### SEXUAL OFFENDERS AND THE LAW

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# I. DEFINITIONS

1. **Sex offender**-described most commonly as a person who has been convicted of one of a number of sex offenses enumerated under the statute and who, upon release from custody, must register with local law enforcement and whose whereabouts may be reported to the community in which he or she resides.
2. **Sexually violent predator, sexually dangerous person, sexual psychopath-**a person who has been designated by statute as either having committed or having been convicted of committing a sexual offense and has been diagnosed with a mental disease, mental disorder, mental abnormality, sexual disorder, or personality disorder that makes the person likely to engage in future predatory acts.
3. **DSM-5 and Paraphilic Disorders** (First 2014)
   1. In DSM-5, there is a distinction between **paraphilias and paraphilic disorders**.

**Paraphilia:** any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners.

**Paraphilic disorder**: a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm to others.

* 1. The distinction between paraphilias and paraphilic disorders was implemented without making any changes to the basic structure of the diagnostic criteria of the DSM-IV-TR.
  2. A new Criterion C, which requires a minimum age of 18, has been added to the criteria set for voyeuristic disorder, restricting the diagnosis to adult individuals.
  3. The proposed diagnoses of paraphilic coercive disorder and hypersexual disorder *were not* included in the DSM-5 nor was the proposal to broaden the pedophilic disorder diagnosis to include attraction to pubescent as well as prepubescent children.

**II. PARAPHILIA OVERVIEW**

##### A. General Findings

* + - 1. In Abel’s study of 561 sex offenders, the following characteristics were noted (Abel et al 1987):

a. High rate of sexual offending;

1. High number of incidents per offender;
2. Multiple types of offenses per offender;
3. High incidence of physical coercion;
4. High rate of other criminal offenses;
5. Little sense of need for treatment.
   1. Paraphilias usually have their age of onset from ages 10-20 (Abel 1999).

##### B. Epidemiology

1. Study of 60 male undergraduates (non clinical population not seeking any treatment) investigating participation in and/or fantasies of paraphilic behavior found (Templeman and Stinnett 1991):
2. 42% participated in voyeurism;
3. 35% participated in frottage;
4. 8% had made obscene telephone calls;
5. 5% had engaged in coercive sexual activity;
6. 3% had participated in sexual contact with girls <12;
7. 2% had participated in exhibitionism.

1. **Treatment Seekers:** Data from 90 treatment programs involving over 2,000 individuals seeking assessment indicate (Dangerous Sex Offenders-APA Task Force Report, page 44, 1999):
2. 37% child molestation;
3. 20% voyeurism;
4. 13.8% exhibitionism;
5. 13.3% fetishism;
6. 11.2% frottage;
7. 10.7% public masturbation.
8. The paraphilias with the **greatest number of victims** (in decreasing order) are: exhibitionism, frottage, pedophilia against boys outside the home, and voyeurism (Abel 1999).
9. **“Crossing”-**Paraphilic persons tend to cross over between touching and non-touching of their victims, between family and non-family members, between female and male victims, and to victims of various ages (Abel GC, Osborn CA, Stopping Sexual Violence 1992).
10. Paraphilic persons also tend to cross over to other types of paraphilic behavior (Abel and Osburn 1992).
11. The paraphilias with the highest incidence of crossover (Abel 1999) were *in decreasing order*, beastiality, public masturbation, male incest pedophilia, fetishism, masochism, voyeurism, female nonincest pedophilia, exhibitionism, male non-incest pedophilia, transvestism, frottage, female incest pedophilia, rape of adult women, ego-dystonic homosexuality, and transsexualism.
12. “Crossing” is important because it is associated with a greater risk for recidivism (Abel 1999).

1. Female sex offenders:
   1. McCleod (2015) noted that slightly over 20% of substantiated child sexual abuse cases that are reported to child protective services in the United States involve a primary perpetrator who is female.
   2. Williams and Bierie (2015) review of over 800,000 sexual offenders in 37 states noted the following differences between female sex offenders (FSOs) and male sex offenders (MSOs):

* Females offended against same sex victim in nearly half the cases in contrast to males who had a same sex victim in only 10% of cases.
* Female sex offenders had a male accomplice in 30% of cases compared with male sex offenders who had a male accomplice in only 2% of cases.
* Subsequent research has noted that females with accomplices are usually male/female pairs who are romantically involved (Louise and Longb 2018).

**III.** **SEXUAL OFFENDERS AGAINST MINORS**

1. Definitions:
2. **Pedophilia** refers to sexual interest in pre-pubescent children.
3. **Hebephilia** refers to a persistent and intense sexual interest in pubescent children who are in Tanner Stages 2 or3 (i.e., the peripubertal stages of secondary sex development, approximately corresponding to the ages of 11–14, given variation in the onset of puberty).
4. The majority of child molesters are exclusively heterosexual (Abel 1999).
5. The majority of adult male child molesters molest children that they know or are related to them. Less than 10% molest strangers.
6. Pedophilias and sexual offending. A study of 453 pedophiles (Abel 1989) found:
7. Of all pedophilic acts, approximately 55% of the victims were girls.
8. Nearly all non-touching child molestations (exhibitionism, voyeurism) involve female victims.
9. Hands-on touching child molestations are perpetrated, in the majority of the cases, against boys.

E. Internet Offenders and Pedophilia

In 1998, the Office of Juvenile Justice and Delinquency Prevention began to label online sexual crimes directed toward children as Internet crimes against children (ICAC). **Child pornography possession is the most common referral for criminal investigation**.

Durkin (1997) has described four ways in which people with a sexual preference for children may misuse the Internet:

* 1. to traffic child pornography (traders);
  2. to communicate with like-minded individuals (networking);
  3. to engage in inappropriate sexual communication with children (grooming);
  4. to find children to molest (travelers).

**Question 1: Is child pornography possession a valid indicator of pedophilia?**

In a study investigating whether being charged with a child pornography offense is a valid diagnostic indicator of pedophilia, researchers (Seto, Cantor and Blanchard 2007) evaluated 685 referred males with phallometry. As a group, child pornography offenders showed greater sexual arousal to children than to adults. The results indicated that child pornography offending is a stronger diagnostic indicator of pedophilia than is sexually offending against child (Seto 2010).

**Question 2: Do child pornography offenders differ from contact offenders against children in their level of pedophilic interest?**

In their meta-analysis, Babchishin et al (2015) compared three groups of online and offline sex offenders against children:

* 1. online child pornography-only offenders (child pornography offender);
  2. offenders with both child pornography and contact sex offenses against children (mixed offender group or “dual offenders”); and
  3. offline only sex offenders against children (contact only offenders).

Results: Child pornography only offenders had a greater pedophilic interest than contact offenders. However, **mixed offenders (dual offenders) were found to be the most pedophilic,** even more than child pornography offenders.

**Question 3: Do child pornography offenders have different characteristics than contact offenders?**

Preliminary findings appear to suggest that CPOs may represent a distinct group of offenders who differ from traditional contact sexual offenders in a number of ways. Overall, the findings are indicative of the presence of a somewhat higher functioning group of offenders who largely confine their offending to online or other non-contact sexual activities, and who are otherwise seemingly successful in life. One exception to this appears to be in the domain of romantic relationships, with CPOs tending to be less successful in relationships than contact sexual offenders (Henshaw et al. 2017).

**Question 4: What are risk factors for child pornography offenders to cross over to a contact offense?**

Individuals most at risk for cross-over offences would be expected to have high levels of pedophilia, high levels of antisociality, have access to children, and have few psychological barriers to acting on their deviant impulses. Conversely, online child pornography would be expected to be low risk for contact sex offences if they score low on measures of general antisociality, have limited access to children, and have psychological barriers to committing contact sexual offences (Babchishin et al. 2015).

**Question 5: Are child pornography offenders less likely to have contact offenses than contact only offenders?**

Official statistics may underrepresent the true extent of sexual offending by child pornography offenders. Bourke et al. (2015) found high levels of undetected contact offending among individuals who were apprehended in relation to child pornography offenses. Rates of disclosure about contact offending increased from 4.7% to 57.5% during a polygraph interview procedure.

**Question 6: Is there a specific risk assessment tools for child pornography offenders?**

Yes. Eke et al (2018) have developed a specific assessment titled the “**Child Pornography Offender Risk Tool” (CPORT): Version 2 (June 20, 2018). The CPORT is** a risk assessment tool designed to predict **any sexual recidivism** (e.g. contact or non contact sexual offense or child pornography possession) among male offenders with a conviction for child pornography offense. The authors have developed a scoring guideline for the following seven risk factors to help assist evaluating future sexual recidivism for child pornography offenders. The authors acknowledge that there are other factors, such as positive phallometry, that are not included on this list:

* Offender age at time of the index investigation
* Any prior criminal history
* Any prior or index failure on conditions such as probation, parole, or conditional release
* Any prior or index contact sexual offense history
* Indication of pedophilic or hebephelic sexual interests
* More boy than girl content in the child pornography material
* Ratio of boy to girl content in nudity and child content

**IV.**  **HISTORY OF SEXUAL PSYCHOPATH LEGISLATION**

1. Sexual psychopath legislation first appeared in the late 1930’s. Purpose involved both punishment and treatment with indeterminate sentencing. Reflected view that sex offenders had a mental illness and psychiatrists could treat them.
2. By 1976, 30 states had enacted sex offender commitment laws also known as **“mentally disordered sex offender” statutes (MDSO).** These statutes allowed people charged with certain sexual offenses to be committed to secure residential treatment programs for an indeterminate length of time.

C. \* ***Specht v. Patterson,* United States Supreme Court, 1967**

1. Francis Specht filed a habeas corpus petition in Federal District Court to challenge his detention under the Colorado “Sex Offenders Act” having been convicted of indecent liberties. Under this Act, an individual could be committed to a state institution if he “constitutes a threat of bodily harm to members of the public, or is a habitual offender and mentally ill.” The Act also required an individual to undergo a psychiatric evaluation that determined whether or not the person was "treatable” and should be committed to a state institution. The result was a potential indefinite hospital commitment.
2. In place of being sentenced for his crime (where he could get only up to 10 years) Specht was sentenced under the Sex Offenders Act that represented an indefinite commitment from one day to life.
3. Specht complained that the statute did not allow him a notice and a hearing to challenge the evidence presented at court. The District Court and Court of Appeals affirmed his detention.
4. The Supreme Court held that the **14th amendment due process clause** was violated by not giving Specht the following 6 protections: the right to be present with counsel, to have notice, to have a hearing, to confront the evidence against him, to cross-examine witnesses, and to offer his own evidence and be heard.
5. It is significant that due process protections were accorded when the results of a psychiatric evaluation were to be used in sentencing and involuntary treatment.
6. In late 1960’s and 1970’s, trend included modification of sexual psychopath legislation to make treatment voluntary for the prisoner.
7. The psychiatric community generally rejected the notion that a specific group of patients labeled “sexual psychopaths” could be accurately identified.
8. \****Allen v. Illinois, US Supreme Court, 1986***
   * + 1. Terry Allen was charged with unlawful restraint and deviate sexual assault though he was not actually tried on these charges. Instead, the State filed a petition to have Mr. Allen declared a sexually dangerous person under the Illinois Sexually Dangerous Person Act. This act defines a sexually dangerous person as “suffering from a mental disorder which has existed for a period of not less than one year, immediately prior to the filing of the petition, coupled with criminal propensities to the commission of sex offenses, and to have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children.”
       2. The trial court ordered two psychiatric exams over Allen’s protest that this violated his **5th amendment** privilege against self-incrimination. During the examination, Allen acknowledged that he had been involved in deviant sexual behavior since the age of 10 and that he had, in fact, forced a woman into his car where he forced her to perform fellatio. Allen was diagnosed with a psychotic thought disorder and found to be a “sexually dangerous person.”
       3. The US Supreme Court (5:4) upheld Allen’s detention. Proceedings under the Sexually Dangerous Persons Act are not criminal within the meaning of the 5th amendment’s guarantees against self-incrimination because the Act’s aim is treatment not punishment. Act is therefore civil and protection against self-incrimination in criminal proceedings does not apply. The fact that some procedural safeguards noted in criminal proceedings are present does not turn this into a criminal proceeding.
9. Sentencing schemes and sex offenders:
   * + 1. The most common sentencing scheme prior to the 1980’s involved **indeterminate sentencing**. Under this scheme, a person’s release was case specific and depended on factors a parole board considered in deciding whether or not to release.
       2. During the 1980’s, **determinate sentencing** (fixed number of years) began to replace indeterminate sentencing. As a result, some offenders when released perpetrated additional sexual offenses drawing public and legislative attention to this group.
       3. States began considering other mechanisms for holding potentially violent offenders after their determinate sentence was completed.

## **V. ANALYSES OF RECENT SEXUAL OFFENDER LEGISLATION**

## Typically, new Sexually Violent Predator commitment laws require proof of four elements (Janus, 2000):

## A past course of sexually harmful conduct.

## A current mental disorder or “abnormality.”

## A finding of risk of future sexually harmful conduct.

## Some form of connection between the mental abnormality and the danger.

## Common legal challenges to the commitment of sexual offenders include:

## **Due process**-14th amendment challenges that terms like “mental abnormality” are vague and violate fundamental fairness.

## **Equal protection**-process differs from other civil commitment schemes.

## **Double jeopardy**-The 5th amendment provides in part: “Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.” The double jeopardy clause prohibits multiple punishments for the same offense.

## **Ex post facto**-A law violates the ex post facto prohibition if it aggravates a crime or makes it greater than it was when committed; permits imposition of a different or more severe punishment than was permissible when the crime was committed; or, changes the legal rules to permit less or different testimony to convict the offender than was required when the crime was committed.

## **VI. MODERN LEGAL TRENDS INVOLVING SEXUAL OFFENDERS**

1. In 1990, Washington State passed the **Community Protection Act, which represented an alternate civil commitment scheme**. First state in this time frame to enact a sexually violent predator law.
2. Prompted by the case of Earl Shriner. In 1989, 2 years after serving a 10- year sentence for kidnapping and assaulting two teenage girls. Shriner had been the subject of civil commitment but the petition was denied because there was no showing of the recent overt act needed to establish his dangerousness. After his release, Shriner raped and strangled a 7-year-old boy, cut off his penis, and left him in the woods to die.
3. The Community Protection Act established a new civil commitment law for “sexually violent predators” *after* their sentence completed. Statute stated target group was made up of individuals “who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment act.”
4. The legislature noted that “in contrast to persons appropriate for civil commitment… sexually violent predators generally have antisocial personality features which are unamenable to existing treatment modalities and those features render them likely to engage in sexually violent behaviors.”
5. According to the statute, a sexually violent predator is a person “who has been convicted of or charged with a crime of sexual violence and who suffers from a **mental abnormality** or **personality disorder** which makes the person likely to engage in predatory acts of sexual violence.”

B. \**Hendricks v. Kansas*, US Supreme Court, 1997

1. In 1994, Kansas enacted the Sexually Violent Predator Act, which establishes procedures for the civil commitment of persons who, due to a “mental abnormality” or a “personality disorder,” are likely to engage in “predatory acts of sexual violence.”
2. A mental abnormality was defined as “a congenital or acquired condition affecting the emotional or volitional capacity which predisposes a person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.”
3. Leroy Hendricks had a long history of sexually molesting children and was scheduled for release shortly before the Act became law. As Hendricks was concluding his prison term for prior pedophilic acts, a jury determined that he suffered from pedophilia, and that pedophilia qualifies as a “mental abnormality” under the Act.
4. Hendricks challenged his commitment on substantive due process, double jeopardy, and ex post facto grounds.
5. The Kansas Supreme Court invalidated the act on the ground that the “mental abnormality” did not satisfy what it perceived to be the “substantive due process requirement” because involuntary civil commitment must be predicated on a “mental illness” finding. Kansas appealed the case to the US Supreme Court.
6. US Supreme Court held (5-4) that the Kansas statute was not unconstitutional. Key points include:
7. **Substantive due process not violated** as the term “mental illness” is not required. Court stated, “We have never required State legislatures to adopt any particular nomenclature in drafting civil commitment statutes. Rather, we have traditionally left to legislators the task of defining terms of a medical nature that have legal significance.”
8. **Double jeopardy and ex post facto clause not violated**. Double jeopardy and ex post facto clauses are constitutional protections implicated only if the act is punitive. Court held that the Act was civil and not criminal.
9. **Failure to offer treatment does not mean Act is punitive-**Justice Thomas wrote, “We have never held that the Constitution prevents a state from civilly detaining those for whom no treatment is available, but who nevertheless pose a danger to others.”

**VII. UPDATES FOLLOWING *HENDRICKS*’ DECISION**

A. **\**Kansas v. Crane*, US Supreme Court, 2002**

* + - 1. Michael Crane was convicted of lewd and lascivious behavior and pleaded guilty to aggravated sexual battery. He was diagnosed with exhibitionism and antisocial personality disorder.
      2. Under the Kansas SVP Act, Mr. Crane was committed as a SVP. The Kansas Supreme Court reversed the trial court’s commitment arguing that the previous US Supreme Court decision in *Hendricks* required the State to prove that Mr. Crane had a complete lack of control regarding his risk of future dangerous behavior. In addition, the Kansas Supreme Court argued that although Mr. Crane may have an emotional disorder, he did not suffer from a disorder of volition and therefore to commit him would violate his 14th amendment due process rights.
      3. The US Supreme Court vacated the Kansas Supreme Court and remanded the case. The US Supreme court held that in Hendricks, they did not require a finding of complete lack of control in order for the Kansas SVP Act to be constitutional. The Court also stated that they had not distinguished in the past between emotional and volitional disorders and “had no occasion to do so here.”

1. *\*McKune v. Lile*, US Supreme Court, 112 S. Ct. 2017, 2002 (See Corrections II Lecture)

Robert Lile was a convicted sex offender who had lured a high school student into his car as she was returning home from school. He was convicted of rape, aggravated sodomy, and aggravated kidnapping.

In 1994, a few years before he was scheduled for release, prison officials ordered him to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign and “Admission of Responsibility” form, in which they discuss and accept responsibility for the crime for which they have been sentenced. Participants are also required to disclose a sexual history form detailing all prior sexual activities, regardless of whether such activities constitute uncharged criminal offenses.

Lile refused to participate in SATP on the ground that the required disclosures of his criminal activity would violate his Fifth Amendment privilege against compelled self-incrimination. The District Court granted him summary judgment, which was affirmed by the Tenth Circuit.

The US Supreme Court held that SATP serves a vital penological purpose, and that offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment. The case was reversed and remanded.

**VIII.** **SEXUAL OFFENDER REGISTRATION, NOTIFICATION, AND TRAVEL LAWS:**

1. Sexual Offender Registration:
2. All 50 state statutes and the federal law require, at the very least, that the sex offender register with a law enforcement agency.
3. Must register within a certain time period and provide at least a name and current address.
4. **Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 1994**
5. In October 1989, 11-year-old Jacob Wetterling bicycled with his brother and a friend to a store near his St. Joseph, Minnesota, home to rent a video. His ride home was interrupted by an armed man wearing a nylon mask who ordered the boy’s companions to flee. Investigators later learned that, unbeknownst to local law enforcement, halfway houses in St. Joseph housed sex offenders after their release from prison.
6. The Wetterling Act was subsequently passed and requires States to establish stringent registration programs for sex offenders.

In all States, sex offenders are required to register for at least 10 years.

Sexually Violent Predators are required to register as a sex offender for life.

1. The Wetterling Act requires that the sentencing court determine whether a person is or is no longer a sexually violent predator.
2. *Levenson (2018) recommends that sex offender registration could be better managed through:*
   1. *use of empirically derived risk assessment tools to classify offenders and modify registration requirements accordingly,*
   2. *removal of juveniles from registries; and*
   3. *elimination of residence restrictions.*
3. **Community Notification regarding Sexual Offenders-“Megan’s Law”:**
4. The term “community notification” refers to the dissemination of identifying information to citizens and community organizations about convicted sex offenders who are released into the community (Center for Sex Offender Management, April 2001).
5. Development of Megan’s law:
   1. On July 29, 1994, 7-year-old Megan Kanka, from Hamilton Township, N.J. was walking home after playing at a friend’s house. She had almost reached her front door when Jesse Timmendequas, 33, a landscaper who had lived across the street for about a year, invited her over to pet his new puppy. When the little girl followed him inside, he led her to an upstairs bedroom, strangled her unconscious with his belt, raped her and asphyxiated her to death with a plastic bag. He then placed her body in a toolbox, drove it in his pickup truck to a soccer field and dumped it in some bushes. Timmendequas was a twice-convicted sex offender but was unknown to the community.
   2. Three months after Megan’s death, the Governor of New Jersey signed Megan’s Law, which **mandated** authorities to notify residents regarding convicted sex offenders living in the area. In essence, Megan’s law lead to multiple other states passing both sexual registration and community notification statutes.
6. The Federal Version of Megan’s Law was enacted in 1996. This act requires States to release registration information regarding sex offenders to the public when it is necessary to public safety. This requirement is often referred to as “mandatory community notification” and was the first amendment to the Wetterling Act.
7. Unintended results of notification laws:

1. Vigilantism
2. Failure to register
3. Failure to find housing
4. Victim identification
5. Failure to receive treatment
6. Increase risk of relapse due to additional stresses
7. The US Supreme Court has upheld the constitutionality of community notification laws in two separate cases.

*Connecticut Department of Public Safety v. Doe,*

*U.S. Supreme Court, 2003*

* 1. *In 1998 and 1999, the Connecticut legislature revised their version of Megan’s Law under legislation known as the Connecticut Sex Offender Registry Act (CT-SORA). Convicted sexual offenders must register with the Department of Public Safety, which posts their names on an Internet Website. The Internet posting specifically stated that no determination of the individual’s dangerousness had been made.*
  2. *John Doe was convicted of a sex offense based on conduct that preceded CT-SORA. He filed suit under 42 U.S.C. § 1983 alleging that CT-SORA failed to provide him* ***adequate procedural due process (14th amendment)*** *regarding a hearing about his dangerousness before being subject to the law’s requirements.*
  3. *The United States Supreme Court (9:0) held that Doe was not entitled to a due process hearing regarding dangerousness because the registration requirement was not based on a current finding of dangerousness and only on Doe’s conviction. The Court emphasized that Doe was provided adequate procedural safeguards during the criminal process.*

*Smith v. Doe, U.S. Supreme Court, 2003*

* + 1. *In 1994, Alaska enacted the Alaska Sex Offender Registration Act that contained two retroactive components: a registration requirement and a community notification system.*
    2. *Respondents John Doe I and John Doe II were convicted of sexual abuse of a minor and released into the community prior to the Act’s passage. Both individuals brought as U.S. C. § 1983 claim, arguing that the requirements violated the Ex Post Facto Clause of the Constitution.*
    3. *In a 6:3 decision, the U.S. Supreme Court held that because the Alaska Sex Offender Registration Act is civil and nonpunitive in nature, its retroactive application could not violate the Ex Post Facto Clause, which applies only to criminal proceedings.*

1. **Adam Walsh Child Protection Act of 2006** (“Child Protection Act”):
   * + 1. Expanded sex offender policies by enhancing penalties for those who sexually exploit children, expanding Internet investigations and prosecution for child pornography, and most importantly adding a central compilation of all state sex offender registries into one uniform national sex offender registry.
       2. The Sex Offender Registration and Notification Act (SORNA) provision of the Adam Walsh Act standardizes the ways in which states have previously responded to the Wetterling Act and Megan’s’ Law of the 1990’s.
   1. Under the SORNA, sex offenders must register before they are released from prison or within 3 days of a non-imprisonment sentence.
   2. SORNA ***applies retroactively*** and therefore requires all delineated sex offenders to register, even those who were convicted prior to this legislation.
   3. SORNA also makes it a criminal offense for any person who is required to register under SORNA and “travels in interstate or foreign commerce” to knowingly fail to register or update a registration.
   4. All juvenile sex offenders will be required to register and those who are at least 14 years of age at the time of the offense and who have been adjudicated for aggravated sexual abuse or some comparable offense will be subject to community notification provisions.
      * 1. Section 4248 of the Adam Walsh Act permits the federal government to civilly commit any “sexually dangerous” person in the custody of the Bureau of Prisons. Under the law, a person is considered sexually dangerous if he or she has engaged or attempted to engage in sexually violent conduct or child molestation, and if he or she is also considered sexually dangerous to others. Since the Adam Walsh Act was passed in 2006, the federal government has sought civil commitment of 95 people across the country, with 77 of them being current residents of the federal prison in Butner, North Carolina.
        2. ***United States v. Comstock*, United States Supreme Court, 2010**

* Graydon Comstock was serving a 37-month sentence in federal prison for possession of child pornography. Six days before his release, Mr. Comstock was classified, by clear and convincing evidence, as a “sexually dangerous person” under 18 U.S.C. § 4248. He and four other men challenged being detained under § 4248 alleging that it violated the Sixth, Eighth, and Tenth Amendments, as well as Due Process, Double Jeopardy, *Ex Post Facto*, and the Necessary and Proper Clause.
* The Necessary and Proper Clause is a provision under Article 1 Section 8 of the U.S. Constitution that enables Congress to make laws required for the exercise of its other enumerated powers.
* The Fourth Circuit Court held that Congress had exceeded its legislative powers under the Necessary and Proper Clause and affirmed the dismissal of the involuntary commitment held by the District Court. The U.S. Supreme Court granted certiorari limited to the question of Congress' authority under the Necessary and Proper Clause to enact §4248.
* **Holding**: The U.S. Supreme Court held that the Necessary and Proper Clause grants Congress authority sufficient to enact §4248. The U.S. Supreme Court reversed the Fourth Circuit’s judgment and remanded the case for further proceedings. The Court did not reach or decide any claim that the statute or its application denied equal protection, procedural or substantive due process, or any other constitutional rights and noted that the respondents could pursue those claims on remand.
  + - 1. Currently, the US Supreme Court is deciding the constitutionality of SORNA to delegate authority to the U.S. Attorney General to impose the law’s registration requirements upon offender who were convicted before the statute was enacted. The case under review (as of 2/19/2019) is *Gundy v. United States*. In this case, Herma Gundy was convicted of committing sexual assault in Maryland while on supervised release for a prior federal offense. After serving his sentence, he was transferred to federal custody to serve his sentence for violating his supervised release. As a part of this transfer, Gundy received permission to travel unsupervised by bus from Pennsylvania to New York. Gundy made the trip, but did not register as a sex offender in either Maryland or New York as required by state law.

D. Castration Laws (Scott and del Busto 2009; Goswami 2014):

* + 1. More recently, numerous states have passed laws that require the sex offender to accept either hormonal therapy (“chemical castration”) or an orchiectomy as a condition of probation.
    2. Many of these laws provide immunity to treatment providers.
    3. Not all laws require full informed consent for sex offender.

1. Jessica Lunsford Act- This law is termed the Jessica Lunsford Act after the rape and murder of a 9-year old girl by a registered sex offender who had moved without notifying the proper authorities about his change in address. Florida passed legislation requiring certain child molesters to wear a Global Positioning System (GPS)-based electronic monitor for the rest of their lives. (Russell 2005). The act was introduced at the federal level in 2005 but was never enacted into law by Congress. Approximately 44 states now have some version of the Jessica Lunsford Act.

E. *Packingham v. North Carolina*, US Supreme Court, 2017

Facts: North Carolina law makes it a felony for a registered sex offender “to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages.” According to sources cited to the Court, the State has prosecuted over 1,000 people for violating this law, including pe­titioner, who was indicted after posting a statement on his personal Facebook profile about a positive experience in traffic court. The trial court denied petitioner’s motion to dismiss the indictment on the ground that the law violated the First Amendment. He was convicted and given a suspended prison sentence. On appeal, the State Court of Appeals struck down the law on First Amendment grounds, but the State Supreme Court reversed.

**Issue:** Does the North Carolina law making it a felony for a sex offender to access a commercial social networking Web site violate the First Amendment.

**Holding**: The North Carolina statute impermissibly restricts lawful speech in violation of the First Amendment. “With one broad stroke, North Carolina bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights. Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, particularly if they seek to reform and to pursue lawful and rewarding lives.”

**IX.** **EVALUATION OF SEX OFFENDERS AND PARAPHILIAS**

1. Seto et al (2014) note that the assessment and diagnosis of paraphilias require a comprehensive multimodal examination that includes:
   * + 1. A mental status examination to screen for any co-occurring psychiatric condition;
       2. Review of sexual history via interview, questionnaires, and risk assessments. Actuarial assessments have demonstrated better predictive validity when compared with clinical judgment alone. (See Appendix A for more detail-the use of structured risk assessment instruments are an integral part of the risk assessment where indicated but beyond the scope of this presentation);
       3. Collateral information from current or former sexual partners and from files:
       4. A sex hormone profile;
       5. Ideally psychophysiological testing of sexual arousal patterns.
2. Psychophysiologic assessments

**Plethysmography-**the degree of penile erection is measured by volume or circumference change during presentation of various auditory or visual stimuli. Plethysmography is useful in identifying individuals with high levels of inappropriate arousal and low levels of appropriate arousal. McPhail et al. (2017) meta-analysis found that phallometric testing was a reliable indicator of sexual interest and positive findings predicted sexual offending against children.

a. Two types:

1. Circumferential plethysmography-used in the United States-a band around the penis measures increase in circumference. Twenty percent full erection is the most commonly accepted measure for interpreting phallometric data as being clinically significant.
2. Volume plethysmography-used in some laboratories in Canada. A glass casing encompassing the penis up to the base quantifies the gas displacement resulting from an erection during stimulus presentation. Measures minute changes in penile volume and therefore has greater validity.
   1. In his review of phallometric assessments of sexual interests, Marshall (2014) makes the following summary points:
3. Some (but not all) child molesters demonstrate deviant sexual arousal. Deviant sexual interest is a moderate predictor of future risk to offend in child molesters, “so the value of phallometric assessments with these offenders appears to be clear.”
4. The use of phallometry with rapists has yielded results that have divided the field in whether or not this is a reliable evaluation tool for this particular group.
5. Not used in the U.S. courtroom and not diagnostic.
6. Factors which affect validity of such measures include:
7. Not attending to stimuli
8. Voluntary suppression
9. Lack of standardized stimuli;
10. Denial of paraphilic interest;
11. Variation, duration, and quantity of erection measurement;
12. Lack of correlation between laboratory responses and responses outside the laboratory.
13. The use of Sildenafil has been shown to significantly increase phallometric response in middle-aged males without compromising the reliability of the phallometric diagnosis (Kolla et al 2010).
14. **Visual Time (VT) Measures:** VT measures of sexual interest in children can be regarded as a valid indirect latency-based measurement and a helpful adjunct to other available measures. At present, VT measures can be considered the best validated indirect latency based measure of sexual interest in children (Schmidt et al. 2017).

**Visual Reaction Time (also known as the Abel Assessment for Sexual Interest-AASI)**

a. A noninvasive method for evaluating sexual preferences. Has two components:

* + - 1. A questionnaire that asks about sexual thoughts, fantasies, and behavior and a self reported ability to control his or her sexual behaviors. The questionnaire also contains items to address feigning and cognitive distortions about interest in sex with children, and it correlates responses with a profile of known child molesters.
      2. A computerized assessment of self-reported arousal to slides depicting images of young boys and girls, males and female teenagers and adult men and women. This is the “objective” measure known as the Visual Reaction Time (VRT). This portion of the evaluation correlates reported arousal and attractiveness ratings with the length of time a subject looks at a stimulus.

1. Advantages over other means of assessment include (APA Task Force, 1999, p. 59):
2. Brief administration-less than one hour to complete;
3. No special laboratory needed;
4. Can be used with males or females of any age down to age 12;
5. The sexual interest measurements can be made with depictions of **nonnude** stimuli.
6. Comparison with penile plethysmography have found similar reliability and validity. (APA Task Force, 1999 quoting in press article by Abel, GG, p 59)
7. Similar factors affecting validity of plethysmography apply to tests of visual reaction time.

3. **Polygraph**

1. a. Useful to elicit additional offenses from evaluee and serves as adjunct to interview.
2. b. The accuracy of any polygraph test depends in large part on the polygraph examiner’s ability to properly phrase questions in order to elicit the appropriate questions worded in language that the subject understands.
3. d. Generally not admissible in court.

e. **Post-conviction Sex Offender Treatment (SOT):** Research indicates that although a polygraph used as a tool to monitor offenders is able to reveal new information in a highly selected sample of motivated offenders, the knowledge of an upcoming polygraph test does not seem to prevent offenders from engaging in high-risk behavior (Meijer et al. 2009).

**X.** **TREATMENT** (Appendix B outlines key points to psychological and medical treatment approaches.)

1. Key points regarding pharmacotherapy (chemical castration) (Garcia et al 2013; Assumpcao et al 2014)
2. **Medroxyprogesterone acetetate** (MPA, Depo Provera) is most common agent prescribed in the USA. MPA acts by reducing testosterone and treated individuals report fewer sexual fantasies.
   1. In 1978, the FDA removed its approval for MPA.
   2. Reported side effects have included: abdominal pain, increased blood cortisol levels, depression, diabetes mellitus, increased production of breast milk, insomnia, gallstones, hot flashes, hypertension, and the formation of blood clots. Serious, irreversible side effects that have been reported include breast enlargement, abnormal sperm production (which may be reversible) and liver damage. **Pulmonary embolism** has been noted as the most severe side effect reported (Garcia 2013).
   3. In 2004, Pfizer added a “black box warning” to the drug label for Depo-Provera concerning the possible side effect of **weakened bone tissue**.
3. **Cyproterone Acetate** (CPA)- progesterone derivative that decreases testosterone. Available in Canada and Europe but not the United States. Can cause liver dysfunction, weight gain, and feminization.
   1. Associated side effects have reported to include the following: depression, weight gain, shortness of breath, nausea, vomiting, weakness, thromboembolism, enlarged breast tissue (gynecomastia in 20% of treated men), and irreversible liver damage. In addition, the long-term use of CAP has been associated with a decrease in mineral bone density with osteoporosis as a potential result.
   2. CPA has been described as having less reported feminization, fatigue, and weakness when compared to MPA.
4. **Long Acting Analogues of Gonadotropin Releasing Hormone:**
   1. Recommended for use after other alternatives have been ruled out or when there is a high risk of sexual violence related to a paraphilia (Turner and Briken 2018).
   2. Triptorelin-(Decapeptyl-CR) Long Acting Analogue of Gonadotropin-Releasing Hormone. Studies show marked reduction in recidivism with fewer side effects compared with MPA and CPA. Not presently available in the US. A case report of bone loss has been reported in a 35 year-old man with a paraphilia treated with triptorelin (Hoogeveen and van der Veer 2007).
   3. Luitenizing hormone-releasing hormone (LHRH) inhibitor. Leuprolide acetate (LA; Lupron) and goserelin (Zoladex) approved in the US. In their research on sex offenders, Gall et al. (2018) compared a group of sex offenders receiving both Lupron and cognitive behavioral therapy (CBT) with a group of sex offenders receiving only CBT. Both treated groups were compared with norms available with reference to the Static-99R, as well as compared with a sample of untreated, nonsexual violent offenders. Key findings in regard to use of Lupron were:

* Those offenders prescribed both Lupron and CBT were evaluated as higher risk of recidivism than those receiving CBT alone.
* Only one person in the high risk group receiving combined treatment recidivated sexually over an average follow-up time of 7.1 years.
* The observed rate of sexual recidivism was substantially lower than the predicted rates from the Static-99R norms.
* Researchers recommended use of Lupron for over three years as this allowed clients to address issues in CBT that might otherwise have been difficult given extremely high levels of paraphilic arousal that might have interfered with treatment progress.
* Researchers suggested that the administration of Lupron reduced the risk posed by the Combination group to that of the CBT only group.
  1. Reported side effects have included enlarged breast tissue, hot flashes, weight gain, and a decrease in bone density with long-term use. Bone density should be monitored at least every two years (Turner and Briken 2018).

4. **SSRIs-**May help individuals with sexual obsessions/compulsions. Some authors recommend using SSRI’s as the first drug treatment approach in sex offenders before trying antiandrogens. Consider as first line treatment in juvenile sex offenders.

1. Key points regarding surgical castration:
   * + 1. Involves removal of the testicles resulting in a decreased testosterone level.
       2. In contrast to chemical castration, is irreversible though an individual could take testosterone replacements.
       3. Schmucker and Losel (2008) found in their review of the literature, that those offenders who received surgical castration compared with those who did not demonstrated the most dramatic decrease in sexual recidivism.

XI. SEXUAL OFFENDERS AND RECIDIVISM

1. General questions to consider:
   * + 1. What type of offenders is most likely to sexually reoffend?
       2. Over the next 25 years, what is the risk of reoffense for a child molester vs. a rapist?
       3. What is risk of reoffending for all sexual offenders?
       4. What are some risk factors to examine?
       5. Is treatment effective?
2. General Overview
3. Estimates of sexual recidivism may be underestimated as various studies have shown that many victims of sexual assault do not report their victimization to the police.
4. Incest offenders, whether treated or nor, have lower rates of recidivism than pedophiles and rapists.
5. In a study of 400 male child molesters followed over a mean period of 7.16 year period (Greenberg and Bradford, 2000), men who molested children who were acquaintances had the highest proportion of sexual recidivism (16.2%) compared to extended family (10.8%), strangers (9.7%), stepfather (5.1%), and biological (4.8%).
6. Studies show that longer follow-up periods produce higher recidivism rates and even 5 year follow-up period may not be enough (Marques JK, Day DM, Nelson C, et al. 1991).
7. Assessing risk for recidivism:
8. In a large meta-analysis (Hanson RK and Bussiere MT 1996) of over 28,000 sex offenders (from 61 studies), recidivism rates and risk factors were examined:
   1. The overall recidivism rate for sexual offenses (rearrest or reconviction) at 4-5 years was 18.9% for rapists and 12. 7% for child molesters. The recidivism rate for a sexual offense for all sexual offenders was 13.4%. The rate of recidivism for nonsexual violent offenses was 22.1% for rapists and 9.9% for child molesters.
   2. The strongest predictors of sexual offender recidivism in order of predictive accuracy were (Hanson and Bussiere 1998):

Pedophilic sexual preference on phallometric testing. (r=.32)

*Any* deviant sexual offense (r=.22)

Prior sexual offenses. (r=.19)

Failure to complete treatment (r=.17)

c. Variables not associated with recidivism in this study included:

1) History of sexual abuse as a child.

Substance abuse.

Psychopathology (anxiety and depression)

1. Studies examining psychopathy as measured by the PCL-R have not found this instrument to be a good predictor of sexual recidivism though psychopathy is correlated with nonsexual violent and general recidivism (Olver and Wong 2006).
2. Assessing treatment response by measuring recidivism:
3. Langeluddeke (1963) studied 932 castrates in Germany with a follow-up period of up to 20 years. He found:
4. 2.6% were convicted of a subsequent sex crime. 22% were convicted of a non-sexual crime.
5. Comparison group of 685 untreated sex offenders found reconviction rate for a subsequent sex crime was 39.1%.
6. Hanson et al (2002) conducted a meta-analytic review examining the effectiveness of psychological treatment for sex offenders by summarizing data from 43 studies (combined n=9,454). Found:
   1. Sexual offense recidivism rate was lower for the treatment groups (12.3%) than the comparison groups (16.8%).
   2. Offenders who dropped out of treatment had consistently higher sexual recidivism rates that those who completed treatment. However, offenders who refused any treatment were not at a higher risk for sexual recidivism than offenders who dropped out of treatment.
   3. Treatments that used cognitive behavioral approaches were most effective.
7. The Cochrane (2012) review of psychological interventions for adults who have sexually offended did not find strong evidence that psychological interventions, of any type, had clearly demonstrated a treatment benefit. The authors write, “We concluded that further randomized controlled trials are urgently needed in this area, so that society is not lured into a false sense of security in the belief that once the individual has been treated, then their risk of reoffending is reduced. Currently, the evidence does not support this belief.”
8. The Cochrane review (Khan et al. 2015) of seven medication trials (all studies over 20 years old) examined the efficacy of a limited number of drugs (primarily antiandrogens) in reducing recidivism. The researchers noted that despite some encouraging findings from the studies, the limitations of the studies did not allow firm conclusions to be drawn regarding pharmacological intervention as an effective intervention for reducing sexual recidivism. However, none of the studies reviewed included the SSRIs or the GnRH analogues.
9. The treatment approach most likely to have an effect on recidivism is a combined pharmacological, cognitive-behavior, and relapse prevention approach. (APA Task Force, p 145, 1999) In general, biomedical treatments show more successful outcomes with long periods of follow-up compared to psychological treatments (APA Task Force, p 145, 1999; Schmucker and Losel 2008).

XII. SUMMARY

The term “sex offender” is a legal not medical term.

Recent laws have taken more punitive approach to management of sex offenders.

Knowledge of factors associated with recidivism important in risk assessment.