

A Judge's Guide to Sex Offender Evaluations

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The sentencing of sex offenders has become increasingly complex. Tougher sentencing laws, registry laws, and the introduction of civil commitment for sexually violent predators have all raised the stakes for all concerned in the sentencing process. Increasingly, judges are presented with evaluations of convicted sex offenders that make recommendations for sentencing that are based on psychological assessments. These assessments purport to classify offenders on the continuum of dangerousness and the likelihood of recidivism.

This guide is intended to help judges understand and evaluate these assessments. It will cover the basic issue of clinical vs. actuarial assessments; provide thumbnails for some of the most common actuarial assessment instruments currently in use; and provide a guide for assessing the credibility of a specific sex offender evaluation.

Clinical vs. Actuarial Assessment

For many years it was widely believed that the most effective way of assessing an offender's dangerousness, or readiness for release, was to seek the opinions of those who seemed to best understand the offender and his psychology – his treatment providers. Logically, it seemed, these professionals had spent months, often years, observing and treating the offender and would therefore provide the most informed and accurate prediction of the offender's dangerousness. As intuitively obvious as this assumption is, it has been contradicted by considerable research which has demonstrated the superiority of actuarial assessments over clinician-based, or "clinical" assessments. Actuarial assessments are not based on clinical judgment. Rather, they evaluate the offender's standing on an array of variables that have empirically been demonstrated to be associated with dangerousness, or recidivism. Thus, actuarial assessments are independent of clinical judgment (and, some would say, clinical bias) and are based on an objective assessment of the offender's status.

Actuarial Assessment Instruments

Actuarial assessment instruments measure an individual's standing on a prescribed set of variables that have empirically been shown to correlate with dangerousness or recidivism. These variables have been broken down into "static" and "dynamic" factors. Static factors are unchanging; for example, the age at which the first

offense was committed. Dynamic factors, such as the use of illegal substances, can change, thereby changing the individual's score on the assessment instrument.

Among the most important of the static factors in every actuarial assessment instrument are the number and the characteristics of the offenders' prior offenses. It should be noted that some instruments require that a prior offense, to be counted, must be a conviction, whereas other instruments require only that it be charged. Some instruments weight the prior offense differently, depending on whether it was a conviction. Finally, some instruments count only prior convictions, but do "score" the characteristics of prior charged offenses, such as an arrest for a sexual offense that took place in a public setting.

CAVEAT:

There is an important limitation that must be noted that applies to all of the instruments currently in use. The research upon which these instruments are based is done exclusively on offenders whose crimes were reported and whose cases were adjudicated. As such, these offenders may – and likely do – differ from "undetected" offenders. Undetected sex offenders are actually the majority of offenders; they are rarely reported by victims, and currently, almost never prosecuted. Yet, these offenders have been studied for the past 20 years, and, like their incarcerated counterparts, they are most often repeat offenders with a diverse history of criminal conduct. However, because their crimes are almost never adjudicated, these offenders are likely to appear less dangerous on conventional assessment instruments. When an instrument such as the PCL-R (Psychopathy Checklist – Revised) is applied to them, it is likely to under-estimate the undetected offender's score simply because some of the static factors used do not apply as well to this population. Therefore, an evaluator who uses an instrument on an individual who may not be represented in the normative sample used to derive the instrument should note this possible discrepancy.

The following are some of the most frequently used actuarial instruments currently in use. Since research in this area is ongoing, this list should not be viewed as exhaustive.

RRASOR: Rapid Risk Assessment for Sexual Offense Recidivism

The RRASOR distills four variables drawn from numerous studies of sex offender recidivism. The variables, which can be scored from administrative records, include: prior sexual offenses; age (below 25); extra-familial victims; and male victims. The variable, "prior sex offenses," is scored on an ascending scale determined by the number of charges and convictions. The remaining variables are scored as 0 or 1 depending on the presence of the variable.

STATIC-99

The STATIC-99 is an empirically derived instrument that combines variables from the RRASOR and a British assessment instrument. The variables include: male victims; never married; non-contact sex offenses; unrelated victims; stranger victims;

prior sex offenses; current & prior non-sexual violence; 4+ sentencing dates; and 18-25 years of age.

MnSOST-R: Minnesota Sex Offender Screening Tool – Revised

The MnSOST-R was developed to identify offenders most likely to re-offend, to aid in screening inmates for possible civil commitment. An offender is rated on 16 items, and this score is then translated into a 1 to 10 dangerousness rating scale. Among the static items assessed are: the number of sex offenses committed; the duration of the offender's sex offending behavior; the amount of force used; the diversity of victims attacked; drug abuse history; and employment history. Dynamic items assessed include: discipline history while incarcerated; chemical dependency treatment history; sex offender treatment history; and age at time of release.

PCL-R: Psychopathy Checklist – Revised

The PCL-R attempts to measure the construct of "psychopathy," which it defines as a combination of interpersonal patterns (manipulative, dominating, cold-hearted), emotional characteristics (shallow, volatile, lacking in empathy), and behavioral tendencies (impulsive and sensation-seeking). It is scored by a combination of file information and interview data, although file information alone is deemed sufficient. The PCL-R was developed and normed on prison inmates and forensic psychiatric patients, and it has shown good accuracy in predicting violence and recidivism in these samples.

SORAG: Sex Offender Risk Appraisal Guide

Derived from the VRAG (Violence Risk Appraisal Guide) and specifically intended for evaluating sex offenders, the SORAG scores individuals on the following 14 items and measures: Psychopathy Checklist score; elementary school maladjustment; age at index offense; DSM personality disorder; separation from parents before age 16; failure on prior conditional release; history of nonviolent offenses; never married; DSM schizophrenia; history of alcohol abuse; history of violent offenses; history of sex offense convictions; male or adult victim (ever); and deviant response in penile plethysmograph testing.

VRAG: Violence Risk Appraisal Guide

The VRAG was developed in Canada and was designed to measure risk of recidivism in a general prison population. It assesses an individual's standing on the following variables: Psychopathy Checklist score; elementary school maladjustment; age at index offense; DSM personality disorder; separation from parents before age 16; failure on prior conditional release; and history of nonviolent offenses; never married; DSM schizophrenia; victim injury in index offense; history of alcohol abuse; and male victim in index offense. The VRAG has been shown to be a good predictor of general, violent recidivism, but less so for sexual recidivism.

From File Information to Numbers: How it Works

Actuarial assessment instruments are designed to turn information about the offender – mostly historical information – into numbers. Here is an example of how they work. ***Please note: the following sample is intended to demonstrate, in general, how actuarial instruments are used; it is not intended to teach the actual scoring process, which requires specialized training.*** The MnSOST-R evaluates an offender on 16 variables. Four of the variables are: length of offending history; use of force or threat of force while committing a sex offense; committing multiple acts on a single victim; and offending against victims of different age groups. In this hypothetical example, an offender's file includes the following information:

Offender (age 22), recently convicted of a rape of a 19-year-old, was charged four years ago (prior offense) with sexual assault of a minor (victim aged 12), but the charge was reduced to a simple assault in a plea agreement because the victim was psychologically unable to testify. In the instant offense, the offender was shown to have deliberately induced intoxication in the victim. He then manually touched her genitals and penetrated her vagina with his penis.

In the above example, each of the four variables listed above would be scored in the “positive” direction, yielding a more elevated score and thus greater risk index. The offender's prior assault charge would count as a prior sex offense, despite the plea agreement, and because it occurred within six years of the instant offense, the offender would be scored with “length of sex offending history.” The offender would also be scored for “force or threat of force” because he committed the offense against an intoxicated victim, one of the conditions specified by the MnSOST-R. The fondling and sexual intercourse would count as two sex acts, yielding an elevated score on this variable. Finally, because the earlier offense was committed against a 12 year old, and the instant offense against a 19 year old (older than 16), this would count as offending against different age groups. It should be noted that while some of these “decisions” might seem arbitrary, they are based on research that has identified these variables as significant predictors of recidivism.

Evaluating the Evaluations

How can a judge determine whether a sex offender evaluation is fair and accurate, and worthy of being considered in making a sentencing or other decision? It is perhaps unfair to expect judges to be sufficiently familiar with the intricacies of assessment to make judgments about their accuracy. Unfortunately, judges will inevitably be faced with “competing” evaluations, or with evaluations coming from only one side of the adversarial process. In such situations, it is important that the judge be able to make his or her own assessment of the apparent fairness of the evaluation. To help guide the “judging” of the evaluation, four lines of inquiry are described below: 1) assessing the evaluator's credentials and potential bias; 2) assessing the quality of the assessment instruments used in the evaluation; 3) checking the report's internal consistency; and 4) looking for missing data.

The Evaluator's Credentials

Sex offender assessment has become a specialized field that requires considerable training and expertise. In some states, clinicians who perform such assessments must be certified by the state. It is therefore fair to ask what training the evaluator has received specific to sex offender evaluation, and how many evaluations he or she has performed. An assessment may include considerable information derived from a clinical interview, but it should also include data from actuarial assessment instruments (see above), and the evaluator must have received the training necessary to accurately interpret the results of those assessments. That training should be specifically enumerated on the evaluator's CV, which should be attached to the assessment or requested by the judge.

Because of the stakes involved in many of these situations, it is also important to determine whether the evaluator may be subject to subtle biases in his or her interpretation of the findings of the assessment. Such a bias may be revealed through an assessment of the internal consistency of the report (see below), but it may also be indicated by an extreme imbalance in the number of evaluations and/or consultations that the clinician performs for one side or the other.

The Quality of the Assessment Instruments

There is only a small number of assessment instruments that have been specifically designed for use with sex offenders. Some of them are listed above in the section on actuarial assessment instruments. However, new instruments are periodically added. If an evaluation includes an unfamiliar instrument, it is important to request from the evaluator published articles from peer-reviewed scientific journals that detail the development of the instrument, and its scientific reliability and validity. A competent evaluator who is using an instrument should have no difficulty in providing this.

The Internal Consistency of the Report

Many psychological evaluations begin and end with the evaluator's conclusions about the offender's dangerousness. As a service to the reader, the evaluator submits the "bottom line" succinctly and places it within the document where it can be quickly and easily referenced. While the conclusion is a potentially important "fact" in the legal process, it is actually far less important than the quality of the data the evaluator used to derive it. If the data are thin, if conflicting data were ignored, if important data are simply missing from the report, then the conclusion might be rendered questionable or even irrelevant. It is therefore important to carefully read the entire report, and, to the extent it is possible, make an independent decision about whether the data cited within the report are actually consistent with the stated conclusion.

Here is an example of an "internal consistency check" from an actual assessment report that was submitted to a judge in a sentencing hearing for a sex offender. The evaluator, who had been hired by the defendant, concluded: "In my opinion, he is not a

danger to the community.” Yet, in the body of the lengthy report, the following variables were noted pertaining to the defendant’s history and current status: a history of substance abuse; ongoing substance abuse; a history of impulsive behavior; a history of juvenile delinquency; a history of untreated sexual and physical abuse as a child; a prior DWI arrest; pathological narcissism; possible pedophilia; admitted “sexual addiction”; a history of job instability; a history of unpaid debts; and hostility toward probation officers. Many of these factors are frequently cited in research as being important variables associated with elevated risk of recidivism. Taken together, it is difficult to see how the evaluator’s conclusion is consistent with the evidence.

We will return to this report in the next section, the search for “missing data.”

Looking for Missing Data

In one of the Sherlock Holmes mysteries, the legendary inspector solves a crime by identifying an important detail that was missing from an account: the dog that didn’t bark. It is a classic example of the importance of “missing data.” If an evaluation passes the test of internal consistency, has it done so fairly? Or, is the conclusion consistent with the data presented only because important, potentially conflicting data have been omitted? Determining whether important data are missing is extremely difficult, yet crucially important in evaluating the evaluation of a sex offender.

Returning to the report referred to above: In addition to factors listed that seemed to conflict with the evaluator’s conclusion, there were critical factors that had been omitted from the report. The offender had been charged or investigated in numerous prior sexual assaults; the police reports from those investigations contained numerous references to offender behavior that could only be described as classically antisocial; the offender had been investigated in two prior domestic violence cases; and the offender had a history of scores of probation violations that were entirely unmentioned in the report.

Obviously, a judge cannot conduct an independent investigation to uncover such missing information. However, a judge can ask questions that might yield answers suggestive of missing information. For example:

- a. Did the evaluator request all police reports pertaining to the defendant? To whom was the request made? Is the evaluator professionally satisfied that all such reports have been uncovered? Were any records requested but not delivered?
- b. Was the offender ever charged with or investigated for domestic violence? If not, how certain is the evaluator of this information?
- c. If the offender resided in other jurisdictions, what steps have been taken to request police reports, misdemeanor records, etc. from those jurisdictions?
- d. Did the evaluator conduct any interviews with collateral witnesses? A collateral witness can be anybody who can shed additional perspective on an important

issue in the evaluation. If such interviews were conducted, who were the witnesses? Did the evaluator request access to any collateral witnesses that he/she then did not or could not interview?

Summary

Increasingly, courts are being asked to make decisions about sex offenders based on, or informed by, evaluations conducted by various parties. Sex offender evaluations can be quite sophisticated – or they may only appear to be so. It is therefore important for judges to become as familiar as possible with the key issues, and the most common assessment instruments used in sex offender evaluations, and to evaluate the quality of those evaluations. It is hoped that this brief guide will serve as an aid to judges and a bridge to more detailed information that might be needed.

Useful References

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Useful Web Sites

American Professional Society on the Abuse of Children (APSAC):
<http://apsac.fmhi.usf.edu/>

Association for the Treatment of Sexual Abusers: <http://www.atsa.com/>

Center for Sex Offender Management: <http://www.csom.org/>

National Center for Victims of Crime: <http://www.ncvc.org/ncvc/Main.aspx>

National Institute of Corrections: <http://www.nicic.org/>

National Sexual Violence Resource Center: <http://www.nsvrc.org/>

Office of Justice Programs (DOJ): <http://www.ojp.usdoj.gov/>

Research branch of the Ontario Dept. of Corrections: <http://www.mhcr-research.com/ragpage.htm>

The Safer Society Foundation: <http://www.saferociety.org/>