“Sex Offender Risk Assessment: Recent Research and Current Controversies” Symposium

Virginia Criminal Sentencing Commission

June 13, 2005

Overview

- Sponsored by the Institute of Law, Psychiatry and Public Policy at UVA
- Commission staff was invited on scholarship by the VA Department of Mental Health, Mental Retardation and Substance Abuse Service (DMHMRSAS)
- Featured speakers were Dr. Dennis Doren, Dr. R. Karl Hanson (RRASOR), and there was a Legal Response by a panel of lawyers

Application to VCSC Studies

- Risk Assessment Instruments: Getting the Right Instrument for the Intended Use
- Actuarial Risk Assessment vs. Clinical Evaluation: What the Evidence Tells Us
- Developments & Controversies in Sex Offender Risk Assessment
- Legal Response

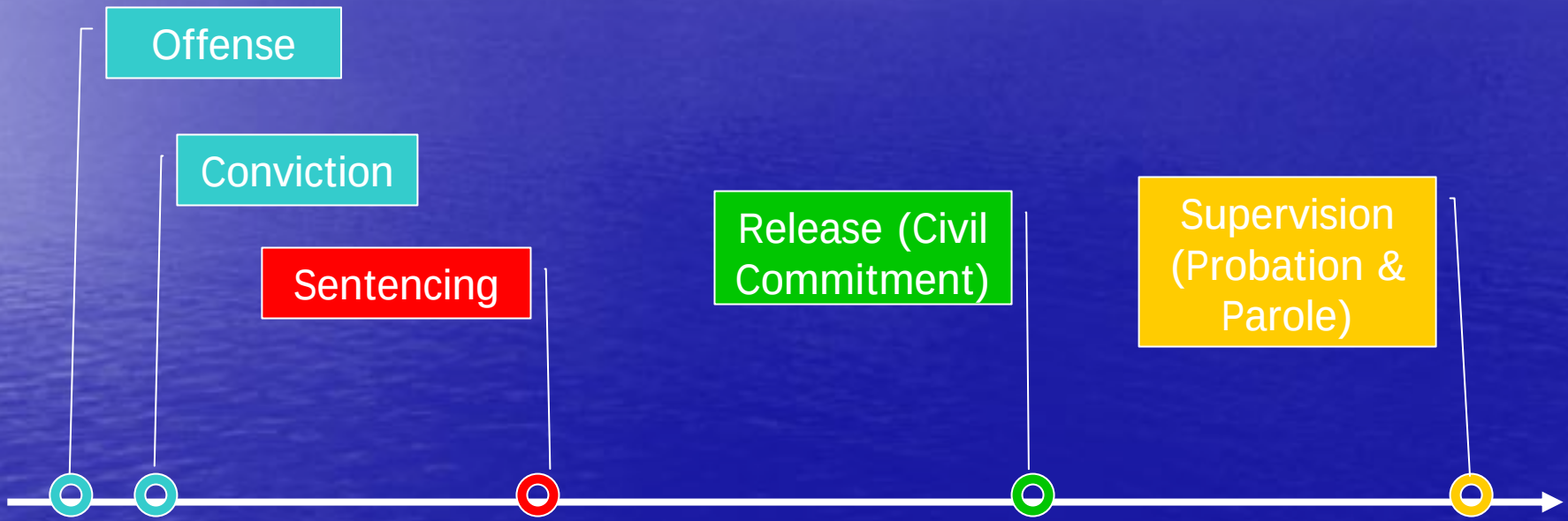
Risk Assessment Instruments: Getting the Right Instrument for the Intended Use

- Risk Assessment vs. Risk Management
  - Assessment: assesses the likelihood that an event will occur
  - Management: assesses risk in order to put external limits or constraints on behavior
- Types of Use for Risk Assessment
  - Initial Judgment (Sentencing)
  - Release (Civil Commitment)
  - Supervision (Probation or Parole)

Risk Assessment Instruments: Getting the Right Instrument for the Intended Use

Type of Factors	Definition	Examples
Static	Factors that cannot change	Criminal history, offense, age at offense, etc.

Risk Assessment Instruments: Getting the Right Instrument for the Intended Use



Pre-Risk

Static Factors
- Do not change
- Examples: Criminal history, Offense facts

Stable Dynamic Factors
- Might change over time
- Examples: personality disorders (treatment), Age effects

Acute Dynamic Factors
- Might change quickly
- Examples: mood, intoxication, victim access

Risk Assessment Instruments: Getting the Right Instrument for the Intended Use

- "Knowledge about static risk factors is sufficiently well developed that scales based on these factors can provide meaningful assessments of offenders' long-term risk potential" "...an assessment of high risk by a static risk scale may suggest the need for incarceration"
- "...without a dynamic risk assessment there is little information as to when the offender can be safely released"
- "Knowledge of dynamic risk factors is required to effectively treat and supervise offenders"

Solicitor General Canada, Research Summary, Vol. 4, No. 2, March 1999.

Actuarial Risk Assessment vs. Clinical Evaluation: What the Evidence Tells Us

- Types of Risk Assessment Models
  - Unstructured Clinical Opinion: basis for opinions can change from case to case
  - Structured Clinical Opinion: a priori list of risk and protective factors used, may or may not have an empirical basis
  - Anamnestic Approach: looks at life history to determine what risk factors were and then determines if those factors still exist
  - Empirically Guided Clinical: a priori list of risk and protective factors used, has an empirical basis
  - Clinically Adjusted Actuarial Assessment: actuarial instrument used with adjustments based on non-actuarial considerations
  - Pure Actuarial: uses specifically defined risk and protective factors

Actuarial Risk Assessment vs. Clinical Evaluation: What the Evidence Tells Us

- Hanson 1998
  - Looked at 10 clinical methods and 3 actuarial methods.
  - Of the clinical methods, 3 did worse than chance, 2 were approximately the same as chance, and 5 did better than chance.
  - All of the actuarial methods did better than chance.
  - All of the actuarial methods were more accurate at predicting sex offender recidivism than any of the clinical methods.

Actuarial Risk Assessment vs. Clinical Evaluation: What the Evidence Tells Us

- Terry Nicholaichuk 1999
  - Recidivism measures also support empirically based models as more accurate than just clinical judgment

High, Medium, and Low-Risk Rating
Based on Criminal Risk Rating
(n=741)

Risk Level	Intake (Clinical Judgment)	RRASOR
Low	12%	54.50%
Medium	28.50%	35.60%
High	62.20%	9.80%

Actuarial Risk Assessment vs. Clinical Evaluation: What the Evidence Tells Us

- Hanson 2004 & Morton-Bourgon
  - 95 recidivism studies, produced from 1943 to 2003, including 31,000 sex offenders and nearly 2,000 recidivism predications were used.
  - “Actuarial risk instruments were consistently more accurate than unguided professional opinion for predicting sexual, violent non-sexual and general recidivism”.

Developments & Controversies in Sex Offender Risk Assessment Development

Multidimensional Model vs. One "Best" Model

- Researchers cannot agree on best approach
- If multiple instruments are used, there may be conflicts in recommendations
- Different instruments may be measuring different things – but all measure risk
- Recent studies are helping to evaluate the different approaches to risk assessment

Developments & Controversies in Sex Offender Risk Assessment Development

- Offender Age
  - Most studies look at age of release, age of 1st offense may be a better measure
  - For most offense groups, recidivism will decline with age. The question is, does sex offender recidivism decline with age?

Developments & Controversies in Sex Offender Risk Assessment Development

- Offender Age: Langan, Smitt, & Durose 2003 DOJ study

Three-year Re-arrest Rates for any Sexual Offense

Age at Release	Percent of Total Sample	Sexual Recidivism Rate
18-24	12.2(n=1182)	6.1
45-29	16.4(n=1589)	5.5
30-34	20.0(n=1938)	5.8
35-39	19.1(n=1851)	6.1
40-44	13.3(n=1289)	5.6
45+	19.0(n=1842)	3.3
Overall	100.0(n=9691)	5.3

Developments & Controversies in Sex Offender Risk Assessment Development

- Offender Age
  - Hanson & Bussiere: significant inverse relationship between age at release & sexual recidivism (older at release means less recidivism)
  - Hanson (2002): Looked at Rape, Child Molestation, and Incest Separately. All groups recidivism begin to decline at age 25 and approach zero by ages 60 to 70. However, child molesters maintain risk longer.
  - Barbaree, Blanchard, & Langton: Extrafamilial child molestation recidivism starts at higher rates than rapes and incest but all are about the same by age 60.
  - Barbaree, Langton, & Peacock: Current actuarials may not be appropriate for offenders older than 40 due to the effect of offender age.

Developments & Controversies in Sex Offender Risk Assessment Development

- Offender Age

  Concerns: There are some methodology concerns with certain studies. For instance, Thornton & Doren (2002) showed a decline in recidivism after age 24 and near zero by age 60 but the release group they studied were ages 25 – 59. Also, another analysis compared sentencing events and age but did not take in to account that a sentencing event (especially in sex offenses) might be for a crime that occurred much earlier.

Developments & Controversies in Sex Offender Risk Assessment Development

- Treatment as a Factor
  - Mixed evidence about using completed, or failed to complete, treatment as a factor.
  - Initial risk level may largely determine the effect of completing/not completing treatment.
  - Low risk offenders may self-select in or out of treatment.

Legal Response

- Director of the Sexually Violent Predator Unit, Virginia Attorney General's Office
  - Pamela Sargent, Esq
- Defense Attorneys that have worked on Civil Commitment cases in Virginia:
  - James Broccoletti, Esq
  - Leigh Drewry, Esq

Legal Response

RESEARCH ISSUES:

- No clear level of risk that triggers civil commitment. What level of risk should be tolerated?
- The process impacts the certainty of the science. If judges and lawyers do not understand the instruments, even if completed correctly, it is likely that the instrument will not have the intended impact. Fear of getting it wrong could potentially result in low risk offenders being detained indefinitely.

LEGAL ISSUES:

- Defense concerns about whether civil commitment is really punishment after a debt to society has already been paid.
- Canadian system: it is possible to give indeterminate sentences to sex offenders and have them periodically evaluated for release. Civil commitment in essence occurs at sentencing instead of release.