Sentencing.....	23
Chapter 5—Summary Reporting System Data.....	49
Chapter 6--Offender Based Transaction System.....	57
Chapter 7-- Child Hearsay.....	67
Chapter 8—Findings and Recommendations.....	71
Appendix A—Sentencing Events.....	76
Appendix B—Status of Adults Referred for Commitment to SVPP.....	78
Appendix C—Lewd or Lascivious Offenses.....	79
Appendix D—Current Sex Offenses Ranked by Severity.....	80
Appendix E—Sexual Predator/PSIA Offender Registration.....	83

Executive Summary

This study was directed by Chapter No. 2005-28, Laws of Florida, also known as the “Jessica Lunsford Act.” Section 2 contains the following language:

In addition, the Office of Economic and Demographic Research shall study the factors relating to the sentencing of sex offenders from the point of arrest through the imposition of sanctions by the sentencing court, including original charges, plea negotiations, trial dispositions, and sanctions. The Department of Corrections, the Office of the State Courts Administrator, the Florida Department of Law Enforcement, and the State Attorneys shall provide information deemed necessary for the study. The final report shall be provided to the President of the Senate and Speaker of the House by March 1, 2006.

Most sexual offenses are identified in Chapter 794 relating to sexual battery, and Chapter 800 relating to lewd or lascivious behavior, including exhibitionism and molestation. To study the sentencing of sex offenders, the Office of Economic and Demographic Research (EDR) analyzed all available databases and conducted a survey directed to a group of judges and assistant state attorneys with experience in cases involving sexual offenders.

Although each data source has its own strengths and weaknesses, a comprehensive examination of all the sources results in a more accurate picture of sexual offender processing.

Sex offenses share some characteristics with other serious offenses such as murder and robbery. The defendants face potentially lengthy prison terms. Therefore, defendants are motivated to fight the charges with whatever resources are at their disposal. The trial rates are highest for these three offenses. Law enforcement and prosecutorial resources gravitate towards these most serious cases. With the attention and time devoted to these cases, any problems with the evidence or proceedings associated with the case are more likely to be revealed and utilized by the defense.

But sex offenses are also different from other offenses. Sanction and length mitigation is high. High proportions of defendants have at least some counts dismissed. Data from the various sources as well as the survey responses from judges and prosecutors point to unique difficulties in the prosecution and conviction of sexual offenses. Foremost is the young age of most of the victims. From the Ryce data, the average age of the victims was 13.4 years old. Eighty-three percent were 15 or younger. The second key factor is that 85% of the victims knew the offender. For successful prosecution, unless there is corroborative evidence, the child must testify in court. The prospect of having a child victim of a sexual crime testify in a public trial is daunting. The victims and their families may consider the trauma of repeatedly revisiting the crimes in a public forum too difficult. A child does not possess the intellectual and emotional skills necessary for the adversarial confrontation with the defense. Faced with these challenges, the prosecution often finds the best outcome may be to offer a plea bargain involving a mitigated sanction or sentence length, hence the high mitigation rates found for sexual crimes. Frequent law changes with stricter sanctions may cause mitigations back toward historical sentence lengths. With a conviction, even if the sanction is not as strict as the prosecution desired, the offender may qualify to be registered as a sex offender.

CHAPTER 1--INTRODUCTION

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- The Criminal Code Database, which contains records on sentencing events.
- The Summary Reporting System (SRS) which includes summary data on the processing of filings in the state court system.
- The Offender Based Transaction System which contains information on criminal charges at the time of arrest and during subsequent phases as the charge moves through the judicial system.
- The Uniform Crime Report data from the Florida Department of Law Enforcement.
- Data from the Department of Corrections on referrals to the Jimmy Ryce Sexually Violent Predator Program, which include data on the victims of referred offenders.

The report begins with a demographic profile of sexual offenders who have been convicted and sentenced in the state of Florida, including information on their victims. The rest of the report is generally organized by data source, with each source used to develop a broader picture of the complex processing of defendants as they move through the criminal justice system.

In this study, the sexual offense category will be compared both to other offense categories and to the aggregate of all offenses to determine whether there are unique characteristics that distinguish sex offenders from other types of offenders.

Although each data source has its own strengths and weaknesses, a comprehensive examination of all the sources results in a more accurate picture of sexual offender processing. A summary chapter at the end of this report identifies the most important findings from each data source and explores some ideas and recommendations for improving the system

CHAPTER 2—DEMOGRAPHIC PROFILE OF SENTENCED OFFENDERS

To develop a demographic profile of sex offenders and compare them to all other criminal offenders, EDR used the Criminal Code database for the years 2002, 2003, and 2004. This database is a large, comprehensive dataset which provides valuable information on the universe of all criminal sentencing events. It has the unique advantage of containing records of offenders sentenced to both county jail terms and to incarceration or supervision by the state Department of Corrections (DOC). Although scoresheets were not received for every offender, the DOC estimates that compliance was 71.1% in FY 2002-03, 71.9% in FY 2003-04, and 67.9% in FY 2004-05. Compliance tended to be slightly higher for the more serious prison sanctions than lesser supervision sanctions. Given the large number of sentencing events in the database (109,977 in 2002, 116,962 in 2003, and 117,290 in 2004), it is unlikely that underreporting biased the information in this report. Since the statistics varied only slightly from year to year, aggregate numbers based on all three years, representing 344,229 sentencing events, will be presented. See Appendix A for tables with information on the number of sentencing events by year.

GENDER

Table 2.1 displays the gender breakdown of the nine major criminal offense categories. Despite the occasional high profile case involving an older woman and an adolescent male, male offenders outnumber females by a wide margin. Most revealing, men comprised 98.3% of the 5,840 sex offense convictions in the 2002-2004 period. In

spite of a small increase in the number of female offenders, the women's share of total convictions declined slightly in each of the three years. After sex offenses, the greatest gender discrepancy was found in weapons crimes, where women comprised 6.0% of the offenders. Overall, men were responsible for 80.5% of 344,229 total offenses.

Table 2.1
Gender of Offenders Sentenced 2002-2004

Offense group ¹	Male		Female	
	Number	Percent	Number	Percent
Murder/Manslaughter	1,701	88.7%	216	11.3%
Sexual/Lewd Behavior	5,741	98.3%	99	1.7%
Robbery	8,260	90.4%	882	9.7%
Violent, Other	37,033	81.8%	8,269	18.3%
Burglary	30,064	91.8%	2,672	8.2%
Property Theft/Fraud/Damage	51,772	67.5%	24,884	32.5%
Drugs	97,236	80.2%	24,034	19.8%
Weapons	6,332	94.0%	403	6.0%
Other	38,951	87.3%	5,680	12.7%
Total	277,090	80.5%	67,139	19.5%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

RACE

Table 2.2 shows a breakout of major offense categories by race. Whites made up 56.3% of all sentenced offenders, but 64.7% of sex offenders. Only burglary, with 66.6% white offenders, had a higher proportion of Caucasians. Blacks, responsible for 41.9% of all sentenced offenders, comprised 32.2% of the 5,840 sex crimes. "Others" were involved in 1.8% of all crimes and about 3% of the sex offenses.

Table 2.2
Race of Offenders Sentenced 2002-2004

Offense group ¹	White		Black		Other	
	Number	Percent	Number	Percent	Number	Percent
Murder/Manslaughter	1,088	56.8%	768	40.1%	61	3.2%
Sexual/Lewd Behavior	3,776	64.7%	1,882	32.2%	182	3.1%
Robbery	3,955	43.3%	5,028	55.0%	159	1.7%
Violent, Other	27,492	60.7%	16,788	37.1%	1,022	2.3%
Burglary	21,800	66.6%	10,265	31.4%	671	2.0%
Property Theft/Fraud/Damage	46,508	60.7%	28,705	37.4%	1,443	1.9%
Drugs	60,140	49.6%	59,555	49.1%	1,575	1.3%
Weapons	3,209	47.6%	3,380	50.2%	146	2.2%
Other	25,778	57.8%	17,973	40.3%	880	2.0%
Total	193,746	56.3%	144,344	41.9%	6,139	1.8%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Considerable variation appears when specific sexual offenses are analyzed by race (Table 2.3). For instance, 75.4% of the offenders sentenced for *sexual battery by adult, victim under 12* were white. Yet blacks numbered 57.2% of those sentenced for *sexual battery, threat with deadly weapon*. Such variations may reflect racial behavioral variations, relationships to law enforcement, or prosecutorial and judicial perceptions, all factors which are extremely complex to determine, describe, or measure.

Table 2.3
Race of Offenders Sentenced for Sex Offenses 2002-2004

Offense	White		Black		Other	
	Number	Percent	Number	Percent	Number	Percent
Sexual battery by adult, victim under 12 ¹	187	75.4%	56	22.6%	5	2.0%
Sexual battery, threat with deadly weapon	62	40.8%	87	57.2%	3	2.0%
Sexual battery without physical force likely to cause serious injury	220	50.2%	200	45.7%	18	4.1%
Adult 24 or older --sex with 16-17 year old	189	61.2%	107	34.6%	13	4.2%
Lewd or lascivious battery, victim 12-15	792	61.2%	461	35.6%	42	3.2%
Lewd or lascivious molestation, victim under 12/offender 18 or older	407	75.8%	110	20.5%	20	3.7%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	310	67.0%	144	31.1%	9	1.9%
Lewd or lascivious conduct, victim under 16/offender 18 or older	336	77.8%	86	19.9%	10	2.3%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	249	77.6%	61	19.0%	11	3.4%
All other sex offenses	1,024	62.2%	570	34.7%	51	3.1%
Total	3,776	64.7%	1,882	32.2%	182	3.1%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

AGE

As seen in Table 2.4, the average age at the time of their offense for all offenders sentenced for sex crimes was 31.1 years, the same as the average age for all offenders sentenced. Most offense groups vary only slightly from the mean. The offense group varying the most is robbery, where the average offender was 25.7 years old at the time of the offense.

Table 2.4

**Average Age at Offense of Offenders
Sentenced 2002-2004**

Offense group ¹	Average age
Murder/Manslaughter	30.2
Sexual/Lewd Behavior	31.1
Robbery	25.7
Violent, Other	31.2
Burglary	27.3
Property Theft/Fraud/Damage	31.0
Drugs	31.9
Weapons	29.7
Other	33.2
Total	31.1

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Age at time of offense varies greatly when analyzed by individual sexual offenses, ranging from 25.4 years for *lewd or lascivious battery, victim 12-15* to 39.6 years for *lewd or lascivious molestation, victim under 12/offender 18 or older* (see Table 2.5). The average age of offenders convicted of *sexual battery by adult, victim under 12* is also high, at 35.7 years. The higher average age for these two offenses is especially disturbing since they involve the youngest victims.

Table 2.5
Average Age at Time of Offense for Offenders Sentenced
for Sex Offenses 2002-2004

Offense	Average age
Sexual battery by adult, victim under 12 ¹	35.7
Sexual battery, threat with deadly weapon	29.9
Sexual battery without physical force likely to cause serious injury	30.8
Adult 24 or older --sex with 16-17 year old	31.5
Lewd or lascivious battery, victim 12-15	25.4
Lewd or lascivious molestation, victim under 12/offender 18 or older	39.6
Lewd or lascivious molestation, victim 12-15/offender 18 or older	32.7
Lewd or lascivious conduct, victim under 16/offender 18 or older	31.7
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	35.2
All other sex offenses	30.8
Total	31.1

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

PRIOR FELONY CONVICTIONS

The Criminal Code database includes a variable indicating the offender’s number of prior felony convictions. The variable is based on the prior felony record indicated on the scoresheet. Table 2.6 displays the average number of prior felony convictions by the major offense categories. These prior convictions are for any felony, not necessarily a felony in the same category as the instant offense. Sex offenders had an average of .60 prior felony convictions, the lowest of any category. The second lowest was the property theft and fraud category at .85 and the highest was the drug category at 1.22. The average for all offenders was 1.06. Sex offenders are less likely to have a prior felony conviction than any other offense group.

Table 2.6
Average Number of Prior Felonies for
Offenders Sentenced 2002-2004

Offense group ¹	Average number of prior felonies
Murder/Manslaughter	0.94
Sexual/Lewd Behavior	0.60
Robbery	1.18
Violent, Other	0.85
Burglary	1.11
Property Theft/Fraud/Damage	0.85
Drugs	1.22
Weapons	1.15
Other	1.17
Total	1.06

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

The Criminal Code database does not include any information on employment status. However, this information is available from the Department of Corrections for prison admissions. As shown in Table 2.7, for the three-year period (2002 to 2004), 47.7% of prison admissions had been employed full-time at the time of their arrest. However, 62.4% of sexual offenders were employed full-time when they were arrested—the highest of any offense group.

Table 2.7
Percent of Prison Admissions (2002-2004)
Employed Full-Time at Time of Arrest

Offense group ¹	% Employed Full-Time
Murder/Manslaughter	51.9%
Sexual/Lewd Behavior	62.4%
Robbery	43.1%
Violent, Other	52.6%
Burglary	47.2%
Property Theft/Fraud/Damage	49.2%
Drugs	42.7%
Weapons	50.2%
Other	55.9%
Total	47.7%

Source: Department of Corrections end-of-month status files.

CHAPTER 3—SEXUAL OFFENSE VICTIMS

Important factors in the effective prosecution of any offense include the existence of physical evidence, corroborating witnesses, and cooperative victims. To better understand the role of these factors, EDR analyzed information on the victims of these crimes.

Unfortunately, information on the characteristics of victims of sexual offenses is very limited. The Criminal Code database includes information on victim injury but nothing on the characteristics of the victim. Nor does Court data contain this information. Only two sources contain this data. The Department of Corrections collects information on the characteristics of the victims of individuals referred for involuntary civil commitment, and the Florida Department of Law Enforcement also keeps data related to victims of domestic violence. This chapter presents information on victims available from these sources.

VICTIMS OF RYCE REFERRALS

In 1998 the Florida Legislature passed the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.” The act provides that offenders convicted (or adjudicated delinquent) of a sexually violent offense and serving a sentence in the custody of the Department of Corrections, or committed to the Department of Juvenile Justice, or to the Department of Children and Families (DCF) custody after being found not guilty by reason of insanity, be referred to DCF for screening for civil commitment prior to their release. Ninety-four percent, an overwhelming majority, are from the Department of Corrections. The referral can be for

a prior conviction or even for a nonsexual offense that was sexually motivated. As of December 31, 2005 there had been 20,539 referrals to DCF. Of those, 205 individuals or one percent were committed to the civil commitment facility. The same facility housed another 313 individuals awaiting disposition of the civil commitment proceedings. DCF determined that 86% of the referrals did not meet the statutory definition of sexually violent predators. The remaining 11.4% (86% non-qualifying, 1.6% in detention status, and 1.0% committed) includes 978 individuals with their initial record review pending, 942 individuals who were not recommended for commitment by the multi-disciplinary screening that follows the preliminary record review and 219 individuals who were released by court order, had their petition dismissed, were released at trial, or were released after commitment. (Please see Appendix B for a flowchart showing this information.)

As part of the review process for referral to DCF, the Department of Corrections compiles information in electronic format on offenders, their offenses, and their victims. EDR requested and received from DOC the complete file of all referrals since the inception of the program in 1999. If an offender was referred more than once, the information presented here covers the most recent referral. It should also be noted that since the Ryce file is of offenders about to be released from prison, it only includes offenders who received the more serious sanction of a prison term, as opposed to the group of all offenders convicted of sex offenses.

While most chapters of this study consider offenders convicted of a sex offense during a recent three year period, the Ryce dataset consists of sex offenders approaching release from incarceration. This shift in perspective was necessary because the Ryce data

is the only available detailed source on sex offender victims. Using the Department of Corrections 2004-05 Annual Report, EDR compared the general characteristics of prison admissions and prison releases, and the characteristics were quite similar. Despite the different perspectives of the data, the Ryce file is a large and valuable dataset for the purposes of this study.

There is a separate referral record for each victim. A total of 4,713 offender records had no victim information and were excluded from the analysis. Without these, and retaining the data for the most recent referral, there were records for 18,441 victims of crimes committed by 10,732 offenders, an average of 1.72 victims per offender. (As a point of reference, there were 1,798 admissions to prison for sex offenses in FY 2004-05.) Table 3.1 indicates the referral offense. Since most of these offenses were committed prior to the 1999 revisions to chapter 800 relating to lewd or lascivious behavior, the most frequent offense is the pre-1999 *lewd or lascivious offense, child under 16*, at 37.5% of the total. (See Appendix C for information on the 1999 changes to Chapter 800.) *Sexual battery by adult, victim under 12* is the second most common referral offense, with 10.9% of the total. Together, these two offenses constitute the referrals for nearly half of the victims.

**Table 3.1
Referral Offense¹**

Offense	Number	Percent
Lewd or lascivious, child under 16	6,915	37.5%
Sexual battery by adult, victim under 12	2,018	10.9%
Sexual battery without physical force likely to cause serious injury	1,571	8.5%
Lewd assault/sex battery, victim less than 16	1,104	6.0%
Sexual battery, threat with deadly weapon	856	4.6%
Sexual battery--coerce child by adult	847	4.6%
Lewd or lascivious battery, victim 12-15	811	4.4%
Kidnap committed to facilitate a felony	495	2.7%
Other offenses	3,824	20.7%
Total	18,441	100.0%

Source: Department of Corrections datafile of offenders referred to DCF.

¹ This is the offense associated with a particular victim from the offender's most recent referral. The offender may have had prior and/or additional offenses.

Table 3.2 shows the offense date. Note that 21.7% of the offenses were prior to 1990, suggesting that many of the offenders were in prison for at least ten years before their referral.

**Table 3.2
Offense Date**

	Number	Percent
Before 1990	4,004	21.7%
1990-1994	5,329	28.9%
1995-1999	6,182	33.5%
2000-2005	2,926	15.9%
Total	18,441	100.0%

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.3 displays the age of the victim at the time of the offense. The dataset included ages for 15, 532 of the 18,441 victims. Particularly striking is the young age of most of the victims: more than 82% were 15 or younger. Only 9.3% were older than 19. The average age of the victims was 13.4 years. Note that 38% of the victims were less than 12 years old. Because so many of the victims are children, the issue of the children’s testimony about the offenses is crucial. Subsection 90.803(23), Florida Statutes, explicitly provides an exception to the prohibition against hearsay testimony, to allow for statements of child victims under the age of twelve. The importance of hearsay evidence is explored further in Chapter 7 of this report.

**Table 3.3
Victim Age**

Age in Years	Number	Percent	Cumulative Percent
1 - 5	1,104	7.1%	7.1%
6 - 11	4,798	30.9%	38.0%
12 - 15	6,913	44.5%	82.5%
16 - 17	1,010	6.5%	89.0%
18 -19	257	1.7%	90.7%
20 - 24	546	3.5%	94.2%
25 - 34	527	3.4%	97.6%
35 or older	377	2.4%	100.0%
Total	15,532	100.0%	
Unknown	2,909		
Mean age - 13.4 years			

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.4 shows the relationship of the offender to the victim, which was known in 15,679 of the cases. In total the offender was known to the victim in 84.8% of the cases. The offender was a member of the victim's family in 28.4% of the offenses. Nearly 16% of the offenders were immediate family; 12.8% were non-immediate family members. The offenders were classified as "Other Known Person" in 56.4% of the cases. The offenders were strangers to the victim in only 15.2% of the cases. This large dataset verifies the findings of other research concerning the relationship between the offender and the victim in sexual offenses. The vast majority of children who are victims of sexual offenses know the offender.

Table 3.4
Relationship of Offender to Victim

	Number	Percent	Cumulative Percent
Immediate family	2,454	15.7%	15.7%
Non-immediate family	2,006	12.8%	28.4%
Other known person	8,836	56.4%	84.8%
Stranger	2,383	15.2%	100.0%
Total	15,679	100.0%	
Unknown	2,762		

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.5 displays the relationship of the offender to the victim by age of the victim. For victims under twelve, the offender was known to the victim in 92.5% of the cases and a stranger in only 7.5%. And, nearly 46% of the offenses were committed by a family member. Although the public is understandably horrified by cases of stranger abduction and murder, the resultant emphasis on identifying and locating registered sexual offenders and predators may be ignoring potential threats far closer to home. As

victim age increases through age 24, so does the percentage of stranger attacks, reaching a high of 48.4% for victims 20-24 years of age.

The relationship of the offender to the victim is an important factor in the prosecution. A judge responding to the survey question about the influence of the relationship on conviction indicated that:

[relationship] impacts a case greatly. It explains away contact. There is often family pressure to balance the needs of the victim with the needs of a defendant. There is often the psychological defense of denial going on in the family.

Table 3.5
Victim Age by Relationship of Offender to Victim

Victim Age	Number				Total
	Immediate Family	Non-Immediate	Other Known Person	Stranger	
1 - 5	288	220	459	52	1,019
6 - 11	1,110	909	2,110	359	4,488
12 - 15	799	656	4,274	739	6,468
16 - 17	72	64	653	131	920
18 -19	8	16	124	82	230
20 - 24	25	19	218	246	508
25 - 34	17	14	226	216	473
35 or older	24	6	166	151	347
Total	2,343	1,904	8,230	1,976	14,453
Unknown	3,988				

Victim Age	Percent of Age Group				Total
	Immediate Family	Non-Immediate Family	Other Known Person	Stranger	
1 - 5	28.3%	21.6%	45.0%	5.1%	100.0%
6 - 11	24.7%	20.3%	47.0%	8.0%	100.0%
12 - 15	12.4%	10.1%	66.1%	11.4%	100.0%
16 - 17	7.8%	7.0%	71.0%	14.2%	100.0%
18 -19	3.5%	7.0%	53.9%	35.7%	100.0%
20 - 24	4.9%	3.7%	42.9%	48.4%	100.0%
25 - 34	3.6%	3.0%	47.8%	45.7%	100.0%
35 or older	6.9%	1.7%	47.8%	43.5%	100.0%
Total	16.2%	13.2%	56.9%	13.7%	

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.6 reveals that for the 16,045 victims with known injury information, there were a total of 11 deaths (.1%). There was no physical injury to the victim in 61.8% of the cases.

**Table 3.6
Highest Level of Violence**

Level of injury	Number	Percent
Death	11	0.1%
Severe injury	483	3.0%
Moderate injury	2,086	13.0%
Minimal injury	3,552	22.1%
No injury	9,913	61.8%
Total	16,045	100.0%
Unknown	2,396	

Source: Department of Corrections datafile of offenders referred to DCF.

Note: DOC data entry instructions state, "All non-consensual sexual acts are considered violent, however [this] is violence above and beyond the sex act itself."

As seen in Table 3.7, a weapon was used in the commission of less than 10 % of the cases examined.

**Table 3.7
Weapon Used**

	Number	Percent
Weapon used	1,399	8.6%
Weapon not used	14,943	91.4%
Total	16,342	100.0%
Unknown	2,099	

Source: Department of Corrections datafile of offenders referred to DCF.

Finally, Table 3.8 indicates that the activity was not consensual in 86.4% of the cases.

**Table 3.8
Consent**

	Number	Percent
Consensual	2,231	13.6%
Not consensual	14,209	86.4%
Total	16,440	100.0%
Unknown	2,001	

Source: Department of Corrections datafile of offenders referred to DCF.

The question of consent may determine whether an offender is charged with sexual battery or lewd or lascivious battery. Under the sexual battery chapter, the offense of *sexual battery without physical force likely to cause serious injury*, must be without the person’s consent. The offense is a second degree felony. (Consent is not a defense if the victim is under twelve or the defendant is in a position of familial or custodial custody.) If the victim is at least 12 years of age but younger than 16, the offender (of any age) can be charged with lewd or lascivious battery for sexual activity, also a second degree felony, even if the act is consensual.

Several survey respondents mentioned that s. 800.04(4)(a), F.S., which defines lewd or lascivious battery, is problematic. A judge said, “[The] law does not distinguish between serious cases and other boyfriend-girlfriend cases when one is underage and there is consent.” The defendant could be 18, or younger than 18 but prosecuted as an adult, when the victim is 12 through 15 and the activity was consensual. Even if the

offenders receive a mitigated sanction, they still qualify for the state's sex offender registry.

VICTIMS OF DOMESTIC VIOLENCE

The Florida Uniform Crime Report (UCR) data from the Florida Department of Law Enforcement is a comprehensive measure of reported crimes and arrests in Florida. A subsection within the UCR is dedicated to domestic violence and the categories of domestic violence, including forcible sex offenses. This information is of interest because it includes the victim's relationship to the offender. Since this data has been stable and consistent for the past three years, our analysis will only examine the statistics for 2004.

In 2004, out of a total of 12,756 reported forcible sex offenses, 2,699 (21%) were considered domestic violence. Although this seems to contradict the earlier finding that the perpetrator is known to the victim in 80 to 90% of the cases, it should be remembered that 'domestic violence' crimes are much more limited in scope. As defined in s. 741.28, F.S., domestic violence is perpetrated by one family or household member upon another family or household member. To be a family or household member

with the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

For purposes of domestic violence laws, the definition focuses on the geographical residence. Hence family members such as uncles or grandfathers who have not resided in the same single dwelling unit do not qualify as family or household members under this definition, even though common usage could consider them so. The category "known to

the victim” used in Ryce data is a much more expansive group that would include neighbors, friends, church, school, and youth activity workers, etc.

Table 3.9 displays reported domestic violence incidents by offense type to victim’s relationship to offender. The 2,699 reported domestic violence forcible sex offenses are broken out into three subcategories: forcible rape (1,146 in 2004), forcible sodomy (407), and forcible fondling (1,146). Children are the most frequent victims, identified in 815 reported incidents, or 30.2% of the total. The second largest victim category is “other family members,” with 773 reported incidents. There are specific categories to show the victim is a spouse, parent, or sibling, so the “other family member” refers to someone other than a spouse, parent, or sibling. Siblings are the third most frequent victim, with 314 reported incidents.

Table 3.9
2004 Domestic Violence -- Forcible Sex Offenses by Victim's Relationship to Offender

Offense	Relationship of Victim to Offender							
	Total	Spouse	Parent	Child	Sibling	Other family	Cohabitant	Other
All Forcible Sex Offenses	2,699	194	93	815	314	773	229	281
Forcible Rape	1,146	162	45	280	104	243	153	159
Forcible Sodomy	407	15	10	119	88	127	20	28
Forcible Fondling	1,146	17	38	416	122	403	56	94
All Forcible Sex Offenses	100.0%	7.2%	3.4%	30.2%	11.6%	28.6%	8.5%	10.4%
Forcible Rape	100.0%	14.1%	3.9%	24.4%	9.1%	21.2%	13.4%	13.9%
Forcible Sodomy	100.0%	3.7%	2.5%	29.2%	21.6%	31.2%	4.9%	6.9%
Forcible Fondling	100.0%	1.5%	3.3%	36.3%	10.6%	35.2%	4.9%	8.2%

Source: Florida Department of Law Enforcement, "Crime in Florida, January -December 2004."

As shown in Table 3.10, there were only 912 arrests for the 2,699 reported forcible sex offenses, an average of 1 arrest for every 3 incidents. An incident may not lead to an arrest for a number of reasons. In addition, a single offender may be

responsible for multiple incidents. Some incidents never result in an arrest because probable cause is lacking, or the victims, after initially reporting an incident, may change their minds and decline further cooperation with the law enforcement agency. Finally, the offenders may have fled and escaped apprehension.

Table 3.10

2004 Domestic Violence -- Reported Forcible Sex Offenses and Arrests

Offense	Total reported incidents	Arrests	Arrests per Incident
All Forcible Sex Offenses	2,699	912	0.3
Forcible Rape	1,146	432	0.4
Forcible Sodomy	407	145	0.4
Forcible Fondling	1,146	335	0.3

Source: Florida Department of Law Enforcement, "Crime in Florida, January - December 2004."

To put the domestic violence arrest rate into perspective, in 2004 there were a total of 850,490 reported index offenses in Florida, and a total of 175,555 arrests for index offenses, an average of one arrest per five incidents. The arrest rate is higher for domestic violence sexual offenses at least in part because the perpetrators were actually known by the victims.

CHAPTER 4—CRIMINAL CODE SENTENCING

This chapter compares the sentencing of sex offenders to the sentencing of other offenses. The Criminal Code database, which was used to obtain demographic information on offenders, was also used in this analysis. As noted earlier, this is a rich source of data on sentencing in Florida because it includes information on state prison, state supervision, and county jail sanctions, as well as other sanctions such as fines. In addition, the sentencing detail available on the Criminal Code scoresheet provides information on sanction and sentence length mitigation.

Table 4.1 displays the **incarceration rate** (the percentage of guilty dispositions receiving a prison sentence sanction) by the nine major offense categories for calendar years 2002, 2003, and 2004. The offense category with the highest incarceration rate is, as expected, the murder/manslaughter category, with rates over 80 percent. In general, the incarceration rate for all offenses has increased slightly during this three-year period, from 20.2% in 2002 to 21.6% in 2004. But the sex offense/lewd behavior category has shown a sharp increase, rising from 49.4% in 2002 to 59.2% in 2004. While in 2002 the robbery category had the second highest rate at 57.6%, by 2004 the sexual offense group had moved into the second position. The majority of the increase in the sex offense incarceration rate took place in 2003, when it jumped to 57.2%.

Table 4.1
Percent Sentenced to Prison by Offense Group
(Guilty Dispositions)

Offense group ¹	2002	2003	2004	Change 2002-2004
Murder/Manslaughter	83.2%	86.8%	86.5%	3.3%
Sexual/Lewd Behavior	49.4%	57.2%	59.2%	9.7%
Robbery	57.6%	57.1%	56.9%	-0.8%
Violent, Other	23.5%	26.0%	26.4%	2.9%
Burglary	30.7%	33.2%	33.4%	2.7%
Property Theft/Fraud/Damage	13.3%	14.6%	15.4%	2.1%
Drugs	16.3%	17.9%	17.5%	1.2%
Weapons	29.1%	29.8%	30.6%	1.4%
Other	14.6%	14.4%	15.4%	0.8%
Total	20.2%	21.6%	21.6%	1.5%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Although such a dramatic increase in one year raises the question of whether there was a specific law change or high profile incident that may have triggered the increase, that does not appear to be the case. The changes in Chapter 800 relating to lewd or lascivious conduct which revised offense definitions and upgraded the seriousness ranking of various offenses in this chapter occurred in 1999 and were in place for the third year by 2002. The system of emergency alerts to the public in cases of child abduction known as “Amber Alerts” was implemented in Florida in 2000. The first case receiving high profile media attention, the abduction and slaying of eleven-year old Carlie Brucia, took place in February of 2004, after the rate jump that occurred in 2003. Whatever the cause or causes may be, the increase is significant.

Table 4.2 displays the incarceration rate for specific sex offenses. The offense with the highest incarceration rate has remained *sexual battery, threat with deadly weapon* at 95.9% in 2004. This rate has varied only slightly over the three year period. The second highest incarceration rate is for *sexual battery by adult, victim under 12*.

Although the rate was 90.6% in 2002, it decreased to 85.7% in 2004. It should be noted that capital offenses are not sentenced under the Criminal Code. This means that the *sexual battery by adult, victim under 12* numbers shown here are for attempted *sexual battery by adult, victim under 12* which is a first degree felony.

Table 4.2
Percent Sentenced to Prison by Sexual Offense
(Guilty Dispositions)

Offense	2002	2003	2004	Change 2002-2004
Sexual battery by adult, victim under 12 ¹	90.6%	88.0%	85.7%	-4.9%
Sexual battery, threat with deadly weapon	94.4%	93.9%	95.9%	1.5%
Sexual battery without physical force likely to cause serious injury	54.3%	66.2%	60.6%	6.4%
Adult 24 or older --sex with 16-17 year old	40.6%	37.5%	45.9%	5.2%
Lewd or lascivious battery, victim 12-15	42.0%	51.7%	57.8%	15.8%
Lewd or lascivious molestation, victim under 12/offender 18 or older	56.4%	71.9%	73.4%	17.0%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	38.8%	50.0%	56.1%	17.3%
Lewd or lascivious conduct, victim under 16/offender 18 or older	35.6%	36.3%	42.9%	7.3%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	46.5%	38.6%	42.1%	-4.4%
All other sex offenses	48.1%	62.2%	59.5%	11.4%
Total	49.4%	57.2%	59.2%	9.7%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

The offenses with the largest increases in the incarceration rate over the three years are three of the lewd or lascivious offenses. The rate for *lewd or lascivious molestation, victim 12-15/offender 18 or older* rose by 17.3 percentage points, from 38.8% in 2002 up to 56.1% in 2004. The incarceration rate for the corresponding offense when the victim was under 12 increased by almost the same amount from 56.4% in 2002

to 73.4% in 2004. *Lewd or lascivious battery, victim 12-15* increased by 15.8 percentage points from 42% in 2002 to 57.8% in 2004.

Even without law changes or other high profile events, the number and rate of sex offenders receiving a prison term has increased significantly from 2002 to 2004, led by the largest increases in the lewd or lascivious offense types. Note that the lewd or lascivious offenses were rewritten in 1999, with some offenses moving up to a higher offense severity ranking in 1999. For purposes of this analysis, the relatively few lewd or lascivious offenses committed prior to the 1999 changes but sentenced during the 2002 through 2004 period were placed into the other sexual offenses category. As a result, the increase in the incarceration rate for lewd or lascivious offenses is attributable not to the law changes but instead to the sentencing behavior, since all the offenders in the category were sentenced under the same revised laws. The only distinction between them is time.

Table 4.3 displays the **average sentence length** for offenders sentenced to prison in 2002, 2003 and 2004. Under Florida's Criminal Code, the only upper limit to a sentence is the statutory maximum allowed for the felony degree of the offense. (Thirty years for a first degree felony, fifteen for a second degree felony, and five years for a third degree felony.) Hence the sentence imposed should represent the court's assessment, whether arrived at through a plea bargain or imposed by the judge after a trial, of the appropriate sanction based on the seriousness of the offense. If the average sentence length is an accurate indicator of an offense's seriousness, then sexual offenses are the second most serious category. In 2004, the average sentence length for a sexual offense was 7.8 years, 5.6 years less than murder, the most serious category with an average sentence length of 13.4 years. The third most serious category, robbery, had an

average sentence length of 6.9 years, or nine-tenths of a year less than sexual offenses. The next category, burglary, averaged 4.3 years and the remaining categories decline to the lowest, theft and fraud, at 2.3 years.

Table 4.3
Average Sentence Length (in years) for Offenders Sentenced to Prison under the Criminal Code

Offense group ¹	2002	2003	2004
Murder/Manslaughter	12.7	13.3	13.4
Sexual/Lewd Behavior	8.3	8.5	7.8
Robbery	7.1	6.9	6.9
Violent, Other	4.1	4.0	3.9
Burglary	4.4	4.3	4.3
Property Theft/Fraud/Damage	2.5	2.4	2.3
Drugs	3.2	3.0	2.9
Weapons	4.1	3.8	3.8
Other	2.7	2.5	2.4
Total	4.1	4.0	3.9

Source: Criminal Code database, updated 7/1/2005.

Note: Sentences of 50 years or more were recoded to 50 years.

¹Criminal code scoresheets are only prepared for non-capital offenses.

These serious rankings seem intuitively correct. The loss of human life as a result of criminal acts is unique in its finality. It also seems intuitively correct that sex offenses would be the next most serious offense. These crimes are a traumatic violation of privacy, may involve violence and injury, and often result in long-lasting or even life-time damage to the victims, either physical or psychological or both.

Table 4.3 shows that the average for all offenses has declined slightly from 4.1 years in 2002 to 3.9 years in 2004. The average sentence length for sex offenses has been more erratic, actually increasing from 8.3 years in 2002 to 8.5 years in 2003, then declining to 7.8 years in 2004.

As noted above, the incarceration rate has increased over the last three years but this has been accompanied by a decline in the average sentence length. Logic suggests that as offenders, who previously would have received a non-prison sanction, are sentenced to prison, they will receive shorter sentences than those already receiving a prison sanction: hence the decline in the average sentence length. This general observation would be applicable to sex offenders as well.

Table 4.4 displays the average sentence length for specific sex offenses. The longest average sentence length in 2004 was 14.7 years for the offense of *sexual battery by adult, victim under 12* and the shortest average sentence length in 2004 was 3.7 years for *lewd or lascivious exhibitionism, victim under 16/offender 18 or older*. Although there has been some variation over the three years, in most cases the average sentence length in 2004 was shorter than in 2002. The offense with the largest increase in the incarceration rate, *lewd or lascivious molestation, victim 12–15/offender 18 or older*, also had the largest decrease in the average sentence length. The incarceration rate increased from 38.8% to 56.1% from 2002 to 2004, while the average sentence length decreased from 7.3 years to 4.3 years.

Table 4.4

Average Sentence Length (in years) for Offenders Sentenced to Prison for Sex Offenses under the Criminal Code

Offense	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	12.1	14.1	14.7
Sexual battery, threat with deadly weapon	14.9	12.4	13.4
Sexual battery without physical force likely to cause serious injury	9.3	8.3	9.9
Adult 24 or older --sex with 16-17 year old	5.1	6.4	4.6
Lewd or lascivious battery, victim 12-15	7.6	7.1	6.7
Lewd or lascivious molestation, victim under 12/offender 18 or older	10.2	10.7	8.8
Lewd or lascivious molestation, victim 12-15/offender 18 or older	7.3	5.3	4.3
Lewd or lascivious conduct, victim under 16/offender 18 or older	4.7	4.1	4.3
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	4.0	5.3	3.7
All other sex offenses	7.6	9.1	8.4
Total	8.3	8.5	7.8

Source: Criminal Code database, updated 7/1/2005.

Note: Sentences of 50 years or more were recoded to 50 years.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony,

So the phenomenon seen in all offense categories can be observed with sex offenses as well: as incarceration rates increase, the sentences of the offenders who formerly received non-prison sanctions lower the average prison sentence length. The same pattern holds for the two offense categories with the next largest incarceration rate increases, *lewd or lascivious molestation, victim under 12/ offender 18 or older* and *lewd or lascivious battery, victim 12–15*. The average sentence length of the lewd or lascivious molestation offense decreased from 10.2 years in 2002 to 8.8 years in 2004, and for lewd or lascivious battery from 7.6 years in 2002 to 6.7 years in 2004.

Table 4.5 shows the percentage of offenders receiving a **mitigated sanction** by major offense category. The presumed minimum sentence for an offender with more than 44 points under the Criminal Code is a prison sentence; hence a non-prison sanction constitutes a mitigated sanction. The sex offense category has the highest mitigation rate in each of the three years studied. The overall mitigation rate for all offenses was stable throughout the three year period, at 11.6% in 2002, 11.6% in 2003, and 11.2% in 2004. The rate for sex offenders declined from 40.3% in 2002 to 33.1% in 2004. Although the rate fell over the three year period, it was by far the highest of any category in 2004. The second highest rate was 23.4% in the ‘other violent crimes’ category.

Table 4.5
Percent Receiving a Mitigated Sanction

Offense group ¹	2002	2003	2004	Change 2002-2004
Murder/Manslaughter	16.7%	13.2%	13.5%	-3.2%
Sexual/Lewd Behavior	40.3%	34.2%	33.1%	-7.2%
Robbery	16.4%	19.3%	18.6%	2.2%
Violent, Other	24.1%	22.9%	23.4%	-0.7%
Burglary	20.5%	21.4%	21.2%	0.6%
Property Theft/Fraud/Damage	4.4%	5.0%	4.8%	0.4%
Drugs	8.8%	8.9%	8.7%	-0.1%
Weapons	10.1%	12.3%	11.4%	1.3%
Other	7.0%	6.8%	6.3%	-0.6%
Total	11.6%	11.6%	11.2%	-0.4%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table 4.6 breaks the sex offense category out into specific offenses. The sanction mitigation rates exhibit considerable variation, ranging from a high of 58% for *lewd or lascivious battery, victim 12–15* in 2002 to a low of 4.1% for *sexual battery, threat with deadly weapon* in 2004. Three of the lewd or lascivious offenses have mitigation rates

Table 4.6

Percent of Sex Offenders Receiving a Mitigated Sanction

Offense	2002	2003	2004	Change 2002-2004
Sexual battery by adult, victim under 12 ¹	9.4%	12.0%	14.3%	4.9%
Sexual battery, threat with deadly weapon	5.6%	6.1%	4.1%	-1.5%
Sexual battery without physical force likely to cause serious injury	44.2%	33.1%	38.7%	-5.5%
Adult 24 or older --sex with 16-17 year old	43.8%	49.0%	41.3%	-2.5%
Lewd or lascivious battery, victim 12-15	58.0%	48.3%	41.3%	-16.7%
Lewd or lascivious molestation, victim under 12/offender 18 or older	42.9%	28.1%	26.6%	-16.3%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	54.4%	44.4%	40.6%	-13.8%
Lewd or lascivious conduct, victim under 16/offender 18 or older	22.7%	22.6%	20.1%	-2.6%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	10.1%	8.7%	16.8%	6.7%
All other sex offenses	41.7%	32.4%	35.2%	-6.4%
Total	40.3%	34.2%	33.1%	-7.2%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony,

which have declined significantly over the three-year period, yet remain at relatively high levels compared to other offenses. For example, the sanction mitigation rate for *lewd or lascivious battery, victim 12-15* declined from 58% in 2002 to 41.3% in 2004. This is a high frequency offense with 431 score sheets for 2004. Similarly, the rate for *lewd or lascivious molestation, victim 12-15/offender 18 or older* fell from 54.4% in 2002 to 40.6% in 2004. *Lewd or lascivious molestation, victim under 12/offender 18 or older* mitigation rates fell from 42.9% in 2002 to 26.6% in 2004. Two sexual battery offenses have experienced smaller declines, but still exhibit high mitigation rates. Mitigation rates for *adult 24 or older--sex with 16-17 year old* was 43.8% in 2002 and 41.3% in 2004.

Offenders convicted of *sexual battery without physical force likely to cause serious injury* received a mitigated sanction 44.2% of the time in 2002 and 38.7% of the time in 2004.

A second type of mitigation is the **mitigated sentence length**. Under the Criminal Code, if the total sentence points are greater than 44, then the lowest permissible prison sentence (in months) is calculated by deducting 28 from the total sentence points, then multiplying by 75%. If the defendant is sentenced to prison, but the sentence length is less than the lowest permissible sentence, the result is characterized as a mitigated sentence length.

Table 4.7 displays the percentage of mitigated sentence lengths by major offense category. The category with the highest mitigation rate for all three years is the sex offense group. Moreover, this category had the highest increase in the use of mitigation (3.5%) with the exception of 'Other'. In 2004 nearly half (48.2%) of all prison sentences for sex offenses were shorter than the Criminal Code's lowest permissible sentence length. This rate is much higher than the mitigation rate for all offenses in 2004, which was 28.4%. The category with the second highest mitigation rate is murder/manslaughter, with rates just under those of the sex offense group.

Table 4.7

Percent Receiving a Mitigated Sentence Length

Offense group ¹	2002	2003	2004	Change 2002-2004
Murder/Manslaughter	43.9%	43.2%	45.4%	1.5%
Sexual/Lewd Behavior	44.7%	45.6%	48.2%	3.5%
Robbery	29.8%	27.9%	26.5%	-3.2%
Violent, Other	28.1%	28.9%	27.6%	-0.5%
Burglary	31.3%	30.4%	30.1%	-1.2%
Property Theft/Fraud/Damage	21.8%	21.7%	23.2%	1.4%
Drugs	24.2%	25.4%	26.5%	2.2%
Weapons	18.8%	20.7%	17.2%	-1.6%
Other	21.5%	23.7%	25.9%	4.4%
Total	27.7%	28.2%	28.4%	0.7%

Source: Criminal Code database, updated 7/1/2005.

Note: Includes offenders sentenced to prison (excluding life sentences) with points greater than 44.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table 4.8 shows the sentence length mitigation rates for specific sex offenses. By far, the highest sentence length mitigation rate is for the offense of *lewd or lascivious battery, victim 12-15* which peaked at 60.4% in 2003 and remained nearly that high in 2004. Other offenses with very high rates include *lewd or lascivious molestation, victim 12-15/offender 18 or older* at 54.5% in 2004 and *sexual battery without physical force likely to cause serious injury* at 51.6% in 2004. Of interest, these offenses also had increasing uses of mitigation over the three-year period (2002 compared to 2004).

Table 4.8
Percent of Sex Offenders Receiving a Mitigated Sentence Length

Offense	2002	2003	2004	Change 2002-2004
Sexual battery by adult, victim under 12 ¹	39.0%	38.4%	32.1%	-6.9%
Sexual battery, threat with deadly weapon	30.0%	43.3%	36.4%	6.4%
Sexual battery without physical force likely to cause serious injury	44.3%	46.5%	51.6%	7.4%
Adult 24 or older --sex with 16-17 year old	48.6%	45.7%	44.9%	-3.8%
Lewd or lascivious battery, victim 12-15	59.0%	60.4%	59.4%	0.4%
Lewd or lascivious molestation, victim under 12/offender 18 or older	33.7%	37.3%	41.8%	8.1%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	42.5%	35.2%	54.5%	12.0%
Lewd or lascivious conduct, victim under 16/offender 18 or older	27.9%	24.4%	15.8%	-12.1%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	13.8%	13.5%	14.3%	0.5%
All other sex offenses	48.8%	48.1%	52.9%	4.1%
Total	44.7%	45.6%	48.2%	3.5%

Source: Criminal Code database, updated 7/1/2005.

Note: Includes offenders sentenced to prison (excluding life sentences) with points greater than 44.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

Section 921.0026, F.S., has a list of twelve mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified. Legitimate mitigation reasons are not limited to those on the list. EDR examined a variable provided on the Criminal Code scoresheet which indicates the reasons for mitigation. By far the most frequent explanation was a legitimate, uncoerced plea bargain. For sex offenders, 87.1% of the downward departures were pleas. This is comparable to the 87.8% rate for all offenses. The next two most common reasons for sex offenders' mitigated sentences were the defendant being sentenced as a youthful offender, and the "other" category:

each accounting for 4.7%. Together the three reasons account for 97% of the mitigations of sex offense sentences.

Which leads to the next question: why so many downward departure plea bargains? One possibility may be that the prosecution suspects for various reasons that it may be difficult to obtain a conviction at trial. However, by accepting a sanction mitigation—e.g. community supervision instead of prison, the defendant is willing to plead guilty to the sex offense charge. Should the defendant reoffend with another sex offense, the previous sex offense conviction will contribute prior record points and may make it easier for the prosecution to obtain another conviction with a more substantial sanction.

Another possible reason for the high mitigation rates observed for sex offenses is that the minimal presumptive sanction is more severe than what seems to be an appropriate sanction to the prosecution and judge. The following discussion on victim injury points explores this possibility in more detail. The history of sex offense sentencing since guidelines were established shows that sex offenses have been frequently amended to impose stricter sentencing. But the sentencing guidelines were originally designed to reflect the actual sentencing practices of judges at the time, so each change is designed to alter existing sentencing practices.

Society does change its attitude toward certain offenses over time. Clear movements towards stricter enforcement and punishment of drunken driving and domestic violence offenses have transpired. Public advocacy groups and education have shifted the public consensus on these issues. Sex offenses seem to be experiencing a similar movement, but it is not clear why the trajectory has been so steep. The function

of legislative bodies is to make and change laws. The judiciary enforces these laws. But many times changes to the law become more muted when they are put into practice, as when, for example a new minimum mandatory sentence is imposed for an offense where the average sentence has been less than the new minimum. Prosecutors may find working with strict minimum mandatory or presumptive minimum sentences advantageous in the plea bargaining process. With the starting point a strict sanction, the offer of a lesser sanction becomes more attractive to the defendant. On the other hand, the prosecutors and judges have other reasons for wanting to do this. After years of practice, prosecutors and judges, with their legal discretion, develop individual preferences for the appropriate sanctions for specific offenses. If a new minimum mandatory sanction seems excessive, they may offer a plea bargain with a sanction mitigation, or even offer to accept a plea to a lesser offense that does not have the minimum mandatory sentence. This adjustment to law changes has been observed repeatedly

One way to understand the reasons for high mitigation rates is to directly ask prosecuting attorneys and judges why they think these rates are so high. Question 2 of the survey was:

Certain sex offenses have high mitigation rates (sanction mitigation rates around 40%, sentence length mitigation rates between 40% and 60%). The offenses are

- (a) Sexual battery—s. 794.011(5)*
- (b) Adult 24 or older having sex with 16 or 17 year old—s. 794.05(1)*
- (c) Lewd or lascivious battery, victim 12-15—s. 800.04(4)(a)*
- (d) Lewd or lascivious molestation, victim under 12, offender 18 or older—s.800.04(5)(b)*
- (e) Lewd or lascivious molestation, victim 12-15, offender 18 or older—s.800.04(5)(a)2.*

What do you think contributes to each or all of these offenses having such high mitigation rates?

Responses included the following--

- Need for negotiated mitigation to resolve a factually weak case, rather than risk a Not Guilty verdict at trial.
- Sex offenses are hard to try and hard to prove. Sex crimes most often take place without objective witnesses. Much of the evidence is subject to attack, victims are reluctant or unable to testify. Family relationship between victim & defendant result in pressure on the victim to drop charges, etc.
- ...a plea may be offered or a lesser sentence due to the potential trauma a trial causes a victim. (Some defense attorneys are merciless and a trial can be more damaging than the original act.)

VICTIM INJURY POINTS

Under the Criminal Code (and Sentencing Guidelines before that) a defendant's lowest permissible sentence (recommended sentence) is calculated by adding up points which are assigned based on the offense(s) committed, the defendant's prior record, and a variety of factors relating to the circumstances of the offense including victim injury points. From the advent of sentencing guidelines in 1983 until the major revision in 1994, the conversion from a score to a sentence required a conversion table. A separate table existed for each of the nine offense categories. For instance, for a sexual offense, a score of 186 to 207 corresponded to a recommended sentence of two and a half to three and a half years. As originally written, a single count of a first degree sexual offense was worth 180 points. Twenty victim injury points were added for "contact but no penetration" and 40 for "penetration or slight injury." As an example, consider the offense *sexual battery, threat with deadly weapon*, a first degree felony. Under the

original guidelines, the offender would have scored 180 points for the primary offense, plus 40 points for penetration for a total of 220 points, scoring in the three and a half to four and a half year prison term range. Without the victim injury points the recommended sentence would have been one to one and a half years or community control. Note that in this example the 40 victim injury points accounted for 18% of the 220 total points.

Although the Guidelines had been constructed to reflect actual sentences imposed, in less than a year the Florida Supreme Court adopted changes to the Rules of Criminal Procedure to increase the points associated with the primary offense for sexual crimes. In our example, the points for a first degree felony were increased from 180 to 216. Adding the 40 points for penetration yields a total score of 256, associated with a recommended sentence range from five and a half to seven years. The points associated with the sexual penetration now account for 16% of the total score, i.e. 40 out of 256 total points.

The Guidelines underwent a major revision with the passage of the “Safe Streets Initiative of 1994.” The tables constituting the Guidelines were placed in the Florida Statutes themselves, rather than in the Rules of Criminal Procedure, making them accessible for future revisions by the Legislature. The nine offense categories were replaced by an offense severity ranking consisting of ten levels of seriousness. Levels range from One for the less serious offenses up to Ten for the most serious crimes. A key characteristic of the revised guidelines was that each point of the score generally corresponds to a month of prison sentence, with no conversion table required to translate the score into a recommended prison term. The total score is calculated and 28 points are subtracted to account for non-prison sentences and the fact that a prison sentence must be

at least twelve months long. The remaining point score corresponds directly to months in prison. Returning to the example of a *sexual battery, threat with deadly weapon* the offense is ranked in level Nine of the offense severity ranking. A primary offense ranked at level Nine is worth 91 points plus 40 points for sexual penetration. From the total of 131 points, subtract 28 for a resultant sentence of 103 months, or 8.6 years. The victim injury points are now 31% of the total score.

By 1994, the recommended sentence for this particular sexual battery offense had increased from four years up to 8.6 years, with the contribution of the victim injury points increasing from 18% to 31%. The next major revision came in the “Crime Control Act of 1995.” Along with many other significant revisions, the points for sexual penetration were doubled from 40 to 80 and the points for sexual contact were increased from 18 to 40. Returning again to the example of the sexual battery offense, a level Nine offense was worth one more point, 92, plus 80 points for sexual penetration, for a total of 172 points and a recommended 12 year prison term. The victim injury points now constitute 47% of the total score. The last major revision, the creation of the Florida Criminal Punishment Code in 1997, did not alter these points, but did provide for the imposition of statutory maximum sentences by degree. A first degree felon could now receive up to 30 years in prison. This sentence is not considered an aggravated sentence and cannot be appealed simply because of its length. Exhibit 4-1 summarizes changes in the recommended sentence for this specific sexual battery offense.

Exhibit 4-1

Contribution of Victim Injury Points to Recommended Sentence for Offense of Sexual Battery (victim 12 or older, with threat of physical force likely to cause serious injury)

	Original Sentencing Guidelines	Florida Supreme Court 1984 Revision	"Safe Streets Initiative of 1994" Revision	"Crime Control Act of 1995" Revision
Primary offense points	180	216	91	92
Recommended sentence for primary offense with no victim injury	1 - 1.5 years ¹	3.5 - 4.5 years	5.3 years	5.3 years
Victim injury points for penetration	40	40	40	80
Total points	220	256	131	172
Recommended sentence for primary offense with victim injury points	3.5 - 4.5 years	5.5 to 7 years	8.6 years	12.0 years
Victim injury points as percent of total points	18.2%	15.6%	30.5%	46.5%
Increase in recommended sentence due to victim injury points	2.5 - 3.0 years	2.0 - 2.5 years	3.3 years	6.7 years

¹ Community Control was also permitted with this score.

The Criminal Code database was also used to examine the role that victim injury points play in the sentencing of offenders. Table 4.9 shows the percentage of offenders receiving victim injury points by major offense category. The category with the highest percentage of offenders receiving victim injury points is the murder/manslaughter group, with 84.1% receiving points in 2004. Those offenders not receiving points were presumably attempts where no injury occurred. The offense group with the second highest percentage is the sexual offense group, with 67.6% receiving victim injury points in 2004. Some of the offenses in the sexual group, such as lewd exhibitionism, will not normally have victim injury points. The next highest category is other violent offenses-- with 24.3% receiving victim injury points in 2004-- followed by robbery with 11.2%.

Table 4.9
Percent of Offenders Receiving Victim Injury Points

Offense group ¹	2002	2003	2004
Murder/Manslaughter	84.3%	83.5%	84.1%
Sexual/Lewd Behavior	68.9%	69.3%	67.6%
Robbery	11.6%	11.3%	11.2%
Violent, Other	26.9%	26.9%	24.3%
Burglary	2.8%	2.8%	2.7%
Property Theft/Fraud/Damage	0.3%	0.3%	0.2%
Drugs	0.2%	0.3%	0.2%
Weapons	1.6%	1.7%	1.9%
Other	0.7%	0.9%	0.9%
Total	6.2%	6.1%	5.4%

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table 4.10 addresses the question of the importance of victim injury points in determining an offender's score under the Criminal Code by showing information on the average percentage of victim injury points to the total score, by the major offense categories. In 2004, victim injury points were 53.2% of the total score in the murder/manslaughter category, followed by 44.5% in the sexual offense category. Recall the first degree sexual battery offense example, where victim injury points were 47% of the total score. For all offenders with victim injury points, the points constituted, on average, 27.1% of the score in 2004.

Table 4.10
Victim Injury Points as Percent of Total Points-- Offenders
with Victim Injury Points

Offense group ¹	2002	2003	2004
Murder/Manslaughter	53.6%	54.0%	53.2%
Sexual/Lewd Behavior	46.2%	44.9%	44.5%
Robbery	12.9%	12.8%	14.7%
Violent, Other	17.6%	18.3%	18.9%
Burglary	12.9%	12.6%	14.9%
Property Theft/Fraud/Damage	21.5%	27.7%	22.0%
Drugs	21.3%	28.7%	25.5%
Weapons	12.0%	15.6%	24.1%
Other	27.0%	37.1%	38.4%
Total	25.5%	26.6%	27.1%

¹Criminal code scoresheets are only prepared for non-capital offenses.

One purpose of the Safe Streets Initiative of 1994 was to place the guidelines point structure within the statutes to make them accessible to lawmakers for future revisions. Not surprisingly the Legislature has enhanced points for sex offenders in response to various concerned parties. But the high sanction and sentence length mitigation rates for sex offenders could be a result of this effort being too successful. As mentioned earlier, if presumptive minimum sanctions seem too severe to the prosecuting and judicial practitioners, frequent downward departures may be the result. Inherent in the substantial sentences originally designed for murder and for sexual offenses was the fact that a victim was murdered or subjected to sexual battery. With the enhancement of victim injury points, the proportionality of these offenses to all other offenses may have been distorted. The chief judge for criminal cases in one circuit suggested, “The severity

of the sentence compared to how these offenses were treated 20 years ago” as a reason for high mitigation rates.

The next two tables show the percentage of sex offenders receiving victim injury points for sexual contact by specific sexual offense (Table 4.11) and victim injury points for sexual penetration by specific sexual offense (Table 4.12). This gives some idea of the actual nature of the sexual activity associated with each of these specific offenses beyond that implied in the definition of the offense itself. For example, for the offense of *sexual battery by adult, victim under 12*, there were points for sexual contact in 68.3% of the convictions, and points for sexual penetration in 34.9% of the 2004 convictions. Again, note that most of these cases are “attempts.” For the offense of *lewd or lascivious battery, victim 12-15*, there were points for sexual contact in 16.0% of the convictions and for sexual penetration in 69.8% of the convictions..

Table 4.11
Percent of Sex Offenders Receiving Victim Injury Points for Sexual Contact

Offense ¹	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	56.5%	59.0%	68.3%
Sexual battery, threat with deadly weapon	18.5%	18.4%	18.4%
Sexual battery without physical force likely to cause serious injury	20.2%	16.9%	16.1%
Adult 24 or older --sex with 16-17 year old	12.5%	10.6%	8.3%
Lewd or lascivious battery, victim 12-15	17.5%	16.9%	16.0%
Lewd or lascivious molestation, victim under 12/offender 18 or older	73.7%	78.7%	71.9%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	53.4%	46.1%	43.3%
Lewd or lascivious conduct, victim under 16/offender 18 or older	28.8%	25.3%	28.6%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	0.0%	1.6%	0.0%
All other sex offenses	25.1%	34.9%	31.9%
Total	28.4%	30.7%	30.0%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

Table 4.12
Percent of Sex Offenders Receiving Victim Injury Points for Sexual Penetration

Offense ¹	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	36.5%	33.0%	34.9%
Sexual battery, threat with deadly weapon	83.3%	77.6%	71.4%
Sexual battery without physical force likely to cause serious injury	55.0%	51.3%	57.4%
Adult 24 or older --sex with 16-17 year old	66.3%	66.3%	58.7%
Lewd or lascivious battery, victim 12-15	74.7%	70.2%	69.8%
Lewd or lascivious molestation, victim under 12/offender 18 or older	5.1%	5.1%	9.4%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	17.5%	15.0%	20.0%
Lewd or lascivious conduct, victim under 16/offender 18 or older	5.3%	4.8%	1.9%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	0.0%	0.0%	0.0%
All other sex offenses	43.9%	41.8%	43.3%
Total	42.7%	40.6%	40.4%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

SEX OFFENDERS AND MURDER

In February 2004 Floridians were horrified at the kidnapping and murder of 11-year old Carlie Brucia. A security video surveillance tape of the child being led away by her abductor presented a vivid picture and created massive media attention. The defendant in the case, Joseph P. Smith, was on drug offender probation for possession of cocaine at the time of the crime, had a history of alleged violence, and seemed to be personally in a deteriorating spiral. Some suggested that the criminal justice system had failed by allowing the defendant to be at large in the community. Since March 2003 the Department of Corrections has implemented a "zero tolerance" policy for technical violators of probation. Joseph Smith had failed to pay \$170 of \$411 in court costs which

generated a probation violation report in December 2003. However, since Smith was unemployed, he apparently could not be violated for nonpayment, and additional information which might have raised a red flag was not included in the violation report or other information available to the judge.

Crimes that result in the death of the victim are obviously uniquely serious in their finality: a death can never be undone or mitigated. Furthermore, the horrific nature of the child's murder has evoked both proposed and implemented changes in the law aimed at preventing recurrences. With this in mind, several high profile cases occurring after Brucia will be explored, as well as all admissions to prison in the past three years where both a sex offense and a murder were committed. In particular, the cases will be examined for evidence of systemic failures that might have prevented these crimes, or for a particular profile which might alert officials to the potential for further criminal behavior.

The kidnapping, sexual assault, and murder of nine-year-old Jessica Lunsford in February 2005 resulted in similar responses from the public and the media. The defendant in the case, John Couey, 46, was a registered sex offender with an extensive criminal history. At the time of the offense, Couey was on county probation for a misdemeanor drug offense, but his probation officer was unaware that the man was a registered sex offender. Whether this information would have made any difference is unknown, but the Legislature has subsequently addressed this shortcoming in the "Jessica Lunsford Act" by requiring public or private entities providing misdemeanor probation services to check the sexual offender and sexual predator registration lists for each of their cases. Couey had also moved and failed to notify law enforcement of his change of

address. In response, the “Jessica Lunsford Act” increased registration requirements and the penalties for their violation.

Since a key legal principle provides that laws cannot retroactively criminalize acts committed prior to the effective date of the law, such laws are generally prospective in nature. One such law that might have prevented Couey’s alleged crimes is the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.” Passed in 1998, the law provides screening and evaluation for inmates convicted of a sexually violent offense who are about to be released from prison. Couey had been convicted of an attempted lewd or lascivious act on a child under 16 but was released prior to the passage of the Jimmy Ryce Act. Although only a small number of inmates are civilly committed (just over 200 since 1998) Couey himself had made statements over the years regarding his need for treatment that might have resulted in his civil commitment.

A third case involved the murder and attempted sexual battery of thirteen-year-old Sarah Lunde in April of 2005. The defendant in the case, David Onstott, was released from prison in 2001 after having served five and a half years for sexual battery. Onstott had previously dated the girl’s mother and it is alleged he went to the house looking for her, when he found Sarah there alone. Just one month before, Onstott had been arrested for failing to register as a sex offender. The “Jessica Lunsford Act” upgraded the offense of failing to register as a sex offender from a level Six offense where the lowest permissible sentence is any non-state prison sanction, to a level Seven offense where it is a state prison sentence.

All inmate admissions to Florida prisons in 2002, 2003, and 2004 were screened to select those cases in which there was both a murder and a sexual offense. There were a total of 20 admissions meeting the criteria: 4 in 2002, 11 in 2003, and 5 in 2004. Then, the Department of Corrections inmate database was examined to determine prior commitments to the Department, either to prison or to state supervision (probation or community control). This data source does not have information about prior misdemeanor convictions, or convictions for felonies in other states. Of the twenty, ten offenders had no prior commitment to the DOC, either as an inmate or for community supervision.

Eight admissions had a prior commitment to the Department, but no prior sex offense. Of the prior commitments, each had only one: four had a prior prison commitment, and four had a prior commitment to community supervision.

Of the two remaining offenders, one had no prior commitments to the Department, but after the arrest for the murder and sexual battery, was convicted of another sexual battery that occurred in a separate event after the original murder/sexual battery. The final offender is the only offender to have had a prior conviction for a sexual offense at the time of the murder coupled with a sexual offense. To summarize these findings: In 2002, 2003 and 2004 there were 20 defendants sentenced to prison for a murder and a sexual offense. Eleven had no prior commitments to the DOC. Eight had one prior commitment (four supervision, four prison) but none of the prior commitments were for a sexual offense. One offender out of the 20 had a prior commitment for a sexual offense.

Given all of this information, evidence of systemic failures or unique profiles is not readily apparent. This suggests that additional legal and policy changes would have to be written broadly. In fact, so broadly that financial and civil rights issues become significant factors.

CHAPTER 5—SUMMARY REPORTING SYSTEM DATA

The Summary Reporting System (SRS) data are based on submissions from the 67 Clerks of the Circuit Courts of Florida. The information is extracted by the Office of the State Court Administrator (OSCA) from a static data base containing the official trial court statistics. EDR analyzed tables prepared by OSCA to determine if the legal processing of sexual offenders differs from that of other offenders in any significant ways. The following analysis looks at averages over three fiscal years, FY 2001-02 through FY 2003-04.

Table 5.1 below shows the total number of defendants disposed, the number whose cases were dismissed before trial, and the pre-trial dismissal rate (the number dismissed pre-trial divided by the total number of defendants disposed) for the eleven subcategories reported in the SRS as well as for major offense categories calculated for this analysis.

Table 5.1
SRS Filed Defendants and Pre-Trial Dismissal Rate
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number of filed defendants disposed	Number dismissed before trial	% dismissed before trial
Murder	1,310	175	13.4%
Capital Murder	240	44	18.2%
Non Capital Murder	1,070	132	12.3%
Sexual Offenses	3,195	498	15.6%
Robbery and Other Crimes against Persons	33,609	4,383	13.0%
Robbery	5,080	685	13.5%
Other Crimes Against Person	28,529	3,698	13.0%
Property Crimes	63,234	7,633	12.1%
Burglary	16,172	1,396	8.6%
Theft Forgery Fraud	39,624	3,687	9.3%
Worthless Checks	5,801	2,368	40.8%
Other Crimes Against Property	1,636	182	11.1%
Drugs	55,597	4,982	9.0%
Other	22,730	1,576	6.9%
Total	179,675	19,247	10.7%

Source: State Courts website.

The SRS classification scheme breaks property crimes into four subcategories; (1) burglary (2) theft, forgery, and fraud (3) worthless checks and (4) other crimes against property. The percentage of defendants for worthless checks whose cases were dismissed before trial was 40.8%, by far the largest share of any category. Note that this information is only for felonies, and a worthless check must be for \$150 or greater to constitute a felony offense. These offenders may be offered a pretrial intervention alternative, which results in the dismissal of the charges if successfully completed. Alternatively, if the offender makes restitution and pays the fines prior to prosecution of the offense, the case may also be dismissed.

Because the classification scheme divides property crimes into several subcategories, the high dismissal rate for the offense of felony worthless checks was revealed. But the overall dismissal rate for all property crimes, including worthless checks is 12.1%. When the dismissal rates for the six major categories are examined (murder, sexual offenses, robbery and other crimes against persons, property crimes, drug crimes, and other) the category with the highest dismissal rate is the sex offense category. However, the average dismissal rate for the three years was 15.6%, much lower than the rate for the subcategory of worthless checks and slightly lower than for the capital murder subcategory.

At the major category level, the second highest pre-trial dismissal rate was for *robbery and other crimes against persons*, at 13.0%, followed by property crimes at 12.1%. The overall rate for all offenses was 10.7%. The rates vary from year to year, and in fiscal year 2001-02 the highest dismissal rate before trial was in the murder category, at 15.9%, then the sexual offense category, at 15.2%.

Table 5.2 contains related information on dismissals and acquittals: the total number of defendants dismissed before trial as well as the number dismissed during or after the trial, and the number acquitted. Of the six main categories, sex offenses had the highest acquittal/dismissal rate at 19.7% with the second highest rate being murder cases at 19.0%. The subcategory of worthless checks again had the highest overall rate at 41.0%.

Table 5.2
Dismissal/Acquittal Rate for Disposed Defendants
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number dismissed/ acquitted	% dismissed/ acquitted
Murder	249	19.0%
Capital Murder	57	23.9%
Non Capital Murder	191	17.9%
Sexual Offenses	630	19.7%
Robbery and Other Crimes against Persons	4,885	14.5%
Robbery	800	15.7%
Other Crimes Against Person	4,085	14.3%
Property Crimes	7,934	12.5%
Burglary	1,521	9.4%
Theft Forgery Fraud	3,826	9.7%
Worthless Checks	2,380	41.0%
Other Crimes Against Property	207	12.6%
Drugs	5,211	9.4%
Other	1,750	7.7%
Total	20,658	11.5%

Source: State Courts website.

Again there is variation among the three fiscal years, with the highest acquittal/dismissal rate in fiscal years 2001-02 and 2002-03 occurring in the murder category, with rates of 21.4% and 20.8% respectively, followed closely by the sexual offense category with 19.4% and 19.5%.

In summary, the acquittal/dismissal rate for the sexual offense category, averaged over the three fiscal years, was the highest of any category, at 19.7%. It slightly exceeded the murder category rate of 19.0%. The third highest category was *robbery and*

other crimes against persons, at 14.5%. While sharing characteristics with these other two serious categories, the acquittal/dismissal rate for sexual offenses seems slightly high and this finding will be explored further.

Table 5.3 shows the percentage of defendants that were disposed at trial as opposed to being disposed at the pre-trial phase either by dismissal or plea. This measure was selected to gauge the proclivity to go to trial by offense category.

Table 5.3
Trial Rate for Disposed Defendants
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number disposed at trial	% disposed at trial
Murder	365	27.3%
Capital Murder	122	50.3%
Non Capital Murder	243	22.2%
Sexual Offenses	356	10.9%
Robbery and Other Crimes against Persons	1,403	3.9%
Robbery	401	7.6%
Other Crimes Against Person	1,002	3.2%
Property Crimes	847	1.2%
Burglary	417	2.4%
Theft Forgery Fraud	363	0.8%
Worthless Checks	20	0.2%
Other Crimes Against Property	47	2.2%
Drugs	666	1.1%
Other	606	2.4%
Total	4,244	2.2%

Source: State Courts website.

By far the highest percentage was for the murder category, where on average 27.3% of the defendants were disposed by trial over the three year period. Within the murder category, the trial rate for capital murder cases was 50.3%, more than twice as high as the rate for non-capital murder. The second highest trial disposition rate by major category was for sexual offenses with a trial rate averaging 10.9%. The third highest

category was robbery, at 3.9%. While the trial rate for sexual offenses is relatively high at 10.9% compared to the overall rate of 2.1%, it is well below the trial rates for murder.

The Summary Reporting System information examined up to this point has been based on defendants. The same tables will now be analyzed based on counts. Obviously, the same defendant can have more than one count. During the three fiscal years under consideration there were, on average, 144,551 defendants found guilty of felony offenses. They were convicted of 190,719 felony counts, an average of 1.3 counts per defendant.

Table 5.4, comparable to Table 5.1 above, shows the total number of felony counts disposed, the number dismissed before trial, and the pre-trial dismissal rate (the number dismissed pre-trial divided by the total number of felony counts disposed) for the eleven subcategories reported in the SRS as well as for major offense categories calculated for this analysis.

Table 5.4
SRS Pre-Trial Dismissal Rate of Filed Felony Counts
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number of filed felony counts disposed	Number dismissed before trial	% dismissed before trial
Murder	1,792	406	22.7%
Capital Murder	262	50	18.9%
Non Capital Murder	1,530	357	23.3%
Sexual Offenses	6,480	2,221	34.3%
Robbery and Other Crimes against Persons	44,685	9,888	22.1%
Robbery	6,812	1,431	21.0%
Other Crimes Against Person	37,873	8,457	22.3%
Property Crimes	107,927	21,856	20.3%
Burglary	21,892	3,642	16.6%
Theft Forgery Fraud	76,565	14,810	19.3%
Worthless Checks	6,921	2,925	42.3%
Other Crimes Against Property	2,549	479	18.8%
Drugs	74,469	11,383	15.3%
Other	29,511	5,290	17.9%
Total	264,864	51,044	19.3%

Source: State Courts website.

Overall, nearly one in five disposed counts was dismissed before trial (19.3%) compared to one in ten defendants who had charges dismissed before trial (10.7%). Worthless checks had the highest pre-trial dismissal rate at 42.3%--and this percentage is only slightly higher than the defendant dismissal rate. On the other hand, sexual offense counts had the highest pre-trial dismissal rate among the six major categories at 34.3%--more than twice as high as at the defendant level. Looking at it another way, sexual offense counts that were dismissed pre-trial accounted for 4.4% of all dismissed counts while the comparable percentage for defendants was 2.6%.

Similar patterns are present in the data on acquittals/dismissed counts (Table 5.5). In terms of this measure, the sex offense category is uniquely high. For the three years, an average of 39.6% of the counts were acquitted or dismissed (as noted above, 34.3% were dismissed pre-trial). The next highest category is murder with a 29.6% acquittal or dismissal rate, a full ten percentage points lower than the sex offense category. The drug category had the lowest rate at 15.8%, and the rate for all categories was 20.4%.

Table 5.5
Dismissal/Acquittal Rate for Disposed Counts
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number dismissed/ acquitted	% dismissed/ acquitted
Murder	530	29.6%
Capital Murder	75	28.7%
Non Capital Murder	454	29.7%
Sexual Offenses	2,564	39.6%
Robbery and Other Crimes against Persons	10,944	24.5%
Robbery	1,650	24.2%
Other Crimes Against Person	9,294	24.5%
Property Crimes	22,503	20.9%
Burglary	3,913	17.9%
Theft Forgery Fraud	15,128	19.8%
Worthless Checks	2,944	42.5%
Other Crimes Against Property	519	20.4%
Drugs	11,774	15.8%
Other	5,591	18.9%
Total	53,905	20.4%

Source: State Courts website.

As shown in Table 5.6, the trial rate for disposed counts is similar to that for disposed defendants. While 2.2% of the disposed defendants go to trial, 2.7% of disposed counts reach the trial phase. The trial rate for sexual offense counts is 13.0%, somewhat higher than the defendant trial rate of 10.9%. Murder trial rates exceed those for sexual offenses, but rates for all of the other offenses are much lower than those for sexual offenses.

Table 5.6
Trial Rate for Disposed Counts
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number disposed at trial	% disposed at trial
Murder	483	26.9%
Capital Murder	138	52.7%
Non Capital Murder	344	22.5%
Sexual Offenses	842	13.0%
Robbery and Other Crimes against Persons	2,388	5.3%
Robbery	682	10.0%
Other Crimes Against Person	1,706	4.5%
Property Crimes	1,582	1.5%
Burglary	651	3.0%
Theft Forgery Fraud	815	1.1%
Worthless Checks	31	0.5%
Other Crimes Against Property	85	3.3%
Drugs	1,034	1.4%
Other	722	2.4%
Total	7,051	2.7%

Source: State Courts website.

In summary, the SRS data were analyzed for both defendants and counts. From the perspective of defendants, sex offenses had the highest rate of acquittals or dismissals, at 19.7%. However, that rate was closely followed by the murder category, at 19.0%. The overall rate for all offenses was 11.5%. From the perspective of total counts the picture is different. Nearly 40 percent (39.6%) of sex offense counts resulted in an acquittal or dismissal, significantly higher than the second highest category, murder, at 29.6%, and all categories at 20.4%. So sex offender defendants are convicted at rates

similar to those accused of murder, but many of the counts are dropped or result in acquittals.

Various possibilities could explain this pattern. When the defendant is known to the victim, the criminal behavior may have occurred repeatedly over a period of time and resulted in many charges, though evidence for conviction is not present for all counts. The prosecutorial strategy may then involve charging as many counts as possible and dropping the weaker ones as part of the plea bargaining process. When there are multiple child victims, the general reluctance to expose victims to the potentially re-traumatizing effects of a courtroom appearance may lead to dropped charges when convictions with lengthy prison sanctions are obtained from other charges and victims. When judges and prosecutors with experience in the prosecution of sex crimes were surveyed, one question asked specifically about the high percentage of acquittals/dismissals. Explanations included the following:

- Age of the typical victim which often creates an inability to testify; lack of corroborative evidence (rarely any witnesses),
- Media hype and T.V. shows create a desire in juries to get more (“ the smoking gun” so to speak) than just a child’s testimony, which is rarely the case in these types of crimes.
- Most normal people have no frame of reference for sex crimes against children: therefore juries have a hard time believing that a pedophile can be (by appearance and manner) such a nice person.

Although counts are dropped or result in acquittals at a high rate, it is also important to keep the end result in mind. Less than 20 percent of defendants had all counts against them dismissed (or were acquitted of all counts). Seventy-seven percent of sex offense defendants either pled or, at trial, were found to be guilty of a sex offense.

CHAPTER 6--OFFENDER BASED TRANSACTION SYSTEM

The Legislature first passed legislation to establish the Offender Based Transaction System (OBTS) in 1985. Florida's 67 Clerks of the Court provide the data in an automated format to the Office of the State Courts Administrator (OSCA), the Florida Department of Law Enforcement (FDLE) and the Department of Corrections (DOC). From this data OSCA produces the Summary Reporting System database, and FDLE updates its Computerized Criminal History file with court dispositional information.

The Office of Economic and Demographic Research requested and received copies of the felony criminal portion of the OBTS database from OSCA twice in the summer of 2005 for use in this sex offender study, and received a final updated version December 1, 2005. Each record of the dataset represents a single felony charge. Records are updated as a charge moves through the legal system. This is the only dataset that can be used to analyze the evolution of charges as they move from arrest to final disposition by the courts.

EDR analyzed the data for a three-fiscal year period: 2001-02, 2002-03, and 2003-04. The database contains information on various phases of each charge's legal processing: the basic phase, the initial phase, the prosecutor phase, the court phase, the sentence phase, and the post sentence phase. Specifically, variables indicate the statutory charge at the initial phase, the prosecutor phase, and the court phase of the process. This allows a window into how charges may change or remain the same as they move through the legal system.

The two major categories of sexual offenses are sexual battery offenses (F. S. Chapter 794) and lewd or lascivious offenses (F.S. Chapter 800). (See Appendix D for a

listing of all sex offenses.) The records were screened to produce two subsets, one with an initial charge of sexual battery, and one with an initial charge of a lewd or lascivious offense. The data were then screened to include only counts where all processing had been completed. The older the case, the more likely it is to have been completed. For example, 92.5% of the sexual battery counts from fiscal year 2001-02 are complete, while 85.4% are complete for fiscal year 2003-04. For the three year period, 89.6% of the records with an initial charge of sexual battery and 91.1% of the records with an initial lewd or lascivious charge had been completed and were included in the analysis.

The analysis first examined completed counts as they moved from the initial phase to the prosecutor phase. The statutory charge in the initial phase is the charge at the time of arrest or notice to appear. The statutory charge in the prosecutor phase reflects any changes in the charge that occur at this level. Table 6.1 details the changes from the initial phase to the prosecutor phase. For the three fiscal years, an average of 3,560 counts (89.9%), that began as a sexual battery charge remained such at the prosecutor phase. Two hundred and twenty-seven charges that were initially sexual battery charges were changed to charges of lewd or lascivious acts, (5.7%); and 172 (4.4%) were changed to other offenses. For the charges of lewd or lascivious acts in the initial phase, 4,801 (95.6%) remained the same, while 63 (1.2%) were changed to sexual battery charges, and 157 (3.1%) were changed to other offenses.

Table 6.1
Statutory Charge at Prosecutor Phase
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	3,560	63
F.S. 800	227	4,801
Other	172	157
Total	3,959	5,021
Statutory Charge	Percent	
F.S. 794	89.9%	1.2%
F.S. 800	5.7%	95.6%
Other	4.3%	3.1%
Total	100.0%	100.0%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

Information in the database on the final action of the prosecutor provides additional information on the processing of sexual offenses. The prosecutor may file charges at this time or the charges may be dropped, consolidated, or transferred to another court. Also, the prosecutor may not take any action. Filing occurs after the prosecutors have examined the case, including the evidence and the witnesses and decided whether to proceed with prosecution. Charges that are filed continue to move through the system.

As shown in Table 6.2, 38.7% of the counts that were initially for a sexual battery charge resulted in a filing, and 42.5% of the initial lewd or lascivious charges resulted in a filing.

Table 6.2
Counts Filed at the Prosecutor Phase
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	1,203	34
F.S. 800	178	1,962
Other	150	136
Total	1,531	2,132
Statutory Charge	Filing Rate--Filed Counts as Percent of Total Counts	
F.S. 794	33.8%	53.7%
F.S. 800	78.3%	40.9%
Other	87.6%	86.8%
Total	38.7%	42.5%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

However, the filing rate is much higher for counts where the statutory charge changed during the prosecutor phase. In cases where an initial charge of sexual battery was changed to a lewd or lascivious offense, the filing rate was 78.3%. The rate was even higher (87.6%) for those sexual battery charges which were changed to another offense. Similar differences were observed for counts where the initial offense was a lewd or lascivious offense.

For the sexual battery cases that did not result in a filing, the most common reason was “Dropped/Abandoned - A formal notification by the prosecutor identifying that the charge will not be filed on and no further action is to be taken.” “Dropped/Abandoned” was indicated in 1,160 counts. The second most common reason, indicated in 693 charges, was “Nolle Prosequi – A formal entry upon the record by the prosecuting officer, by which it is declared that the charge will not be prosecuted.” The third most

common, indicated in 471 counts was “No action – No action taken by the prosecutor.” A much smaller number of charges were indicated as consolidated with other charges, transferred to another court, or administratively dismissed. The decision not to file for lewd or lascivious charges were for the same reasons, in the same order of frequency.

The next phase is the court phase. For all counts with an initial charge of sexual battery that resulted in a filing by the prosecutor, about two thirds continued as a sexual battery charge and about one third changed, either to a lewd or lascivious charge or to another offense. Almost 80% of the lewd or lascivious charges remained the same.

Table 6.3
Statutory Charge at Court Phase of Filed Counts
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	987	29
F.S. 800	215	1,676
Other	329	427
Total	1,531	2,131
Statutory Charge	Percent	
F.S. 794	64.5%	1.3%
F.S. 800	14.0%	78.6%
Other	21.5%	20.0%
Total	100.0%	100.0%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

As shown in Table 6.4, eighty-eight percent of the filed counts with an initial charge of sexual battery resulted in a guilty disposition. Although initially charged with a sexual battery offense, many of these charges result in a conviction for another offense. On average for the three years, 61.6% of these convictions were still for a sexual battery, while 14.5% were for a lewd or lascivious offense, and 23.9% were for another offense. So nearly 40% of the initial sexual battery counts that ultimately resulted in a conviction

were convicted of an offense other than sexual battery. Of the convictions in the “Other” category, *battery/felony battery* was the most frequent offense, followed by the offense of *sexual performance by a child*, which is in Chapter 827 relating to the abuse of children. However, the high frequency of convictions for *sexual performance by a child* is only observed in 2004, not the earlier years.

Table 6.4
Filed Counts that Resulted in a Guilty Disposition at the
Court Phase
Three year average (FY 2001-02 through FY 2003-04)

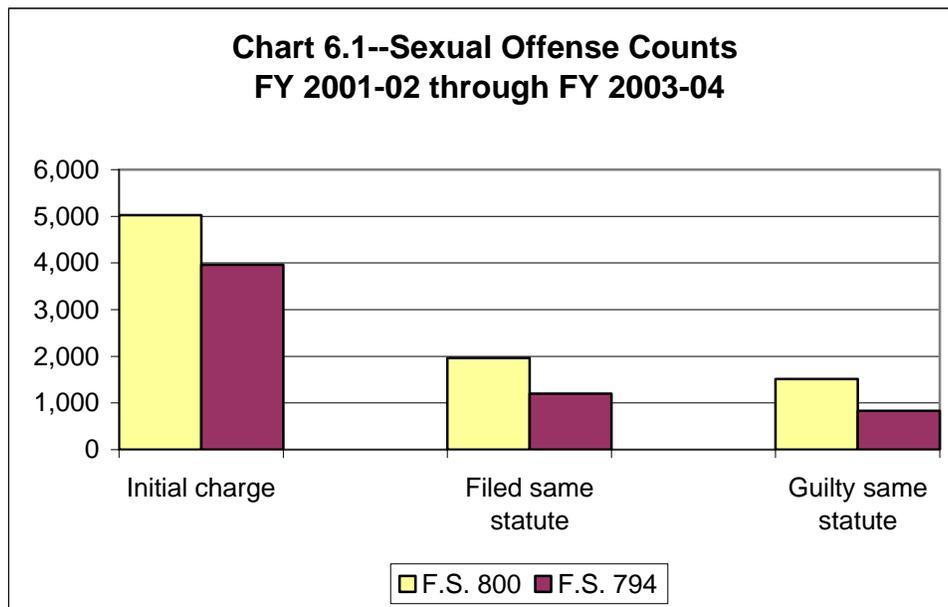
	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	830	23
F.S. 800	196	1,517
Other	322	423
Total	1,348	1,963
Statutory Charge	Guilty Rate--Guilty Counts as Percent of Filed Counts	
F.S. 794	84.1%	81.4%
F.S. 800	91.3%	90.5%
Other	97.9%	99.1%
Total	88.1%	92.1%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

For all counts with an initial charge for lewd or lascivious offenses that resulted in a filing by the prosecutor, 92.1% resulted in a guilty disposition. On average 77.3% of convictions were for a lewd or lascivious offense, while 1.2% were for a sexual battery and 21.5% were for other offenses. The other offenses were most frequently *battery/felony battery*, followed by *abuse of children*.

Finally, 34% of all initial charges for sexual battery ultimately resulted in a guilty disposition for any offense, and 39.1% of the initial lewd or lascivious charges resulted in a conviction for some offense.

As shown in Chart 6.1, for the three fiscal years studied in this analysis, the 5,000 initial charges involving lewd or lascivious behavior resulted in about 2,000 lewd or lascivious filings (40% of initial charges), and about 1,500 lewd or lascivious guilty dispositions (30% of initial charges). For the 4,000 sexual battery initial charges, about 1,200 (30%) resulted in sexual battery filings, and about 800 (21%) resulted in sexual battery guilty dispositions.



EDR undertook a similar tracking through phases based on the number of defendants (Table 6.5). For the three years there was an average of 2,039 defendants with an initial charge of sexual battery with an average of 1.94 counts per defendant. Just over half (50.6%) of the defendants had at least one charge filed at the prosecutor phase. Of the defendants with a filing, 90% or 928 defendants led to a guilty disposition. Looking back to the initial phase, only 45.5% were ultimately found guilty. For initial lewd or lascivious offenses, there was an average of 2,423 defendants per year with an

average of 2.1 counts per defendant. Of this group, 62.1% or 1,505 defendants were filed against in the prosecutor phase. Of the defendants with filings, 94.1% were found guilty. Looking back to the initial phase, only 58.5% were ultimately found guilty of some offense. This difference reflects the large number of defendants who have all charges dismissed prior to filing, or are acquitted.

Table 6.5
Sexual Offense Defendants
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Number of defendants (Completed counts)	2,039	2,423
Counts per defendant	1.94	2.07
Filings	1,031	1,505
Percent of Defendants with Counts Filed	50.6%	62.1%
Defendants with Guilty Dispositions¹	928	1,417
Percent of Defendants with counts Filed that have Guilty Dispositions	90.0%	94.2%
Percent of Defendants with Guilty Dispositions	45.5%	58.5%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

¹ Includes adjudication withheld dispositions.

As elsewhere in this study, the sexual offense category was then compared to another offense category with some similar characteristics, robbery, and to all offense categories to see what is unique and what is common to them all (see Table 6.6). As offenders with a charge of robbery in the initial phase move to the prosecutor phase and have charges filed against them, 93.2% of the charges were still for robbery, while 3.3% were for another Chapter 812 offense (theft and related crimes), and 3.5% were for other offenses. This is similar to the lewd or lascivious offenses where 92% were for a lewd or lascivious offense, and greater than the sexual battery category, where only 78.6% of the

initial counts were eventually filed as sexual battery cases. Of the total robbery counts in the initial phase, 50.9% led to a filing for some offense. This is clearly higher than for the sexual offenses, where 38.7% of sexual battery counts led to a filing and 42.5% of lewd or lascivious counts resulted in a filing. For all offenses, 49.3% led to a filing, so robbery offenses were even slightly higher than the overall rate.

Table 6.6
Comparison of Sexual and Robbery Offenses
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)	With Initial Charge of Robbery (F.S. 812)	All offenses
Percent of counts where filed offense is the same as initial offense	78.6%	92.0%	93.2%	NA
Percent of counts that resulted in a filing for some offense (not necessarily the same as the initial offense)	38.7%	42.5%	50.9%	49.3%
Percent of initial counts adjudicated guilty	34.0%	39.1%	47.9%	46.5%
Average counts per defendant	1.9	2.1	1.4	3.1
Percent of defendants adjudicated guilty	45.5%	58.5%	52.8%	61.7%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

In the court phase, 47.9% of the robbery counts in the initial phase were ultimately adjudicated guilty of some offense, compared to 34.0% of the sexual battery and 39.1% of the lewd or lascivious counts. For all offenses, 46.5% of counts resulted in a guilty disposition.

When the view is shifted to the defendants, the picture changes. Robbery defendants at the initial phase had an average of 1.4 completed counts, compared to 1.9 completed counts per sexual battery offender, 2.1 counts per lewd or lascivious offender, and 3.1 counts for all offenders. Overall, 52.8% of initial robbery defendants were found guilty, 45.5% of sexual battery defendants, and 58.5% of lewd or lascivious defendants. Again, the pattern is that sexual offenders in the initial phase have more counts, but fewer

counts lead to convictions. Nevertheless, they are convicted of more counts per defendant, and defendants are found guilty at a rate comparable to robbery defendants. Both conviction rates trail the rates for all offenses combined, where 61.7% of defendants are convicted.

CHAPTER 7-- CHILD HEARSAY

One unique aspect of sexual offenses is that the victims are so often children. In the Ryce referral data, victims were under twelve years of age in 38% of the 15,532 cases. The age of the victims presents special problems in prosecuting these cases. Young children may not understand that some kinds of touching are wrong and may not report criminal behavior—especially if the perpetrator is a family member or other trusted person. Or the child may be too embarrassed to report incidents when they occur. When the offenses are reported, the children may have forgotten some details, such as the exact date when the offense occurred. Their recall of details is often weak. These issues present a special challenge in proving charges beyond a reasonable doubt.

If the defendant is the father or stepfather, a dynamic may emerge similar to other domestic violence situations, where the spouse feels financially or emotionally dependant and unable to escape an abusive relationship. In such cases the spouse may question the validity of her child's accusations. This lack of support by the non-abusive parent may lead to the child recanting the accusations in an effort to please the parent. One survey respondent noted,

- Public education about the dynamics of denial within families for a variety of reasons is critical. When some of the dysfunctional family members support the perpetrator reasonable doubt is created.

Sometimes the sexual offense charges emerge during acrimonious divorce proceedings, and questions arise concerning whether the children are being used as pawns in this conflict. Because of their dependency upon adults, children can be influenced by them. Their vulnerability can lead to their being manipulated.

Furthermore, children are by nature imaginative, and at times do not distinguish well between fantasy and reality.

There is concern that the legal proceedings necessary to convict the offender may compound the trauma to the victim by repeatedly revisiting the details of the sexual offense. A judge responding to EDR's survey noted that for children, "The forum is intimidating. The legal process takes too long. Repeated interrogation is stressful and confusing."

Chapter 90 of the Florida Statutes deals with the evidence code, and s. 90.803(23), F.S. carves out an exception to the general prohibition against hearsay evidence for statements of child victims. An out-of-court statement by a child victim with a physical, mental, emotional, or developmental age of 11 or less is admissible unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness. However, certain conditions must be met as specified in the Statutes:

- 90.803(23)(a)1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and
 2. The child either:
 - a. Testifies; or
 - b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).

The key point here is that the out-of-court statement by the child victim, including a videotaped statement, is admissible only if the child testifies in court, or; if the child is

unavailable to testify, which includes the fact that testifying would cause severe harm to the child, then there must be other corroborative evidence. Absent corroborating evidence, it is the word of one party against the other. The Sixth Amendment to the U.S. Constitution contains the Confrontation Clause, which provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witness against him.” Florida law tries to balance the principal of allowing a defendant to confront an accuser in a legal proceeding against the need to protect victims who are children. As in all compromises, the result is not ideal for either party. Whether this is the best compromise available in this situation is unknown. But the result is that unless there is corroborating evidence, victims less than twelve years old have to testify before a conviction can be achieved. Even though testifying may be harmful to the victim, the prosecution cannot proceed without it. Furthermore, several survey respondents mentioned that the recent U.S. Supreme Court opinion in *Crawford v. Washington*, 124 S. Ct. 1354 (2004) will further restrict the use of the child hearsay exception.

Other survey respondents raise the possibility of law changes which would facilitate the successful introduction of child testimony. A Judge commented:

- Legislative changes are overdue in the area of child victims and their testimony. A task force should be created to draft laws that require 1) children to be videotaped anytime they are making a statement to Law Enforcement in order to decrease the need for repeated statements & depositions, 2) anybody taking the statement of a child as to sex crimes should be certified by the Supreme Court or the Florida Bar, 3) any school counseling or psychological counseling session of a child in any case where sex crimes are alleged should be pursuant to court order and under the court’s jurisdiction, 4) criteria should be established to protect the credibility of the child while balancing the defendants right to confrontation and a jury trial.

A Prosecutor wants statutory changes:

- [Give] more opportunity for child victims' hearsay statements to be admitted. [Curb] the effects of (requirements) Crawford. Or in the alternative, if we were allowed to treat a deposition (of the child victim) taken on behalf of the defendant (and following statutory criteria) as meeting the requirements of Crawford, so as to allow child hearsay statements admitted without actually requiring the child victim to take the stand at trial.

CHAPTER 8—FINDINGS AND RECOMMENDATIONS

Offender Characteristics

- 98.3% of sex offenders are male, the highest proportion of any offense category
- 64.7% of sex offenders are white, the highest share of any category except robbery
- Sex offenders were the same average age at the time of their offense as all offenders. But the specific sex offenses with the highest average age of the offenders involved victims under 12
- Sex offenders are less likely to have a prior felony conviction than any other offense group.

Victim Characteristics

- 82.5% of Ryce referral victims were under 16. The average age was 13.4 years.
- 84.8% of victims knew the offenders. For victims under 15 or younger, 90% knew the offender.
- 28.4% of all victims were related to the offender and nearly 46% of victims under 12 were related to the offender.

Sentencing

- In 2004, sex offenders had the second highest incarceration rate, below that of murder and above that of robbery
- The incarceration rate for sex offenders has changed the most of any category, rising from 49.4% in 2002 to 59.2% in 2004.
- Sex offenders have the second longest sentences, below those of murder and above those of robbery.
- Sex offenders have the highest sanction mitigation rate at 33.1%.
- Sex offenders have the highest sentence length mitigation rate at 48.2% in 2004.

- Sex offenders have the second highest share of offenders receiving points for victim injury at 67.6% in 2004, with murder the highest at 84.1%
- The share of victim injury points of total points is second highest for sex offenders at 44.5%, with the share for murder the highest at 53.2%.
- Out of 20 cases sentenced to prison in 2002-2004 with a conviction for murder and a sexual offense, only one offender had a prior commitment for a sexual offense.

Criminal Processing

- 19.7% of sex offense defendants had their charges dismissed or were acquitted during FY 2001-02 through FY 2003-04 —the highest percentage of six major offense categories.
- 39.6% of sex offense counts were dismissed or resulted in an acquittal during FY 2001-02 through FY 2003-04—the highest percentage of six major offense categories.

Charge Processing

- 38.7% of sexual battery counts and 42.5% of lewd or lascivious counts resulted in a filing.
- 88.1% of **filed** sexual battery counts and 92.1% of **filed** lewd or lascivious counts resulted in a guilty disposition.

Sex offenses share some characteristics with other serious offenses such as murder and robbery. The defendants face potentially lengthy prison terms. Therefore, defendants are motivated to fight the charges with whatever resources are at their disposal. The trial rates are highest for these three offenses. Law enforcement and prosecutorial resources gravitate towards these most serious cases. With the attention and time devoted to these cases, any problems with the evidence or proceedings associated with the case are more likely to be revealed and utilized by the defense.

But sex offenses are also different from other offenses. Sanction and length mitigation is high. High proportions of defendants have at least some counts dismissed. Data from the various sources as well as the survey responses from Judges and Prosecutors point to unique difficulties in the prosecution and conviction of sexual offenses. Foremost is the young age of most of the victims. From the Ryce data, the average age of the victims was 13.4 years old. Eighty-three percent were 15 or younger. The second key factor is that 85% of the victims knew the offender. For successful prosecution, unless there is corroborative evidence, the child must testify in court. The prospect of having a child victim of a sexual crime testify in a public trial is daunting. The victims and their families may consider the trauma of repeatedly revisiting the crimes in a public forum too difficult. A child does not possess the intellectual and emotional skills necessary for the adversarial confrontation with the defense. Faced with these challenges, the prosecution often finds the best outcome may be to offer a plea bargain involving a mitigated sanction or sentence length, hence the high mitigation rates found for sexual crimes. Frequent law changes with stricter sanctions may cause mitigations back toward historical sentence lengths. With a conviction, even if the sanction is not as strict as the prosecution desired, the offender may qualify to be registered as a sex offender.

Survey respondents had several suggestions for facilitating children's testimony. Child Advocacy Centers, Victim's Witness Assistance Programs or other programs can provide support and assistance to child victims in their dealings with the criminal justice system. Moreover, a task force should study potential changes to the laws to enable child

hearsay statements. Several respondents suggested training and certification for prosecutors and judges involved with sexual offense cases.

RECOMMENDATIONS

- (1) The Department of Corrections should ensure that form DC-203 is accurately completed for all sex offenders and the information entered into an electronic database (see Appendix E.) The form provides much more detailed information about the sex crimes committed and their victims than is available from any other source but it is not consistently completed and the information is only available on paper documents. The information would be valuable to the Legislature and others interested in future research to guide policy in this difficult area.
- (2) Information presented in this study should be updated next year to highlight any changes after implementation of the Jessica Lunsford Act.

APPENDICES

APPENDIX A—SENTENCING EVENTS

Table A.1 Total Sentencing Events

Offense group ¹	2002	2003	2004
Murder/Manslaughter	600	680	637
Sexual/Lewd Behavior	1,903	2,078	1,859
Robbery	3,155	3,089	2,898
Violent, Other	14,974	15,479	14,849
Burglary	10,610	11,350	10,776
Property Theft/Fraud/Damage	25,143	26,326	25,187
Drugs	38,509	40,607	42,154
Weapons	2,135	2,287	2,313
Other	12,948	15,066	16,617
Total	109,977	116,962	117,290

Source: Criminal Code database, updated 7/1/2005.

Note: these numbers have not been adjusted for non-compliance in the preparation of criminal code scoresheets. The Department of Corrections prepares a compliance report each fiscal year and in recent years, compliance has been between 61% and 71%.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table A.2
Total Sentencing Events--Sex Offenses

Offense	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	85	100	63
Sexual battery, threat with deadly weapon	54	49	49
Sexual battery without physical force likely to cause serious injury	129	154	155
Adult 24 or older --sex with 16-17 year old	96	104	109
Lewd lascivious battery, victim 12-15	348	516	431
Lewd lascivious molestation, victim under 12/offender 18 or older	156	178	203
Lewd lascivious molestation, victim 12-15/offender 18 or older	103	180	180
Lewd lascivious conduct, victim under 16/offender 18 or older	132	146	154
Lewd lascivious exhibitionism, victim under 16/offender 18 or older	99	127	95
All other sex offenses	701	524	420
Total	1,903	2,078	1,859

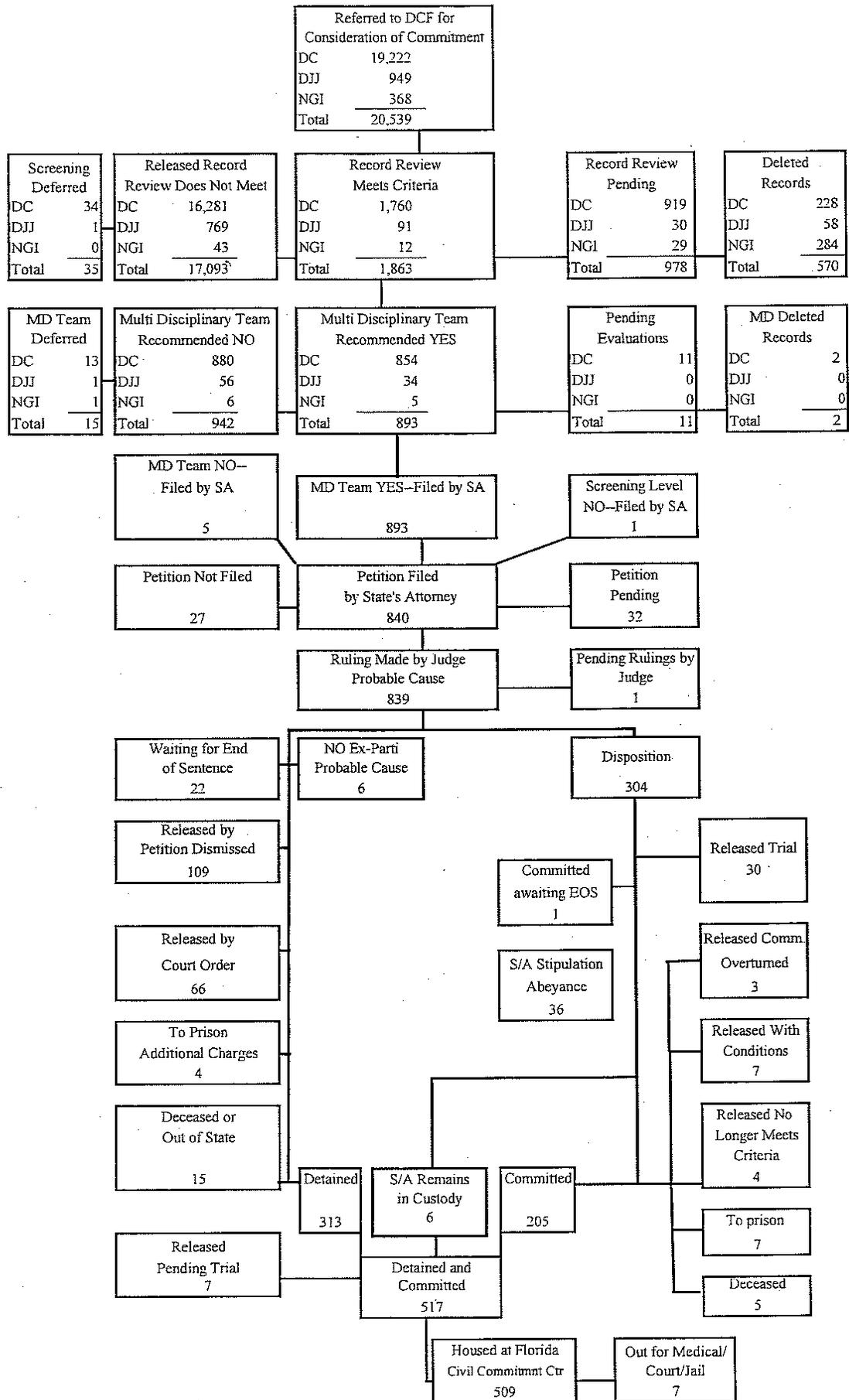
Source: Criminal Code database, updated 7/1/2005.

Note: these numbers have not been adjusted for non-compliance in the preparation of criminal code scoresheets. The Department of Corrections prepares a compliance report each fiscal year and in recent years, compliance has been between 61% and 71%.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

**APPENDIX B
STATUS OF ADULTS REFERRED FOR**

COMMITMENT TO SVPP THROUGH DECEMBER 31, 2005



APPENDIX C-- LEWD OR LASCIVIOUS OFFENSES

	Statute	Age of Victim	Age of Perpetrator	Felony Degree	Offense severity level
Pre-1999					
Lewdly fondle or assault, commit or simulate sexual acts on or in presence of a child under 16 in a lewd, lascivious or indecent manner	800.04	Under 16	Any age	2	7
Current					
Lewd or Lascivious Battery					
Sexual Activity--oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object (excluding an act done for a bona fide medical purpose)	800.04(4)(a)	12 - 15	Any age	2	8
Encourages, forces or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity	800.04(4)(a)	Under 16	Any age	2	8
Lewd or Lascivious Molestation					
Intentionally touches in a lewd or lascivious manner the breast, genitals, genital area, or buttocks, or the clothing covering them or entices child to so touch the perpetrator.	800.04(5)(b)	Less than 12	18 or older	Life ¹	9
	800.04(5)(c)1.	Less than 12	Under 18	2	7
	800.04(5)(c)2.	12 - 15	18 or older	2	7
	800.04(5)(d)	12 - 15	Under 18	3	6
Lewd or Lascivious Conduct					
Intentionally touches in a lewd or lascivious manner or solicits a person to commit a lewd or lascivious act	800.04(6)(b)	Under 16	18 or older	2	6
	800.04(6)(c)	Under 16	Under 18	3	5
Lewd or Lascivious Exhibition					
Intentionally masturbates; intentionally exposes the genitals in a lewd or lascivious manner; or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim under 16 years of age. Includes live transmission over the internet.	800.04(7)(c)	Under 16	18 or older	2	5
	800.04(7)(d)	Under 16	Under 18	3	4

¹ Per the Jessica Lunsford Act, passed in 2005, conviction of this offense requires a term of imprisonment for life or a split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life.

APPENDIX D--CURRENT SEX OFFENSES RANKED BY SEVERITY¹

						NOTE: SEXUAL PREDATOR MUST BE DESIGNATED BY A COURT FINDING	
Statute	Description	Criminal Code Offense Severity Level	Felony degree	Sex Offender Qualifying Offense	Sex Predator "Once is Enough" Qualifying Offense	"Second strike sexual predator"	
						Qualifying primary offense	AND qualifying prior offense
794.011(2)(a)	Sexual battery; offender 18 or older commits sexual battery or, in an attempt to commit sexual battery, injures the sex organs of a victim less than 12 years of age	NA	C	YES	YES	YES	NO
787.01(3)(a)	Kidnapping; child under 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition	10	L	YES	YES	YES	YES
794.011(3)	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury	10	L	YES	YES	YES	YES
794.011(2)(b)	Sexual battery; offender younger than 18 years commits sexual battery or, in an attempt to commit sexual battery, injures the sex organs of a victim less than 12 years of age	9	L	YES	YES	YES	NO
800.04(5)(b)	Lewd or lascivious molestation; victim less than 12 years of age; offender 18 years or older	9	L	YES	YES	YES	YES
787.02(3)(a)	False imprisonment; child under 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition	9	1, PBL	YES	YES	YES	YES
794.011(2)	Attempted sexual battery; victim less than 12 years of age	9	1	YES	YES	YES	NO
794.011(4)(a)	Sexual battery, victim 12 years or older and physically helpless	9	1	YES	YES	YES	YES
794.011(4)(b)	Sexual battery, victim 12 years or older; offender coerces victim by threat of force or violence	9	1	YES	YES	YES	YES
794.011(4)(c)	Sexual battery, victim 12 years or older; offender coerces victim by use of retaliation threats	9	1	YES	YES	YES	YES
794.011(4)(d)	Sexual battery, victim 12 years or older; offender administers to victim without consent narcotic or other intoxicating substance	9	1	YES	YES	YES	YES
794.011(4)(e)	Sexual battery, victim 12 years or older and mentally defective	9	1	YES	YES	YES	YES
794.011(4)(f)	Sexual battery, victim 12 years or older and physically incapacitated	9	1	YES	YES	YES	YES
794.011(4)(g)	Sexual battery by a law enforcement officer, victim 12 years or older	9	1	YES	YES	YES	YES
794.011(8)(b)	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority	9	1	YES	YES	YES	YES
847.0145(1)	Selling, or otherwise transferring custody or control, of a minor	9	1	YES	YES	YES	YES
847.0145(2)	Purchasing, or otherwise obtaining custody or control, of a minor	9	1	YES	YES	YES	YES
794.011(5)	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury	8	2	YES	NO	YES	YES

APPENDIX D--CURRENT SEX OFFENSES RANKED BY SEVERITY¹

						NOTE: SEXUAL PREDATOR MUST BE DESIGNATED BY A COURT FINDING	
Statute	Description	Criminal Code Offense Severity Level	Felony degree	Sex Offender Qualifying Offense	Sex Predator "Once is Enough" Qualifying Offense	"Second strike sexual predator"	
						Qualifying primary offense	AND qualifying prior offense
800.04(4)(a)	Lewd or lascivious battery, sexual activity with victim 12-15 years of age	8	2	YES	NO	YES	YES
800.04(4)(b)	Lewd or lascivious battery, encourages, forces, or entices victim under 16 to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity	8	2	YES	NO	YES	YES
825.1025(2)	Lewd or lascivious battery upon an elderly person or disabled adult	8	2	YES	NO	YES	YES
796.03	Procuring any person under 18 years for prostitution	7	2	YES	NO	YES	YES
800.04(5)(c) (1)	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years	7	2	YES	NO	YES	YES
800.04(5)(c)(2)	Lewd or lascivious molestations; victim 12-15 years of age; offender 18 years or older	7	2	YES	NO	YES	YES
847.0135(3)	Solicitation of a child, via a computer service, to commit an unlawful sex act	7	3	YES	NO	NO	YES
794.05(1)	Adult aged 24 or older engaging in sex with a minor aged 16 or 17	6	2	YES	NO	YES	YES
800.04(6)(b)	Lewd or lascivious conduct; offender 18 years of age or older	6	2	YES	NO	YES	YES
827.071(2) & (3)	Use or induce a child in a sexual performance, or promote or direct such performance	6	2	YES	NO	YES	YES
794.011(8)(a)	Solicitation of minor to participate in sexual activity by custodial parent	6	3	YES	NO	YES	YES
800.04(5)(d)	Lewd or lascivious molestation; victim 12 - 15 years of age; offender younger than 18 years	6	3	YES	NO	YES	YES
825.1025(3)	Lewd or lascivious molestation of an elderly person or disabled adult	6	3	YES	NO	NO	YES
847.0135(2)	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct	6	3	YES	NO	NO	YES
800.04(7)(c)	Lewd or lascivious exhibition; offender 18 years or older	5	2	YES	NO	YES	YES
827.071(4)	Possess with intent to promote any photographic material, motion picture, etc. which includes sexual conduct by a child	5	2	YES	NO	YES	YES
800.04(6)(c)	Lewd or lascivious conduct; offender less than 18 years of age	5	3	YES	NO	YES	YES
825.1025(4)	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult	5	3	YES	NO	NO	YES

APPENDIX D--CURRENT SEX OFFENSES RANKED BY SEVERITY¹

						NOTE: SEXUAL PREDATOR MUST BE DESIGNATED BY A COURT FINDING	
Statute	Description	Criminal Code Offense Severity Level	Felony degree	Sex Offender Qualifying Offense	Sex Predator "Once is Enough" Qualifying Offense	"Second strike sexual predator"	
						Qualifying primary offense	AND qualifying prior offense
827.071(5)	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child	5	3	YES	NO	YES	YES
847.0137(2) & (3)	Transmission of pornography by electronic device or equipment	5	3	YES	NO	NO	NO
847.0138(2) & (3)	Transmission of material harmful to minors to a minor by electronic device or equipment	5	3	YES	NO	NO	NO
800.04(7)(d)	Lewd or lascivious exhibition; offender less than 18 years	4	3	YES	NO	YES	YES
787.025	Luring a child into a building or car with intent to commit a felony (when offender has a prior conviction for a chapter 794 or 800 offense)	1	3	YES	NO	YES	YES
794.065(1)	Sex offender (with victim under 16) residing within 1,000 feet of any school, day care center, park or playground.	1	3	YES	NO	YES	NO
847.0133	Provide obscene material to a minor	1	3	YES	NO	NO	YES

¹This list includes offenses identified in Chapter 794 or Chapter 800, Florida Statutes. In addition, it includes offenses which are in other chapters but which are considered sex offender registration qualifying offenses. Information on the sex offender and sex predator qualifying offenses was obtained from the Florida Department of Law Enforcement publication, "2004 Guidelines to Florida Sex Offender Laws".

Name: _____
LAST FIRST MIDDLE

FDC# _____

SECTION E – Vehicle, Mobile Home, Trailer or Manufactured Home

Vehicle # _____ License Tag # _____
Registration # _____
Description (including color scheme): _____

Vessel, Live-Aboard Vessel, or Houseboat

Hull ID# _____ Name of Vessel: _____
Manufacturer's Serial # _____
Description (including color scheme): _____

SECTION F – Employment

Employed Unemployed

Employer: _____ Contact: _____ Phone Number: () _____
Address: _____
City County State Zip

SECTION G - Offense Information

VICTIM - Minor Adult

Date of Offense:	Offense:	Statute Number:	Offense Location: (Include City & State)
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____

Victim 1 Age: _____ Race: _____ Sex: _____
Victim 2 Age: _____ Race: _____ Sex: _____
Victim 3 Age: _____ Race: _____ Sex: _____
Victim 4 Age: _____ Race: _____ Sex: _____

CRIME COMMITTED

- 1 2 3 4
- Attempted murder
 - Exposed genitals
 - Fondled victim
 - Murder
 - Victim forced to perform anal penetration on offender
 - Offender forced victim to masturbate him/her
 - Offender forced victim to masturbate self
 - Offender forced victim to perform oral sex
 - Penetrated victim with an object
 - Penetrated victim with finger/toe
 - Performed anal penetration on victim
 - Performed oral sex act on victim
 - Performed penis/vaginal penetration on victim
 - Other (explain on supplemental form)

WEAPON USED

- 1 2 3 4
- Blunt object
 - Chemical/mace
 - Firearm
 - Hands/fists/feet
 - Knife/cutting instrument
 - Threat/intimidation
 - Other (explain on supplemental form)

OFFENDER'S ACTION (Continued)

- 1 2 3 4
- Abducted victim
 - Bit victim
 - Blindfolded victim
 - Cleaned/washed before act
 - Cleaned/washed after act
 - Condom used
 - Cut/forced clothing removal
 - Defecated on victim
 - Disguise used
 - Evidence conscious
 - Ejaculated on victim
 - Followed victim
 - Gagged victim
 - Hit/beat victim
 - Induced drugs/alcohol
 - Offender under the influence of drugs/alcohol
 - Lubricant used
 - Ransacked premises
 - Requested specific position/language
 - Restrained/tied victim
 - Shaved victim
 - Showed pornographic material to victim
 - Spanked victim
 - Stalked victim
 - Took photographs/videos
 - Took clothing/trophy from scene
 - Tortured victim
 - Trickery/deceit/impersonate
 - Unable to achieve erection
 - Urinated on victim
 - Other (explain on supplemental form)

OFFENDER'S ACTION (Continued)

FORCED VICTIM TO

- 1 2 3 4
- Act out scenario
 - Clean/wash before act
 - Clean/wash after act
 - Consume liquor/drugs
 - Disrobe completely
 - Disrobe partially
 - Disrobe offender
 - Remain silent
 - Use condom
 - Use lubricant
 - Other (explain on supplemental form)

VICTIM CHOSEN BECAUSE

- 1 2 3 4
- Age
 - Availability
 - Known to offender
 - Unknown to offender
 - Physical appearance
 - Profession/occupation
 - Race
 - Runaway
 - Selected randomly
 - Other (explain on supplemental form)

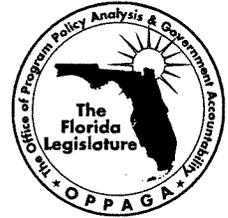
Distribution: Institution: Central Office (White)
FDLE (Green)
File (Yellow)
Sheriff's Office (Pink)
Offender (Goldenrod)

Probation: FDLE (Original)
P & P Offender File (Copy)
Offender (Copy)



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND
GOVERNMENT ACCOUNTABILITY



RESEARCH MEMORANDUM

Conditional Release of Sexually Violent Predators Through Stipulated Agreements

October 21, 2011

Summary

As requested, OPPAGA reviewed the practice of stipulated agreements for the conditional diversion or release of offenders from the Sexually Violent Predator Program. This report answers five questions:

- What are stipulated agreements?
- What is the legal basis for stipulated agreements?
- Why are stipulated agreements negotiated?
- How are sexually violent predators with stipulated agreements supervised in the community?
- Have sexually violent predators with stipulated agreements committed new crimes?

Stipulated agreements are negotiated civil contracts between a state attorney and an offender that allow the offender to be released into the community under specified terms and conditions. As of September 2011, OPPAGA identified 153 stipulated agreements approved by Florida state courts. State attorneys' offices that use them cite their broad prosecutorial discretion and authority to negotiate civil contracts as the legal basis for these agreements. State attorneys' offices use stipulated agreements in an effort to maintain public safety by providing some measure of accountability when an offender meets sexually violent predator criteria but it is unlikely that the state will prevail at the commitment trial or annual release hearing. Sometimes state attorneys' offices use the agreements to require conditions for release from the Sexually Violent Predator Program because there is no re-entry phase to provide community-based treatment and supervision. Preempting trials also reduces court costs. However, some stakeholders question the legal basis and enforceability of the agreements. State attorneys' offices are typically responsible for providing supervision to sexually violent predators released into the community under stipulated agreements; however, they do not have the ability to enforce many of the provisions of the agreements. Almost half of sexually violent predators also had some type of Department of Corrections supervision at the time of their release. Of the 140 offenders released via stipulated agreement and in the community for at least one

R. Philip Twogood, Coordinator

year, 31 have been convicted of new criminal charges, including 5 that were convicted of a felony sex offense and 3 others that were convicted of violent felonies. The remaining 23 were convicted of various misdemeanors and non-violent felonies. In addition, 18 offenders had been returned to the Florida Civil Commitment Center due to contract revocation.

Background

As defined by statute, sexually violent predators are persons who have been convicted of a sexually violent offense and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.¹

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act.² The act creates a civil commitment process for sexually violent predators that is similar to the Baker Act procedures to involuntarily commit and treat mentally ill persons. Offenders with specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families for assessment as to whether they meet the clinical definition of a sexually violent predator; the department then provides a recommendation to the state attorney.

Following receipt of the recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the person is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center, the case proceeds through the commitment process, and in many instances a civil trial is held. (Appendix A describes the commitment process in more detail.)

Those committed to the Sexually Violent Predator Program are housed for treatment at the Florida Civil Commitment Center.³ The treatment program consists of four levels of sex offender-specific cognitive behavior treatment. This program takes approximately six years to complete. Section 394.918, *Florida Statutes*, provides that persons committed to the state under the Involuntary Civil Commitment of Sexually Violent Predators Act be confined until the court determines that they are no longer a threat to public safety.

A person committed under the act has an examination of his mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him to be released. If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he is likely to engage in acts of sexual violence.

¹ Section 394.912, *F.S.*

² Sections 394.910 through 394.932, *F.S.*

³ The Florida Civil Commitment Center is a 720-bed, physically secure facility located in Arcadia, Florida, and operated by The GEO Group.

Since the program's inception, over 42,000 offenders have been referred to the Department of Children and Families for screening and assessment. As of September 2011, there were 677 detained and committed individuals at the Florida Civil Commitment Center: 147 detainees awaiting completion of commitment procedures, 525 civilly committed predators, and 5 non-committed offenders in custody under stipulated agreements.⁴ (Appendix A describes the disposition of all referrals.)

What are stipulated agreements?

Stipulated agreements are negotiated civil contracts between a state attorney and an offender that allow the offender to be released into the community under specified terms and conditions. As of September 2011, OPPAGA identified 153 stipulated agreements approved by Florida state courts.

Stipulated agreements can be broadly classified into three main types: pre-trial, post-commitment, and split agreements.

- **Pre-trial agreements** are negotiated prior to a civil trial that would determine whether a person is a sexually violent predator. In these cases, the court conducts a civil proceeding in which the commitment order is held in abeyance (temporarily suspended) as long as the offender adheres to the terms and conditions stipulated in the contract. One hundred thirteen (113) pre-trial agreements have been signed.
- **Post-commitment agreements** are negotiated with offenders who have been committed by the courts as sexually violent predators. These offenders have petitioned the court for release under the provision that they no longer pose a danger to the public. In some cases, the offender has satisfactorily progressed in treatment at the Florida Civil Commitment Center and may be suitable for outpatient treatment. Twenty-one (21) post-commitment agreements have been signed.
- **Split agreements** are contracts in which an offender agrees to participate in treatment at the Florida Civil Commitment Center for a limited amount of time. A mutually-agreed upon licensed clinician will recommend outpatient treatment when that clinician thinks the offender has completed enough inpatient treatment at the center to safely be treated in the community. Thirteen (13) split agreements have been signed.

All three types of agreements typically provide for the offender's release into the community in exchange for participation in sex offender treatment and often other conditions. Other conditions typically include the offender taking polygraph tests at his own expense, submitting periodic reports to the court, and incurring no new criminal charges. Some contracts have additional requirements, such as attending Alcoholics Anonymous, abiding by a curfew, having no victim contact, or not possessing pornographic material. If the offender fails to comply with the conditions of his release, depending on the terms of the contract, he may be held as a detainee at the Florida Civil Commitment Center while the state begins the process of civil commitment. If the

⁴ Data presented in this report are based on the period of our analysis of the DCF Sexually Violent Predator Program data for the sake of consistency. The most current summary data is available at <http://edr.state.fl.us/>.

offender has waived his right to a trial, he may be immediately committed as a sexually violent predator.

Circuits also negotiate contracts for other specific situations. In nine cases, the offender was physically compromised due to terminal illness, and five stipulated agreements arranged for the conditional release of an offender directly to U.S. Immigration and Customs Enforcement for the purpose of deportation.

What is the legal basis for stipulated agreements?

The 17 circuits that have negotiated stipulated agreements cite three main legal bases for the contracts. Some state attorneys' offices consider it part of their prosecutorial discretion to enter into stipulated agreements; others point to s. 394.914, *Florida Statutes*, which states that the state attorney may file a petition to commit an offender under the Involuntary Civil Commitment of Sexually Violent Predators Act. Other state attorneys' offices use the stipulations because civil procedures, which govern these commitment cases, allow for such settlements.

However, some stakeholders question the legal basis and enforceability of the agreements. Some state attorneys' offices state that there is no legal basis, or the basis is questionable, for stipulated agreements, which are not specifically authorized in the Involuntary Civil Commitment of Sexually Violent Predators Act. In addition, some state attorneys' offices in circuits that have not negotiated stipulated agreements cite a lack of enforceability under contract law should an offender fail to comply with the terms and conditions of their agreement as their reason for not negotiating these types of agreements. Lastly, as s. 394.911, *Florida Statutes*, states that "less restrictive alternatives are not applicable to cases initiated under this part," it is unclear whether conditionally releasing sex offenders whom the state attorney believes meet criteria for involuntary civil commitment constitutes a "less restrictive alternative" contrary to the legislative intent of the program.

Why are stipulated agreements negotiated?

State attorneys' offices negotiate stipulated agreements in an effort to maintain public safety by providing some measure of accountability when it is unlikely that the state will prevail at the commitment trial or annual hearing. Sometimes state attorneys' offices use the agreements to provide conditions for release from the Sexually Violent Predator Program because there is no re-entry phase to provide community-based treatment and supervision. Finally, preempting trials helps to contain court costs. Almost three-quarters of the stipulated agreements were negotiated pre-trial.

Trials to commit a sexually violent predator are typically jury trials. The state bears the burden of proving that the person is a sexually violent predator and the jury verdict must be unanimous. In some instances, the state may have a weak case caused by a split in the expert opinions, weak evidence, or the age of the case. State attorneys' offices believe that in such situations, the conditions of the stipulated agreement provide more public safety than if the state were to lose the case and have the individual released without further supervision into the community.

Some stipulated agreements are an effort to provide continued treatment after release from the Sexually Violent Predator Program. While many states that operate involuntary civil

commitment programs provide community-based treatment or supervision as offenders return to the community, Florida does not.

Public defenders are willing to negotiate stipulated agreements as they guarantee a release for their clients. Given the indeterminate length of commitment under the Involuntary Civil Commitment of Sexually Violent Predators Act, conditional release may be preferable to risking commitment or retention in the program.

State attorneys and public defenders report that stipulated agreements reduce the number of civil commitment cases that go to trial, thus containing court costs. Because a sexually violent predator civil hearing can result in commitment for an extended and unspecified period of time, a typical trial may require months of preparation by the state and the defense and the use of expert witnesses by both sides, in addition to the judicial resources required for the trial.

How are sexually violent predators with stipulated agreements supervised in the community?

State attorneys' offices are typically responsible for providing supervision to sexually violent predators released into the community under stipulated agreements.⁵ However, while many of the agreements have terms such as abiding by a curfew, no victim contact, or no pornographic material, state attorneys' offices do not have the resources or expertise to directly enforce these conditions. Unlike probation officers, state attorneys do not go into an offender's home to determine their living conditions or see if they are in violation of the contract. Instead, state attorneys' offices rely primarily on reports from the treatment provider to monitor compliance and run periodic criminal history checks to see if the offender has been arrested. State attorneys' offices acknowledge that they are ill-equipped to maintain the type of supervision necessary for a predator in the community. However, as one assistant state attorney responded, "...in place of no conditions at all, if the jury does not commit, and no aftercare treatment mandated by statute, it appears to be the lesser of two evils."

In addition, almost half of sexually violent predators on stipulated agreements were also supervised by the Department of Corrections. Of the 153 conditionally released offenders, 71, or 46.4%, had some type of Department of Corrections supervision (including felony and sex offender probation) at the time of their court order for release.⁶ In cases where the offender is subject to department supervision, the assistant state attorney typically communicates with both the sex offender treatment provider and the probation officer to ensure compliance with the terms and conditions of the contract.

Have sexually violent predators with stipulated agreements committed new crimes?

Of the 140 offenders who were conditionally released via stipulated agreement and had been in the community at least one year, 31, or 22%, have been convicted of new crimes.

⁵ The 20th Circuit responded that the offender's attorney, usually an assistant public defender, is required to "police" the offender and submit documentation to support compliance with the contract terms.

⁶ Some offenders were given a split sentence (incarceration followed by Department of Corrections supervision) as their criminal sentence handed down by the court.

Five of the offenders were convicted of a felony sex offense.⁷ Three others were convicted of violent felonies—two of robbery and one of aggravated assault. The remaining 23 offenders were convicted of various misdemeanors and non-violent felonies, as shown in Exhibit 1.

Exhibit 1

Five of the 140 Offenders Released via Stipulated Agreements Were Convicted of Felony Sex Offenses

Type of Conviction		Number	Percentage
None		109	78%
Misdemeanor	Misdemeanor battery	4	3%
	Misdemeanor drug offenses	1	1%
	Misdemeanor DUIs and driver license violations	3	2%
	Misdemeanor theft, trespass, or criminal mischief	1	1%
	Total misdemeanor convictions	9	6%
Felony	Felony sex offenses	5	4%
	Robbery	2	1%
	Aggravated assault or battery	1	1%
	Property theft, fraud, damage	3	2%
	Drug sale or delivery	1	1%
	Sex offender registration or requirements	6	4%
	Felony possession of cocaine, marijuana, prescription drugs	4	3%
Total felony convictions	22	16%	
Total		140	100%

Source: OPPAGA analysis of judicial data from the Florida Department of Law Enforcement through September 22, 2011, for sexually violent predators released via stipulated agreement.

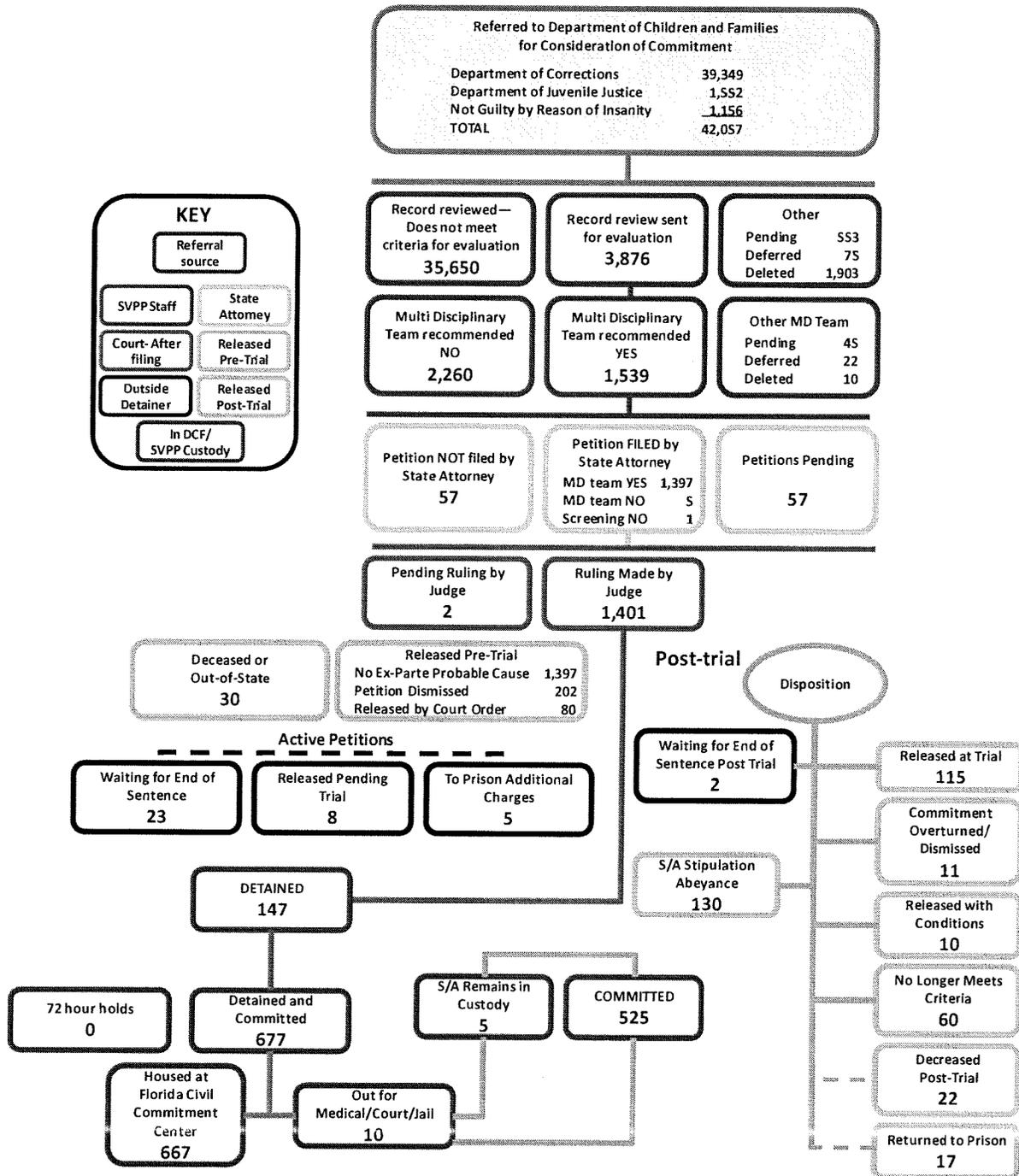
Our analysis also found that, as of September 22, 2011, of the 140 offenders conditionally released via stipulated agreement and in the community at least one year, 18 had been returned to the Florida Civil Commitment Center due to contract revocation.⁸ In 7 of these cases this was due to a new criminal conviction; in the other 11 cases it was due to a new criminal charge or a material violation of the stipulated agreement, such as non-compliance with the treatment plan or having unsupervised visitation with a minor.

⁷ Sex offenses were sexual battery with a firearm (victim 12 or older), lewd or lascivious exhibition by a person 18 or older, sexual battery (force not likely to cause great bodily harm), and lewd or lascivious molestation.

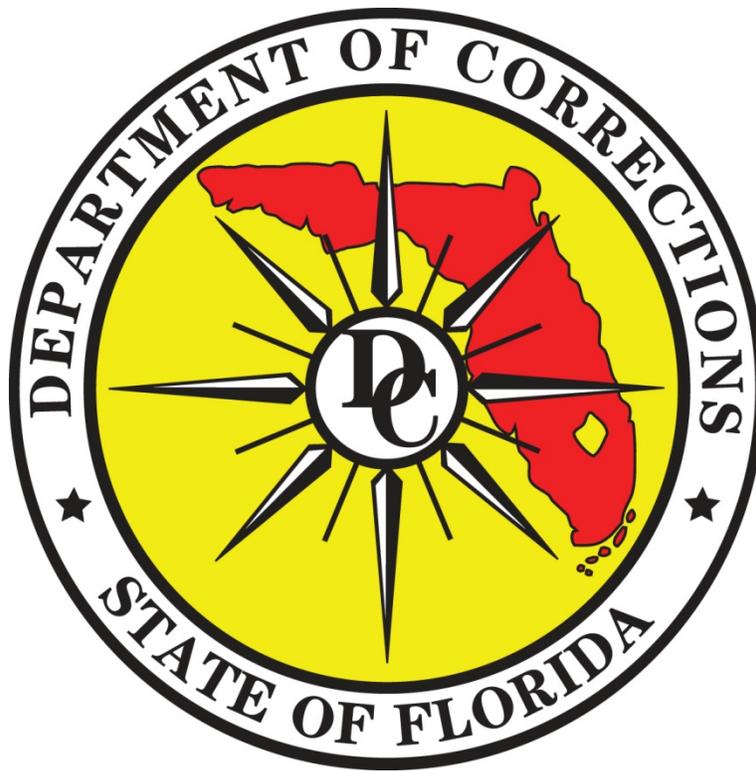
⁸ Additional offenders with new criminal convictions may also return to the center after they serve their jail or prison sentence.

Appendix A

STATE OF FLORIDA
 Status of Adults Referred for Commitment
 to the SVPP through September 30, 2011



Source: This flowchart was prepared by the Florida Legislature, Office of Economic and Demographic Research using information prepared monthly by the Department of Children and Families (DCF). Release reasons were changed on June 12, 2009 by DCF for 12 committed individuals.



Florida Prison Recidivism Report: Releases from 2004 to 2011

May 2013

Florida Department of Corrections
Michael D. Crews, Secretary

Bureau of Research and Data Analysis
dcresearch@mail.dc.state.fl.us

TABLE OF CONTENTS

Introduction.....	3
Executive Summary.....	4
Methodology	5
Recidivism Rates Over Time	9
Recidivism and Gender	10
Recidivism and Violent Offenses.....	11
Recidivism and Non-Violent Offenses	12
Recidivism and Age.....	13
Recidivism Rates - Model Factor Tables.....	14
References.....	19

INTRODUCTION

The Florida Prison Recidivism Report is produced annually by the Bureau of Research and Data Analysis within the Florida Department of Corrections. The annual study examines the recidivism among Florida's released inmate population. While the use of recidivism as a performance indicator of the state's rehabilitative efforts can be debated, the analysis itself is of vital public importance. Given that 87% of inmates housed in Florida prisons today will one day be released back into our communities, those in charge of the state's planning and budgeting need to know the likelihood that an inmate who is released today will one day return back to Florida's prison system. More importantly, for the public and those charged with ensuring public safety, the state's recidivism rate is an important measure of criminal activity caused by released prisoners.

When discussing recidivism rates, the factors that influence recidivism must be considered. For example, recidivism rates vary across age groups, racial/ethnic groups, and gender. In order to determine where and how to devote scarce correctional and community resources, we must identify which groups are most likely to fail when they are released from Florida's prisons and which groups are likely to successfully re-enter society.

This study finds that the factors that influence Florida's recidivism rate are generally consistent with existing research. A report by the Pew Center on the States shows the overall recidivism rate (return to prison for any reason within three years of release) for releases from 33 states participating in the study was approximately 43%.

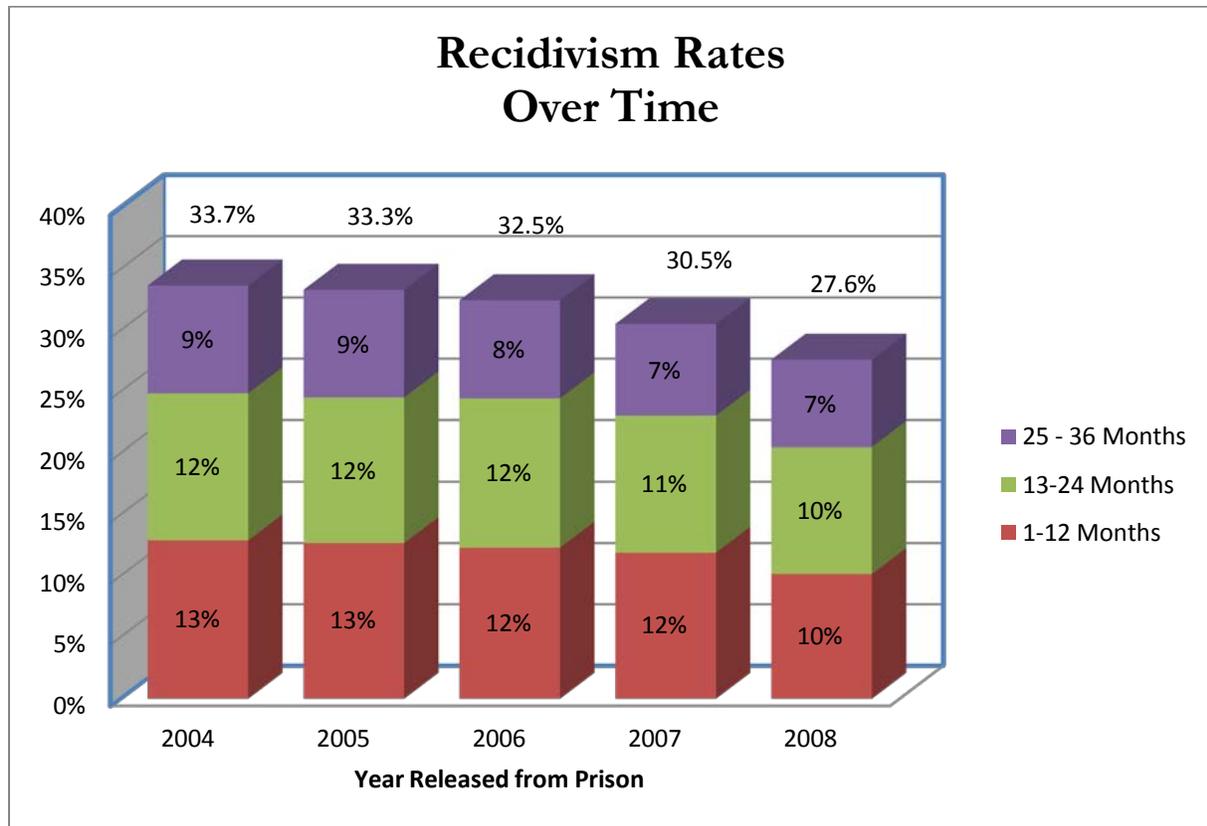
It must be noted that, unlike most states, Florida paroles very few inmates and only about one third of released inmates have any supervision at all following their release. Those who are supervised following release recidivate at higher rates than released inmates without supervision due in part to this increased supervision and required adherence to the conditions of supervision. Since fewer of Florida's released inmates are supervised, Florida's recidivism rate may appear lower than that of other states. It should come as no surprise that California, for example, releases the majority of their inmates to supervision and their recidivism rate is 63.7% (FY 07-08 releases).

When comparing recidivism rates across groups or programs, caution must be taken to ensure that the same parameters are considered. The key considerations include the definition of recidivism, the time-period of interest since release, methodology and calculation, characteristics of the respective groups, and the relative sample size of the groups or programs being compared.

EXECUTIVE SUMMARY

Defining Recidivism

For this report, recidivism is defined as a **return to prison**. The return to prison may be a result of a new conviction or a violation of post-prison supervision. The follow-up periods (typically reported as three years) are calculated from prison release date to the date of readmission to prison.



Changing Recidivism Rates

The last three-year release cohorts have shown slight decreases in three-year recidivism rates. These decreases are shown below:

- Inmates released in 2006 who returned to prison within three years → 32.5% recidivism rate
- Inmates released in 2007 who returned to prison within three years → 30.5% recidivism rate
- Inmates released in 2008 who returned to prison within three years → 27.6% recidivism rate

Factors to be Considered

For 2004-2011 releases, some factors that influence an inmate's likelihood of recidivism include:

- Number of prior prison commitments
 - More Priors → Higher Likelihood of Recidivating
- Whether the inmate has a supervision term after release
 - Supervised → Higher Likelihood of Recidivating
- The inmate's tested education level
 - Higher Grade Level → Lower Likelihood of Recidivating
- The inmate's behavior while in prison
 - More Disciplinary Reports → Higher Likelihood of Recidivating
- The inmate's age at first offense
 - Younger → Higher Likelihood of Recidivating

METHODOLOGY

Only inmates released from Florida prisons from January 1, 2004 to December 31, 2011 are included in the study with the following exceptions:

- Inmates who died or were executed have been omitted from the calculation of recidivism rates.
- Inmates who are missing information on the factors of interest are omitted.
- Inmates with more than one release in a calendar year have only the first such release included.
- Inmates with detainers in place at the time of release are omitted.

This methodology follows the Association of State Correctional Administrators (ASCA) Performance-Based Measures System counting rules definition of recidivism. As a result of consulting with the National Institute of Corrections' Patricia Hardyman, Ph.D., additional variables were added to the study this year:

- Placing a time restriction (five years) on how long prior to the admission date to count non-violent offenses,
- Placing a time restriction (fifteen years) on how long prior to the admission date to count violent offenses,
- Suspected or confirmed gang involvement, and
- Age at first offense.

For this study, survival analysis techniques are used to compute recidivism rates and to define the statistical models used to determine which factors significantly influence recidivism rates. The basic rates for tables and graphs are computed from Kaplan-Meier estimates of the survival curve using right-censored data. The analyses of factor significance are conducted using Cox models (proportional hazards regression) of the same data. The analysis used a 5% level of significance to determine the factors in order of importance, and a stepwise selection routine for determining which factors to include. The correlations between factors were considered during the stepwise routine to eliminate highly correlated variables from both being selected for inclusion in the model. In those

cases, the first variable selected was included and the correlated variable was eliminated from consideration.

The following variables were considered for inclusion in the model:

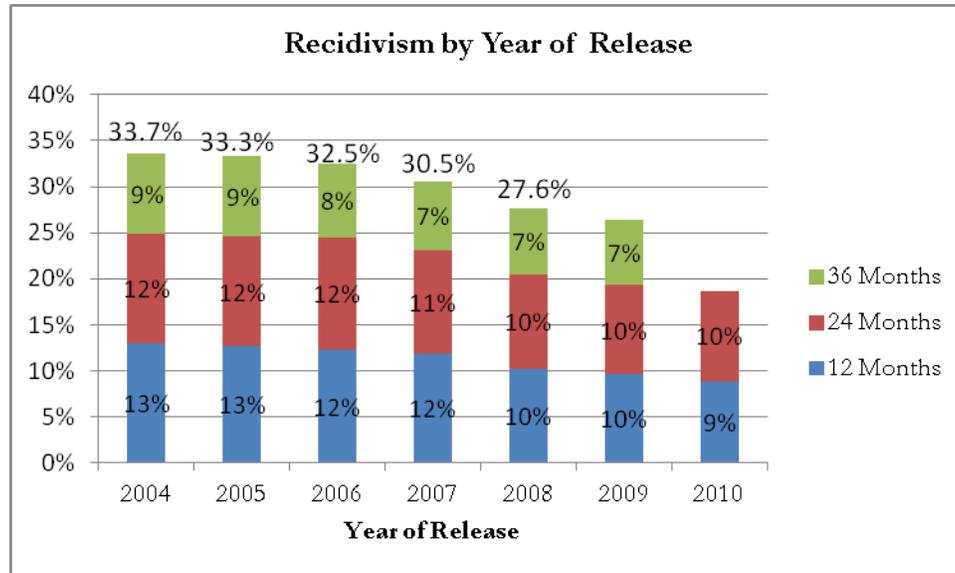
Gender is Male – Yes/No
Number of Prior Prison Commitments
Age at Release
Age at First Offense
Confirmed Gang Member – Yes/No
Confirmed or Suspected Gang Member – Yes/No
Number of Disciplinary Reports in Current Incarceration
Most Recent Tests of Adult Basic Education (TABE) score (education level in grade equivalents)
Time Served in Prison, Current Incarceration in Months
Worst Offense is Murder/Manslaughter – Yes/No
Worst Offense is Murder/Manslaughter within 15 Years of Admission – Yes/No
Worst Offense is Sex Offense – Yes/No
Worst Offense is Sex Offense within 15 Years of Admission – Yes/No
Worst Offense is Robbery – Yes/No
Worst Offense is Robbery within 15 Years of Admission – Yes/No
Worst Offense is Other Violent Offense like Assault or Kidnapping – Yes/No
Worst Offense is Other Violent Offense within 15 Years of Admission – Yes/No
Race is Black – Yes/No
Ethnicity is Hispanic – Yes/No
Supervision to Follow Prison – Yes/No
Low Custody (Minimum or Community Custody) – Yes/No
High Custody (Close Custody) – Yes/No
Number of Burglary offenses in criminal history
Number of Drug offenses in criminal history
Number of Theft/Fraud offenses in criminal history
Number of Weapons offenses in criminal history
Number of Burglary offenses within 5 Years of Admission
Number of Drug offenses within 5 Years of Admission
Number of Theft/Fraud offenses within 5 Years of Admission
Number of Weapons offenses within 5 Years of Admission
Diagnosed Mental Illness – Yes/No
Substance Abuse Severity Score
Inmate-Reported Drug Screening Score
Inmate Concerned about Child's Welfare – Yes/No
Inmate Extremely Concerned about Child's Welfare – Yes/No
Inmate has No Enemies – Yes/No
Inmate has Enemies – Yes/No
Inmate's Family is in Crisis – Yes/No
Inmate's Family has a Negative Influence on the Inmate – Yes/No
Inmate's Family has a Positive Influence on the Inmate – Yes/No
Inmate's Friends have a Negative Influence on the Inmate – Yes/No
Inmate's Friends have a Positive Influence on the Inmate – Yes/No

Inmate's Spouse has a Negative Influence on the Inmate – Yes/No
Inmate's Spouse has a Positive Influence on the Inmate – Yes/No
Inmate has No Spouse – Yes/No
Inmate has a Negative Relationship with their Attorney – Yes/No
Inmate has a Positive Relationship with their Attorney – Yes/No
Inmate has other Negative Influences in their Life – Yes/No
Inmate has other Positive Influences in their Life – Yes/No

It should be noted that for the "Worst" Offense factors the hierarchy is Murder, Sex Offense, Robbery, and Other Violent Offense. Each inmate can only be designated in at most one of the categories. For example, if he has committed both sex offenses and robbery, he will be considered in the "Worst Offense is Sex Offense" category, not in the "Worst Offense is Robbery" category.

Also, for the criminal history factors, only those offenses for which the inmate received either a Florida prison sentence or Florida community supervision sentence are considered. Crimes in Florida that resulted in other sanctions, such as fines or county jail or federal sentences, are not considered. Arrests, supervision, or prison sentences outside of Florida are not considered unless they are part of the inmate's Florida sentence.

RECIDIVISM RATES BY YEAR OF RELEASE

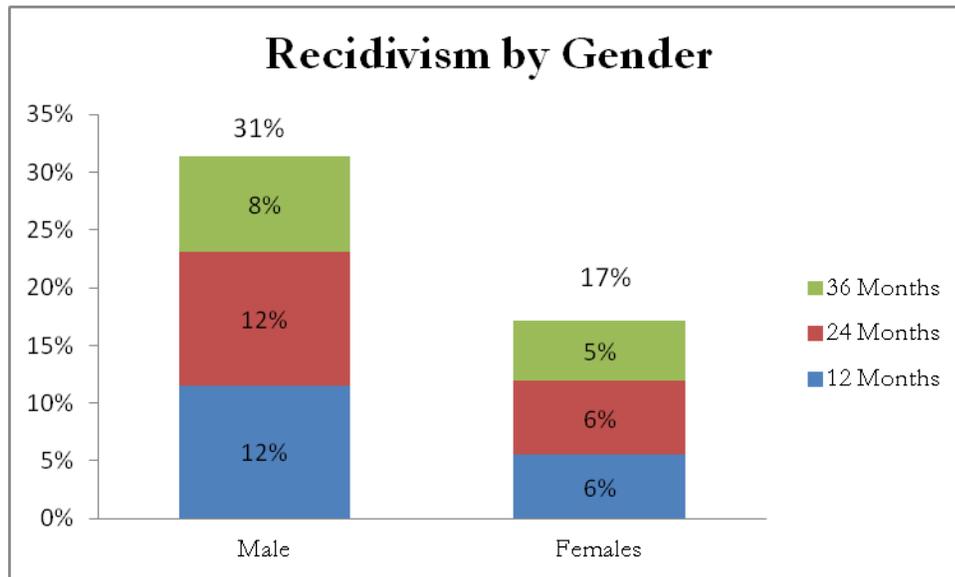


The 36 months recidivism rates, when examined one year of releases at a time, range from 27.6% to 33.7% in the five years for which three-year rates can be computed.

Recidivism rates are certainly affected by factors outside the influence of the Department of Corrections, such as unemployment, crime rates, and local criminal justice issues including jail bed availability and judicial behavior. Statewide initiatives like truth-in-sentencing, increased use of mandatory prison terms, and inconsistent funding for inmate rehabilitative programs may also influence recidivism rates. For these reasons, recidivism rates cannot be used as the only measure of operational performance for the prison system. It is a measure of a multitude of societal issues working for and against the released inmate, before he ever receives a prison sentence and after he is released.

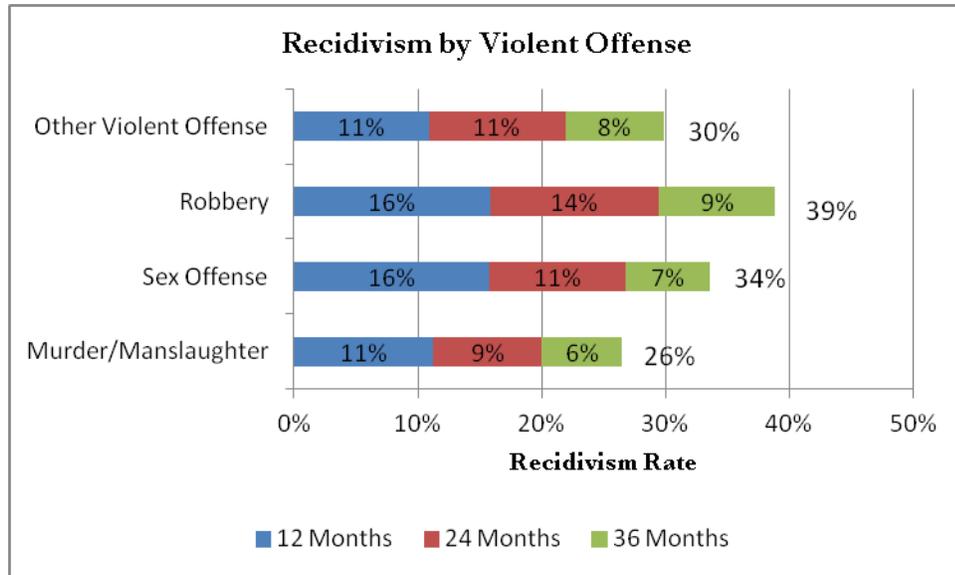
The downward trend in recidivism rates follow similar trends in crime rates, arrests, and felony filings. The state's Criminal Justice Estimating Conference has noted declining prison admissions in recent years as a reason for the recent stabilization of the total prison population. This follows more than a decade of growth in the number of inmates Florida incarcerates.

RECIDIVISM RATES AND GENDER FOR INMATES RELEASED 2004-2011



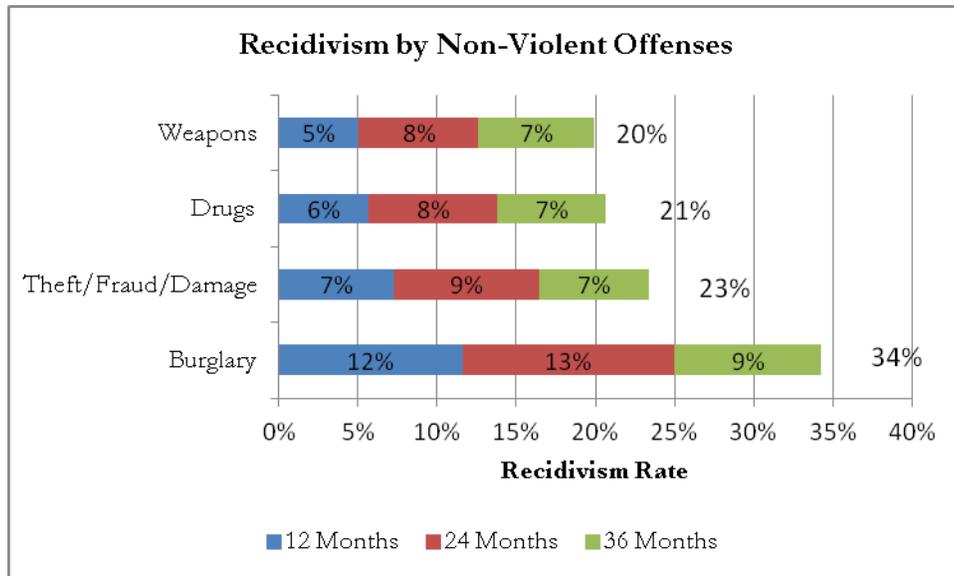
With regard to gender, female inmates' recidivism rates are much lower than male inmates' recidivism rates. At three years, the male recidivism rate is 31% while the female rate is only 17%. Other factors could impact the difference in the recidivism rates. While the average time served for males is 38 months, the average time served for females is only 24 months. Approximately 29% of female releases have some type of supervision to follow compared to 35% of males. These factors and others may explain some of the differences in the recidivism rate for males and females.

RECIDIVISM RATES AND INMATES WITH VIOLENT OFFENSES FOR INMATES RELEASED 2004-2011



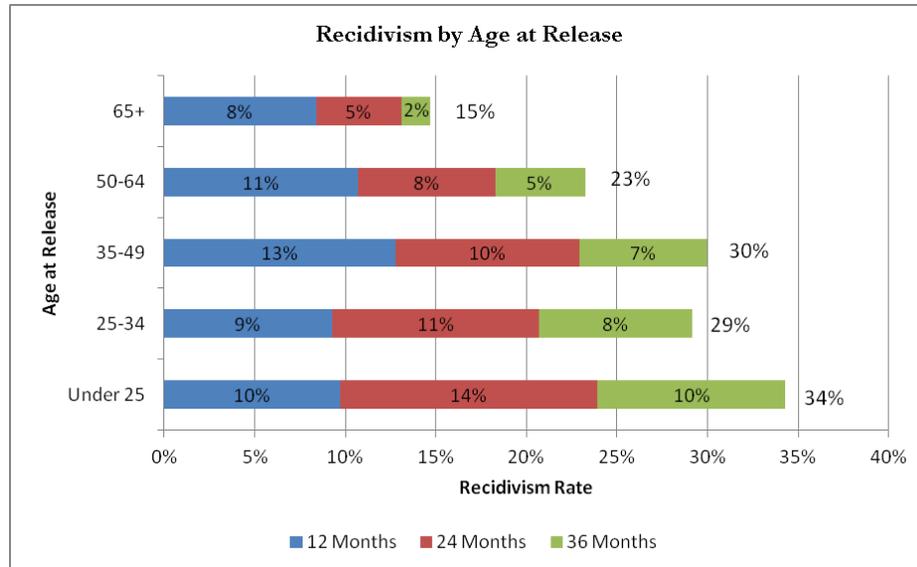
The graph above shows that among inmates who were in prison for violent offenses, those in prison for murder or manslaughter have the lowest recidivism rates. Inmates serving time for robbery, sex and other violent offenses have higher than average recidivism rates.

RECIDIVISM RATES AND INMATES WITH NON-VIOLENT OFFENSES FOR INMATES RELEASED 2004-2011

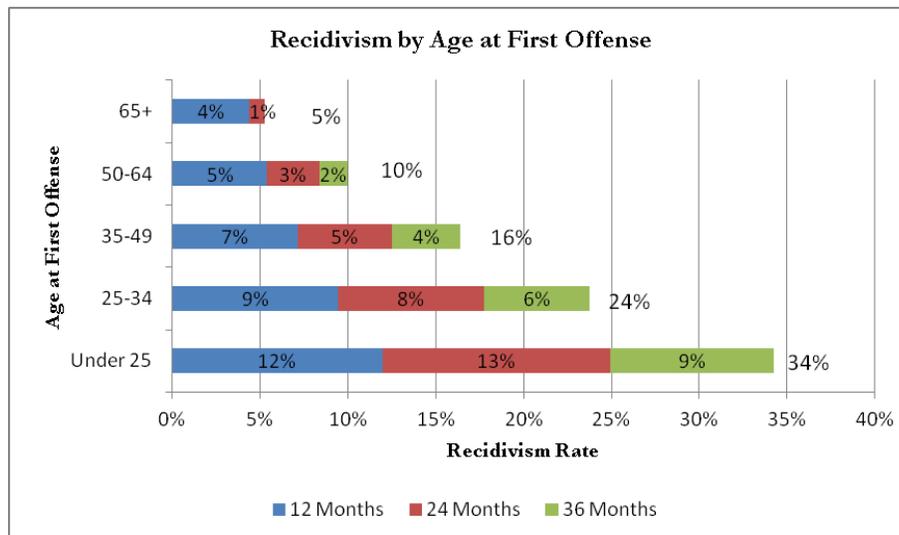


The graph above shows that among inmates who were in prison for non-violent offenses, those in prison for weapons offenses have the lowest recidivism rates. Those committing burglary offenses released during this period have the highest recidivism rates.

RECIDIVISM RATES AND AGE FOR INMATES RELEASED 2004-2011



The older an inmate is at time of release, the less likely he is to return to prison.



The younger an inmate is at the time of their first offense that results in a commitment to the Department of Corrections, the more likely that inmate will be to return to prison.

RECIDIVISM RATES – MODEL FACTOR TABLES FOR MALE INMATES RELEASED 2004-2011

Table 1. Hazard Ratios for Categorical Factors Selected by Model

Factors	Values	Overall Releases 2004 - 2011	Percent of Release Cohort	Recidivism Rate	Hazard Ratio
Supervision to Follow	Yes	86,753	35%	41%	1.979**
	No	163,980	65%	24%	
Gang Membership	Yes	13,465	5%	50%	1.56**
	No	237,268	95%	29%	
Race	Black	122,509	49%	34%	1.223**
	Non-Black	128,224	51%	25%	
Custody at Release	Low (Community or Minimum)	119,174	48%	25%	0.877**
Most Serious Crime in Inmate History	Murder/Manslaughter	8,089	3%	26%	0.714**
Ethnicity	Hispanic	19,246	8%	23%	0.775**
	Non-Hispanic	231,487	92%	30%	
No Spouse	Yes	50,914	24%	32%	1.074**
	No	157,036	76%	30%	
Most Serious Crime in 15 Years of Admission	Sex Offense within 15 Years of Admission	15,196	6%	34%	1.106**
Friends are a Positive Influence on the Inmate	Yes	118,071	57%	29%	0.954**
	No	89,879	43%	32%	
Custody at Release	High (Close)	35,734	14%	39%	1.085**
Most Serious Crime in 15 Years of Admission	Other Violent Offense (e.g., assault or kidnapping) within 15 Years of Admission	82,668	33%	33%	0.962**
Friends are a Negative Influence on the Inmate	Yes	16,342	8%	34%	1.066**
	No	191,608	92%	30%	
Inmate has a Diagnosed Mental Illness	Yes	37,021	15%	30%	0.963*
	No	213,712	85%	30%	
Most Serious Crime in Inmate History	Robbery	38,332	15%	39%	0.972*
Child Welfare Average Concern	Yes	122,218	59%	30%	0.983*
	No	85,732	41%	32%	

** : p-value ≤ 0.01; * : 0.01 < p-value ≤ 0.05; NS: Not Significant at α = 0.05

Table 2. Hazard Ratios for Continuous Factors

Factors	Value	Median	Mean	Hazard Ratio
Criminal History	Number of Prior Prison Commitments (0-9)	0	0.6	1.224**
Age at First Offense	Age at First Offense (13-84)	21	24.0	0.968**
Institutional Behavior	Number of Disciplinary Reports During Current Incarceration (0-269)	0	2.5	1.012**
Education Level	Most Recent Tests of Adult Basic Education (TABE) score (Grade Equivalents of 1-12.9)	6.7	†	0.971**
Substance Abuse Treatment Need	Inmate-Reported Drug Screening Score (0-14)	4	5.6	1.021**
Criminal History	Number of Theft Offenses within 5 Years of Admission (0-401)	0	1.0	1.006**
	Number of Burglary Offenses (0-102)	0	1.0	1.028**
	Number of Weapons Offenses (0-20)	0	0.2	0.943**
	Number of Drug Offenses within 5 Years of Admission (0-73)	0	1.0	1.02**
	Number of Other Offenses within 5 Years of Admission (0-115)	0	0.4	1.015**

** p -value ≤ 0.01 ; * p -value ≤ 0.05 ; NS: Not Significant at $\alpha = 0.05$; †: An average cannot be calculated for grade equivalent TABE scores since these are not interval scale.

Note that hazard ratios in the above tables are interpreted as the multiple of the likelihood of failure. For example, inmates who are gang members have a hazard ratio of 1.56. Since it is greater than one, it means that a male inmate is $(1.56-1=0.56)$ 56% more likely to fail than an inmate who was not a gang member with all other factors held constant (meaning they are identical on all factors in the model except for gang membership).

On the other hand, if the hazard ratio is less than one, the interpretation is a percent reduction in likelihood to fail. For example, a Hispanic inmate is $(1-0.775=.225)$ 22.5% less likely to recidivate than a non-Hispanic inmate with all other factors held constant.

For those measures that are expressed as numeric counts instead of dichotomous (Yes/No), the hazard ratios show the increase or decrease PER UNIT INCREASE in the factor. For example, for each additional disciplinary report an inmate receives while incarcerated, his likelihood of recidivating increases by $(1.012-1=.012)$ 1.2%. For each additional grade level tested, his likelihood of recidivating decreases by $(1-0.971=0.029)$ 2.9%.

Factors in Order of Predictability

Listed below are the factors in order of importance followed by an 'H' if the factor is associated with a higher likelihood of recidivism and an 'L' for a lower likelihood of recidivism.

Males

1. Number of Prior Prison Commitments – *H*
2. Supervision Following Prison – *H*
3. Age at First Offense – *L*
4. Number of Disciplinary Reports while in Prison – *H*
5. Gang Member Suspected or Confirmed – *H*
6. Most Recent TABE (Educational Level) – *L*
7. Inmate Reported Drug Screening Score – *H*
8. Race is Black – *H* (*Lower for Females*)
9. Number of Theft/Fraud Offenses within 5 Years of Admission– *H*
10. Number of Burglary Offenses – *H*
11. Low Custody – *L*
12. Worst Offense is Murder/Manslaughter – *L*
13. Hispanic Ethnicity – *L*
14. Inmate has NO Spouse – *H*
15. Number of Weapons Offenses – *L*
16. Number of Drug Offenses within 5 Years of Admission – *H*
17. Sex Offense within 15 Years of Admission – *H*
18. Friends are a Positive Influence on the Inmate – *L*
19. High Custody – *H*
20. Other Violent Offenses within 15 Years of Admission (e.g., Aggravated Assault, Assault, Battery) – *L*
21. Number of Other Non-Violent Offenses within 5 Years of Admission– *H*
22. Friends are a Negative Influence on the Inmate – *H*
23. Diagnosed Mental Illness – *L* (*Higher for Females*)
24. Worst Offense is Robbery – *L*
25. Inmate has an Average Concern for Child's Welfare– *L*

Females

1. Number of Prior Prison Commitments – *H*
2. Supervision Following Prison - *H*
3. Age at First Offense - *L*
4. Inmate Reported Drug Screening Score - *H*
5. Most Recent TABE (Educational Level) – *L*
6. Number of Theft/Fraud Offenses within 5 Years of Admission – *H*
7. Number of Other Non-Violent Offenses within 5 Years of Admission - *H*
8. Low Custody - *L*
9. Hispanic Ethnicity – *L*
10. Diagnosed Mental Illness – *H* (*Lower for Males*)
11. Murder/Manslaughter Offense within 15 Years of Admission– *L*
12. Friends are a Negative Influence on the Inmate -*H*
13. Number of Disciplinary Reports while in Prison - *H*

14. Other Violent Offense within 15 Years of Admission - *L*
15. Number of Drug Offenses within 5 Years of Admission – *H*
16. Race is Black – *L (Higher for Males)*
17. Number of Burglary Offenses within 5 Years of Admission – *H*

The factors that affect male recidivism, but not females are:

1. Suspected or Confirmed Gang Member
2. Inmate has NO Spouse
3. Number of Weapons Offenses
4. Sex Offense within 15 Years of Admission
5. Custody is High
6. Friends are a Positive Influence on the Inmate
7. Worst Offense is Robbery
8. Inmate has an Average Concern for Child's Welfare

The factors that affect both males and females, but in opposite directions:

1. The factor Race is Black is associated with a higher recidivism rate for males and a lower recidivism rate for females.
2. The factor Diagnosed with a Mental Illness is associated with a higher recidivism rate for females and a lower recidivism rate for males.

Table 3. Factors Not Included in the Model

Factor	Value	Overall Releases 2004-2011	Percent of Release Cohort	Recidivism Rate
Release Type	Expiration of Sentence (No Supervision to Follow)	162,471	65%	24%
	Conditional Release (mandatory supervision for serious offenders as specified in F.S. 947.1405)	37,208	15%	50%
	Expiration of Sentence to Probation or Community Control (Split Sentence)	36,082	14%	39%
Release Facility	Major Correctional Institution	193,726	79%	31%
	Work/Forestry Camp	17,851	7%	29%
	Work Release Center / Transition Center	30,437	12%	19%

Note that the results presented in Table 3 do not constitute a rigorous evaluation of any factor. For example, it is not valid to claim that if all inmates went to Work Release Centers, one would realize a lower overall recidivism rate. Inmates who succeed at work release do not have the same characteristics as many other inmates, so the work release impact would likely be different if expanded to include a broader group of inmates.

When comparing recidivism rates across groups or programs, caution must be taken to ensure that the same parameters are considered. The key considerations include the definition of recidivism, the time-period of interest since release, methodology and calculation, characteristics of the respective groups, and the relative sample size of the groups or programs being compared.

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SEX OFFENDER RISK AND RECIDIVISM IN FLORIDA

2012

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2012

Sex Offender Risk and Recidivism in Florida

Table of Contents

EXECUTIVE SUMMARY	2
BACKGROUND	4
METHODOLOGY	4
RESULTS.....	7
Descriptive Statistics.....	7
Recidivism Rates	8
Detailed Breakdown of New Crimes Committed	9
Procedures Used to Classify Sex Offenders and Identify Recidivists.....	11
Offenders and Predators	11
Adam Walsh Act Tiers.....	12
Static-99R Scores and Respective Recidivism Rates by Classification System.....	13
SUMMARY AND IMPLICATIONS FOR POLICY.....	15

Sex Offender Risk and Recidivism in Florida

EXECUTIVE SUMMARY

SAMPLE

A sample of 500 convicted sexual offenders was randomly selected from the database of the Florida Department of Corrections. Specifically, the sample was drawn from a pool of adult (over age 18) convicted sex offenders who were released from a Florida prison in fiscal years 1999-2000 (n = 250) and 2004-2005 (n = 250). These cohorts (valid n = 499) allowed for five-year and ten-year follow-up periods for tracking recidivism.

RESEARCH QUESTIONS & FINDINGS

1. What are the 5-year and 10-year recidivism rates for sex offenders in Florida?

After five years, 5.2% of the sample had been re-arrested for a new sexual crime. After 10 years, 13.7% of the sample had been re-arrested for a new sexual crime.

2. What is the breakdown of new offenses committed by released sex offenders in Florida?

The 499 offenders committed a total of 2,752 new offenses over the 10 year period, 32% of which were unspecified and were most likely technical probation violations. Of the known criminal offenses, 4.2% were new sex crimes, 18% were for failing to register as a sex offender, 10% were driving offenses, about 13% were non-victim property crimes, nearly 17% were drug or alcohol related, 26% were victimless, behavioral, non-property crimes, and about 12% were serious violent offenses.

3. How are sex offender classification procedures used in Florida and how do these procedures compare in their respective abilities to assess risk and identify recidivists?

- 21% of the sample was classified as Predators, and 79% as Offenders.
- Using Adam Walsh Act (AWA) guidelines listed on the FDLE sex offender registry website, 51% were classified as AWA Tier 3 and 49% were AWA Tier 2.
- The mean (average) Static-99R score was 1.97, with a median (midpoint) score of 2 and a mode (most frequent) score of 3.

- The mean Static-99R score for Offenders was 1.95, and the mean Static-99R score for Predators was 2.06.
- The mean Static-99 score for AWA Tier 2 offenders was 2.2, and the mean Static-99 score for AWA Tier 3 offenders was 1.6.
- Five-year sexual recidivism rates for offenders and predators were 4.5% and 8.2% respectively. Ten-year sexual recidivism rates for offenders and predators were 11.9% and 22.7% respectively.
- Five-year recidivism rates for AWA Tier 2 and Tier 3 offenders were 6.5% and 4.1% respectively. Ten-year recidivism rates for AWA Tier 2 and Tier 3 offenders were 17.3% and 10.9% respectively.

CONCLUSIONS AND IMPLICATIONS FOR POLICY

- There were no statistically significant differences between the recidivism rates of AWA Tier 2 and Tier 3 offenders. The recidivism rates were in the opposite direction from what might be expected, with Tier 2 offenders sexually recidivating at higher rates than Tier 3 offenders.
- AWA Tiers did a poor job of classifying offenders into relative and hierarchical risk categories.
- Offender/Predator status did a better job of classifying offenders into relative and hierarchical risk categories, with predators re-offending more frequently than offenders.
- Actuarial risk assessment (Static-99R) did a better job of discriminating between recidivists and non-recidivists, with sexual recidivists having slightly higher scores than non-recidivists.

Sex Offender Risk and Recidivism in Florida

BACKGROUND

Sexual violence is a serious social problem with far-reaching consequences for victims, their families, and society. In response to concerns about sex crimes, the U.S. Congress has enacted a series of laws designed to identify, track, monitor, and manage convicted sex offenders living in the community. In 1994 the *Jacob Wetterling Act* mandated that each state develop a registry of convicted sex offenders for law enforcement tracking and monitoring purposes. In 1996 the *Wetterling Act* was amended to allow for registry information to be disseminated to the public. This amendment is known as *Megan's Law* and sets guidelines for each state to implement community notification procedures. All 50 states are now required to post their registries online, making them easily available to the public. The *Adam Walsh Act* of 2006 standardized procedures across all US jurisdictions by creating federal mandates for the classification of sexual offenders and delineating corresponding registration, notification, and management requirements. Florida was the first state to pass legislation to become compliant with the Adam Walsh Act in 2007.

Registration and notification requirements are, according to the Florida Legislature, not intended to serve as criminal punishment. Rather, they were enacted by the legislature as public safety measures. As such, the specification of registration or community notification requirements and the subsequent allocation of resources for monitoring and supervising sex offenders in the community require critical choices based on an assessment of the offender's likelihood of recidivism. The serious implications for potential victims, offenders, and fiscal resources all demand the guidance of the most accurate evaluations available. Public safety decisions and funding allocations will be most effective when informed by the use of accurate decision making procedures.

This study compared the abilities of a variety of risk classification schemes used to assess risk for sex offense recidivism in Florida. The goal of the project was to provide empirical guidance for implementing sex offender registration and notification policies. This report describes findings in Florida as part of a multi-state study funded by the National Institute of Justice.

The principal aims of this study were three-fold: (1) to determine five-year and ten-year recidivism rates for sex offenders in Florida; (2) to examine the types of new offenses committed by Florida sex offenders; and (3) to compare the federally mandated Adam Walsh Act (AWA) classification tiers and Florida's Offender/Predator classification with actuarial risk assessment instruments in their respective abilities to identify high risk sex offenders and recidivists.

METHODOLOGY

As part of the multi-state project, data were collected from New Jersey, Minnesota, Florida and South Carolina. Eligible subjects were convicted sex offenders released from prison into the community between January 1, 1990 and July 1, 2005. Sexual offenses were defined as any sex crime requiring registration.

Recidivism was defined as a subsequent arrest. Additionally, subjects must have been released after confinement to the community and not to a civil commitment program.

Data were collected using available law enforcement databases, supplemented by a review of prison and probation records. The study proceeded in two phases. Phase 1 included the coding of recidivism risk scores for the Static-99R using available archival records, as well as by extracting relevant demographic and criminal history data at time of release into the community for each offender. Each criminal contact was categorized by the most serious charge. Phase 2 included the coding of recidivism data for each offender. Variables collected and coded during Phase 2 included charge information.

In Florida, a sample of 500 convicted sexual offenders was randomly selected from the database of the Florida Department of Corrections. Specifically, the sample came from a pool of male adult (over age 18) convicted sex offenders who were released from a Florida prison in fiscal years 1999-2000 (n = 250) and 2004-2005 (n = 250). These two cohorts were chosen for two reasons: to allow for a 5-10 year follow-up period, and because data availability and accessibility improved in 2004. The final valid sample included 499 subjects.

The Florida Department of Law Enforcement (FDLE) provided data pertaining to sexual and nonsexual recidivism arrests and probation violations for each subject. The recidivism time frame ranged from the release date of the index offense to the date of data retrieval (11/15/2010). The recidivism data included identifiers or other information used to link a reported event to a particular individual. Recidivism data were for new crimes committed only in Florida and cannot account for new arrests in other jurisdictions. Recidivism data are based on documented arrests and therefore always underestimate true reoffending rates because not all new crimes are detected or reported to police.

Assignment of AWA Tiers is an inherently idiosyncratic process from one state to the next due to differences in each state's criminal code as well as the range of available data concerning factors such as victim age and the presence of aggravating circumstances. Additionally, the imprecision in some state criminal codes complicates the tier assignment, particularly where factors such as the victim age or the degree of force used could not be ascertained from the offense statute or other available information. To account for these challenges, tier assignments were made along a continuum of certainty, with "borderline" cases flagged as such. It should also be noted that although FL is currently AWA compliant, AWA tiers did not exist at the time of release of the cohorts. Therefore, AWA tiers were assigned for each offender based on the tier that would have been appropriate at the time of release, using two procedures:

Procedure 1: Interpretation of Federal Guidelines defined by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, Tracking (SMART Office)

(1) Detailed review of statutory codes in Florida; (2) Assignment of baseline tiers for each type of offense across three victim age groups – 12 and under, 13-17, and 18+; (3) Review of both instant offense and most serious offense fields, and assignment of initial tiers based on this information; (4) Review of supplemental fields in the dataset to identify other cases in which the offender has a history of two or more sexual offenses, history of victimizing children under 12, and/or history of use of force in commission of offenses and (5) As applicable, adjustment of initial tiers based on this review.

Procedure 2: Interpretation of State Guidelines defined by FDLE

(1) Look for most serious of all offenses, assign tier based on most serious conviction according to FDLE criteria for Tier 3:

- Section 787.01, where the victim is a minor and the offender is not the victim's parent or guardian
- Section 787.02, where the victim is a minor and the offender is not the victim's parent or guardian
- Section 794.011, excluding s. 794.011(10)
- Section 800.04(4)(b), where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion.
- Section 800.04(5)(b)
- Section 800.04(5)(c)1., where the court finds molestation involving unclothed genitals or genital area
- Section 800.04(5)(c)2., where the court finds molestation involving unclothed genitals or genital area
- Section 800.04(5)(d), where the court finds the use of force or coercion and unclothed genitals or genital area.
- Any attempt or conspiracy to commit such offense.
- A violation of a similar law in another jurisdiction.

All other sex offenders in Florida are considered to be Tier 2 offenders and register twice per year for 25 years unless they have been deemed a sexual predator, in which case they are considered to be Tier 3. In Florida, per Florida Statute 775.21, there are several criteria that must be met in order for an individual to be designated for registration as a sexual predator. These include a conviction for a qualifying and Capital, Life, or First degree felony sex offense committed on or after 10/1/1993; or a conviction for any felony violation or attempt thereof for a qualifying offense committed after 10/1/1993 in addition to a prior conviction for any felony violation or attempt thereof for a qualifying offense and a written court finding designating the individual a sexual predator. Additionally, as of July 1, 2004, regardless of whether an individual meets or does not meet the criteria listed above, anyone civilly committed under the Florida Jimmy Ryce Sexually Violent Predator Act must register as a sexual predator.

Actuarial risk assessment was conducted by completing a Static-99R risk assessment score for each sex offender where information was available for coding. The Static-99R is the most commonly tested and utilized sex offender risk assessment instrument in North America. It consists of 10 empirically derived items (see Appendix 1) and has a potential score range of -3 to 12. The instrument has demonstrated predictive validity and reliability in screening sex offenders into relative risk categories and, across samples, higher recidivism rates are consistently correlated with higher scores. Due to missing data (most often victim characteristics), the instrument was scored on 103 sex offenders in Florida.

RESULTS

Descriptive Statistics

Prior to presenting the results for each of the three project aims, descriptive statistics on the full sample are shown below in Table 1. The table below presents information on offender age at sentencing, race/ethnicity, incarceration terms, age of known victims, criminal history prior to index offense, and risk assessment scores.

Table 1: Florida Statistics (N = 499)

		Mean (average)	Median (midpoint)	Mode (most common)	Combined states in sample % or Mean
Offender Age at release		38	37	40	37
Race-White	62%				51%
Race-Black	35%				31%
Latino	8%				7%
Number of years served in prison		3.3			
<5 years	72%				
5-10 years	24%				
>10 years	4%				
Victim age <6 *	14%				
Victim age 7-12	40%				
Victim age 13-15	40%				
Victim age 16 or older	16%				
Any prior sex crime charges	23%				
Any prior non-sex convictions	29%				
Static-99R score**		2	2	3	

* Victim age percentages do not add up to 100% because some offenders have victims in more than one age category.

** Static-99R Score Legend for Risk Category (see Appendix 1)

-3 through 1 = Low
 2, 3 = Low-Moderate
 4, 5 = Moderate-High
 6 plus = High

Recidivism Rates

In Florida, 37% of the sample had a new arrest for any new crime or technical probation violation after five years, and 60% had been arrested for any new crime or technical probation violation after 10 years. After five years, 5% of the sex offenders had been re-arrested for a new sex crime, and 13.7% had been re-arrested for a new sex crime after 10 years (see Table 2). As seen in Table 3, the Florida 5-year sexual recidivism rates were about the same as the combined average in three other states, and slightly above the average after 10 years.

Table 2: Florida Recidivism Rates (N = 499)

5-yr any recidivism	37 %
10-yr any recidivism	60 %
5-yr sexual recidivism	5 %
10-yr sexual recidivism	13.7 %
Any technical violation	37 %
Failure to Register	39 %

Table3: FL Sexual Reoffending Rates Compared to Other States

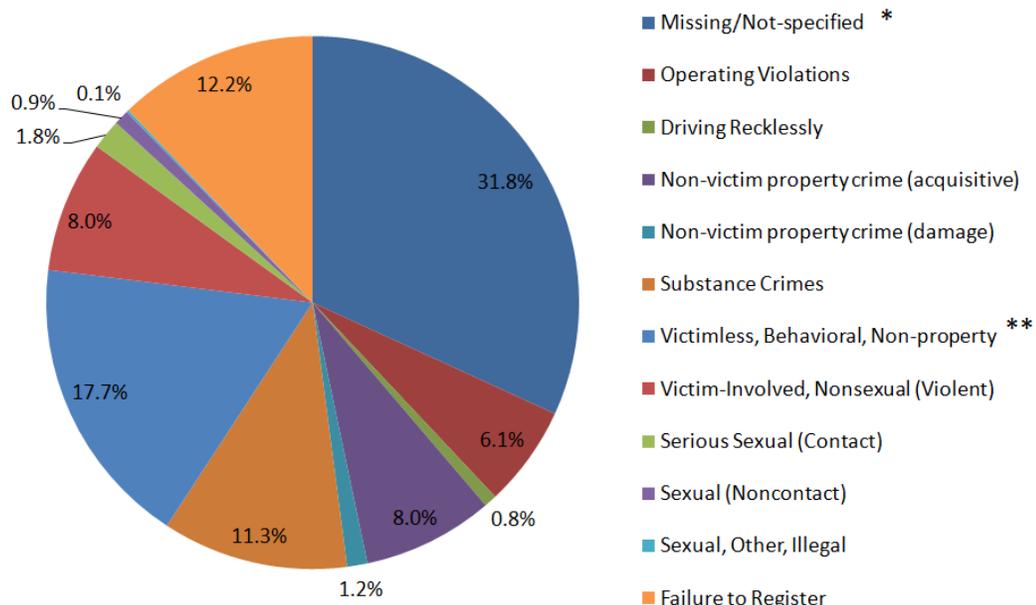
State	FL	MN	NJ	SC	Combined
Five-Year Sexual Recidivism	5.2% (25 of 477)	7.0% (35 of 498)	3.5% (10 of 288)	4.1% (20 of 488)	5.1% (90 of 1751)
Ten-Year Sexual Recidivism	13.7% (33 of 241)	12.9% (64 of 498)	8.3% (22 of 264)	7.0% (34 of 486)	10.3% (153 of 1489)

Detailed Breakdown of New Crimes Committed

The 499 sex offenders were arrested a total of 2,752 times over the 10 year period, 32% of which were unspecified and were most likely technical probation violations (see Figure 1). Of the known criminal offenses (see Figure 2), 4.2% were new sex crimes, 18% were for failing to register as a sex offender, 10% were driving offenses, about 13% were non-victim property crimes, nearly 17% were drug or alcohol related, 26% were victimless, behavioral, non-property crimes, and about 12% were serious violent offenses.

Figure 1: All recidivism arrests over the 10 year follow-up period.

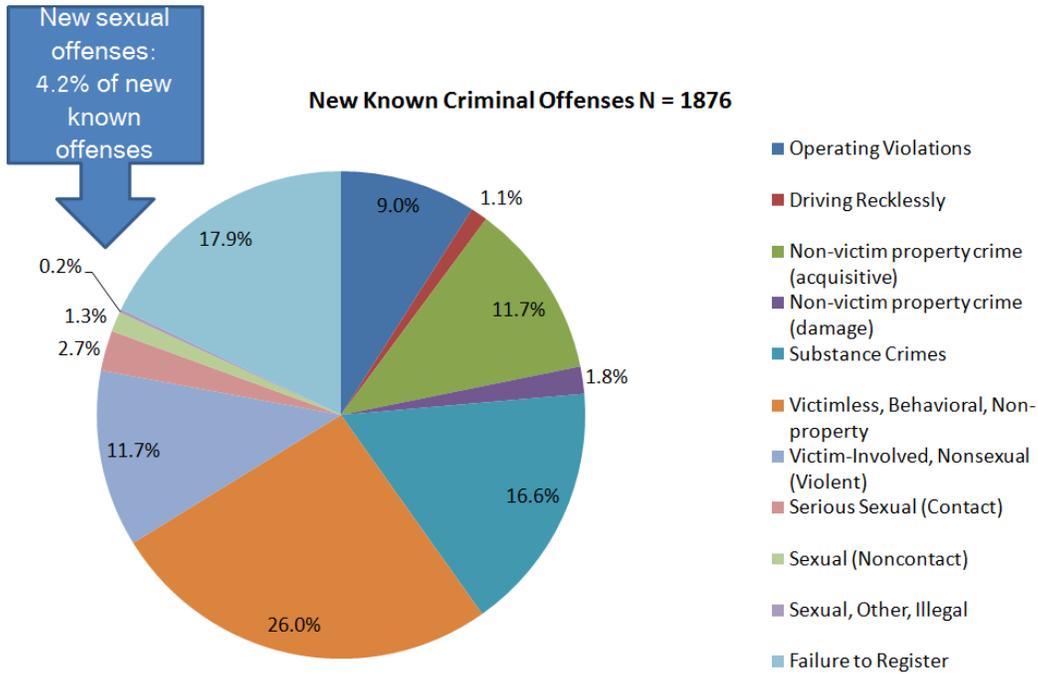
All new arrests (n = 2752)



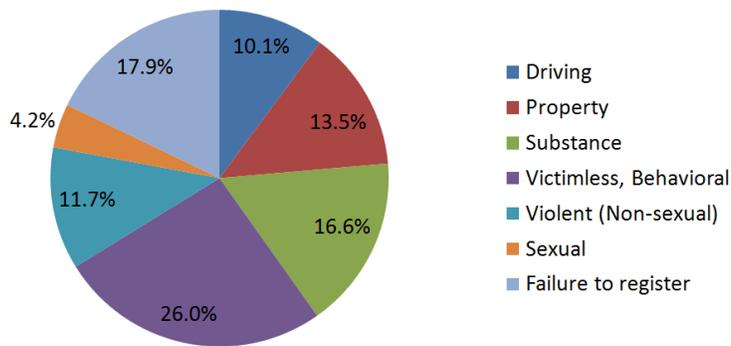
* Probably probation violation (arrest, no new crime)

** Trespassing, obstructing justice, vagrancy, illegal gun possession, etc

Figure 2: New known criminal offenses over the 10 year follow-up period.



Offenses Known (Collapsed Categories)



Procedures Used in Florida to Classify Sex Offenders and Respective Abilities to Identify Recidivists

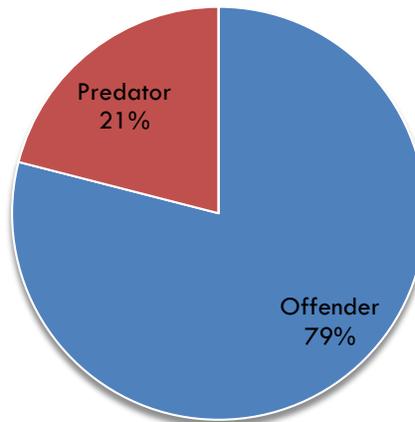
Offenders and Predators

According to the FDLE, registered sex offenders are designated as predators if they have 1) A conviction for a qualifying and Capital, Life, or First degree felony sex offense committed on or after 10/1/1993; or 2) A conviction for any felony violation or attempt thereof for a qualifying offense committed after 10/1/1993 in addition to a prior conviction for any felony violation or attempt thereof for a qualifying offense; and 3) A written court finding designating the individual a sexual predator. Additionally, as of July 1, 2004, regardless of whether an individual meets or does not meet the criteria listed above, anyone civilly committed under the Florida Jimmy Ryce Sexually Violent Predator Act must register as a sexual predator.

In this sample, 21% were designated as predators and 79% as offenders.

In April 2011, the total population of Florida registered sex offenders (RSOs) contained 16% designated as predators and 84% as offenders (data provided by FDLE in April 2011, n = 55,847). The current sample appears therefore to be higher risk compared to the general RSO population, which is not surprising since the sample was generated from prisoners released from incarceration. Incarcerated offenders are presumed to have committed more serious offenses than those sentenced to community probation.

Figure 3: Offenders and Predators



Adam Walsh Act Tiers

Using a classification procedure drawn strictly from the federal guidelines, the sample contained 57% Tier 3 sex offenders (highest risk) and 43% Tier 2 sex offenders. Using the state guidelines on the FDLE website categorizing offenders by Florida statute of conviction and then adding those labeled as predators, the sample contained 51% Tier 3 sex offenders (highest risk) and 49% Tier 2 sex offenders. In all subsequent analyses, FDLE Tier Guidelines were used in assigning offenders to Tier 2 or Tier 3.

In April 2011, the total population of Florida RSOs contained 39% designated as Tier 3 and 61% as Tier 2 (data provided by FDLE in April 2011, n = 55,847). Again, the study sample appears to be higher risk compared to the general RSO population, which is not surprising since the sample was generated from prison releases.

Figure 4: AWA Tier Classification Procedure 1 (Federal guidelines per SMART office)

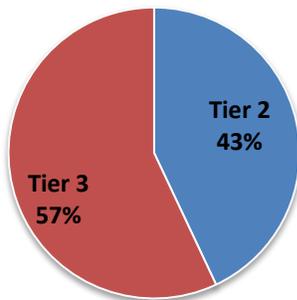
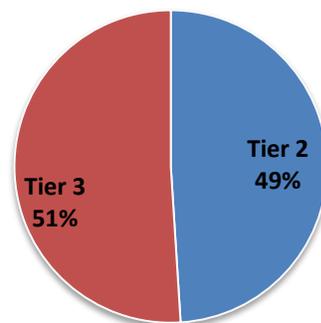


Figure 5: AWA Tier Classification Procedure 2 (State guidelines per FDLE website)



Static-99R Scores and Respective Recidivism Rates by Classification System

The mean (average) Static-99R score was 1.97, with a median (midpoint) score of 2 and a mode (most frequent) score of 3. Scores of 2 and 3 are defined by the instrument's developers as "low-moderate" risk levels.

The mean Static-99R score for Predators was 2.06, and the mean Static-99R score for Offenders was 1.95. This did not reflect a statistically significant difference between the groups. (See Figure 6)

The mean Static-99R score for AWA Tier 2 offenders was 2.2, and the mean Static-99R score for AWA Tier 3 offenders was 1.6. This did not reflect a statistically significant difference between the groups. (Figure 7)

Figure 6

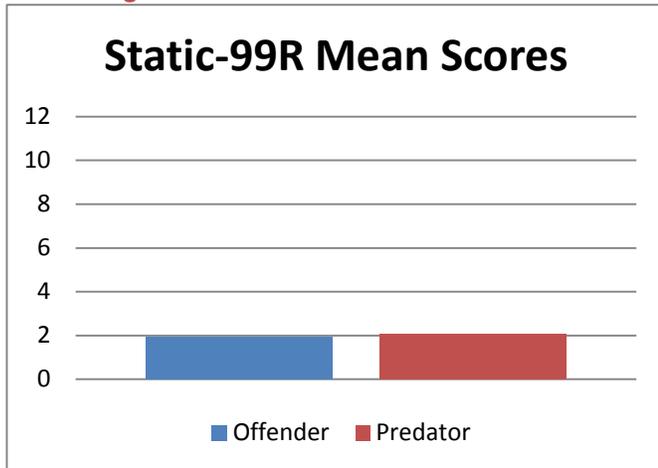
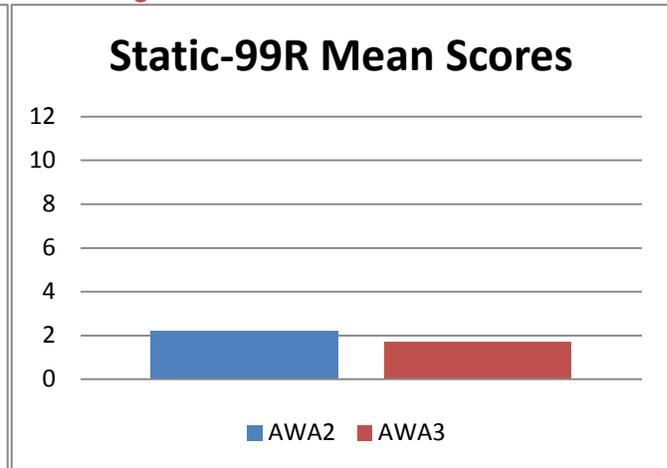


Figure 7



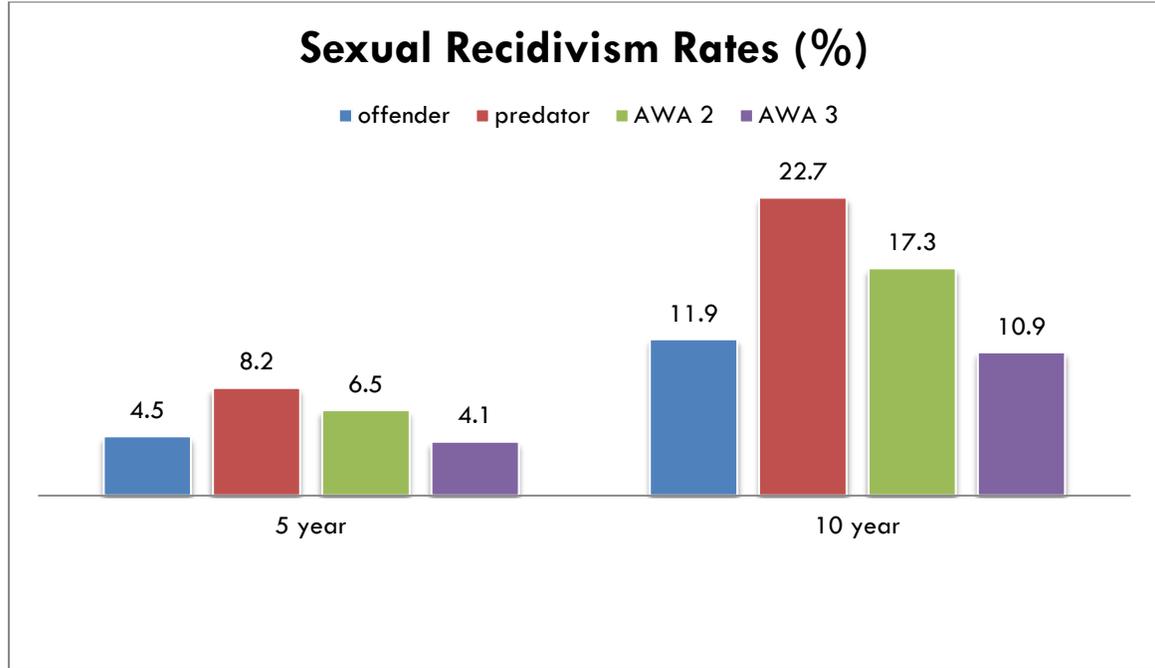
Five-year sexual recidivism rates for offenders and predators were 4.5% and 8.2% respectively. This did not reflect a statistically significant difference ($\chi^2 = 2.139, p = .14$). Ten-year sexual recidivism rates for offenders and predators were 11.9% and 22.7% respectively, which did not quite reach statistical significance ($\chi^2 = 3.549, p = .06$).

Five-year sexual recidivism rates for AWA Tier 2 and Tier 3 offenders were 6.5% and 4.1% respectively. This did not reflect a statistically significant difference ($\chi^2 = 1.291, p = .26$). Ten-year sexual recidivism rates for AWA Tier 2 and Tier 3 offenders were 17.3% and 10.9% respectively. This did not reflect a statistically significant difference ($\chi^2 = 2.056, p = .15$). Sexual recidivism rates for AWA tiers were in the opposite direction than expected, with Tier 2 offenders recidivating at higher rates than Tier 3 offenders.

Sexual recidivists who were re-arrested within 5 years had higher mean Static-99R scores (2.4) than non-recidivists (1.9), though the differences were not statistically significant ($t = -.202, p = .84$). Sexual recidivists who were re-arrested within 10 years had higher mean Static-99R scores (2.5) than non-recidivists (1.7), though the differences were not statistically significant ($t = -1.092, p = .28$).

Recidivists who were re-arrested within 5 years for a non-sexual crime had higher mean Static-99R scores (2.5) than non-recidivists (1.7), and the differences were statistically significant ($t = -2.100, p = .04$). Recidivists who were re-arrested for a non-sexual crime within 10 years had higher mean Static-99R scores (2.3) than non-recidivists (1.6), though the differences were not statistically significant ($t = -1.503, p = .14$).

Figure 8



SUMMARY AND IMPLICATIONS FOR POLICY

The Adam Walsh Act seeks to improve community safety by standardizing procedures by which states classify sex offenders and subject them to registration and notification requirements. Presumably, efforts to classify sex offenders are expected to result in improved identification and better risk management of those who pose the greatest threat to public safety.

These findings suggest, however, that AWA tiers did a poor job of identifying high risk offenders and classifying offenders into relative and hierarchical risk categories, and thus may not meaningfully guide sex offender management practices. There were no statistically significant differences between groups when the recidivism rates of AWA Tier 2 and Tier 3 offenders were compared. The rates were in the opposite direction from what would be expected, with Tier 2 offenders sexually recidivating at higher rates than Tier 3 offenders.

Offender/Predator status did a better job of classifying offenders into relative and hierarchical risk categories, with predators recidivating more frequently than offenders. One possible explanation for this finding is that the predator designation used in Florida was reserved for relatively few sex offenders (21%). This more narrowly defined risk category appeared to more efficiently identify potential recidivists than its more broadly defined AWA3 counterpart.

Actuarial risk assessment (Static-99R) consistently discriminated between both sexual and nonsexual recidivists and non-recidivists in the expected direction. All recidivists had higher scores than non-recidivists, and the differences for nonsexual recidivists were statistically significant.

Without a meaningful categorization scheme that truly reflects a hierarchical portrayal of risk, tiers become less useful for the public and create an inefficient distribution of resources for sex offender management purposes. If public awareness is an objective of notification, then less precise and more inclusive categorical schemes may not be as helpful for the consumer of registry information who seeks to identify the most high-risk and dangerous individuals.

The vast majority of new arrests (84%) over the ten-year period were for non-sexual, non-violent crimes.

Supplemental analyses also indicated that increased age is protective of future reoffending, regardless of whether it is the age at which the offense occurred, age at sentencing, or age at release from incarceration. In general, risk for sexual and nonsexual re-offense diminishes with advancing age, suggesting that 25-year and lifetime registration durations as mandated by current policy may be unnecessary and inefficient. As the sex offender population ages, individuals pose less threat to public safety, and their lifetime presence on a registry may obscure the public's ability to distinguish those offenders who are more likely to reoffend.

Limitations

This study is not without limitations. Missing data due to absent variables reduced the sample size of analyses using Static-99R. The data that appeared to be systematically missing were those pertaining to victim characteristics. It is not unusual in criminal justice research to find that corrections files are incomplete, and in particular, victim information and juvenile criminal history are commonly unavailable. Other challenges often encountered by researchers investigating criminal recidivism include the underreporting of offenses and the sometimes limited accuracy of criminal history data repositories. Because many sex crimes go unreported, rates of sexual recidivism among the sampled offenders underestimate actual rates of reoffending. The Bureau of Justice Statistics' National Crime Victimization Survey (NCVS) reported in 2010 that only half of all

sexual assaults against persons 12 or older were reported to law enforcement and many do not result in an arrest of the perpetrator. It should be noted, however, that under-reporting may be less of a problem when sex crimes are committed by individuals who have already been detected; in other words, sex offenses committed by registered sex offenders may be less likely to go unreported and when reported may be more likely to result in an arrest. Thus, recidivism rates as defined in this study are probably less likely to be affected by under-reporting than overall sex crime rates.

In addition, the authors acknowledge that data inaccuracies may exist within state criminal justice data repositories and that the quality of recidivism data may vary by case, depending on the release cohort and the follow-up period used in statistical analyses. Recidivism data were available only from Florida, and therefore do not capture any arrests that might have occurred out of state.

The researchers also recognize that the system for classifying offenders into AWA tiers might not precisely reflect the procedures outlined by the federal government or those utilized by FDLE. The researchers acknowledge the potential imperfections of their strategy, but are confident that the method approximates the state classification system in a reliable and valid fashion.

CONCLUSIONS

In summary, the most salient policy considerations are twofold. First, if the purpose of a classification scheme is to identify higher risk offenders in order to guide public awareness and law enforcement monitoring, it is essential for that classification scheme to approximate relative risk in a meaningful fashion. Second, it follows that if the classification scheme is indeed a meaningful portrayal of relative risk, then resources for tracking and monitoring can be allocated concordantly. In other words, if the current AWA classification scheme does not appear to represent a systematic and hierarchical classification of relative risk categories, it follows, then, that resource distribution may not be optimally efficient both in terms of cost-effectiveness and targeted sex offender management practices. Actuarial risk assessment instruments are superior to AWA tiers in ranking the relative risk of individual sex offenders and should be considered for screening offenders into relevant risk categories.

Appendix 1: Static-99R Risk Factors and Scoring

Static-99R Coding Form

Question Number	Risk Factor	Codes		Score
1	Age at release	Aged 18 to 34.9		1
		Aged 35 to 39.9		0
		Aged 40 to 59.9		-1
		Aged 60 or older		-3
2	Ever Lived With	Ever lived with lover for at least two years?		
		Yes	No	0 1
3	Index non-sexual violence - Any Convictions	No		0
		Yes		1
4	Prior non-sexual violence - Any Convictions	No		0
		Yes		1
5	Prior Sex Offences	<u>Charges</u>	<u>Convictions</u>	
		0	0	0
		1,2	1	1
		3-5	2,3	2
		6+	4+	3
6	Prior sentencing dates (excluding index)	3 or less		0
		4 or more		1
7	Any convictions for non-contact sex offences	No		0
		Yes		1
8	Any Unrelated Victims	No		0
		Yes		1
9	Any Stranger Victims	No		0
		Yes		1
10	Any Male Victims	No		0
		Yes		1
Total Score		Add up scores from individual risk factors		

Translating Static-99R scores into risk categories

Score Label for Risk Category

-3 through 1	=	Low
2, 3	=	Low-Moderate
4, 5	=	Moderate-High
6 plus	=	High

Source:

Helmus, L., Babchishin, K. M., Hanson, R. K., & Thornton, D. (2009). Static-99 Revised Age Weights.

<http://www.static99.org/pdfdocs/static-99randage20091005.pdf>

NOTE:

This Profile reflects referrals
and not SVP Commitments

**Profile of Jimmy Ryce Referred Inmates
Released From Prison
July 1, 2001 to August 31, 2013**

Prepared by:
Florida Department of Corrections
Michael D. Crews, Secretary

Bureau of Research and Data Analysis

PURPOSE

This report was generated pursuant to the Jimmy Ryce Act (F.S. 394.931). The report describes the 26,625 inmates released from prison from July 1, 2001 to August 31, 2013 who were referred to the Department of Children and Family Services. The information was obtained from the Department of Corrections database and file reviews conducted by field staff.

DATA QUALITY

Some data on offenders or offenses is missing for the following reasons:

- Information relating to offenses which occurred a long time ago (typically before 1985) is sometimes not available because hard copy records have been destroyed at the law enforcement or judicial agency level;
- The information from the courts and law enforcement did not always contain detailed information such as the age of the victim, whether the crime was consensual, etc.;
- Information is often not available when the offense occurred in other states;
- Juvenile records are sealed or not obtainable.

The number of cases with missing data is specified for each data element in this profile. The percentages are computed based on the known data only. This does not necessarily mean that the percentages would remain the same if all the data were known.

Jimmy Ryce Eligibility Based On:

	Number	Percent
Current Offense	12,796	48%
Prior Offense Only	13,829	52%
Total	26,625	

Some inmates qualifying under the current offense may also have qualified under a prior offense.

Top 10 Most Serious Sexual Offenses

	Number	Percent
L/L, INDEC.ASLT CHILD U/16	4,410	20%
SEX BAT BY ADULT/VCTM LT 12	2,740	12%
SEX BAT/INJURY NOT LIKELY	2,072	9%
L/L BATT.SEX W/V12-15	1,635	7%
L/L BATTERY V 12-15 YO	1,540	7%
SEX BAT/ WPN. OR FORCE	1,400	6%
LEWD ASLT/SEX BAT VCTM<16	1,039	5%
L/L MOLEST V<12 OFF 18+	1,023	5%
L/L MOLEST V12-15 OFF 18+	856	4%
L/L CONDUCT V<16 OFF 18+	720	3%
OTHER	4,949	22%
TOTAL	22,384	

The determination of the most serious sexual offense is based on sentencing guideline levels, felony degree, and offense content.

Number of Victims of the Qualifying Offense

	Number	Percent
One	20,956	88%
Two	2,146	9%
Three	443	2%
Four or More	208	1%
Total	23,753	

This refers to separate victims rather than multiple crimes committed against the same victim.

Relationship of Offender to Victim

	Number	Percent
Immediate Family	3,444	16%
Non-Immediate Family	2,717	13%
Other Known Person	12,053	57%
Stranger	2,950	14%
Total	21,164	

For those cases with more than one victim, the closest relationship between any victim and the offender is the one reported.

Whether Sexual Act Was Consensual

	Number	Percent
Consensual	3,600	17%
Not Consensual	18,106	83%
Total	21,706	

For those cases with more than one victim, if any of the sexual acts are not consensual, then that offender is counted in the "Not Consensual" category.

Level of Violence

	Number	Percent
None	12,374	58%
Minimal Injury	5,810	27%
Moderate Injury	2,528	12%
Severe Injury	536	3%
Death	24	0%
Total	21,272	

For those cases with more than one victim, the highest level of violence is counted.

Whether a Weapon Was Used

	Number	Percent
Yes	2,179	10%
No	19,297	90%
Total	21,476	

For those cases with more than one victim, if a weapon was used against any victim it appears in the "Yes" category.

Age of Youngest Victim

	Number	Percent
11 and Under	2,872	13%
12 to 15 Years	9,789	43%
16 and Older	9,853	44%
Total	22,514	

For those cases with more than one victim, the age of the youngest victim is

Age of Offender at First Sex Offense

	Number	Percent
17 and Under	2,033	9%
18 to 24 Years	7,495	34%
25 to 29 Years	3,750	17%
30 to 39 Years	5,420	24%
40 to 49 Years	2,230	10%
50 Years and Older	1,249	6%
Total	22,177	

Length of Time Since Most Recent Sex Offense

	Number	Percent
2 Years or Less	388	2%
3 to 5 Years	1,406	6%
6 to 10 Years	4,504	20%
11 to 15 Years	6,372	29%
16 to 20 Years	4,789	22%
21 or More Years	4,722	21%
Total	22,181	

This measure includes any incarceration time. The length of time is computed from the most recent sexual offense date to August 31, 2013.

Total Number of Prior and Current Sex Offense Convictions

	Number	Percent
One	7,764	35%
Two	5,933	27%
Three	2,913	13%
Four	2,082	9%
Five	922	4%
Six or More	2,432	11%
Total	22,046	

Note that this measure includes the current offense as well as any prior sex offense convictions.



**State of Florida
Department of Children and Families**

Rick Scott
Governor

Esther Jacobo
Interim Secretary

MEMORANDUM

DATE: Sept. 23, 2013
FROM: Esther Jacobo, Interim Secretary
SUBJECT: Sexually Violent Predator Program Review

Within days after assuming my position as Interim Secretary of the Department of Children and Families, I called for a review of the Sexually Violent Predator Program in an effort to ensure the program is making commitment recommendations that keep the public safe. I have thoroughly examined and analyzed the findings and recommendations in the attached report. Based on this review, I am directing the Division of Substance Abuse and Mental Health to immediately implement the following recommendations contained in the report:

1. The policies and procedures for the evaluation process should be reviewed and evaluated by a team of expert stakeholders before being finalized and implemented.
2. Screeners will be trained to understand they are not solely responsible for screening out offenders who do not meet civil commitment criteria. They must refer cases for face-to-face evaluation when there is any doubt or ambiguity as to whether an offender will meet criteria.
3. When two evaluators believe an offender meets commitment criteria, the multidisciplinary team should be required to recommend a commitment petition be filed. Implementation of this recommendation will require rulemaking.
4. In addition to automatically sending cases that include kidnapping and murder convictions for evaluation, cases that include "attempted" kidnapping and "attempted" murder should automatically be sent for evaluation.
5. Contracts with forensic evaluators should be limited to one year with the option of renewal instead of the current three year policy.
6. A system for evaluating the evaluators and providing them with feedback about the clarity of their reasoning should be implemented as a standard practice.

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

I have further determined that in order to effectively administer the program, the administrator must be able to oversee the program with an unbiased objectivity. The administrator must have a thorough understanding and appreciation of the laws governing the Sexually Violent Predator Program and its potential impact on public safety. This is extremely important work with large public safety implications and the program must be implemented strictly as the law requires. Therefore, the program is best administered by an objective manager rather than a clinical psychologist. This change will ensure the administrator of the program is not involved in evaluating offenders, and can implement the Act in an unbiased manner.

To that end, I have named Greg Venz, an attorney and expert on the Jimmy Ryce Act, as Interim Administrator of the Program. Greg's extensive knowledge of the statutes, case law and history around this program is unmatched, and I am confident he will provide informed insight and leadership.

After evaluating the organizational structure within the Division of Substance Abuse and Mental Health, I have also restructured the management team to ensure more effective oversight and accountability of our programs and fiscal practices. This change will ensure the program receives closer oversight and guidance.

The attached report provides a great deal of information and several recommendations I hope will be helpful to our legislative leaders as they consider what changes to the law are needed to ensure Floridians are protected from sexually violent predators. The Department is committed to supporting the Legislature as we work together to tackle this challenging issue on behalf of the Floridians we are charged with protecting.

Review of Florida's Sexually Violent Predator Program Office

September 23, 2013

The Florida Department of Children and Families, Substance Abuse and Mental Health (SAMH) Program Office requested a comprehensive review of the Sexually Violent Predator Program Office (SVPP) by forensic mental health experts.

Review Panel:

Chris Carr, Ph.D.

Anita Schlank, Ph.D., ABPP

Karen C. Parker, Ph.D.

Chris J. Carr, Ph.D., is a Licensed Psychologist in Florida. He was previously the Chief Psychologist of the Vermont DC and the Clinical Supervisor of inpatient and outpatient mental health programs in prisons in Region II of the Florida DC. He has conducted program evaluations since 1995. He began treating sex offenders in 1991 and has worked at the FCCC. He has presented on Sex Offender Evaluation and Treatment including conferences sponsored by the National Commission on Correctional Health Care and the Florida Council on Crime and Delinquency. He has been conducting SVP evaluations - and other forensic evaluations - and testifying as an expert since 2003.

Anita Schlank, Ph.D., ABPP is a Licensed Clinical Psychologist, board certified in forensic psychology, and a Certified Sex Offender Treatment Provider in the Commonwealth of Virginia. She was previously the clinical director of the civil commitment program for sexual offenders in Minnesota, and is currently the clinical director of the SVP program in Virginia. In addition, she has consulted with and/or been an expert witness for eight of the SVP programs throughout the country. Dr. Schlank is the editor of the book series entitled *The Sexual Predator*, which is focused on issues related to the civil commitment of sexual offenders, and was previously the President of MnATSA.

Karen C Parker, Ph.D. is a licensed Psychologist in Florida. She was the first Clinical Director of the Sexually Violent Predator Program (1999-2003) and currently conducts risk-assessment evaluations for that Program. She was a Senior Psychologist in Florida's Department of Corrections, serving both men and women in four correctional institutions. She served as a psychologist in both the civil and forensic units at the Florida State Hospital in Chattahoochee, Florida. Dr. Parker was a Medical Psychologist at the Veteran's Hospital in Loma Linda, California and developed the first inpatient Pain Treatment Center at that hospital. Dr. Parker was part of an administrative team that implemented three additional inpatient pain treatment centers in hospitals located in the greater Los Angeles (California) area. Dr. Parker also has a BSN in Nursing and worked in both prisons and jails in North Florida.

Table of Contents

4	Florida's Civil Commitment of Sexual Predators: An Overview
5	Treatment: The Florida Civil Commitment Center
7	A Description of the Sexually Violent Predator Program (SVPP)
9	The Systemic Role of the Sexually Violent Predator Program Office in the Civil Commitment Process
12	The Core Issue: The Problem of Selectivity
16	Research Conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA)
18	Research Conducted by the Sexually Violent Predator Program Office (Preliminary Results)
21	Florida Sun Sentinel Investigation
23	Summaries of the Sexually Violent Predator Program's Recidivism Data
24	Integrating the Recidivism Data from the Florida SVPP Studies
26	Assessing the Risk of Sexual Recidivism
29	Use of the Static-99R in Florida's Sexually Violent Predator Program Evaluations
33	Expanding the Guidelines for Face-to-Face Evaluations
36	Less Restrictive Alternatives
39	Conclusions and Recommendations
44	References

Florida's Civil Commitment of Sexual Predators: An Overview

Nearly half of these United States have enacted sexual offender civil commitment laws. On May 19, 1998 the Florida Legislature passed the Involuntary Civil Commitment of Sexually Violent Predators Act, Florida Statute 394, Part V. The law went into effect on January 1, 1999. The Sexually Violent Predator Program (SVPP) is included within the Mental Health Program Office of the Florida Department of Children and Families (DCF). The Act defines "Sexually Violent Predators" as persons who have been convicted of a sexually violent offense and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. Further, this likelihood to reoffend means that the propensity to commit acts of sexual violence is of such a degree as to pose a menace to the community (394.912, Florida Statutes).

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act. The act creates a civil commitment process for sexually violent predators. It is similar to the Baker Act provisions for the involuntary civil commitment of mentally ill persons who pose a danger to themselves or others.

Offenders are referred to the Sexually Violent Predator Program when their release from the Department of Juvenile Justice (DJJ), the Department of Corrections (DOC), or the state hospital system (DCF) is being considered. The Sexually Violent Predator Program then gathers all of the information available concerning the offender's sexual, criminal, and personal history. Then the SVPP Office begins the process of determining whether this individual meets the clinical definition as a sexually violent predator under the Act. After the evaluation is conducted, the Department then makes a recommendation to the State Attorney regarding commitment or release.

Following the receipt of the recommendation and the supporting documentation, the State Attorney determines whether to file a petition in court that alleges that the offender is a sexually violent predator in need of residential treatment. If the judge determines that probable cause exists, the offender is detained at the Florida Civil Commitment Center. The commitment process often ends with a civil trial, during which a jury (or judge) is able to hear the evidence and decide whether residential treatment is appropriate for that individual.

Treatment: The Florida Civil Commitment Center

Those committed to the Sexually Violent Predator Program are housed for treatment at the Florida Civil Commitment Center. The program consists of multiple levels of cognitive-behavioral treatment that is specifically designed for sexual offenders. Under its current design, the program has four treatment levels (“Phases”) and takes approximately six years to complete. The law (Section 394.918, FS) provides that persons committed under the Involuntary Civil Commitment of Sexually Violent Predators Act are to be confined until the court determines that they are no longer a threat to public safety. After an offender is committed, he has the right to a yearly examination of his mental condition. This is called the “Annual Review.” The evaluators complete an Annual Review Report and, if necessary, the court will hold a hearing to determine whether there is probable cause to believe that the person’s condition has so changed that he is safe to be released. This determination can be made by a jury or a judge (bench trial).

Florida Civil Commitment Center (FCCC): The Florida Civil Commitment Center is a state-of-the-art secured civil commitment facility with a 720-bed capacity. It is located in Arcadia, Florida and is operated by GEO Care, LLC. It houses both committed residents and pre-trial detainees. Most residents and detainees live in open-bay dorms with multiple beds in a shared living space. Persons housed in Secure Management for disciplinary reasons, have single rooms to maximize security. For those residents who are in treatment and have a long track-record of good behavior, can choose to live in the Honor Dorm where special privileges are granted. These rooms have doors and two beds (not bunk beds).

FCCC Comprehensive Treatment Program: The treatment programming at FCCC is grounded in two complementary models: (1) The Risk-Needs Responsivity Model and (2) The Good Lives Model. The treatment design is guided by research under both the treatment and the risk management methodologies. As part of its practice, FCCC actively contributes to the research in this growing body of literature.

Treatment Phases: Following the initial evaluation and treatment planning process, committed residents enter the four phases of treatment:

- **Phase I: Preparation for Change** (Range for completion is 15-18 months). Pre-trial detainees may participate in some programs associated with this Phase. The goal for Phase I is the strengthening of the resident's self-regulation skills and the reduction of those behaviors that could potentially interfere with the treatment process. A portion of Phase I specifically targets the antisocial lifestyle and the thought patterns associated with it. This course is called Moral Reconciliation Therapy (MRT) and it has been shown to make a positive impact upon those with persistent antisocial lifestyles (Little, 2005 and Ferguson & Wormith, 2012).
- **Phase II: Awareness-Disclosure and Discovery** (Range for completion is 18-24 months). This phase involves residents working with clinical staff to develop a treatment plan with individualized targets for intervention. Residents must complete polygraph-assisted life and sexual history disclosures. This information facilitates identification of personal risk factors, offense patterns, and the life-barriers that exist for each resident.
- **Phase III: Healthy Alternative Behaviors – Development and Consolidation** (Range for completion is 18-24 months). This phase of treatment gives concentrated attention to the offense-specific elements of a resident's history, with emphasis upon his current personality and behavioral patterns. Residents work on making improvements across four domains: self-management; socio-affective functioning; distorted attitudes/beliefs; and sexual interests.
- **Phase IV: Maintenance and Comprehensive Discharge Planning** (Range for completion is 6-9 months). Residents in this advanced phase of treatment further develop their life-skills and their offense-prevention strategies. They demonstrate and refine behavioral skills they have learned but, also, identify areas that need more attention. At this stage, the residents present a detailed plan for their release. The resident documents each step in his plan and how it affects his ability to succeed in the community.
- The FCCC has competency restoration programming for detainees found Incompetent to Proceed.

A Description of the Sexually Violent Predator Program

The Sexually Violent Predator Program Office: The SVPP Office has the following responsibilities:

- (1) Reviewing and screening the sexual offenders who are approaching release. The files are referred by the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and those mental health treatment facilities managed by the Department of Children and Families (DCF);
- (2) Selecting offenders in need of a full risk-assessment evaluation;
- (3) Arranging for the offenders to be evaluated by licensed mental health professionals on contract with the SVPP;
- (4) Reviewing the evaluation reports for overall quality and cogency;
- (5) Making recommendations to Assistant State Attorneys about commitment;
- (6) Managing the contract that the Sexually Violent Predator Program has with GEO Care, LLC. This contract provides for the operation of the Florida Civil Commitment Center (FCCC) and the treatment that is provided to its residents. The SVPP Office is located in Tallahassee and the FCCC facility is located in Arcadia, Florida. The Annual Funding for the treatment component of the Program was \$35 million (FY 2010 – 2011).

The Sexually Violent Predator Program Procedures: Approximately 200-400 files are referred to the SVPP Office each month. Over 40,000 have been reviewed since the inception of the program. A File Review Team of Behavioral Health Specialists (Master's level professionals) examines each file to determine if the offender has a qualifying offense under the statute. This Team also contacts law enforcement and related agencies to ensure that all of the available criminal data is included for review. The records are gathered from Florida, other states, and, sometimes, other countries. The goal is to accumulate as much information as reasonably possible about the offender's criminal, social, and mental health history. After the Review Team has prepared the file, members of the Screening Team (licensed psychologists) examine the file in order to determine whether or not the individual should receive a full evaluation that includes a face-to-face interview with the offender. The Screeners also check

files for accuracy and completeness. When an offender has been selected for evaluation, the SVPP staff arrange for a licensed psychologist (on contract) to travel to the facility where the offender is currently being housed. The Sexually Violent Predator Program has active contracts with 25 independent practitioners.

The SVPP Multidisciplinary Team: The Multidisciplinary Team (MDT) consists of the two psychologists from the Screening Team, the SVPP Director, the Assistant Director, the independent evaluators, and two additional contracted psychologists from the community. The latter have consulted with the SVPP since its inception and are uniquely able to discern issues that affect quality control and the process of making commitment determinations. The MDT also reviews evaluations for overall quality of work product, clarity, and cogency in clinical reasoning. On the basis of the evaluation reports, as well as other information from an offender's file, the MDT determines whether or not the offender meets the criteria for status as a sexually violent predator under the Act. The Team then makes a recommendation to the designee at the State Attorney's Office to proceed with commitment or not.

The Systemic Role of the Sexually Violent Predator Program Office in the Civil Commitment Process

The MDT is the executive branch of the Sexually Violent Predator Program referral process. It exists at the front end of the process where screenings and evaluations take place. At this point, the MDT decides which offenders are in need of an in-depth evaluation and which are not. After the evaluations have been submitted, the MDT decides which offenders to recommend for civil commitment. While the MDT has executive power in the referral process, it is the role of the independent psychologist to conduct these evaluations. Obviously, the MDT controls the flow of referrals to these independent evaluators, and the number of evaluations requested has varied over time. Since the program began the SVPP has screened over 30,000 offenders.

Members of this review panel interviewed the MDT members as part of the program review. One question that was important to the review panel, was whether independent decisions by the MDT existed or was there a form of “group think” that was fostered among the members. Independent thinking by the MDT members appears to be both encouraged and celebrated. But as expected, the Team is cohesive and there is an overall similarity in how they view issues and the Team’s decisions. The Team meets regularly to discuss cases and new research findings. The evaluators, however, function independently from the Team and from one another. This design of pulling the evaluation role away from the MDT builds independence into the process. The Team has the benefit of reviewing and considering the independent evaluations, but still makes the final decision whether to recommend involuntary civil commitment or not.

When evaluators are brought into the process, one or two independent evaluations are requested. The Team initially requests one evaluation. If that evaluation indicates that the offender does meet commitment criteria then a request for a second independent evaluation is made. Occasionally the Team will request a second evaluation even if the first evaluation results in the opinion that the offender does not meet criteria. This may occur when the Team concludes the first evaluation did not sufficiently answer an important question or perhaps when new information surfaces. As mentioned above where there is a reasonable assumption of meeting commitment criteria, two independent opinions are routinely sought. If the MDT ultimately makes the recommendation to pursue commitment, these evaluators are called upon to testify as expert witnesses in civil commitment trials. They are typically experienced forensic

psychologists who, like the MDT members, have extensive expertise in this area. In fact, the team and these independent psychologists meet together for a yearly conference where new research is presented and other issues that affect the evaluation process are discussed. In addition to this conference, contracted evaluators are required to obtain continuing education training that is relevant to the assessment of sex offenders.

As designed, the SVPP system appears to balance the power in the decision making process between the MDT members and the independent forensic psychologists. The MDT has executive power, but the in-depth evaluation process has been separated from the MDT. *To the extent that the MDT requests these independent evaluations*, the infusion of disparate opinions into the process is fostered. This is especially true when considering a case that may go to trial and where commitment is a possibility.

As indicated by the SVPP Rules, a face-to-face evaluation must be conducted in each case where the offender is recommended for commitment. However, the MDT controls the number of cases that are referred for independent evaluations. The decision to refer an individual for indefinite civil commitment is an important and complex one. It is based upon the opinion that a mental abnormality exists, and that abnormality makes that individual likely to engage in future acts of sexual violence. Further, the law requires that the sexual acts must pose a menace to the community at large. What makes this decision progressively more difficult, is that there are moderating and aggravating factors that affect each case. How the evaluator interprets these variables and how they are mixed into the totality of the criminal behavior and the mental illness is a result of interpretation and the assignment of relative weights. No one of the many thousands of sexual offenders is like the other.

When the MDT recommends indefinite commitment, the case is placed into the hands of the State Attorney. It is the State Attorney who decides whether or not to file a petition seeking commitment. In some cases when the MDT recommended commitment, the State Attorney chose not to proceed with the recommendation. Most of the time, however, the MDT and the prosecutors agree on the cases that pursued. Obviously, the ultimate commitment decision is up to the jury or the judge (in case of a bench trial). In either case, it is a lengthy and involved process commensurate with the seriousness of the decision to involuntarily commit an offender for an indefinite period of time.

In order to preserve the integrity in the management of these referrals, it is imperative that the role of the MDT is well-defined at each stage of the process. If, for example, the MDT begins to move beyond the screening and into the

evaluation process, then the decision making will become more centralized than originally intended. The system would not function as it was originally designed. If, on the other hand, the MDT referred all cases for evaluation, then the process would become overly decentralized. It is in the interest of the Program that the MDT preserves the delicate balance that does not jeopardize its position by taking on roles that were not assigned to it or, conversely, out-sourcing the jobs that were.

The initial screening consists of a file review. Evaluations by independent contractors consist of a file review, an extensive interview, and the submission of a comprehensive report. The report concludes with an opinion as to whether or not the offender meets the criteria for involuntary civil commitment as a sexually violent predator. However, it must be emphasized that the MDT is assigned to make the final recommendation decision. The SVPP has no statutory authority to become involved in commitment proceedings after it makes this recommendation. The contract evaluators may be subpoenaed to testify at trial or at other commitment-related proceedings.

The Core Issue: The Problem of Selectivity

Since the Sexually Violent Predator Program's inception, over 40,000 referrals have been made to the Department of Children and Families for screening and assessment. This evaluation process results in a MDT recommendation to the State Attorney. The Program must recommend whether or not the State Attorney should file a petition seeking the involuntary civil commitment of a sexual offender who meets the criteria under the Act. As noted above, the Sexually Violent Predator Program utilizes a sophisticated process in order to arrive at this decision. For the purposes of the current review, it is useful to look at the Sexually Violent Predator Program as a *selection* program. Its mission is to select offenders who are considered to meet the criteria as sexually violent predators under the Act – and to identify offenders who do not meet criteria.

Error is always present in any selection process. This applies to the process that the Central Intelligence Agency uses to identify potential terrorists who require detention. It also applies to the process that physicians use to select those at a high risk of developing cancer and who should be given extensive medical procedures. It would also apply to a program that is delegated to identify those who have problems with alcohol consumption and who may need to have their driver's licenses revoked.

When making this selection, how many incidents of intoxication should be allowed before one is classified as a "high-risk" drunk driver? Some might say that two alcohol-related arrests should qualify someone as being "high risk." Others may want to investigate the nature of the incidents and other related factors. For one person, maybe the two incidents occurred within one year and were related to a divorce, a job loss, or some other traumatic, yet transient, life event. This person had no other alcohol-related arrests and did not usually drink alcohol. For another, however, the two incidents were imbedded in several years of other alcohol-related arrests, such as Domestic Violence and Disorderly Conduct. For this person, there was a pattern of dysfunction related to alcohol abuse. In this case, the "high-risk" was related to the context of the individual's life experience and can be identified by looking at a number of variables that suggest what might happen in the future.

Which of these two individuals is the high-risk drunk driver? The problem is that human behavior is not easy to predict, even when extensive background checks are completed. Humans are complex, and sometimes unpredictable. It is difficult to know the motivations of others; sometimes it is difficult to know one's own

motivation. We are sometimes surprised by our own behavior in certain situations. Given this, any selection process is subject to error.

The SVPP selection process is imperfect. Some people will be judged to meet the criteria as a Sexually Violent Predator when in reality they do not. Conversely, others will be judged as not meeting the criteria as a Sexually Violent Predator when, in reality, they do. The central question for this review is how much error exists in the SVPP selection process and what kind of error is most prevalent. When these facts are discovered, the follow-up question should be: Is there anything about the way the program makes decisions (from the initial screening to the final recommendation) that can be changed to reduce the type of error that exists?

While error is a fact of life, it is not something to simply accept. With public safety at risk, the Program, since its inception, has conducted its own research and allowed others access to data to investigate the use of actuarials, the existence of evaluator bias, and the types of offenders being considered for commitment. In addition, in the early years of the Program, the first OPPAGA review of the treatment program was conducted. With the consultation of information technologists, Florida's SVPP created the most inclusive database of any program throughout the United States. This data has been offered to scientists for use to further our knowledge about the assessment of Sexually Violent Predators. In fact, Dr. Jill Levenson, who is now a recognized expert in the field, conducted her first study using Florida's SVPP data.

The science of identifying dangerous offenders has grown exponentially in the last twenty years and new research replaces the old at an astonishing rate. In fact, the foundation for this review was an analysis of the recent research literature, as listed in the Appendix. Statistics specific to the Sexually Violent Predator Program were reviewed and individual referral cases were examined. The results of the studies recently conducted by OPPAGA and the Sexually Violent Predator Program were supplied to the review panel for inspection.

When making a selection, there are two types of error ("bad" selections) and two types of correct ("good") selections. In this case, a false-positive error occurs when an individual is believed to meet the criteria as a Sexually Violent Predator when he, in fact, does not. This is saying a condition is present when it is not, and is also called a "false alarm." A false-negative error occurs when an individual is believed not to meet the criteria as a Sexually Violent Predator when, in reality, he does. This occurs when the Team says the condition is not present when it is. This is when the team fails to raise an alarm when it should. The two "correct" decisions are noted below: when a real predator is selected ("true positive") and one who is not a predator is deselected ("true negative").

SVPP DECISION	Truly Meets Criteria	Truly Does Not Meet Criteria
<p align="center">Does Not Meet Criteria (Recommended to the State Attorney to Not File a Petition Seeking Involuntary Commitment)</p>	<p>Incorrect Outcome False Negative</p>	<p>Correct Outcome True Negative</p>
<p align="center">Meets Criteria (Recommendation to the State Attorney to File a Petition Seeking Involuntary Commitment)</p>	<p>Correct Outcome True Positive</p>	<p>Incorrect Outcome False positive</p>

It is important to understand that it is impossible to completely eliminate error because this is an imperfect world and the evaluation process, itself, is imperfect. It is possible to balance each type of error, but there are inevitable trade-offs in this endeavor. For example, if we decide we must *never* allow a potentially dangerous sex offender to be mistakenly released into the community, then we must never release any sex offender – ever. Even low-risk sex offenders sometimes go on to commit heinous sex crimes. So to catch that low-risk offender who may commit that heinous act, all sex offenders would need to be committed.

But the decision to *never* allow a potentially dangerous sex offender to be released would result in the loss of liberty for thousands of individuals who truly are at a low risk to re-offend. In addition, this level of detention would obviously become a fiscal nightmare to the taxpayers. If the thousands of sex offenders who have been screened since the Program’s inception were committed, 39 additional compounds would need to be constructed to house them. The current annual budget of approximately \$30 million would consume over one billion dollars of tax revenue. However, at the other extreme, if we *never* want to indefinitely commit an individual who is not actually dangerous, then we would need to release all sex offenders. This other type of extreme decision would

result in the release of many dangerous individuals. Neither extreme is desirable.

Let us examine the current error rates to see the current balance in the selection process. There are two major sources of these statistics: the 2011 OPPAGA Study and the preliminary results of the 2013 Sexually Violent Predator Program Recidivism Study. Relevant findings from these studies will be summarized below. Data from the investigation conducted by the Sun Sentinel will also be reviewed.

Research Conducted by the Office of Program Policy Analysis And Government Accountability (OPPAGA)

On October 21, 2011 the Office of Program Policy Analysis and Government Accountability (OPPAGA) completed a review of the practice of “stipulated agreements” by the Sexually Violent Predator Program. These agreements were entered into between the offenders who were recommended for commitment and the prosecutors who were going to submit them to commitment trials. Rather than have a trial, an agreement was made that the offender enter outpatient treatment, break no laws, and meet other requirements as indicated in the written agreement. When signed, the agreement allowed for the conditional diversion (release) of offenders from the Florida Civil Commitment Center (FCCC). At this time, a commitment order was signed by the judge, but that order was held in abeyance pending the behavior of that offender while living in the community. The bottom line was that if an offender did not comply with any of the provisions, the commitment order would be activated and he would be automatically committed to the residential treatment program in Arcadia.

With regard to this current review, the most important finding in the OPPAGA study was how these ostensibly “committed” and dangerous offenders fared when released back to the community within a relatively short time. This study was unique because usually offenders who are committed do not get released until many years have passed. In this OPPAGA study it was possible to gauge the rate of recidivism by offenders recently determined to be committable and dangerous. For the Sexually Violent Predator Program, follow up data is the “acid test” of the efficiency of the civil commitment process. This is because it allows those involved to see if they are under-referring or over-referring individuals for commitment. This study provided an opportunity to see if offenders who were recommended for commitment as sexually violent predators, actually behaved as expected when they were placed back into the community.

The findings were that out of the 140 offenders living in the community, 5 were convicted of a new felony sex offense after release. The re-offense rate for these 5 is 3.6%. To put it another way, 96.4% of the offenders who were found to have a mental abnormality that made them likely to re-offend, did not re-offend. This finding indicates that many individuals who were thought to be at high risk, were not. When released into the community, these offenders who were considered to be extremely dangerous predators with disorders that undermined their capacity to control themselves, rarely re-offended.

It is important to note that there were some limitations to this study. The offenders studied were in the community for varying periods of time. These 140 offenders were in the community between 1 and 10 years. Thus, their recidivism rates could not be compared to an actuarial rate (e.g., 5 or 10-year rates). Though the risk of re-offense tends to be the highest within the first two years of release, the longer that offenders are in the community, the more time they have to re-offend. Another factor to consider when evaluating this study is that almost half of the sample had some form of probation. In general, being on probation is expected to lower recidivism rates. These limitations to the study are considered moderate and the results should still be considered meaningful.

Research Conducted by the Sexually Violent Predator Program Office (Preliminary Results)

As part of the review process, members of the panel were provided with a presentation entitled "Sexually Violent Predator Program Recidivism Study (Preliminary Results)". The study is authored by the following SVP Program Office staff: Daniel F. Montaldi, Ph.D., Administrator; Sandi Lewis, Ph.D., Senior Psychologist; and Janis Heffron, Ed.D., Senior Psychologist. Following the lead of the OPPAGA study, this one also investigated the behavior of those who were released from the Sexually Violent Predator Program at different stages. The question was whether the OPPAGA findings were consistent with other SVPP offenders who were released to the community; or whether the OPPAGA findings were an anomaly.

The OPPAGA study certainly suggested the need for further outcome research. To this end the SVPP examined the following groups:

- Offenders released from prison (most without a petition filed or with the petition dropped before a probable cause finding by the court);
- Offenders released from the FCCC while still detainees (never committed, with petitions dropped before the trial, or released after a win at trial);
- Offenders released as no longer meeting commitment criteria (which includes those reaching Phase IV in treatment and/or determined by the courts as having achieved the Maximum Therapeutic Benefit at a different Phase of treatment);
- Offenders released on stipulated agreements.

Since the SVP Program began, the Multidisciplinary Team has recommended 1,498 individuals for civil commitment (as of 2/28/13). The SVP research sample consisted of 47% of this group, or 710 offenders who were recommended for commitment by the SVPP program, but were later released.

The study revealed that 71 of the 710 individuals released were, at least, charged (versus convicted) with a sexually motivated offense that involved a victim. This is a 10% recidivism rate. To put it another way, 90% of the offenders considered extremely dangerous due to a mental abnormality and deficits in volitional control, did not re-offend.

It is worth noting the details of the 71 offenses. Thirty-two (32) offenders had charges that resulted in felony sex offense convictions: which is 4.5% of the total group. Nine (9) of the 71 had sexually *motivated* felony convictions. Totaling the felony sex offense convictions and the sexually *motivated* felony convictions (totaling 41), results in a 5.7% recidivism rate. Nineteen of this group had felony

charges that were pending, acquitted, or dropped. This would make a total of 60 (8.45%) with, at least, a felony charge. In addition there were six (6) misdemeanor charges and six (6) misdemeanor convictions.

As noted above, one way to examine the success of the SVPP selection process is to examine how many offenders who were found to be extremely dangerous, actually re-offended after being released. Another way to look at the selection process is to compare offenders who were not recommended for commitment after a face-to-face evaluation and compare them to those offenders who were recommended for commitment. Numbering about 1200, the non-recommended group is much larger than the 710 who were recommended for commitment. In the non-recommended group the percentages of offenders with new felony sex offense convictions was low: 3% for offenders released for a period between 5 and 10 years and 4% for offenders released more than 10 years (up to 14 years). In the recommended group, the percentages of offenders with new felony sex offenses was higher, but not much: 6.8% for offenders released for a period between 5 and 10 years and 6.5% for offenders released more than 10 years (up to 14 years).

The recommended and the non-recommended groups differed by less than 2% in the percentage of offenders obtaining a new felony sex offense conviction after release. Such a minor difference is surprising and indicates that the traditional approach to determining SVP status needs to be improved. There are too many false positives (someone determined to fit the SVP definition when he does not, or someone determined to be likely to re-offend but he is not). The re-offense rates of those who were recommended for commitment were hardly different from those who were not recommended. Obviously, the re-offense rates of a group thought to be extremely dangerous sexual predators would be expected to be much higher than the others.

The overestimation of risk is especially prevalent when age is considered. Very few recommended offenders over 50 re-offended. Only 8 out of 149 (5.4%) offenders age 50-59 had a new sex offense *charge* and only 4 had a new charge (2.7%) for a sexual offense involving physical contact. Only 1 out of 94 (1.1%) offenders past the age of 60 had a new sex offense charge. The one charge by a male over 60 was dropped. For offenders aged 40-49, 13% had a new charge. For offenders aged 30-39, 17% had a new sex charge (misdemeanors included).

This study, as did the former, has limitations when considering the results. There may be factors that have affected the outcome independent of the measured variables. For one, the offenders who were released were living in the community for varied lengths of time. There is also incomplete data on the not-recommended for treatment group as the data on charges only are not yet

available. Also, no data has been collected on the offenders who were not selected for full evaluation and were not recommended.

Florida Sun Sentinel Investigation

The investigation reported in the Sun Sentinel article (8/18/13) entitled, "Sex Predators Unleashed," also shed light on offenders who were referred to the Program. The SVPP, through a public records request, provided the journalists from the Sun Sentinel with data on 31,626 referrals. Recidivism data on the sample was obtained by the journalists from the Florida Department of Law Enforcement through computer searches. Out of the 31,626 men, approximately 1500 or so were recommended for commitment by the SVPP. Thus, since the Florida law went into effect in 1999, approximately 30,000 of these referrals were not recommended for commitment.

The total number of offenders from the 31,626 who obtained a sexual charge or conviction was 1,384 offenders. That would be calculated as a 4.61% sexual recidivism rate. Actually the number of re-offenders among those who were not recommended is slightly lower. The reason for this is that within that 1,384 there are included a number of re-offenders who were recommended (i.e. 31,626). The SVPP program identified 71 of that group of re-offenders, which actually left 1,311 offenders in the "not recommended but re-offended" group. Using the correct figures, this actually amounts to a 4.4% recidivism rate. Another way to say this is: Out of the 30,000 offenders not recommended for commitment, 95.6% did not re-offend.

The article further indicated that 594 of the 30,000 offenders who were not recommended for commitment, obtained new sex offense convictions. This amounts to a 1.98% conviction rate ($594/30,000 \times 100\% = 1.98\%$). This is to say that less than 2% of the 30,000 obtained new convictions for a sexual offense. Another way to say this is that 98% of the individuals not recommended for commitment, were not convicted of additional sexual offenses.

The article also indicated that 130 offenders among the 594 with new convictions had rape convictions. This amounts to a 0.43% rape conviction rate ($130/30,000 \times 100\% = 0.43\%$). Less than 1% of the 30,000 offenders who were not recommended for commitment obtained new rape convictions. Another way to say this is that over 99% of the offenders not recommended for commitment did not go on to be convicted of rape.

The article also indicated that 14 of the 594 men, who had new convictions, were sexual murderers. This amounts to a 0.047 sex related murder rate ($14/30,000 \times$

100% =0.047%). In other words, less than five one-hundredths of 1% of those not referred for commitment were convicted of a sexual murder. Obviously, one of the limitations of these findings is that some offenders commit sexual offenses without getting detected by law enforcement authorities.

Summaries of Sexually Violent Predator Program Recidivism Data

Summary of OPPAGA Findings: On October 21, 2011 the Office of Program Policy Analysis and Government Accountability (OPPAGA) completed a review of the practice of stipulated agreements for the conditional release of offenders from the Sexually Violent Predator Program. The study identified offenders who were recommended for commitment by the SVPP but were later released by the courts on these conditional release agreements, called "stipulated" or "settlement" agreements.

The findings were that out of the 140 individuals in the community on a stipulated release, 5 were convicted of a new felony sex offense after release. The re-offense rate of 5 out of 140 is 3.6%. To put it another way, 96.4% of the offenders that were found to have a mental abnormality that made them likely to re-offend, did not re-offend. This finding indicates that many individuals who were thought to be at a high risk to re-offend were not. When released into the community, this group of offenders, who were determined to be extremely dangerous predators with disorders that undermined their capacity to control themselves, rarely re-offended.

Summary of SVPP Findings: Since the SVP Program began, the Multidisciplinary Team has recommended 1,498 individuals for civil commitment (as of 2/28/13). The SVPP sample consists of 47% (710) of those 1,498 individuals. These are individuals who were recommended for commitment by the SVPP program, but were released by various mechanisms. The results of the study indicated that 71 of the 710 individuals in the sample were, at the least, charged (versus convicted) with a sexually motivated offense involving a victim. This is a 10% recidivism rate. To put it another way, 90% of those offenders considered to be extremely dangerous due to a mental abnormality and deficits in their volitional control that made them likely to re-offend - did not re-offend.

Summary of Sun Sentinel Findings: The data reflected in the Sun Sentinel article (8/18/13), "Sex Predators Unleashed," indicated that of approximately 30,000 sexual offenders who were not recommended for commitment by the SVPP, 1,311 obtained a new sex charge or new sex conviction. This is a 4.4% recidivism rate. Another way to say that is: Out of the 30,000 offenders not recommended for commitment by the Sexually Violent Predator Program, 95.6% did not re-offend.

Integrating the Recidivism Data from The Florida SVPP Studies

When analyzing the recidivism data associated with the Sexually Violent Predator Program, it appears that the most prevalent type of error made was that of identifying “false positives.” This can also be viewed as the Program not correctly identifying the low-risk offenders often enough. These are the 96.4% of offenders observed in the OPPAGA study who were deemed to be dangerous but did not re-offend and the 90% of offenders in the SVPP study that were deemed to be dangerous, but did not re-offend. For those deemed to be so dangerous that they may be committed indefinitely, and cared for at great expense to the state, this false-positive rate appears high. These results suggest that individuals are being over-selected for commitment.

One of the reasons that the false-alarm rate is higher is because discriminating dangerous offenders from non-dangerous offenders has become more difficult due to a lowering of the overall rates of sexual offending. Termed “base rates,” their decrease has been noted since the early 1990’s and has come to affect the SVPP program directly. For example, in Florida in 1993 the total forcible sex offense rate (to include rape, forcible sodomy and forcible fondling) was 101.1 offenses per 100,000 people in the community. In 2012, the rate was 53.2 offenses per 100,000 (Florida Statistical Analysis Center; Florida Department of Law Enforcement).

It is important to point out that as the criminal rates fall it becomes increasingly more difficult to distinguish between those who are dangerous and those who are not. The concept of “base rates” is fundamental to understanding why this is so. The base rate is the overall rate of recidivism of a group of sexual offenders. If the base rate for a group is known to be, for example, 40 percent then evaluators would predict that any individual in that group would have about a 40-percent chance of sexually re-offending. When empirically grounded static and dynamic risk factors related to sexual recidivism are also identified, then even more accurate risk assessments can be made.

However, if the base rate is extremely low, then additional information may not significantly improve the accuracy of evaluations. For example, if the base rate is 10 percent, then practitioners would predict that 90 percent of the individuals in the group will not be arrested for a new sexual offense. The error rate would be difficult to improve even with individualized information about risk factors present

in certain offenders. It is difficult to conduct accurate evaluations when base rates are extremely low. The problem of low base rates has been a particular issue in sexual recidivism studies. This occurs, in part, because the underreporting of sexually violent crimes is higher than in crimes of general violence. It has also resulted from a general decline in sexual crimes. Many factors have contributed to this decline, such as:

- longer prison sentences;
- increased public awareness;
- more advanced sex offender probation monitoring and surveillance (GPS monitoring);
- more effective sex offender treatment techniques and strategies;
- And sex offender registration laws.

Yet a major source for this high false-alarm rate is the manner in which the actuarial, the Static-99 and its revision (Static-99R) have been used in the Sexually Violent Predator evaluation process. Because this actuarial has been used widely (literally globally) in the same way, this could be considered a systemic error related to the risk assessment process.

Assessing the Risk of Sexual Recidivism

In the early days of risk assessment, clinicians based their decisions on factors that appeared to be logically related to the risk being analyzed. At that time, there was a paucity of scientific research data to indicate what factors were truly related to risk being assessed. As the field developed, researchers (e.g., Meehl, Monahan) pointed out that clinicians were actually basing their decisions on factors that appeared to be relevant but were, in fact, grossly inaccurate. It was out of this context that the Static-99 and other risk assessment instruments were developed.

The Static-99, followed by its revision (Static-99R), is the most popular actuarial instrument in use today. It has been translated into many languages and is used in many countries around the world. The basis for this popularity was that initially, the Static-99, like other actuarial tools, did not rely on “clinical judgment” to select items associated with risk. Each item was chosen statistically and was based upon factors that were found to relate to sexual recidivism. The Static-99 consists of 10 items (see below) and there are extensive rules to follow when scoring each item. The Static-99 results in a total score based on the number of risk factors present for the individual being assessed; and this score can be interpreted in various ways. It can be interpreted in a relative manner. That is, you can see how your offender compares to the risk that groups of offenders with similar characteristics pose. You can also take the score and associate it with an absolute risk rate. That is, you can look at the recidivism rates of offenders with similar characteristics as the person you are evaluating.

The Static-99 has become a staple in risk assessment evaluations conducted within the domain of civil commitment. Since the beginning of the Florida SVPP the Static-99 has been considered to be the foundation of risk assessment. In fact, in the Rules that were promulgated by the Program, the use of the Static-99 was mandated, unless it was inappropriate (e.g., woman offender or juvenile offender). Initially, it appeared that the rates compared favorably with the countries and states using it. Also, with one group to compare recidivism rates, there was no “clinical judgment” about which group the offender should be compared to. It was fairly direct, easy to score, and gave one-group for establishing your recidivism rates.

However, in 2009 this changed and questions were subsequently raised concerning the Static-99. A landmark study by Dr. Leslie Helmus revealed that the Static-99 was over predicting risk. Further, this occurred more frequently

among the high-risk groups – which are the groups that were most relevant to civil commitment evaluations. A second problem was also discovered. There was significant variability in the recidivism rates among different groups unaccounted for by the Static-99. This causes problems in the ability to compare groups of offenders which is fundamental to actuarial instruments.

Age was found to be one of the factors that led to the over prediction of risk. It was found that risk drops as one ages and after the age of 60, it drops precipitously. As a result, the age item on the Static-99 was modified. This modification resulted in fairly dramatic changes in risk assessments. The impact of the research on the impact of age on sexual recidivism is ongoing and important. In 2009, the revised Static-99R, replaced the original Static-99.

The other new problem that developed in 2009 was the revelation that different groups of offenders had markedly different recidivism risk rates. Due to this variability in group recidivism rates, instead of one group for comparison, there were now four. Further, based on the written descriptions of these groups, the evaluator was asked to choose which group was most like the offender being assessed. The four groups are:

- The Routine Sample with the lowest rate of recidivism, consisted of offenders with characteristics similar to the average prison inmate;
- The Preselected for Treatment Need Sample had the next highest absolute risk rate. It consisted of men who were treated in prison and community-based sex offender treatment programs in the United States, Canada, and New Zealand;
- The High Risk/Needs Sample was associated with the highest rate of recidivism. These men were designated by the courts as “dangerous offenders;” had a forensic/psychiatric background; were evaluated or treated within a civil commitment setting; or were retained in prison for the complete length of their sentence. These samples came from the United States, Canada, and Denmark;
- The Non-routine Sample was composed of the combined Preselected for Treatment Need and the High Risk/Needs Sample. The associated risk rates were higher than the Preselected Sample and lower than the High Risk Sample.

Predicted levels of recidivism vary dramatically by sample group. However, the method of selecting which group to use in the final comparison is poorly defined and controversial. There is no standardized procedure for making this assignment and the sample that is chosen can significantly alter the level of risk that is applied to the offender being evaluated. Actuarial risk assessment has

become more complicated. The precision once thought to be present in using the Static-99 has diminished (at least when estimated recidivism rates are utilized). Since 2009, the science of risk assessment has become increasingly controversial in civil commitment trials.

Although subsequent data has brought the traditional use of the Static-99R into question, the overall effect of that body of research is unquestionably positive. Because more information is available about scientifically validated risk factors, clinical judgment is no longer based on what *appears* to be logical or related to risk. As a result, what is commonly referred to as “guided clinical judgment” - clinical judgment based on the consideration of risk factors that have been empirically validated - has significantly improved and deserves a place at the risk-assessment table.

Use of the Static-99R in Florida's Sexually Violent Predator Program Evaluations

The absolute recidivism rates provided by the Static-99R have typically been thought of as the “anchor” of a sexual violence risk assessment. This is no longer the case. The above data on the re-offense rates of individuals in Florida recommended for indefinite civil commitment as sexually violent predators reveals a high false-alarm rate. Research by the SVPP indicates that the Static-99/Static-99R has played a large role in this type of error in overestimating risk. The estimated recidivism rates associated with the Static-99R contributed mightily to that overestimation. It has been common practice among evaluators to use reference groups with the highest estimated rates (High Risk/Need, Preselected for Treatment/Need) when conducting a Sexually Violent Predator Evaluation. Below is a Table listing the estimated recidivism rates associated with various scores. This information can be found in the Static-99R Evaluators' Workbook dated July 26, 2012.

Static-99R Reference Group	Estimated 5 Year Recidivism Rate	Estimated 10 Year Recidivism Rate
High Risk/Need	Score 4: 20.1% Score 5: 25.2% Score 6: 31.2%	Score 4: 29.6% Score 5: 35.5% Score 6: 41.9%
Preselected for Treatment	Score 4: 12.3% Score 5: 15.9% Score 6: 20.2%	Score 4: 18.2% Score 5: 22.6% Score 6: 27.6%
Non-Routine	Score 4: 15.4% Score 5: 19.6% Score 6: 24.7%	Score 4: 22.6% Score 5: 27.7% Score 6: 33.4%
Routine	Score 4: 8.7% Score 5: 11.4% Score 6: 14.7%	No data on 10 year rates in Routine Group

The OPPAGA study consisted of offenders who were recommended for commitment and the Static-99R scores of those offenders were generally high.

The average Static-99 score when they were placed on their agreements was "5.91" Using the High Risk/Need sample for reference, the estimated Static-99R 5-year recidivism rate was 25.2%. However, the actual recidivism rate for new felony convictions among the OPPAGA offenders was 3.6%. As discussed earlier, it is of note that 46% of the OPPAGA sample was on some form of probation during their agreement period – but more than half were not. Probation may have reduced the recidivism rate somewhat but the difference is so large, that it begs further discussion.

Given that the offenders in the OPPAGA study were found to have mental abnormalities that made them likely to re-offend, the actual rate of reconviction appears considerably lower than would be expected. Given that the release time in the OPPAGA sample varied from 1-10 years, the 5-year estimated rates for the Static-99R would likely be the closest comparison. The 25.2% recidivism rate, as noted above, appears to be several times higher than the actual recidivism rate of offenders in the OPAGGA study.

The average Static-99R score in the SVPP study was about "5." Again, the 5-year estimated recidivism rate indicated by the Static-99R using the High Risk/Need group was 25.2%. However, the actual sexual recidivism rate *for any sex related charge* (felony or misdemeanor) in the SVPP research was 10%. The actual overall sexual recidivism rate based on felony sex convictions in the SVPP sample was 4.5%. Again it appears that the rates indicated by the Static-99R overestimate risk. In both the OPAGGA study and the SVPP study, the Static-99R estimated rates appear to be significantly higher than the observed rates in our Florida samples.

Since the beginning of the Florida Sexually Violent Predator Program, 1,498 individuals were recommended for civil commitment (as of February 28, 2013). Of those who were recommended for commitment, 710 (47%) were released for various reasons. Seventy-one of those offenders later obtained a charge (at least) for a sexually motivated offense. This corresponds to a 10% recidivism rate for any sexually motivated charge and a 4.5% recidivism rate for those who received felony sex offense convictions. Twenty-six individuals (37%) re-offended with children and 40 individuals (56%) re-offended with adults.

Of the 710 offenders in the SVPP study, 366 were recommended for commitment, but were released as FCCC detainees without commitment. Eighty-three offenders were recommended for commitment but were released from prison. Four of these 83 offenders were given settlement agreements. Of those 710 men recommended, 100 were released from the Florida Civil Commitment Center as no longer meeting criteria. Of these 710 offenders, a total of 161 were

released from the Florida Civil Commitment Center as a result of settlement agreements.

**SVPP Study: Comparison of Offenders Recommended for Commitment
But Released**

	Offenders No Longer Meeting Criteria (N=100)	Offenders Released from Phase IV of FCCC Treatment (N=39)	Offenders Given Settlement Agreements (N=161)	Offenders Released as Detainees (N=366)	Offenders Released from Prison (N=83)
Any Sex Related Charge	7%	5.1%	6.8%	10.7%	16.9%
Felony Charge for Sexually Motivated Offense	4%	5.1%	6.8%	8.7%	15.7%

Data from research projects conducted outside of Florida, have also observed that the Static-99 has overestimated recidivism rates among high-risk offenders (e.g., Fazel, Singh, Doll and Grann, 2012; Singh, Fazel, Gueorguieva, and Buchanan, 2012). The Adam Walsh Study was a multi-state recidivism project that included 500 offenders from Florida: 250 were released in 1999-2000 and 250 were released in 2004-2005. The recidivism rate for this group, based on charges or convictions for sexually motivated offenses, was 5.2% (over 5 years) and 13.7% (over 10 years).

It was appropriate to use actuarial instruments such as the Static-99 when they were believed to improve the accuracy of risk assessments. In fact, during the early years of the SVPP, the data suggested that using these tools resulted in more accurate risk assessments. At that time, it was superior to using unsubstantiated factors when trying to evaluate the recidivism risk of an offender who would soon be released from prison. It now appears that clinical judgment, guided by the broad and ever-expanding base of empirical data, may be superior to simply quoting “rates,” which may lack sufficient application to the offenders being evaluated.

It seems apparent that less weight needs to be given to the Static-99R in sexually violent predator evaluations. The Static-99R may be most useful when viewed as one source of data rather than the “anchor” that it used to be. The ongoing research on sexual recidivism and risk assessment needs to guide considerations in screenings and evaluations. The research is developing and inferences are changing over time. Thus, it is important for the SVPP to engage in regular training to ensure that evaluators are aware of recent developments in the dynamic field of sex offender risk assessment.

Expanding the Guidelines for Face-to-Face Evaluations

Attention has been focused on the Static-99R, and how to react to recent research regarding its predictive ability, and this is important. However this review panel believed a more significant issue relates to the screening team's efforts to perhaps narrow the focus too much when identifying offenders referred for possible civil commitment.

The screening team has become extremely efficient in narrowing the numbers of offenders to be referred for further evaluation based solely on a record review. The screening team has noted the extensiveness of the records reviewed and the experience of team members in explaining this efficiency. However, in the opinion of one member of the panel (who has consulted with nine states regarding their SVP process and has witnessed available records), the records were quite consistent with the amount and quality of records reviewed in other states with SVP statutes. It is the belief of the panel that the initial screening process is meant to be broader, since in a few rare cases, some crucial information regarding dangerousness may be obtained during the clinical interview. The panel reviewed files of offenders screened out as not needing further evaluation and, in several cases, it was the opinion of the panel that the addition of a face-to-face interview could certainly be useful before a final decision was made as to whether to pursue civil commitment.

The screening team appears qualified and experienced. However, guidelines for screening files should be written for any team, not just the one currently on site. The Panel recognizes that there is no simple formula for referring individuals for face-to-face evaluations. The issue is to ensure that those who may appear at first glance to not meet criteria receive the scrutiny deserving of any individual who has engaged in sexually deviant acts directed towards other members of the community. Rates may change over time and depend upon such discrepant external factors as law suits that release a number of sexual offenders at one time, changes in general sentencing guidelines, or a lowering of recidivism rates. Experienced screeners are critical to the process of sifting through the multiple factors present in each case, and in determining which are significant in each case.

An increase in referrals for evaluation will aid in identifying offenders who may initially appear innocuous but are found, upon closer inspection, to be far more dangerous. For example, it is currently written in the Program's Guidelines that cases that include kidnapping and murder convictions be automatically sent for

further evaluation. This panel recommends that serious consideration be given to each case where there has been an “*attempted*” kidnapping or an “*attempted*” murder. The reasoning for this is that attempts that were thwarted, may suggest that these offenders have additional levels of dangerousness that more closely approximate those offenders who “succeeded” in their crimes. In addition, it is recommended that the Team give serious consideration to those men who engaged in acts that may suggest the existence of sexual sadism. This would include items on the Severe Sexual Sadism Scale, such as saving a trophy from a victim, keeping a record of an offense, inserting any object into an orifice, or mutilating any part of the victim’s body. Additionally, signs of progression in severity from an earlier offense to a more recent offense (for example, from exposing to a ‘hands on’ offense) should be considered for special consideration under the new written screening Guidelines.

The Panel cannot foresee the long-term effect of certain recommendations to adjust screening guidelines, and thus wants the Team to assess the recommendations in view of the goal to improve the consistency in the manner in which the most dangerous and the highest risk offenders are identified and treated. Furthermore, the Panel does recognize that at this point in time the Team is already referring at a rate consistent with previous years, but the Panel would like to ensure consistency in the future.

As mentioned above, the Director of the SVP Program has trained his team to be highly efficient in narrowing the referrals for further evaluation, but this step in the process is actually meant to include a fair number of “false positives” that would later be ruled out by those conducting face-to-face interviews. It was the impression of the panel that one reason the screening team was anxious to become more efficient in narrowing the referrals for further evaluation was because there were concerns about certain evaluators. The MDT did not have the confidence that certain professionals could be discriminating enough in determining who truly needed to move on for possible civil commitment. The team appeared quite concerned about such evaluators making decisions, which would unnecessarily deprive individuals of their liberty when those individuals actually fell short of truly meeting commitment criteria.

To some degree the recent occurrence of this issue may be related to the fact that the SVP Program has the benefit of recidivism research that they have not yet had the opportunity to share with the evaluators. This issue may be solved by holding an SVPP conference for evaluators as soon as possible to share research results. In addition, there is always concern about the possibility of a forensic evaluator’s opinion being influenced by an arrangement where they stand to obtain monetary gain depending on which opinion is expressed. There

are circumstances where case evaluators will be able to bill for additional contract hours if they find that the offender does meet commitment criteria, as they will need to bill for their time spent testifying in court. It is certainly hoped and expected that forensic evaluators will be ethical enough not to allow financial compensation to influence their opinion. However, recent research (Murrie et al., 2013) suggests that forensic evaluators may not be *consciously* aware of all the factors influencing their professional opinions.

The forensic evaluators in Florida have three-year contracts, and feedback about the quality of the reports is offered only once per year. The screening team seemed to fear that any concerns expressed at other times might be viewed as attempting to influence the opinions of the experts. However, there appears to be a few possible solutions that could address the screening team's concern regarding certain evaluators.

One solution would be to greatly decrease the length of the evaluators' contract periods: Perhaps the contract would last only one year at a time. The MDT could also increase the frequency with which evaluators receive feedback about the clarity of their reasoning for diagnoses and their final opinions. Then, when an evaluator fails to adequately explain and justify his/her opinion, regardless of the underlying cause for that failure, that evaluator's contract would not be renewed within a relatively short period of time.

A second possible solution would be to add an additional step in the process. The MDT could assign members of the screening team to go into the field to conduct brief face-to-face interviews. The results of these could be brought back to the screening team prior to them making a decision whether to refer the offender for the full evaluation. These interviewers would not stand to make any monetary gain dependent on the outcome of the evaluation, and would provide useful information that could likely support a more sound decision not to refer numerous cases for further evaluation.

Less Restrictive Alternatives

In Florida, an offender is either committed indefinitely or released. There is no middle ground. It would be useful if an option was available for there to be a less restrictive alternative to civil commitment, as is available in several other states. For example, in Virginia, a judge has an option at the time of the commitment hearing, to determine that although the offender does meet criteria, it appears possible to manage his risk in a community setting. In those cases, the offender is placed directly out in the community on conditional release. He has strict guidelines to follow, and any deviation from those guidelines could lead to quick revocation of his conditional release, and placement in the SVP facility. The Office of Sexually Violent Predator Services contracts with Probation and Parole staff to closely monitor (including using GPS) any resident out on conditional release, whether he is placed there directly from court in lieu of going to the facility, or whether he has earned conditional release through progress in the facility's treatment program. Such a contract ensures that those responsible for monitoring the offenders have the necessary training and experience to be successful. This type of contract arrangement for supervision appears preferable to Florida's provision for the Office of the State Attorney to monitor those offenders who stipulate to a commitment held in abeyance, as there is no reason to believe that the office has the time available, nor the training and experience to supervise and monitor sexual offenders in the community.

Having a "step-down" transition back to the community for those offenders who have earned release from the facility is also highly recommended for any state with an SVP population. Given the length of time these offenders have spent in prison prior to even being placed in the long-term residential setting of the SVP facility, a gradual integration back into the community is crucial. As noted in Schlank & Bidelman (2001), "Treatment programs and staff need opportunities to validate the sex offender's progress in a way that protects public safety, avoids re-victimization or new victims, and enhances the offender's ability to function without incident in less restrictive environments. Gradual, incremental, transitional experiences through work, recreation, and self-care for the offender are an effective process to those ends (p. 10-7)."

While the above-mentioned possible solutions may offer some benefit, the panel also believes it is important to emphasize that the screening team may be taking on too much responsibility for screening out offenders as not meeting commitment criteria, when actually some of that responsibility should fall to the courts. For example, the team reviewed a file where two evaluators had found an offender met commitment criteria, and yet the screening team overturned that

decision. It appeared that the team focused mainly on the fact that they disagreed with the evaluators' paraphilia diagnoses, and the fact that there was no physical violence involved in his offenses. However, the offender had targeted a variety of victims (including stranger victims, adolescents and adults), and also demonstrated poor self-regulation/lifestyle impulsivity, sexual preoccupation, and cognitive distortions supportive of sexual offending, all of which are dynamic risk factors that should be given considerable weight even if there was some question about how much weight to give his high score of 8 on the Static-99R.

In addition, this offender was sexually acting out even while in the secure setting of a prison, with public masturbation as recently as 2010. The panel recommends that when two evaluators believe an offender meets commitment criteria, the screening team should not overturn the decision, but should allow the courts to make that final determination. In addition, the screening team may benefit from additional training to emphasize that courts, throughout the country, have consistently determined that physical violence is not required in the offender's history to find that he meets SVP criteria, and any mental abnormality is sufficient, (not just paraphilia diagnoses), as long as it impairs the offender's volitional control and contributes to his high risk for reoffending.

Additional Note:

While clearly outside the scope of questions assigned to the panel, this panel could not help but notice an issue regarding the length of the treatment program. Florida's SVP Program has no clear minimum length of time during which the residents must show consistency of meeting behavioral goals to be promoted to the next phase and to eventually become eligible for release. It is estimated that it would be impossible to complete the program in less than five years. While no clear standards are set for SVP programs, Marques (2001) comes the closest to identifying standards, including the need for distinct phases of treatment with clear, obtainable phase goals. It is important for each resident to have a "way out", with clear goals identified for him from the time of his admission to the program. Program directors should identify the minimum length of time necessary during which they would want to see consistency in meeting identified behavioral phase goals before they would feel comfortable supporting the resident as having reached maximum benefit from the program. This consistency and transparency protects against appearing as if release criteria is made more difficult for high profile cases. While some might argue that standardized phase goals are not individualized enough, and each resident does need individualized treatment, the treatment interventions offered to help the

resident meet those identified phase goals are where the individualization takes place.

It should also be noted that there is some concern about a tendency in the United States to “over-prescribe” treatment for sexual offenders (Mailloux et al., 2003). For example, Wilson et al., (2012) compared Florida’s SVP program with a sex offender program in Ontario and found that the populations of both programs were quite similar. However, they noted that the “time frame in which treatment objectives are achieved is quite different between the two programs presented here. Time to completion for members of the RTC program is well less than half that of the FCCC participants (p. 390).” The authors later go on to note their belief that lengthy treatment periods in a residential program can lead to a greater degree of institutionalization, including narcissism and compulsiveness. In addition, comparisons could be made between Florida’s SVP program and the one in Virginia. Virginia’s SVP program currently has clearly identified phase goals where it is possible for a resident who is motivated to consistently meet the behavioral phase goals and progress through the phases to reach the final phase (Phase Three) in a period as short as fifteen months. This program currently has released seventy-seven residents from inpatient treatment. Forty-nine of those released were recommended by the Forensic Division as having made sufficient progress in the treatment program to have lowered their risk for reoffending. The Virginia program currently has the same recidivism rate (approximately 5%) as the Florida program, which supports the impression of the researchers in the Wilson et al., study, and suggests that additional years in treatment may not be crucial for safety of the community. However, it should be noted that most of those released from the Virginia program were released on Conditional Release, with strict conditions to follow. If such an option were available in Florida, it would likely contribute to everyone’s comfort in decreasing the amount of time residents must spend in the residential setting.

Conclusions and Recommendations

The overall conclusion as to how the program has performed over the years is reflected in error rates. A false positive error occurs when an individual is believed to meet criteria as a Sexually Violent Predator but in reality they do not. A false negative error occurs when an individual is believed not to meet criteria as an SVP and is not recommended for commitment, when in reality they do.

As reflected in the statistics, the salient issue is the “false alarm” rate. This is error related to failing to identify offenders who do *not* fall into the highly dangerous and predatory group. These are the 96.4% (135 out of 140) of offenders observed in the OPPAGA study who were deemed to be dangerous but did not reoffend and the 90% (639 out of 710) of offenders in the SVPP Study that were deemed to be dangerous but did not reoffend. For those deemed to be so dangerous that they may be committed indefinitely – and cared for at great expense to the state – this false positive rate appears high.

Perhaps the most important question is “Is the SVP Program successful at identifying sexual predators?” Based on the actual numbers (statistics) the Review Team finds the program to be successful in identifying high risk sexual offenders. Out of the 30,000 offenders not recommended for commitment by the SVPP 95.6% did not reoffend, but 4.4% did (as indicated by charge or conviction). This rate of 4.4% is lower than or consistent with the rates of re-offense of routine sex offenders released from prisons in Florida and other states. The Adam Walsh Study is a multi-state recidivism study that included 500 offenders from Florida (250 released in 1999-2000 and 250 released in 2004-2005). The 5 year recidivism rate based on charges or convictions for sexually motivated offenses was 5.2%. The 10 year rate was 13.7%.

It is apparent from the above numbers that the type of error that leaves the public at risk (failing to identify offenders who are sexual predators) is far lower than the other type of error (failing to identify offenders who are not sexual predators).

The next set of recommendations is best understood in context of the following. Some variation in opinions among screeners and among evaluators is expected given the general nature of the commitment criteria (that one suffers from a mental abnormality that makes one likely to engage in acts of sexual violence) and the unique and multiple risk factors present in cases. The more factors

involved in a decision, the more complex it is and the more variation in opinion is expected. Involuntary civil commitment decisions are very complex.

Furthermore, any shifts over time in the screening and evaluation process must be understood in the historical context in which they occurred. During the first 10 years (1999-2009) of the SVP risk assessment was largely based on Static-99 results. The decision making process was more simple. Static-99 rates were often pivotal in decisions. Since 2009, the place of Static-99 in SVP commitment cases has become increasingly uncertain. Courtroom discussions about the relevance of the Static-99 and risk assessment are often contentious. As a result risk assessment has become more complex. The other major historical factor to consider when comprehending potential shifts in the screening team is the remarkably relevant research that came out in 2011 (OPPAGA study). In addition the SVP Program research was emerging in 2012. The SVP Program Office screening decisions are understood within this historical context. Program decisions are understood as an attempt to respond professionally and ethically to significant historical factors - the greater uncertainty in the risk assessment process and the finding that risk appears to have been overestimated.

The system of the Sexually Violent Predator Program appears to be set up to distribute or decentralize the decision making power involved in sexually violent predator recommendations. The purpose of the screeners is to identify offenders with significant risk factors and refer them for an in depth face-to-face evaluation. The false positive rate at the front end of the process should be liberal. In other words, it is better to err on the side of over referring at this point in the process. In considering potential referrals it is recommended that the statutory criteria not be narrowly defined (for example, physical violence must be present or opportunistic offenses are not sufficient).

The screening team was not designed to attempt to conduct in depth evaluations based on file information, but rather to identify cases where significant risk factors are present. Evaluations take an average of approximately 17 hours to complete while screenings typically take from a half hour to 2 hours (but vary widely).

There is by design a balance of team decisions and independent opinions in the process. This balance is important and should be maintained. One reflection of this balance is general consistency over time in the number of cases referred by screeners for evaluations. Rises in the rates of screenings sent for evaluations reflects a decentralization of the process whereas decreases in the rates reflects a concentration of decision making power.

It is the belief of the panel that the initial screening process is meant to be broader, since in a few rare cases, some crucial information regarding dangerousness may be obtained during the clinical interview. It is recommended that some additions to the screening process be added to policy as discussed above. It is important to emphasize that the screening team may be taking on too much responsibility for screening out offenders as not meeting commitment criteria, when actually some of that responsibility should fall to the courts (for example, when two evaluators find that an offender meets commitment criteria, but the screening team overturns the decision). The screening team may benefit from additional training to emphasize that courts throughout the country have consistently determined that physical violence is not required in the offender's history to find that he meets SVP criteria, and any mental abnormality is sufficient, (not just paraphilia diagnoses), as long as it impairs the offender's volitional control and contributes to his high risk for reoffending.

It is recommended that clinically relevant feedback to evaluators is increased when evaluations do not provide sufficient rationales and that the team has the right to not renew contracts when there is a pattern of such difficulties. Contracts may be made shorter if useful.

It would be useful if an option was available for there to be a less restrictive alternative to civil commitment, as is available in several other states. In this option the offender is placed directly out in the community on conditional release monitored by probation officers. He has strict guidelines to follow, and any deviation from those guidelines could lead to quick revocation of his conditional release, and placement in the SVP facility. In addition, having a "step-down" transition back to the community for those offenders who have earned release from FCCC is also highly recommended.

The FCCC treatment program has no clear minimum length of time during which the residents must show consistency of meeting behavioral goals to be promoted to the next phase and to eventually become eligible for release. It is estimated that it would be impossible to complete the program in less than five years. It is important for each resident to have a "way out", with clear goals identified for him from the time of his admission to the program. It is recommended that the FCCC program directors identify the minimum length of time necessary during which they would want to see consistency in meeting identified behavioral phase goals before they would feel comfortable supporting the resident as having reached maximum benefit from the program.

The SVP Program is commended for conducting important recidivism research. This research is significant and appears to be the first study of this kind on this

scale. It is recommended that the Program Office conduct a training *as soon as possible* to share the results of the SVP Program Research (Preliminary Results) with evaluators. It is further recommended that the SVP Program Office continue to conduct regular conferences with evaluators (as has been the practice in the past).

Given the research discussed above on the Static-99R the following are recommended. The Static-99R should be removed from the first page of the template. The Static-99R is not as pivotal as it has been in the past. It is one source of data among other sources of data. Given the dynamic state of research on risk assessment the Review Team does not want to narrowly define how the Static-99R should be interpreted. There are already recommendations in the literature and this should be presented at SVP Program trainings/conferences.

As mentioned earlier in this report, the Sun Sentinel neglected to mention that 95.6% of sexual offenders not referred for civil commitment were not charged or convicted of another offense; suggesting that, overall, the commitment process appears to be working extremely well. However, there did not appear to be any harm in reviewing those cases in which offenders did reoffend by committing serious sexual offenses. Therefore, the panel reviewed a sample of those cases referenced by the Sun Sentinel to assess whether anything useful could be learned from them regarding the commitment process.

In three of the four cases sampled, there did appear to be some information worth considering. In one case (referred by the screening team for an evaluation and evaluated in February 2000), the evaluator chose not to recommend commitment based on the belief that he did not meet criteria for a diagnosis of a mental abnormality. However, evidence of a personality disorder appeared to be quite clear to this panel. In another case (referred by the screening team for an evaluation and evaluated in November 1999), commitment was not recommended with considerable weight given to him having committed only one offense; however, the fact that the Post-sentence Investigation noted that he had admitted committing a very similar offense just prior to the instant offense was never mentioned anywhere in the report. In another case (referred by the screening team for an evaluation and evaluated in 2006), commitment was not recommended despite the evaluator admitting that he met criteria for a mental abnormality and also appeared high risk for reoffending, because too much weight was apparently given to the fact that he was ultimately unsuccessful in his several efforts to sexually abuse teenagers. It is the belief of the panel that these findings could serve as a useful teaching tool for both the screening team and the evaluators, to further improve their already impressive success rate. Therefore,

the panel recommends that the remaining cases referenced by the Sun Sentinel also be reviewed by an objective psychologist(s) with expertise in SVP evaluation, with the findings presented to the team of evaluators as a teaching tool.

Finally, in response to a request from DCF, as part of the review process a sample of several Assistant State Attorneys involved in SVP cases were contacted in order to provide them with an opportunity to provide feedback, and especially to identify concerns about the SVP Program. Feedback varied somewhat and ranged from positive to negative. Positive feedback was that communication with SVP Program staff was good in that SVP staff were responsive to questions. Some Attorneys had no complaints. The most common concern was over variation in the number of recommendations for commitment throughout the history of the program, but especially the most recent drop in recommendations for commitment. Concern was expressed about the possibility that recommendations may fluctuate in response to potential external and internal factors such as variations in the budget/funding for the SVP Program or the coverage of high profile cases in the media. Another concern expressed was the potential impact of the Administrator of the SVP Program on recommendations. Particular concern was expressed that an Administrator's understanding of an SVP may be too narrow and have too broad of an impact on the program. Another general concern was the lack of some form of conditional release for individuals released from the FCCC. Also, there is no system in place to notify law enforcement/community members of the placement and movements of individuals who have been released. Given that input from Assistant State Attorney's was solicited it is recommended that the Offices of the State Attorney's be notified about the results of this review.

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Static-99R Coding Form

Question Number	Risk Factor	Codes		Score
1	Age at release	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older		1 0 -1 -3
2	Ever Lived With	Ever lived with lover for at least two years? Yes No		0 1
3	Index non-sexual violence - Any Convictions	No Yes		0 1
4	Prior non-sexual violence - Any Convictions	No Yes		0 1
5	Prior Sex Offences	<u>Charges</u>	<u>Convictions</u>	
		0	0	0
		1,2	1	1
		3-5	2,3	2
		6+	4+	3
6	Prior sentencing dates (excluding index)	3 or less 4 or more		0 1
7	Any convictions for non-contact sex offences	No Yes		0 1
8	Any Unrelated Victims	No Yes		0 1
9	Any Stranger Victims	No Yes		0 1
10	Any Male Victims	No Yes		0 1
	Total Score	Add up scores from individual risk factors		

Translating Static-99R scores into risk categories

Score Label for Risk Category

-3 through 1 = Low
 2, 3 = Low-Moderate
 4, 5 = Moderate-High
 6 plus = High

Man charged in Cherish Perrywinkle slaying grew from childhood bully to feared sex offender

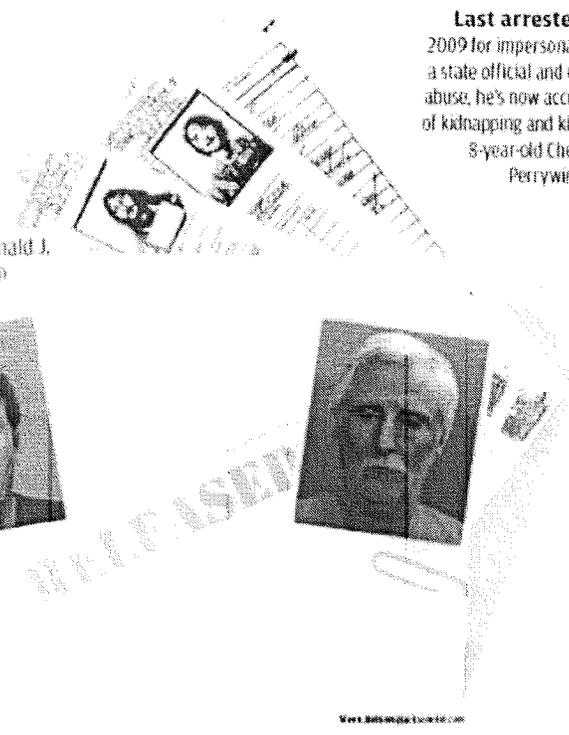
Posted: June 30, 2013 - 9:31pm | Updated: July 2, 2013 - 11:30am

News | The slaying in Duval | Community | Home

Since 1974, Donald J. Smith has been in and out of trouble, with charges ranging from larceny to lewd and lascivious behavior.

Last arrested in 2009 for impersonating a state official and child abuse, he's now accused of kidnapping and killing 8-year-old Cherish Perrywinkle.

Smith, Donald J. (Duval)



View all images on this page

By [Kevin Shivar](#)

Kevin Shivar glared at the one-story brick house just across the street. He knew evil lurked there.

Shivar recalled a jolting visit two weeks ago from the man he knew as Donnie, who lived in the home with his mother when not in jail or prison. Shivar warned the sex offender years ago to stay away.

SEE ALSO: [A history of Donald Smith's arrests](#)

Shivar and his neighbors in the upper-scale, deeply rooted San Jose Forest community where Donald James Smith grew up knew bits and pieces of his past, primarily through Internet searches and backyard gossip.

Smith's sudden appearance as Shivar mowed his lawn began with small talk about Smith's return home, which Shivar knew came after a stint in jail. Shivar felt a chill when Smith noted that the man's 16-year-old daughter had grown up.

"I said, 'You can stay the hell away from here,'" said Shivar, 46. He didn't see Smith again.

Four days later, police arrested Smith in the kidnapping and slaying of Cherish Perrywinkle, the 8-year-old girl stolen from a Walmart and later found slain near a church.

Accounts from the 56-year-old man's childhood and adult acquaintances, neighbors and hundreds of pages of court records paint a picture of the career criminal as a young bully and a sexual deviant from at least his early 20s, as well as a lifelong charmer.

Though what triggered Smith's bizarre behavior remains unknown — authorities rejected a plea of insanity in one of his early criminal cases after a psychiatric exam — trouble clearly found him at an early age and never let go.

In the beginning

Ron Rhatigan was about 8 when Smith, then about 13, lived two lots away in San Jose Forest. They were close for a few years before both families moved

to different streets in the same community.

Rhatigan said he remembers Smith playing with his stepfather's machete and talking about guns. Smith periodically bullied him for little or no reason, mimicking professional wrestling moves that hurt.

"He picked on little kids and beat my ass a couple of times," said Rhatigan, 51, who now lives in Oregon.

Though Smith developed a reputation as a troublemaker, Rhatigan said Smith switched on the charm when necessary.

"He was all smiles in front of the parents," Rhatigan said.

Other details about Smith's young life, such as his time at Wolfson High School or anything about his biological father, remain a mystery. By all accounts his mother, married twice, loved him deeply and spoiled him as he continued living with her until his arrest in Cherish's slaying. Neither she nor other family could be reached to comment.

His first recorded brush with trouble came in 1974 as a 17-year-old when police charged him with burning a stolen car. His crimes against children began three years later when he stopped his mother's green convertible outside a home where two girls, ages 5 and 8, were selling Cokes and masturbated in front of them.

"Do you want some of this?" he asked the victims before driving off.

Smith failed in his attempt to plead insanity after his arrest. A judge deemed him a mentally disordered sex offender and he spent 18 months being treated in a state hospital. He was later sentenced to a year in jail and 10 years' probation.

Arrests followed for burglary, battery, stealing electricity, theft, worthless checks, auto theft and prowling, the latter which came a day after the out-of-wedlock birth of his only child, a son.

Smith's deviance resurfaced in late 1992 when he tried to lure a 13-year-old girl into his van near an elementary school, then hunted her down after she fled and hid in a culvert pipe.

"You'll have to come out some time," he said.

Smith eventually gave up, but an hour later flashed a pornographic picture at two other girls, ages 13 and 14, and tried to lure them into the van in the same neighborhood. They fled and police later arrested Smith, whose 15-year prison sentence for attempted kidnapping and showing obscene materials to minors got cut to six years upon appeal.

Failed husband, father

Smith married the mother of his son while in prison in 1994. Police arrested him twice four years later for buying counterfeit crack cocaine from an undercover cop and masturbating in the parking lot of a supermarket. In the latter case, police found an open bottle of vodka and a 2-liter bottle of urine in Smith's car.

Smith's wife, Francine, told a judge she'd had enough. She filed for divorce and got sole custody after detailing her concerns to the judge about Smith's drug use, sex offenses and failure as a father and husband.

"I want a better life," she wrote in the divorce papers.

Because of his continued trouble, Smith spent 1999 to 2002 under involuntary civil commitment after meeting the criteria of a violent sexual predator as part of the state's Jimmy Ryce Act. Prosecutors released Smith instead of holding a civil commitment trial, which could have led to his indefinite detention.

Smith spent four years in prison for burglary and a judge recommended he get drug treatment. Prosecutors dropped a 2008 child neglect charge after a teen who accused Smith of taking him to a crack den later recanted.

In 2009, Smith posed on the phone as a state child welfare worker and told the mother of a 9-year-old girl he was investigating allegations she'd been molested by her grandfather. Smith made obscene statements to the girl on the phone and police arrested him after tracing the call.

The mother, Stephanie Thornton, refused to let her fearful daughter testify and prosecutors dropped the felony charges to misdemeanors. Smith got two years in jail and not the 20-plus years he faced in prison. Thornton said she believes Cherish Perrywinkle would be alive if she'd done more to thwart the plea deal.

"I hate him," Thornton said of Smith.

Scheming all along

Doug Freeman witnessed Smith's scheming while the two men were in adjoining bunks at the local prison farm this year. Though inmates often don't take kindly to child sex offenders, Freeman said little was known about Smith's criminal history.

Freeman said Smith was a favorite among a group of younger men he'd let sit on his bunk and view smuggled, pornographic adult magazines. Nicknamed by inmates as Weezy for his age, Smith had access to such items he'd get from other inmates in exchange for commissary goods paid for by his mother. Freeman said.

When Smith wasn't providing others with material enticements for attention, Smith talked a good game by convincing inmates he was someone to be reckoned with.

"He's the type of person who can get inside your head and manipulate you," said Freeman, 25, who was doing time for credit card fraud. "He was a smooth

talker and he was a fast talker."

Many who knew Smith when he wasn't incarcerated described the lanky, talented house painter as likable when sober.

Terry Anderson was one of many neighbors who let Smith do work around his home, including a paint job four years ago. Anderson said Smith often strolled around the neighborhood barefoot and wearing painter's pants and a T-shirt. He said Smith portrayed himself as a sad sack in need of work.

"He was pretty eloquent at telling his story and getting people to kind of feel sorry for him," said Anderson, 51.

But Smith's dark side was never too far away.

Eddie Radford, 60, befriended Smith several years ago as a fellow handyman who worked with him around the neighborhood. Radford said Smith told him he had drug connections on the Northside and would periodically disappear on binges.

Radford said the last time he saw Smith was on May 31, the day Smith got out of jail in the case for which he posed as the state child welfare investigator. Radford, 60, said the two sat on the back porch of Smith's mother's home drinking Bud Lights.

"I said, 'Donnie, ... we're both getting old and you need to clean up your life,'" Radford said. "He said, 'Man, you know, I'm straight now.'"

A would-be killer snatched Cherish three weeks later.

jim.schoettler@jacksonville.com, (904) 359-4385

1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100



Donald James Smith through the years

1970s

- Arrested:** March 24, 1974
Charge: Larceny from an auto
Disposition: Adjudication withheld

Arrested: May 7, 1974
Charge: Vehicle theft/Possession of a stolen vehicle/Arson
Disposition: Unavailable

Arrested: Aug. 18, 1977
Charge: Lewd and lascivious act in the presence of children
Narrative: Smith stopped his vehicle in front of the home of two girls, ages 5 and 8, exposed himself to the girls and masturbated. The girls' baby sitter called police, who tracked Smith to his nearby home and arrested him.
Disposition: (Dec. 1977) Pleading guilty, adjudicated guilty; sentence deferred. Ordered to Florida State Hospital for sex offender treatment. (June 1979) Returned from hospital (Sept. 1979) Withheld adjudication of guilt, sentenced to 10 years probation with a condition to serve 1 year in jail. (Oct. 1981) Violation of probation. Sentenced to prison for five years with credit for 1 year and 139 days.
Notes: Psychiatric exam ordered after an insanity plea was suggested three weeks after arrest. Found competent to stand trial. Qualified as a mentally disordered sex offender. Ordered committed to Florida State Hospital for sex offender treatment after 18 months.

Arrested: Sept. 27, 1977
Charge: Escape (fugitive from an unknown Georgia case)
Disposition: Unavailable

Arrested: May 15, 1981
Charge: Unauthorized use of Jacksonville Sheriff's Office insignia
Narrative: A police officer spotted Smith wearing a pair of jeans that had a Sheriff's Office emblem sewn in the crotch of the pants
Disposition: Pleading no contest/adjudication withheld/fine

1980s

- Arrested:** Oct. 16, 1981
Charge: Grand larceny, removed a boat serial number
Disposition: Dropped

Arrested: Oct. 27, 1981
Charge: Violation of probation (on 1977 lewd and lascivious conviction)
Disposition: Adjudicated guilty/5 years in prison with credit for 1 year and 139 days

Arrested: 1/29/82
Charge: Grand larceny/burglary
Disposition: Dropped

Arrested: Feb. 26, 1986
Charge: Battery
Disposition: Pleading guilty, adjudicated guilty. Six months' probation; violated probation. Extended 6 months

Arrested: July 28, 1987
Charge: Unlawful use of electricity from a tampered meter
Disposition: Pleading no contest/adjudication withheld
Notes: Followed by contempt of court; received a 14-day sentence.

Arrested: Oct. 8, 1991
Charge: Burglary/auto theft
Narrative: Police stopped Smith and his girlfriend in a stolen car.
Disposition: Dropped

Arrested: Oct. 8, 1991
Charge: Burglary/grand theft
Disposition: Pleading guilty; sentenced to 4 months in jail

Arrested: June 3, 1992
Charge: Loitering/prowling
Disposition: Pleading guilty; 1 day in jail

1990s

- Arrested:** Oct. 6, 1992
Charge: Attempted kidnapping; 2 counts of showing obscene material to minors.
Narrative: Smith tried to lure a 13-year-old girl into his gray Chevy van and chased her to a park where she hid until he left. He later approached two other girls, ages 13 and 14, and showed them a pornographic photo in an effort to lure them into the van. They fled and police later obtained his license tag number. Upon arrest him, he admitted showing the pornographic pictures but denied anything else.
Disposition: Pleading guilty. Designated a habitual violent offender; sentenced to 15 years in prison, which was reduced after Smith sought post-conviction relief. No indication of sex offender treatment. First offense covered by Jimmy Ryce Act. Paroled in 1997.

Arrested: August 15, and Nov. 24
Charge: Petri theft
Disposition: Pleading no contest/adjudicated guilty, 2 days in jail, 14 days in jail respectively

Arrested: Jan. 24, 1998
Charge: Lewd and lascivious behavior/open container
Narrative: Police called to a man masturbating in a vehicle in a supermarket parking lot found Smith inside a car with his pants open and bare-chested. Police found KY Jeffy, an open bottle of vodka and an unexplained 2-liter bottle of urine in the car. They also found drawings of phallic symbols and an obscene note.
Disposition: Pleading guilty to lewd/lascivious behavior, while the open container charge was dismissed; sentenced to 90 days in jail.

Arrested: Mar. 4, 1998
Charge: Attempted purchase of crack cocaine, tampering with evidence, possession of drug paraphernalia
Narrative: Smith bought \$40 in counterfeit crack cocaine from an undercover narcotics officer and police later found a crack pipe in his vehicle. The charge was amended to attempted crack cocaine in a plea bargain.
Disposition: Pleading guilty to the drug charge; others dropped; sentenced to five months in jail

2000s

- Arrested:** Feb. 18, 2003
Charge: Dealing in stolen property
Disposition: Dropped

Arrested: June 27, 2003
Charge: Two counts of burglary, dealing in stolen property and false verification of ownership to a pawn shop
Narrative: Smith stole tools from two garages and pawned the items using false information.
Disposition: Pleading guilty to dealing in stolen property and false verification charges. Designated a habitual felony offender; sentenced to 4 years in prison with a judge recommending drug treatment.

Arrested: Feb. 1, 2008
Charge: Child neglect with no great bodily harm
Narrative: A 15-year-old male told police Smith took him to a crack house, smoked crack in front of the teen and refused to take him home. The teen told police he wandered the streets before seeking help at a fire station. The teen recanted, telling police he never saw Smith smoke crack.
Disposition: Dropped

Arrested: Sept. 15, 2009
Charge: Impersonation of a state official/child abuse/extortion
Narrative: Smith posed as a state Department of Children and Families Investigator on the phone and told the mother of a 9-year-old Jacksonville girl he was investigating allegations the girl was molested by her grandfather. The mother told Smith in touch with her daughter. She handed the phone to her grandmother. Police traced the call to Smith via phone records and other evidence.
Disposition: The girl's mother refused to let her tearful daughter testify and she and another relative didn't show up for a meeting with the prosecutor. Felony charges were dropped to misdemeanors, for which Smith was given the maximum 1 year on each count; the counts ran consecutively. He was facing 20+ years in prison before the plea bargain.

2000s

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Arrested: June 27, 2003
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Disposition: Dropped

Arrested: Sept. 15, 2009
Charge: Impersonation of a state official/child abuse/extortion
Narrative: Smith posed as a state Department of Children and Families Investigator on the phone and told the mother of a 9-year-old Jacksonville girl he was investigating allegations the girl was molested by her grandfather. The mother told Smith in touch with her daughter. She handed the phone to her grandmother. Police traced the call to Smith via phone records and other evidence.
Disposition: The girl's mother refused to let her tearful daughter testify and she and another relative didn't show up for a meeting with the prosecutor. Felony charges were dropped to misdemeanors, for which Smith was given the maximum 1 year on each count; the counts ran consecutively. He was facing 20+ years in prison before the plea bargain.

Click to zoom in. Double-click to open the article.

2010s

- Arrested:** June 22, 2013
Charge: Murder/kidnapping
Narrative: Authorities have accused Smith of kidnapping Cherish Perrywinkle, 8, from a Walmart on Lem Turner Road and dumping her body near a church. He is being held in jail without bond pending trial.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on General
Government
Banking and Insurance
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR NANCY C. DETERT

28th District

August 2, 2013

The Honorable Don Gaetz
President of The Florida Senate
Suite 409, The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Approved

Dear Mr. President:

I respectfully request that I be excused from the September 23-27 Interim Committee Meetings. I previously committed to attend the Jobs Summit hosted by the National Conference of State Legislatures in Texas during that same week.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Nancy C. Detert".

Nancy C. Detert

NCD/ca

REPLY TO:

- 417 Commercial Court, Suite D, Venice, Florida 34292 (941) 480-3547 FAX: (941) 480-3549
- 416 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Sex Violent Predator - Civil Commitment Bill Number _____ (if applicable)

Name Lauren Book Amendment Barcode _____ (if applicable)

Job Title CEO - Lauren's Kids

Address 104 West Jefferson Phone _____

Tallahassee FL E-mail _____
City State Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24/13
Meeting Date

Topic Sex Violent - Civil Commitment Bill Number _____ (if applicable)

Name Ron Book Amendment Barcode _____ (if applicable)

Job Title _____

Address 104 West Jefferson Phone _____

TLH E-mail _____
City State Zip

Speaking: For Against Information

Representing Lauren's Kids

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24/13
Meeting Date

Topic _____

Bill Number _____
(if applicable)

Name Dr. SUZANNE KLINE

Amendment Barcode _____
(if applicable)

Job Title Psychologist

Address 1282 TIMBERLAKE RD
Street
Tallahassee FL 32312
City State Zip

Phone 850-321-4095

E-mail Dr_KLINE@outlook.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic JUVENILE ISSUES

Bill Number _____
(if applicable)

Name Gwen STEVENSON

Amendment Barcode _____
(if applicable)

Job Title DOJ employee

Address _____
Street

City State Zip

Phone _____

E-mail Gwen.Stevenson@djj.state.fl.us

Speaking: For Against Information *if needed*

Representing Dept of Juvenile Justice (Available for questions if needed)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24/2013

Meeting Date

Topic Sex Predators & offenders

Bill Number (if applicable)

Name BRIAN PITTS

Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24/13

Meeting Date

Topic Qualified Practitioner/Risk Assessment

Bill Number _____ (if applicable)

Name Eric Imhot

Amendment Barcode _____ (if applicable)

Job Title Psychologist

Address PO Box 267458

Phone 954 646 6141

Street

Weston FL

E-mail starypa@bellsouth.net

City

State

Zip

Speaking: For Against Information

Representing Florida Association for the Treatment of Sexual Abuse

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24/13
Meeting Date

Topic SVP Program Review / Risk Assessment Bill Number N/A
Name Gail Colletta Amendment Barcode _____
Job Title President FLORIDA ACTION COMMITTEE
Address 7034 Palazzo Reale Phone 561 305-4959
Brynton Beach, FL 33437 E-mail gail@floridaaction
Committee, org
Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

9-24-2013
Date

Bill Number _____

Barcode _____

Name Calvester Anderson Phone 727/251-9291
Address St. Petersburg E-mail _____
St. Petersburg FL 33705 Job Title _____
City State Zip
Speaking: For Against Information

Appearing at request of Chair

Subject Sex Predators + offenders

Representing _____

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24/13
Meeting Date

Topic Civil Commitment
Name Kriston Kanner
Job Title Asst. St. Attorney
Address 201 SE 6th St - Suite 605
 Ft. Lauderdale, FL 33301
City State Zip

Bill Number _____
(if applicable)

Amendment Barcode _____
(if applicable)

Phone 911 831-7478

E-mail KKanner@scotf.state.fl.us

Speaking: For Against Information

Representing State attorneys

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9.24.2013
Meeting Date

Topic Sexually Violent Predator
Name Sheriff John Rutherford
Job Title _____
Address _____
City State Zip

Bill Number _____
(if applicable)

Amendment Barcode _____
(if applicable)

Phone _____

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/24

Meeting Date

Topic SVP

Bill Number _____ (if applicable)

Name Bob Dillinger

Amendment Barcode _____ (if applicable)

Job Title Public Defender

Address 14250 49th St N

Phone 727-464-6866

Carwater FL 33762
City State Zip

E-mail pd6@wvarethehope.org

Speaking: For Against Information

Representing PD ASSOC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CourtSmart Tag Report

Room: KN 412

Case:

Type:

Caption: Senate Joint Committee Mtg (Judiciary and Children, Families, and Elder Affairs)

Judge:

Started: 9/24/2013 8:41:18 AM

Ends: 9/24/2013 12:00:43 PM

Length: 03:19:26

8:41:20 AM Meeting called to order
8:42:34 AM Senator Lee, Opening Remarks
8:43:45 AM Senator Sobel Opening Remarks
8:47:38 AM Senator Lee intro to staff presentation
8:48:38 AM Mike Erickson, Chief Legislative Analyst, Senate Criminal Justice Committee
8:59:35 AM Scott Clodfelter, Senior Attorney, Senate Criminal Justice Committee
9:08:20 AM Marti Harkness, Chief Legislative Analyst, Senate Approp. Sub. on Civil and Criminal Justice
9:15:53 AM Senator Lee introduces Stakeholders
9:17:17 AM Esther Jacobo, Interim Secretary, Department of Children and Families
9:37:19 AM Kristin Kanner, Asst. State Attorney, 17th Judicial Circuit
9:38:29 AM Bob Dillinger, Public Defender, 6th Judicial Circuit
9:40:27 AM Judge Frank Sheffield, Second Judicial Circuit
9:54:34 AM Sheriff John Rutherford, Duval County, Florida
10:06:25 AM Jennifer Dritt, Executive Director, Florida Council Against Sexual Violence
10:14:54 AM Dr. Robin Wilson, Ph.D., ABPP
10:39:51 AM Senator Lee remarks
10:41:35 AM Senator Lee question to Esther Jacobo; are you satisfied with performance of dept.?
10:42:26 AM Esther Jacobo response
10:45:26 AM Senator Lee comments
10:45:56 AM Senator Lee, what can the dept. do better?
10:46:11 AM Esther Jacobo response
10:47:25 AM Senator Lee, do you have any insight as to why the dept. hasn't done something on its own?
10:48:36 AM Esther Jacobo response
10:50:03 AM Kristin Kanner comments in response
10:54:12 AM Senator Lee question to Dr. Wilson regarding zero tolerance and Dr. Wilson response
10:57:05 AM Senator Lee question to Dr. Wilson, are you only able to get someone to navigate life around these situations vs. curing them?
10:58:07 AM Dr. Wilson response
11:00:43 AM Jennifer Dritt in response
11:02:31 AM Senator Lee question is there a role to look at without having to be a conviction?
11:03:38 AM Robin Wilson responds
11:05:01 AM Kristin Kanner responds
11:06:15 AM Senator Gardiner question regarding form?
11:07:48 AM Senator Gardiner to Sheriff Rutherford regarding out of state offenders
11:08:42 AM Sheriff Rutherford and Kristin Kanner respond
11:10:06 AM Senator Gardiner, can part of their condition for release be that you have access to in their house etc?
11:11:06 AM Senator Gardiner, do we have all the tools or the wrong people using the tools?
11:11:47 AM Kristin Kanner responds
11:13:55 AM Robin Wilson responds
11:15:16 AM Kristin Kanner responds
11:17:16 AM Jennifer Dritt responds
11:18:30 AM Kristin Kanner
11:19:28 AM Senator Sobel question regarding static 99R to Dr. Wilson
11:22:32 AM Dr. Wilson responds
11:23:48 AM Esther Jacobo responds
11:25:51 AM Senator Sobel regarding treatment in prison and cost
11:26:25 AM Senator Sobel to Jennifer Dritt on how to encourage more people to come forward and tell their story
11:26:58 AM Jennifer Dritt responds
11:30:01 AM Senator Sobel question to Esther Jacobo regarding attempted kidnapping and murder and response
11:31:20 AM Senator Sobel question to Esther Jacobo about contracts being evaluated every year
11:31:48 AM Esther Jacobo responds
11:32:07 AM Senator Sobel question about all the evaluators are not phychiotrists

11:32:33 AM Dr. Wilson responds
11:33:25 AM Senator Sobel question regarding a half way system
11:34:31 AM Judge Sheffield responds
11:36:44 AM Sheriff Rutherford responds
11:39:30 AM Senator Sobel question regarding many campuses do not tell their students about sexual predators, what is best way for students to gain knowledge?
11:40:30 AM Sheriff Rutherford responds
11:41:10 AM Senator Bradley, is there something that we should be doing at the front end?
11:45:26 AM Kristin Kanner responds
11:49:22 AM Senator Bradley are there more tools you need?
11:49:31 AM Kristin Kanner responds
11:50:14 AM Sheriff Rutherford responds
11:50:42 AM Senator Bradley question to Judge Sheffield about what offenders are doing during the delays
11:51:16 AM Judge Sheffield responds
11:51:38 AM Dr. Wilson comments
11:52:35 AM Senator Thrasher comments
11:56:20 AM Senator Soto questions regarding concurrent sentences and half way houses?
11:56:55 AM Kristin Kanner responds
11:58:47 AM Dr. Wilson responds
11:59:39 AM Senator Lee moves to rise