

Promoting Offender Accountability and Community Safety through the Comprehensive Approach to Sex Offender Management

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Abstract: In response to the historically fragmented efforts to manage sex offenders within the criminal justice system and treatment community, it has been suggested that goals of offender accountability and community safety can be better attained through a more comprehensive, coordinated, and systemic approach. Anchored by a series of fundamental principles, the comprehensive approach to sex offender management recognizes the interrelatedness of key system components, including investigation, prosecution, and sentencing; specialized assessment, treatment, supervision, and reentry; and registration and community notification.

Despite having been the subject of increased focus by criminal justice systems for decades, the magnitude of sexual victimization remains a significant problem in contemporary society, leading both professionals and the public to raise questions about the comprehensiveness and efficacy of historical sex offender management strategies. It has been suggested that such efforts have been inadequate for a variety of reasons. These include the limited understanding of the multifaceted and complex etiological factors associated with sexual victimization, a failure to recognize and appreciate the implications of varying levels of risk and needs among the sex offender population, a diffuse decisionmaking system, the

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absence of specialized knowledge about sex offenders and victims, a lack of awareness among the general public about sex offenders and victimization, insufficient monitoring and evaluation of interventions, an underemphasis on primary prevention efforts, and the absence of collaboration among those responsible for the different components of sex offender management.¹

In recent years, however, professionals have recognized the value of developing a more coordinated and integrated response to sex offender management, a response that extends beyond traditional practices and emphases. Reflective of such a model, the comprehensive approach to sex offender management acknowledges the complex nature of sex offending and the subsequent necessity of key system components² to effectuate offender accountability, rehabilitation, and victim and community safety throughout all phases of the criminal justice system. Within the comprehensive approach, it is emphasized that none of the individual components of the system—in and of itself—is sufficient in scope or latitude to address the magnitude and complexity of the problem of sexual victimization. Nor is the comprehensive approach necessarily a linear or unidirectional process; rather, the various components are highly interrelated and interdependent, each having implications for one another and the system as a whole.

Critical to the foundation and ultimate impact of the comprehensive approach to sex offender management are several

¹ MANAGING ADULT SEX OFFENDERS: A CONTAINMENT APPROACH (Kim English et al. eds., 1996) [hereinafter MANAGING ADULT SEX OFFENDERS]; Kim English, *The Containment Approach: An Aggressive Strategy for the Community Management of Adult Sex Offenders*, 4 PSYCHOL. PUB. POL'Y & L. 218 (1998) [hereinafter English, *The Containment Approach*]; Kim English et al., *Community Containment of Sex Offender Risk: A Promising Approach*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS: LAW, JUSTICE, AND THERAPY 265 (Bruce J. Winick et al. eds., 2003) [hereinafter English et al., *Community Containment*]; CSOM, *An Overview of Sex Offender Management* (July 2002) [hereinafter CSOM, *Overview*], available at http://www.csom.org/pubs/csom_bro.pdf (last visited July 7, 2004); CSOM, *Public Opinion and the Criminal Justice System: Building Support for Sex Offender Management Programs* (Apr. 2000) [hereinafter CSOM, *Public Opinion*], available at <http://www.csom.org/pubs/pubpinion.pdf> (last visited July 7, 2004); Leilah Gilligan & Tom Talbot, CSOM, *Community Supervision of the Sex Offender: An Overview of Current and Promising Practices* (Jan. 2000), available at <http://www.csom.org/pubs/supervision2.pdf> (last visited July 7, 2004); Kristin Littel, CSOM, *Engaging Advocates and Other Victim Service Providers in the Community Management of Sex Offenders* (Mar. 2000), available at <http://www.csom.org/pubs/advocacy.pdf> (last visited July 7, 2004).

² The key system components of the comprehensive approach to sex offender management include investigation, prosecution, sentencing, assessment, treatment, reentry, supervision, registration, and notification.

fundamental principles: a commitment to victim-centeredness, the need for specialized knowledge, the importance of an informed and involved public, the assurance of monitoring and evaluation of practices, and the necessity of collaboration.³ These principles reflect both a philosophy and a method of practice, and serve as the driving force behind the various strategies and interventions within each of the components of the criminal justice system.

First, victim-centeredness propels sex offender management beyond the at-times exclusively offender-focused policies and practices, whereby active and explicit prioritization of the needs and interests of sexual assault victims remained limited, if not overlooked. Through a victim-centered approach, professionals have recognized the importance of ensuring that active consideration to the needs and interests of victims occurs in tandem with interventions designed to address the risk and needs of offenders. More specifically, it requires a commitment to ensuring that sex offender management policies and practices do not overlook the needs of victims, re-traumatize or otherwise negatively impact victims, or inadvertently jeopardize the safety of victims or other community members. Operationalized, a victim-centered approach is reflected by ongoing responsiveness to victims' needs, provision of requested information to victims and families, promotion of healing and restoration, and allowances for victim input in the critical decisionmaking phases of the sex offender management process.⁴

Second, the unique, diverse, and complex nature of the sex offender population—as well as the multifaceted dynamics associated with sexual victimization—necessitate that professionals who have a role in the comprehensive approach to sex offender management possess specialized knowledge about sex offenders, victims, and effective interventions in order to facilitate informed and responsible decisionmaking. In the absence of specialized knowledge, the professionals responsible for promoting offender accountability and facilitating community safety will be ill-equipped to intervene in a timely, effective, and responsive manner.

Third, while sex offending has been traditionally considered the exclusive responsibility of the criminal justice system, recognition of the need to educate—and partner with—communities to address

³ See Gilligan & Talbot, *supra* note 1.

⁴ MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 2.6–.7; David A. D'Amora & Gail Burns-Smith, *Partnering in Response to Sexual Violence: How Offender Treatment and Victim Advocacy Can Work Together in Response to Sexual Violence*, 14 SEXUAL ABUSE: J. RES. & TREATMENT 121 (1999); English et al., *Community Containment*, *supra* note 1, at 267-68; Gilligan & Talbot, *supra* note 1, at 5; Littel, *supra* note 1.

sexual victimization has become a critical focus of sex offender management. Indeed, the application of the public health model to the issue of sexual victimization has emerged in recent years, thus leading to the recognition that sex abuse is a broad societal concern that requires active involvement and attention from the public at large.⁵ Therefore, an understanding of the invaluable role of an informed public may actually facilitate the development and successful implementation of prevention and reduction efforts relative to sexual victimization, particularly from a primary prevention perspective.⁶

Fourth, the critical nature of this work and the profound implications of system failures to effectively address the problem of sexual abuse demand the incorporation of monitoring and evaluative processes to ensure the integrity, quality, and efficacy of the overall approach to sex offender management.⁷ Program monitoring and evaluation are perhaps best accomplished through the utilization of process and outcome examinations that examine critically the integrity and efficacy of the service delivery system. Funding decisions, resource deployment, legislative and policy decisions, offender success, and community safety all rely on sound programming and services. As the sex offender management field continues to evolve, it is critical that policies and practices are informed by, measured against, and adjusted in accordance with contemporary research and practices.

⁵ STOP IT NOW!, FOUR YEAR EVALUATION: FINDINGS REVEAL SUCCESS OF STOP IT NOW! VERMONT (REPORT # 5) 4 (2000), available at http://www.stopitnow.com/vt/Final_Eval_Summary_2000.pdf (last visited July 7, 2004); Judith V. Becker & Dan W. Reilly, *Preventing Sexual Abuse and Assault*, 11 SEXUAL ABUSE: J. RES. & TREATMENT 267, 275-76 (1999); Fred S. Berlin, *The Etiology and Treatment of Sexual Offending*, in THE SCIENCE, TREATMENT, AND PREVENTION OF ANTISOCIAL BEHAVIORS: APPLICATION TO THE CRIMINAL JUSTICE SYSTEM 21-1 (Diana H. Fishbein ed., 2000); S.M. Hudson et al., *Whither Relapse Prevention?*, in REMAKING RELAPSE PREVENTION WITH SEX OFFENDERS: A SOURCEBOOK 503, 508-12 (D. Richard Laws et al. eds., 2000) [hereinafter REMAKING RELAPSE PREVENTION]; D.R. Laws, *Harm Reduction or Harm Facilitation? A Reply to Maletzky*, 11 SEXUAL ABUSE: J. RES. & TREATMENT 233 (1999); D.R. Laws, *Relapse Prevention or Harm Reduction?*, 8 SEXUAL ABUSE: J. RES. & TREATMENT 243 (1996); Pamela M. McMahon, *The Public Health Approach to the Prevention of Sexual Violence*, 12 SEXUAL ABUSE: J. RES. & TREATMENT 27 (2000); Pamela M. McMahon & Robin C. Puett, *Child Sexual Abuse as a Public Health Issue: Recommendations of an Expert Panel*, 11 SEXUAL ABUSE: J. RES. & TREATMENT 257 (1999); James A. Mercy, *Having New Eyes: Viewing Child Sexual Abuse as a Public Health Problem*, 11 SEXUAL ABUSE: J. RES. & TREATMENT 317 (1999); Sandy K. Wurtele, *Comprehensiveness and Collaboration: Key Ingredients of an Effective Public Health Approach to Preventing Child Sexual Abuse*, 11 SEXUAL ABUSE: J. RES. & TREATMENT 323 (1999).

⁶ See sources cited *supra* note 5; see also CSOM, *Public Opinion*, *supra* note 1.

⁷ MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 2.15-16; English et al., *Community Containment*, *supra* note 1, at 269-74; CSOM, *Overview*, *supra* note 1, at 6, 7.

Finally, as historical approaches to sex offender management have been characterized by fragmentation among—and, at times, conflict between—the various professionals and agencies involved in processing, treating, and serving this population, the importance of collaboration has become increasingly clear. Indeed, the already shared goals of reduced victimization and community safety suggest that the stakeholders responsible for sex offender management can more efficiently and effectively facilitate sustainable change through collaborative partnerships.⁸ By definition, collaboration requires involved professionals and stakeholders to recognize the importance of diverse perspectives, value the distinct roles and responsibilities that exist within each agency, share resources, and make a commitment to work together to enhance capacity toward attainment of a common goal. Overall, collaboration fosters mutual understanding and support for the various components of the sex offender management process and creates an expanded network of informed and dedicated individuals to assist offenders and victims. Moreover, collaboration holds the promise of more successful outcomes by ensuring that treatment interventions, supervision approaches, and other strategies are responsive to the individual levels of risk and needs posed by offenders.⁹

I. INVESTIGATION, PROSECUTION, AND SENTENCING

The comprehensive approach to sex offender management begins at the point of victim disclosure or identification, the catalyst for the investigation, prosecution, and sentencing phase. During this component, the critical importance of victim-centeredness and specialized knowledge is readily apparent. Among the key goals of the investigation, prosecution, and sentencing component are the following: delivering supportive and other needed services to victims; collecting critical forensic evidence; resolving cases swiftly and effectively; protecting the individual rights and safeguards afforded to criminal defendants; promoting accountability of sex offenders; and

⁸ Collaboration is necessary on both a policy and case management level. At the policy level, decisionmakers oversee the development of policies, secure and deploy resources, and provide critical support to individuals at the case management level. Collaboration on the case management level promotes effective day-to-day offender management through information-sharing and the utilization of comprehensive data to inform decisions regarding the management of individual offenders. *See, e.g.,* MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 2.7–.13, 7.4; D’Amora & Burns-Smith, *supra* note 4; English et al., *Community Containment*, *supra* note 1, at 268; CSOM, *Overview*, *supra* note 1, at 4; Littel, *supra* note 1.

⁹ *See* sources cited *supra* note 8.

maintaining the overarching interests of community safety. Unfortunately, relative to other crimes, the nature of and dynamics associated with sexual victimization present unique challenges. Included among these are the potential for a lack of corroborating witnesses, inconclusive physical evidence, delayed reporting by victims due to the considerable impact and potential stigma associated with sexual victimization, difficulties associated with securing consistent statements from—and involvement of—victims, and widespread myths and misperceptions about both offenders and victims.¹⁰

Law enforcement officers and child protective services personnel are among the first to have contact with alleged offenders and victims and, as such, assume a pivotal role in the comprehensive approach. Indeed, the nature, quality, and integrity of investigative practices may ultimately impact the ability of the criminal justice system to respond to victims and manage offenders effectively. Put simply, the successful prosecution of sex offense cases is, in large part, a function of the thoroughness and the collective expertise of those responsible for the investigative process.¹¹ In the absence of successful prosecution, the leverage of the system to impact offender accountability and ensure victim safety is substantially compromised—if not largely eliminated. It is essential, therefore, that those responsible for investigations of sex crimes are specially trained and experienced.¹²

¹⁰ See, e.g., RUDY FLORA, HOW TO WORK WITH SEX OFFENDERS: A HANDBOOK FOR CRIMINAL JUSTICE, HUMAN SERVICE, AND MENTAL HEALTH PROFESSIONALS 15-17 (2001) (discussing the difficulties of securing cooperation from victims); LYNN HECHT SCHAFFRAN ET AL., UNDERSTANDING SEXUAL VIOLENCE: PROSECUTING ADULT RAPE AND SEXUAL ASSAULT CASES 8.36-.41 (2001) [hereinafter PROSECUTING ADULT RAPE]; LYNN HECHT SCHAFFRAN ET AL., UNDERSTANDING SEXUAL VIOLENCE: THE JUDICIAL RESPONSE TO STRANGER AND NONSTRANGER RAPE AND SEXUAL ASSAULT (Unit I) 1-41 (1999) [hereinafter THE JUDICIAL RESPONSE] (adapted for the Wisconsin Supreme Court Office of Judicial Education from the National Judicial Education Program's model judicial education curriculum, *Understanding Sexual Violence: The Judge's Role in Stranger and Non-stranger Rape and Sexual Assault Cases*); Richard T. Andrias, *Myths About Rape: Persistent Problems in Prosecuting Rapes*, 7 CRIMINAL JUSTICE 2 (1992); Lynn Hecht Schafran, *Writing and Reading About Rape: A Primer*, 66 ST. JOHN'S L. REV. 4 (1993); Lenore M.J. Simon, *Matching Legal Policies with Known Offenders*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1, at 153-54.

¹¹ PROSECUTING ADULT RAPE, *supra* note 10, at 8.36-.41; see also English et al., *Community Containment*, *supra* note 1, at 268 (discussing multidisciplinary collaboration); Cindi Nannetti & Dyanne Greer, *Investigating and Prosecuting Sex Offenders*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 8.1, 8.3-5 ("When detectives are not trained to investigate sex crimes, cases are more difficult to prosecute.").

¹² Such knowledge strengthens investigative processes by ensuring that law enforcement officials and other involved personnel understand the dynamics of

In the laudable zealotry of the investigative and subsequent court processes, however, the needs and interests of victims may be inadvertently overlooked. Indeed, it must be recognized that during this phase, policies and practices have the potential to exacerbate or induce trauma among sexual abuse victims.¹³ In an attempt to minimize the potential for system-induced trauma and to ensure timely, efficient, consistent, victim-sensitive, and thorough responses, multidisciplinary protocols that emphasize the specific roles and coordination of law enforcement, child protective, victim advocacy, medical, mental health, and legal representatives have been developed in a number of jurisdictions.¹⁴

At the point of prosecution, in order to maximize offender accountability and responsiveness to the needs and interests of victims, the charges filed should—to the extent possible—accurately reflect the nature and seriousness of the sex crimes.¹⁵ Additionally,

sexual victimization, utilize effective interviewing strategies with victims and alleged offenders, identify critical forensic evidence, and recognize sex crimes that appear non-sexual in nature but that may be driven by sexual deviance or motivation. MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 2.7–.17, 8.3–8.

¹³ Among other issues, insensitivity of investigative personnel, repeated interviews, invasive medical procedures, and courtroom tactics can impact victims negatively. See, e.g., NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE ET AL., INVESTIGATION AND PROSECUTION OF CHILD ABUSE chs. 2, 7 (2d ed. 1993); NAT'L VICTIM CTR., 1996 VICTIM'S RIGHTS SOURCEBOOK: A COMPILATION AND COMPARISON OF VICTIMS' RIGHTS LEGISLATION § 12, at 329, 337 (1996); PROSECUTING ADULT RAPE, *supra* note 10, at 7.1–4; THE JUDICIAL RESPONSE, *supra* note 10, at 34–62; Courtney E. Ahrens et al., *Sexual Assault Nurse Examiner (SANE) Programs: Alternative Systems for Service Delivery for Sexual Assault Victims*, 15 J. INTERPERSONAL VIOLENCE 921, 923–24 (2000); Rebecca Campbell, *The Community Response to Rape: Victims' Experiences with the Legal, Medical, and Mental Health Systems*, 26 AM. J. COMMUNITY PSYCHOL. 355, 356 (1998); Rebecca Campbell et al., *Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma?*, 67 J. CONSULTING & CLINICAL PSYCHOL. 847, 855 (1999); English et al., *Community Containment*, *supra* note 1, at 267–68; Nannetti & Greer, *supra* note 11, at 8.6; Gilligan & Talbot, *supra* note 1, at 1, 2–3 (describing the victim-centered approach); Littel, *supra* note 1.

¹⁴ CSOM, CASE STUDIES ON THE CENTER FOR SEX OFFENDER MANAGEMENT'S NATIONAL RESOURCE SITES, 1–7 (describing the Colorado Sex Offender Management Board), 30 (describing victim-supportive practices in Maricopa Co., AZ), 49–54 (describing New Haven, CT victim advocate role) (2d ed. 2001); English et al., *Community Containment*, *supra* note 1, at 267–68; Nannetti & Greer, *supra* note 11, at 8.6; Gilligan & Talbot, *supra* note 1, at 1, 2–3; Littel, *supra* note 1.

¹⁵ This practice is in contrast with the charging of lesser offenses. See, e.g., MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 24; NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE ET AL., *supra* note 13, at 202; PROSECUTING ADULT RAPE, *supra* note 10, at Faculty Manual 55; English et al., *Community Containment*, *supra* note 1, at 266; Brian K. Holmgren, *Forging New Alliances—Proposals for Change in Managing Sex Offenders within the Criminal Justice System*, in 3 THE SEX OFFENDER: THEORETICAL ADVANCES, TREATING SPECIAL POPULATIONS AND LEGAL DEVELOPMENTS 37–1, 37–8 (Barbara K. Schwartz ed., 1999) [hereinafter 3 THE SEX OFFENDER]; Roger J.R. Levesque,

prosecutors and their representatives—working closely with victim advocates—should meet with victims and their families early in the process to explain the various court proceedings, provide necessary education and support, assess the willingness and ability of the victim to testify, and identify any specific considerations or accommodations that may be necessary.¹⁶ The vertical prosecution of sex offense cases is also beneficial, whereby a single prosecutor is maintained from the point of charging, through witness preparation, pre-trial motions, trial, and sentencing.¹⁷ Finally, prosecutors, defense attorneys, and judges should work collaboratively to avoid unnecessary delays and continuances in the legal process; such delays are neither beneficial to the alleged offender nor the victim and may increase the stress and potential trauma to victims and impact their ability to recall critical details.¹⁸ An additional area worthy of consideration during the prosecution and sentencing phases is that of plea bargaining. Arguably, plea bargains are an important and sometimes necessary mechanism for securing convictions in sex offense cases, with a variety of benefits realized, including the more timely resolution of cases and the elimination of the potential trauma to victims that is associated with testifying or facing the assailant during the proceedings. Despite these advantages, however, certain aspects of plea bargains may have potential negative implications on offender accountability and victim interests.¹⁹ Prosecutors, defense attorneys,

Sentencing Sex Crimes Against Children: An Empirical and Policy Analysis, 18 BEHAV. SCI. & L. 331, 333-34 (2000); David C. Strate et al., *Criminal Justice Policies and Sex Offender Denial*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 4.1, 4.5-7.

¹⁶ See, e.g., FLORA, *supra* note 10, at 15-17; NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE ET AL., *supra* note 13, at 199; Nannetti & Greer, *supra* note 11, at 8.4; CSOM, *Overview*, *supra* note 1, at 3; Littel, *supra* note 1.

¹⁷ Vertical prosecution of sex crimes serves a variety of purposes, including the following: (a) reducing the number of individuals to whom the victim must provide statements; (b) maintaining consistency and continuity of case processing; (c) promoting prosecutor familiarity with the victim and the facts of the case; (d) ensuring the preservation of critical information that can be lost when cases are transferred; and (e) enhancing victim trust and rapport. See Dean G. Kilpatrick et al., *Sexual Assault*, in NATIONAL VICTIM ASSISTANCE ACADEMY TEXTBOOK (2002), available at <http://www.ojp.usdoj.gov/ovc/assist/nvaa2002/chapter10.html> (last visited July 7, 2004); NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE ET AL., *supra* note 13, at 199-200; THE JUDICIAL RESPONSE, *supra* note 10, at 44; Holmgren, *supra* note 15, at 37-3 & n.12.

¹⁸ See, e.g., FLORA, *supra* note 10, at 16 (noting the importance of providing the victim with periodic updates); PROSECUTING ADULT RAPE, *supra* note 10, at 7.14 (noting strategies to prepare victims for and avoid adjournments); THE JUDICIAL RESPONSE, *supra* note 10, at 42-52; John E.B. Myers et al., *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L.J. 3, 63 (1996).

¹⁹ Specifically, pleas that do not require the establishment of a factual basis (i.e.,

and judges should be educated about the potential caveats of certain plea bargaining practices to ensure that—to the extent possible—when plea bargains are utilized, they promote offender accountability and balance the needs and interests of victims.²⁰ Further, to ensure that plea and sentencing decisions are well informed and appropriate for both offenders and victims, it is essential that such agreements are guided by sufficient information about the offender, the offense behaviors, and victim and community safety needs.

At the sentencing phase, risk management dispositional schemes should allow for sufficient flexibility and judicial discretion to tailor individual dispositions and sentences on a case-by-base basis, commensurate with the level of risk and needs posed by offenders, as well as the capacity of the criminal justice system to manage such offenders effectively.²¹ For this to occur, members of the judiciary and other key stakeholders (e.g., legislators, policymakers, prosecutors, defense attorneys) must be fully informed about and

Alford and *nolo contendere* pleas) and those which eliminate the sex offense component of the case (i.e., charge bargains) require careful examination. Potentially unintended consequences include the implied minimization of the seriousness of the offense, invalidation of the victims' experiences, and exacerbation of offender denial, undermining the subsequent treatment, and supervision components of sex offender management. See, e.g., GEORGIA CUMMING & MAUREEN BUELL, SUPERVISION OF THE SEX OFFENDER 13-14 (1997); MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 2.24, 4.5-6; PROSECUTING ADULT RAPE, *supra* note 10, at Faculty Manual 48 (describing the workshop session on this topic); Howard E. Barbaree & Franca A. Cortoni, *Treatment of the Juvenile Sex Offender within the Criminal Justice and Mental Health Systems*, in THE JUVENILE SEX OFFENDER 243, 245-49 (Howard E. Barbaree et al. eds., 1993); Kurt M. Bumby & Marc C. Maddox, *Judges' Knowledge about Sexual Offenders, Difficulties Presiding over Sexual Offense Cases, and Opinions on Sentencing, Treatment, and Legislation*, 11 SEXUAL ABUSE: J. RES. & TREATMENT 305, 314 (1999); English, *The Containment Approach*, *supra* note 1, at 225; Joseph Heinz & Gail Ryan, *The Legal System's Response to Juvenile Sexual Offenders*, in JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES, AND CORRECTION 201, 208 (Gail Ryan & Sandy Lane eds., 1997); Holmgren, *supra* note 15, at 37-4 to -5; Jeffrey A. Klotz et al., *Cognitive Restructuring Through Law: A Therapeutic Jurisprudence Approach to Sex Offenders and the Plea Process*, 15 U. PUGET SOUND L. REV. 579 (1992); Nat'l Adolescent Perpetrator Network ("NAPN"), *The Revised Report from the National Task Force on Juvenile Sexual Offending*, 44 JUV. & FAM. CT. J. 1, 22 (1993) [hereinafter NAPN]; Strate et al., *supra* note 15, at 4.5-6; David B. Wexler & Bruce J. Winick, *Therapeutic Jurisprudence and Criminal Justice Mental Health Issues*, 16 MENTAL & PHYSICAL DISABILITY L. REP. 225, 229-30 (1992).

²⁰ See, e.g., Holmgren, *supra* note 15, at 37-4 to -5; Levesque, *supra* note 15, at 339-40; Strate et al., *supra* note 15, at 4.5-6.

²¹ CUMMING & BUELL, *supra* note 19, at 3-31; NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE ET AL., *supra* note 13, at 228-37; JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 230-31 (2003); Holmgren, *supra* note 13; Jonathan Simon, *Managing the Monstrous: Sex Offenders and the New Penology*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1, at 301; Gilligan & Talbot, *supra* note 1.

possess specialized knowledge relative to effective sex offender management practices, including the resources available in their respective jurisdictions.²²

Beyond a broad understanding of key sex offender and victim issues at the point of sentencing, key decisionmakers must have routine access to thorough, reliable, and individualized assessment data, including pre-sentence investigations and psychosexual evaluations conducted by specially trained sex offender management professionals.²³ Furthermore, to ensure responsiveness to victims' needs and interests, victim impact statements and restitution needs must be considered at the time of sentencing as well. The application of such specialized knowledge by the judiciary might be demonstrated at the sentencing or disposition phase through the imposition of mandates for sex offense-specific treatment, sufficient periods of community supervision that allow for adequate monitoring, relevant special conditions or restrictions for supervision, and court-leveraged consequences for non-compliance.

II. ASSESSMENT

Within the context of the comprehensive approach to sex offender management, assessment is perhaps best characterized as an ongoing and multidisciplinary process—in contrast to the consideration of assessment as a singular clinical event—that guides decisionmaking within and across multiple system components. As such, the collection and synthesis of data from numerous sources over time enhances the ability of the various stakeholders within the criminal justice system to balance the needs of offenders, victims, and communities more effectively and in an ongoing manner.²⁴ Moreover, the diversity and changing needs of sex offenders

²² See, e.g., Bumby & Maddox, *supra* note 19; English et al., *Community Containment*, *supra* note 1, at 276; Nannetti & Greer, *supra* note 11; Lenore M.J. Simon, *Matching Legal Policies with Known Offenders*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1, at 149, 157-59; Gilligan & Talbot, *supra* note 1, at 3.

²³ CUMMING & BUELL, *supra* note 19, at 65-66; THE JUDICIAL RESPONSE, *supra* note 10, at 33-34; English et al., *Community Containment*, *supra* note 1, at 276; Randy Green, *Community Management of Sex Offenders*, in 1 THE SEX OFFENDER: CORRECTIONS, TREATMENT AND LEGAL PRACTICE 21-1, 21-5 (Barbara K. Schwartz & Henry R. Cellini eds., 1995) [hereinafter 1 THE SEX OFFENDER]; Holmgren, *supra* note 15, at 37-2 to -3; NAPN, *supra* note 19, at 28-29; Gilligan & Talbot, *supra* note 1, at 9.

²⁴ These sources include, but are not limited to: psychometric and psychophysiological testing; various historical records; supervision officers; treatment providers; victim advocates; and interviews with collaterals and members of community support networks.

necessitate the conduct of individualized assessments, such that the corresponding system responses are timely, appropriate, and commensurate with the risk and needs posed by each offender.

The assessment of sex offenders' risk has become increasingly influential—and somewhat controversial—within the criminal justice system; it is often used to drive determinations relative to sentencing, treatment planning and delivery, release from institutional custody, community supervision, civil commitment proceedings, and registration and community notification requirements.²⁵ Generally, risk assessment involves the use of actuarial measures with a discrete number of risk factors to compare a specific offender to a group of offenders whose rate of recidivism is known. While many of the actuarial risk assessment tools are comprised of static or unchangeable risk factors, researchers have begun to focus more recently on the dynamic, or changeable, risk factors associated with sexual recidivism.²⁶

Beyond the assessment of risk, the comprehensive approach to sex offender management relies on additional assessment strategies—both clinical and non-clinical in nature and scope—to guide the

²⁵ See, e.g., R. Karl Hanson, *Who Is Dangerous and When Are They Safe? Risk Assessment with Sexual Offenders*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1, at 63; Grant T. Harris et al., *A Multisite Comparison of Actuarial Risk Instruments for Sex Offenders*, 15 PSYCHOL. ASSESSMENT 413, 413 (2003); Harry M. Hoberman, *Dangerousness and Sex Offenders – Assessing Risk for Future Sex Offenses*, in 2 THE SEXUAL PREDATOR: LEGAL ISSUES, CLINICAL ISSUES, SPECIAL POPULATIONS 11-1, 11-3 (Anita Schlank ed., 2001) [hereinafter 2 THE SEXUAL PREDATOR]; W.L. Marshall & D.R. Laws, *A Brief History of Behavioral and Cognitive Behavioral Approaches to Sexual Offender Treatment: Part 2. The Modern Era*, 15 SEXUAL ABUSE: J. RES. & TREATMENT 93 (2003); Robert Prentky et al., *An Actuarial Procedure for Assessing Risk with Juvenile Sexual Offenders*, 12 SEXUAL ABUSE: J. RES. & TREATMENT 71 (2000); Marnie E. Rice & Grant T. Harris, *What We Know and What We Don't Know about Treating Adult Sex Offenders*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1, at 101, 110.

²⁶ Some of these dynamic risk factors (e.g., negative mood, substance abuse, anger, victim access) are rapidly changing and are referred to as acute dynamic risk factors; as such, these elements are particularly salient for supervision officers to monitor. Other risk factors (e.g., pro-offending attitudes, intimacy deficits, poor social supports, antisocial lifestyles, poor self-management) are more enduring, and are therefore considered stable dynamic risk factors; nonetheless, such elements have the potential to change, and thus serve as important targets of treatment. See R. Karl Hanson, *Treatment Outcome and Evaluation Problems (and Solutions)*, in REMAKING RELAPSE PREVENTION, *supra* note 5, at 485, 496; R. Karl Hanson & Andrew J.R. Harris, *A Structured Approach to Evaluating Change Among Sexual Offenders*, 13 SEXUAL ABUSE: J. RES. & TREATMENT 105, 106-09 (2001) [hereinafter Hanson & Harris, *Structured Approach*]; R. Karl Hanson & Andrew J.R. Harris, *Where Should We Intervene? Dynamic Predictors of Sexual Offense Recidivism*, 27 CRIM. JUST. & BEHAV. 6, 7-8 (2000) [hereinafter Hanson & Harris, *Dynamic Predictors*]; Hoberman, *supra* note 25, at 11-28 to -29.

development and implementation of individualized and responsive interventions. For example, at the disposition phase, the presentence investigation (“PSI”) is a non-clinical assessment designed to assist the courts with making informed sentencing decisions, taking into account aggravating or mitigating circumstances, offense-specific and other treatment needs of the offender, appropriateness of community versus institutional placement, and the impact of the offense on the victim.²⁷ Multiple types and sources of information are utilized in order to ensure that assessments are comprehensive and reliable.²⁸

When sex offenders are remanded to the custody of correctional institutions, assessments in the form of intake and classification evaluations can be useful for identifying security classification, immediate or acute medical or mental health needs, overall level of functioning, potential housing unit assignments, and the need for specialized treatment services. For those sex offenders who are allowed to remain in the community under supervision of the criminal justice systems, careful and thorough assessments provide the basis of supervision case plans by identifying the most appropriate levels, targets, and approaches to community supervision. Furthermore, community supervision officers must continually assess changes in sex offenders to ensure that supervision case management plans are responsive to offenders’ current risk levels and needs.²⁹

From a clinical perspective, forensic evaluators with expertise in sex offender management often conduct specialized assessments of sex offenders at various points throughout the criminal justice process.³⁰ Often referred to as psychosexual evaluations, the primary

²⁷ See, e.g., Holmgren *supra* note 15, at 37-4, 37-10; Lori Koester Scott, *Community Management of Sex Offenders*, in 2 THE SEX OFFENDER: NEW INSIGHTS, TREATMENT INNOVATIONS AND LEGAL DEVELOPMENTS 16-1 (Barbara K. Schwartz & Henry R. Cellini eds., 1997) [hereinafter 2 THE SEX OFFENDER]; Gilligan & Talbot, *supra* note 1, at 4-5.

²⁸ CUMMING & BUELL, *supra* note 19, at 3-22; see also Georgia F. Cumming & Robert J. McGrath, *External Supervision: How Can It Increase the Effectiveness of Relapse Prevention?*, in REMAKING RELAPSE PREVENTION, *supra* note 5, at 236, 246 (describing the role of the presentence report); CSOM, *Overview*, *supra* note 1, at 5-6.

²⁹ CUMMING & BUELL, *supra* note 19, at 44-56; Cumming & McGrath, *supra* note 28, at 247-48; see also Hanson & Harris, *Dynamic Predictors*, *supra* note 26; Hanson & Harris, *Structured Approach*, *supra* note 26.

³⁰ Given the potential implications of such evaluations, as well as the specialized nature of sex offender management, the necessity of specialized training and experience for these clinicians cannot be overemphasized. In some states (e.g., Colorado, Illinois, Texas, Washington, and Wisconsin, among others), this has led to the establishment of formal criteria, guidelines, certification, or statutorily defined requirements for sex offender evaluators and service providers. See, e.g., ASS’N FOR THE TREATMENT OF SEXUAL ABUSERS, PRACTICE STANDARDS AND GUIDELINES FOR MEMBERS OF THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS (2001)

goals of these assessments include, but are not limited to, the identification of risk to the community, the degree of psychosexual disturbance, amenability to treatment, and the specific needs to be targeted in treatment. Psychosexual assessments are distinct from more traditional psychological evaluations, particularly given the use of offense-specific assessment tools to assess sexual attitudes, interests, arousal, and functioning. Further, psychosexual assessments may incorporate the use of psychophysiological measures (e.g., penile plethysmography, viewing time) to assess objectively the presence of deviant sexual arousal, preference, and interest. Specialized psychiatric evaluations may be warranted as well, to identify any co-occurring behavioral health needs (e.g., depression, anxiety, psychosis), paraphilic disorders, or other physiological or biological elements that may signal the need for pharmacological intervention.³¹

III. TREATMENT

Arguably a hallmark of most contemporary sex offender management strategies—and indeed critical to the comprehensive approach—is the provision of offense-specific treatment, which is distinct from more general behavioral health interventions or psychotherapy in a number of ways. Rather than the result of internal motivation, clients who present for sex offender treatment are largely non-voluntary and may only be seeking treatment due to legal requirements or external pressures. In addition, sex offense-specific treatment tends to be long-term and is designed to reflect lifelong behavior management; intervention goals exceed the specific interests and needs of the individual clients, and are instead developed within the context of community safety and with input from other professionals involved in the management process. As such, confidentiality is substantially limited, often requiring waivers to allow for the exchange of relevant treatment information with supervision officers and other stakeholders.

[hereinafter ATSA, PRACTICE STANDARDS]; Judith V. Becker & William D. Murphy, *What We Know and Do Not Know about Assessing and Treating Sex Offenders*, 4 PSYCHOL. PUB. POL'Y & L. 116, 121 (1998); Hoberman, *supra* note 25, at 11-30 to -50 (describing various protocols); Holmgren, *supra* note 15, at 37-13; CSOM, *Overview*, *supra* note 1, at 6.

³¹ See, e.g., Berlin, *supra* note 5; Don Grubin, *Complementing Relapse Prevention with Medical Intervention*, in REMAKING RELAPSE PREVENTION, *supra* note 5, at 201, 206-07; Don Grubin & David Thornton, *A National Program for the Assessment and Treatment of Sex Offenders in the English Prison System*, 21 CRIM. JUST. & BEHAVIOR 55-71 (1994); Martin P. Kafka & John Hennen, *A DSM-IV Axis I Comorbidity Study of Males (n=120) with Paraphilias and Paraphilia-Related Disorders*, 14 SEXUAL ABUSE: J. RES. & TREATMENT 349, 351 (2002).

While historical efforts to treat sex offenders were widely varied, sex offender treatment has been refined significantly over the past few decades, and has a generally accepted approach.³² At present, most sex offender treatment programs throughout the country employ cognitive-behavioral methods that include relapse prevention components.³³ Contemporary etiological theories suggest that sex offending behaviors are the result of a complex interaction of sociocultural, biological, and psychological processes.³⁴ As such, sex offender treatment is designed to be relatively comprehensive and holistic, with goals that generally include accepting responsibility for sex offending and other harmful behaviors; modifying cognitive distortions that support offending behaviors; managing negative mood or affect; developing positive relationship skills; managing deviant sexual arousal or interest; maintaining control over unhealthy impulses; enhancing empathy for victims; understanding the sequence of events and risk factors associated with offending; and developing effective coping skills to manage identified risk factors.

Given the diversity of sex offenders, however, a “one size fits all” approach is neither appropriate nor effective.³⁵ Treatment programs should target for intervention the specific needs and risk factors that are believed to be directly associated with sexual offending. By focusing on these specific elements, often referred to as dynamic risk factors or criminogenic needs, the likelihood of recidivism is expected to decrease. Perhaps most promising as targets of sex offender treatment are the more enduring or stable dynamic risk factors associated with sexual recidivism, including deviant sexual interest or arousal, pro-offending attitudes, victim empathy deficits, emotional self-regulation difficulties, intimacy deficits, negative social

³² See, e.g., Marshall & Laws, *supra* note 25. See generally REMAKING RELAPSE PREVENTION, *supra* note 5.

³³ Cognitive-behavioral approaches address the inter-relatedness of thoughts, emotions, and behaviors; a primary emphasis is to identify and replace irrational cognitions that set up negative emotional states and ultimately drive offending behaviors. Within the cognitive behavioral framework, relapse prevention refers to a self-management strategy whereby offenders learn to maintain behavioral change or control by identifying individual risk factors and developing effective coping responses. See ROBERT J. MCGRATH ET AL., CURRENT PRACTICES AND TRENDS IN SEXUAL ABUSER MANAGEMENT: THE SAFER SOCIETY 2002 NATIONWIDE SURVEY (2003) (showing statistics that reflect common national sex offender treatment practices).

³⁴ See, e.g., Becker & Murphy, *supra* note 30, at 120-21; Berlin, *supra* note 5; Marshall & Laws, *supra* note 25, at 101-02.

³⁵ Becker & Murphy, *supra* note 30, at 121; Marshall & Laws, *supra* note 25, at 103-06 (discussing the development of taxonomic systems to describe sex offenders); see also ATSA, PRACTICE STANDARDS, *supra* note 30, at 9-17 (describing protocols for making individualized evaluations); Gilligan & Talbot, *supra* note 1, at 2.

supports and influences, behavioral self-regulation difficulties, and treatment and supervision non-compliance. For some offenders, the inclusion of pharmacological agents may be necessary adjuncts to treatment, either to mitigate psychiatric symptoms that interfere with the ability of the offender to adequately engage in and respond to treatment, or to facilitate control over intense and recurrent sexual fantasies and urges, or both.³⁶

While the specific targets, or content, of offense-specific treatment are critical, the importance of process-related variables in sex offender treatment has been recognized in recent years as well. More specifically, it has been suggested that the historically confrontational and aggressive approaches may have negative therapeutic implications, and that programs can maximize impact by ensuring that therapists are genuine, empathic, respectful, and supportively challenging in the therapeutic process.³⁷ When

³⁶ Through the reduction of testosterone levels, antiandrogens tend to lessen sexual drive and sexual responsiveness, and may diminish fantasies among sex offenders. Similarly, the use of selective serotonin reuptake inhibitors ("SSRIs") may be particularly beneficial for reducing sexual preoccupation such as obsessive and/or compulsive deviant fantasies, urges, and behaviors. See, e.g., Berlin, *supra* note 5; John Bradford, *Medical Interventions in Sexual Deviance*, in *SEXUAL DEVIANCE: THEORY, ASSESSMENT, AND TREATMENT* 449, 453-54 (D. Richard Laws & William O'Donohue eds., 1997); John M.W. Bradford, *Organic Treatment for the Male Sexual Offender*, 528 *ANNALS N.Y. ACAD. SCI.* 193, 195-97 (1988) (discussing antiandrogens); John M.W. Bradford & David M. Greenberg, *Treatment of Adult Male Sexual Offenders in a Psychiatric Setting*, in *SOURCEBOOK OF TREATMENT PROGRAMS FOR SEXUAL OFFENDERS* 253-54 (William Lamont Marshall et al. eds., 1998) [hereinafter *SOURCEBOOK OF TREATMENT PROGRAMS*]; David M. Greenberg & John M.W. Bradford, *Treatment of the Paraphilic Disorders: A Review of the Role of the Selective Serotonin Reuptake Inhibitors*, 9 *SEXUAL ABUSE: J. RES. & TREATMENT* 349, 353-57 (1997); Grubin, *supra* note 31, at 208; Kafka & Hennen, *supra* note 31, at 364; Martin P. Kafka & Robert A. Prentky, *Preliminary Observations of DSM-III-R Axis I Comorbidity in Men with Paraphilias and Paraphilia-Related Disorders*, 55 *J. CLINICAL PSYCHOL.* 481, 485 (1994).

³⁷ See, e.g., Anthony Beech & Ann Scott Fordham, *Therapeutic Climate of Sexual Offender Treatment Programs*, 3 *SEXUAL ABUSE: J. RES. & TREATMENT* 219 (1997); Kurt M. Bumby et al., *A Theoretical Model of the Influences of Shame and Guilt on Sexual Offending*, in 3 *THE SEX OFFENDER*, *supra* note 15, at 5-1, 5-8 to -11; Yolanda M. Fernandez & Geris Serran, *Characteristics of an Effective Sex Offender Therapist*, in 4 *THE SEX OFFENDER: CURRENT TREATMENT MODALITIES AND SYSTEMS ISSUES* 9-1, 9-3 (Barbara Schwartz ed. 2002) [hereinafter 4 *THE SEX OFFENDER*]; Yolanda M. Fernandez & W.L. Marshall, *Contextual Issues in Relapse Prevention Treatment*, in *REMAKING RELAPSE WITH SEX OFFENDERS*, *supra* note 5, at 225, 232-34; Arthur Gordon & Gerald Hover, *The Twin Rivers Sex Offender Treatment Program*, in *SOURCEBOOK OF TREATMENT PROGRAMS*, *supra* note 36, at 3, 10; Jon Kear-Colwell & Philip Pollock, *Motivation or Confrontation: Which Approach to the Child Sex Offender?*, 24 *CRIM. JUST. & BEHAV.* 20 (1997); Ruth E. Mann & David Thornton, *The Evolution of a Multisite Sexual Offender Treatment Program*, in *SOURCEBOOK OF TREATMENT PROGRAMS*, *supra* note 36, at 47, 50-51; Janice K. Marques et al., *Preventing Relapse in Sex Offenders: What We Learned from SOTEP's Experimental Treatment Program*, in *REMAKING RELAPSE WITH SEX OFFENDERS*, *supra* note

programs enhance therapeutic engagement, offenders are more prone to remain committed and invested; successfully maintaining offenders in treatment is particularly critical, given the research that demonstrates lower recidivism rates for sex offenders who complete treatment in contrast to those who withdraw or are terminated unsuccessfully.³⁸

IV. REENTRY

The community reintegration of offenders has received increased attention in recent years at both a state and national level.³⁹ While a number of barriers have been identified regarding the transition of the general offender population from prison to community, the challenges associated with reentry appear more pronounced when sex offenders are released from institutional custody and return to communities. Included among these difficulties are the complex nature and dynamics associated with sex offending, inconsistent and uninformed system practices and policies, and negative community perceptions and responses. Given the profound impact of community reintegration failures—which translate into additional victims of sexual assault—the importance of responsible and effective approaches to sex offender reentry cannot be overemphasized. Maximizing the potential for successful reentry requires careful deliberation at both the institutional and community levels, and, perhaps most critically, the development and implementation of policies and strategies that *bridge* the institutional and community levels. As such, successful sex offender reentry is dependent upon collaboration within and across the entire system,

5, at 321, 326; William L. Marshall, *The Sex Offender: Monster, Victim, or Everyman?*, 8 SEXUAL ABUSE: J. RES. & TREATMENT 317, 324-26 (1996); Steven Sawyer, *Group Therapy with Adult Sex Offenders*, in 4 THE SEX OFFENDER, *supra*, at 14-1, 14-12 to -13.

³⁸ See, e.g., Dennis M. Doren, *The Use of Actuarial Risk Assessment*, in 4 THE SEX OFFENDER, *supra* note 37, at 6-1, 6-8; R. Karl Hanson et al., *First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders*, 14 SEXUAL ABUSE: J. RES. & TREATMENT 169, 181 (2002); R. Karl Hanson & Monique T. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOL. 348, 358 (1998); Marques et al., *supra* note 37, at 324; Janice K. Marques et al., *Effects of Cognitive-Behavioral Treatment on Sex Offender Recidivism: Preliminary Results of a Longitudinal Study*, 21 CRIM. JUST. & BEHAV. 28, 33 (1994); Robert McGrath et al., *Outcome of a Treatment Program for Adult Sex Offenders: From Prison to Community*, 18 J. INTERPERSONAL VIOLENCE 3, 10 (2003).

³⁹ For more thorough discussions pertaining to the reentry of criminal offenders, see PETERSILIA, *supra* note 21; JEREMY TRAVIS ET AL., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY (2001); and Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What Is Promising*, 49 CRIME & DELINQ. 360 (2003).

including correctional institutions, community supervision agencies, law enforcement, mental health and social service agencies, victims and victim advocates, employment and housing officials, and individuals who serve as members of offender support networks.⁴⁰

From an institutional perspective, key reentry considerations include the early identification and ongoing assessment of sex offenders at the point of intake and classification to inform comprehensive case management and release planning; indeed, planning for release should begin at the point of entry into the system in order to ensure that identified needs and anticipated barriers can be resolved prior to release.⁴¹ Furthermore, where possible, the provision of sex offender-specific treatment for incarcerated offenders may be beneficial, particularly in light of the research that suggests that sex offenders who do not receive treatment or fail to complete treatment are at greater risk for sexual recidivism.⁴² Acknowledging that the sex offense behaviors are but one aspect among a multitude of needs that warrant attention, rehabilitative services within institutions should reflect a holistic approach designed to promote overall wellness, productivity, and assimilation into the community, thus including services such as education, vocation, substance abuse, mental health, healthcare, and life skills.⁴³

⁴⁰ PETERSILIA, *supra* note 21, at 171-220; TRAVIS ET AL., *supra* note 39, at 46; *see also* ANNE SEYMOUR, THE VICTIM'S ROLE IN REENTRY 1-14 (2001); English et al., *Community Containment*, *supra* note 1, at 268; Green, *supra* note 23, at 21-1, 21-5; Melissa Hook & Anne Seymour, *Offender Reentry Requires Attention to Victim Safety*, 27 PERSP. 1 (2003); Janice K. Marques et al., *supra* note 37, at 338; Jeff Mellow & Lenny Ward, *Community Strategies for Successful Reentry*, 27 PERSP. 4, 26-28 (2003); Anita Schlank & Pam Bidelman, *Transition—Challenges for the Offender and the Community*, in 2 THE SEXUAL PREDATOR, *supra* note 25, at 10-1.

⁴¹ *See, e.g.*, PETERSILIA, *supra* note 21, at 230-31; Kit Glover & Kurt Bumby, *Reentry at the Point of Entry*, in JUVENILE JUSTICE TODAY: ESSAYS ON PROGRAMS AND POLICIES 39 (2002); Marques et al., *supra* note 37 (describing a California program aimed at early treatment); Schlank & Bidelman, *supra* note 40, at 10-1 to -2 (discussing the need for a gradual transition period).

⁴² *See supra* note 38 and accompanying text.

⁴³ *See infra* notes 51, 55. The importance of discretionary or conditional release policies must be underscored, as such release paradigms offer offenders an incentive to engage in rehabilitative efforts by promoting releases that are largely contingent upon commitment to self-improvement, risk reduction, and thoughtful release planning. Further, conditional or discretionary releases provide for requisite periods of community supervision and criminal justice system leverage that can effectuate offender accountability. *See, e.g.*, PEGGY P. BURKE, ABOLISHING PAROLE: WHY THE EMPEROR HAS NO CLOTHES 12 (1995); JAMES P. LYNCH & WILLIAM T. SABOL, PRISONER REENTRY IN PERSPECTIVE 12-14 (2001); PETERSILIA, *supra* note 21, at 17-18, 158-59; TRAVIS ET AL., *supra* note 39, at 14-16; Timothy A. Hughes et al., *Trends in State Parole: The More Things Change, the More They Stay the Same*, 26 PERSP. 3 (2002); Seiter &

To facilitate a more seamless transition from the institution to the community, formal release planning should begin several months in advance of presumptive or anticipated release. Important elements of release planning include reviewing overall institutional adjustment and participation and progress in rehabilitative services, assessing level of risk using static and dynamic factors, and the sharing of critical information and documentation through transition meetings that include stakeholders both in the institution and in the community.⁴⁴ Additionally, it is important that access to sex offender treatment and other necessary services in the community have been established prior to release, thus promoting continuity of care for offenders returning to the community.⁴⁵ For many sex offenders, issues pertaining to family reunification require careful consideration as part of release planning as well.⁴⁶ Finally, the assurance of victim sensitivity and involvement is particularly critical at this juncture.⁴⁷

Risk management during the transition and stabilization phase requires the need for stringent release conditions, sufficient periods of supervision to allow for support and monitoring of offenders' adjustment, and the ability of community supervision officers to respond in a timely manner to violations or high-risk behaviors.⁴⁸ In addition, the presence of prosocial influences, in the form of community support networks, serves as a critical protective factor for offenders at the time of release;⁴⁹ such individuals can assist with

Kadela, *supra* note 39, at 362-63.

⁴⁴ See *infra* note 55; see also CUMMING & BUELL, *supra* note 19, at 56-59; Cumming & McGrath, *supra* note 28, at 242-43; Green, *supra* note 23, at 21-1; Nancy Steele, *Aftercare Treatment Programs*, in 1 THE SEX OFFENDER, *supra* note 23, at 19-1, 19-3 to -4.

⁴⁵ See sources cited *supra* note 44. Continuity of care applies not only to the timing of services, but also involves consistency of philosophies and approaches between institutional and community-based treatment programs, such that community-based treatment is not unnecessarily duplicative, but instead complements and builds upon the services provided within the institution.

⁴⁶ Family reunification involving sex offenders, particularly those with child victims, is a complex and controversial issue; the best interests of the victim must remain paramount and take precedence over other interests. See, e.g., CUMMING & BUELL, *supra* note 19, at 97-100; Scott, *supra* note 27.

⁴⁷ Specific considerations for victims should include, but are not limited to, the following: notification about the anticipated releases, involvement in parole or release hearings, issuance of no-contact and other protective orders when desired or warranted, and the development of safety plans. See, e.g., SEYMOUR, *supra* note 40, at 15-33; Hook & Seymour, *supra* note 40; English et al., *Community Containment*, *supra* note 1, at 267-68.

⁴⁸ See generally CUMMING & BUELL, *supra* note 19; PETERSILIA, *supra* note 21; Cumming & McGrath, *supra* note 28; Gilligan & Talbot, *supra* note 1.

⁴⁹ CUMMING & BUELL, *supra* note 19, at 38-42; Cumming & McGrath, *supra* note 28, at 243; Gilligan & Talbot, *supra* note 1.

employment, housing, transportation, life skills, and maintaining a positive lifestyle.⁵⁰

Given the potential for victim access concerns and other unique risk factors for sex offenders, crucial areas requiring ongoing attention during the transition and stabilization phase—and that warrant careful consideration prior to release from institutional custody—involve securing suitable employment and housing.⁵¹ For offenders in general, the presence of a criminal record creates a barrier to obtaining employment and housing; the stigma and perceived liability concerns associated with sex offenders further exacerbates employment and housing challenges. Further impacting housing issues for sex offenders are the complexities of community notification, local ordinances and state and federal policy restrictions, resistant landlords, and organized community efforts to ban sex offenders from some neighborhoods.⁵²

The nature and number of barriers to successful reentry highlight the importance of fostering collaborative relationships with key individuals, organizations, and agencies in the community. Partnering with—and educating—the public can maximize the willingness and capacity of communities to provide and expand resources and supports for offenders released from prison.⁵³

⁵⁰ See *supra* note 46. To be considered as an appropriate member of a community support network, such individuals must demonstrate an understanding of the offender's history, specific risk factors, relapse prevention plan, and ongoing needs, and must be committed to working collaboratively with the supervision officer and other professionals to manage the offender's risk.

⁵¹ Unstable employment has been identified consistently as a risk factor for general criminal recidivism. See, e.g., PETERSILIA, *supra* note 21, at 112; TRAVIS ET AL., *supra* note 39, at 31-36. In addition, unstable employment is considered a risk factor for sex offenders. See, e.g., R. KARL HANSON & ANDREW HARRIS, DYNAMIC PREDICTORS OF SEXUAL RECIDIVISM 18 (1998); Candace Kruttschnitt et al., *Predictors of Desistence Among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUSTICE Q. 61 (2000); see also Cumming & McGrath, *supra* note 28, at 239 (noting that supervising officers should assist in job training and employment); CSOM, *Time to Work: Managing the Employment of Sex Offenders under Community Supervision* 1 (Jan. 2002) [hereinafter CSOM, *Time to Work*], available at <http://www.csom.org/pubs/timetowork.pdf> (last visited July 7, 2004).

⁵² See PETERSILIA, *supra* note 21, at 120-23; Green, *supra* note 23, at 21-7; Marques et al., *supra* note 37, at 338; John Pratt, *Sex Crimes and the New Punitiveness*, 18 BEHAV. SCI. & L. 135 (2000); Schlank & Bidelman, *supra* note 40, at 10-3; Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?*, 18 BEHAV. SCI. & L. 375 (2000); CSOM, *Public Opinion*, *supra* note 1; CSOM, *Time to Work*, *supra* note 51.

⁵³ See, e.g., PETERSILIA, *supra* note 21, 199-202; William C. Greer, *Aftercare: Community Reintegration Following Institutional Treatment*, in JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES, AND CORRECTION 417, 427 (Gail Ryan & Sandy Lane eds., new & rev. ed. 1997); Schlank & Bidelman, *supra* note 40, at 10-6; CSOM,

V. COMMUNITY SUPERVISION

The supervision strategies and conditions designed for general criminal offenders may be insufficient in nature and scope to adequately address the unique risk and needs posed by sex offenders.⁵⁴ Therefore, the development of specialized conditions of supervision for sex offenders as a means of effectuating offender accountability and community safety have become commonplace.⁵⁵ Additionally, in order to manage sex offender caseloads more efficiently and effectively, supervision agencies in jurisdictions throughout the country have created specialization among supervision officers, either by establishing sex offender supervision units within existing agency structures or by designating specific supervision officers to manage such cases.⁵⁶

Regardless of whether specialized units or specialized caseloads have been established, it is essential that all supervision officers who are responsible for supervising sex offenders receive training regarding a variety of topics related to sex offender management.⁵⁷ Beyond equipping criminal justice professionals with the necessary skills and expertise, specialized training provides a common language by which supervision officers, treatment providers, and other stakeholders can communicate about critical sex offender management issues.⁵⁸

The development and implementation of individualized supervision case plans provide the basis for effective community

Public Opinion, *supra* note 1 (discussing the importance of public support for sex offender management programs).

⁵⁴ CUMMING & BUELL, *supra* note 19, at 33; MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 1.3; PETERSILIA, *supra* note 21, at 129; Gilligan & Talbot, *supra* note 1.

⁵⁵ Examples of specialized conditions or restrictions for sex offenders include the following: waiving confidentiality between the supervision officer, treatment provider, and others; prohibiting contact with victims; prohibiting or limiting contact with minors; submitting to polygraph examinations (where appropriate); participating in sex offender-specific treatment; prohibiting the possession or use of pornography; limiting access to the Internet; prohibiting alcohol consumption; establishing employment and residence that limits access to potential victims; and restricting movement within and outside of the community.

⁵⁶ See, e.g., PETERSILIA, *supra* note 21, at 83-84; Cumming & McGrath, *supra* note 28, at 238; English et al., *Community Containment*, *supra* note 1, at 266; Green, *supra* note 23, at 21-5 to -6; Sam Olsen et al., *Starting a Sex Offender Program: Reports from Three Communities*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 7.1-.13; Scott, *supra* note 27, at 16.4-.5; Gilligan & Talbot, *supra* note 1, at 9.

⁵⁷ See Cumming & McGrath, *supra* note 28, at 238; English, *The Containment Approach*, *supra* note 1, at 223, 232; Green, *supra* note 23, at 21-5; Scott, *supra* note 27; CSOM, *Overview*, *supra* note 1, at 6; Gilligan & Talbot, *supra* note 1, at 9.

⁵⁸ Cumming & McGrath, *supra* note 28, at 238; English, *The Containment Approach*, *supra* note 1, at 223; Scott, *supra* note 29, at 16.5.

supervision; however, to be maximally useful and responsive, such case plans must be viewed as fluid documents that are modified routinely following changes in offenders' circumstances, needs, and risk level.⁵⁹ Therefore, in order to ensure the relevance of ongoing risk management strategies, it is critical that community supervision officers identify and monitor the dynamic risk factors associated with increased recidivism—in particular, issues of supervision non-compliance, negative mood, victim access, and overall appearance.⁶⁰

Additional promising sex offender supervision strategies include increased field contacts,⁶¹ reliance on community support networks,⁶² utilization of specialized surveillance officers,⁶³ and the adjunctive use of technology such as the polygraph.⁶⁴ In the most ideal

⁵⁹ See, e.g., Cumming & McGrath, *supra* note 28 (describing the evolution of Vermont's relapse prevention model).

⁶⁰ Such an approach is based on the premise that level of risk can in fact change as a result of intervention, and consequently, that such changes result in reductions in recidivism. See, e.g., Anthony Beech et al., *The Relationship Between Static and Dynamic Risk Factors and Reconviction in a Sample of U.K. Child Abusers*, 14 SEXUAL ABUSE: J. RES. & TREATMENT 155 (2002) (discussing risk assessment factors for measuring sex offenders' responses to treatment); Rebecca J. Dempster & Stephen D. Hart, *The Relative Utility of Fixed and Variable Risk Factors in Discriminating Sexual Recidivists and Nonrecidivists*, 14 SEXUAL ABUSE: J. RES. & TREATMENT 121 (2002) (same); Doren, *supra* note 38, at 6-8; Hanson & Harris, *Structured Approach*, *supra* note 26, at 106; Hanson & Harris, *Dynamic Predictors*, *supra* note 26, at 7; Marques et al., *supra* note 37, at 324; David Thornton, *Constructing and Testing a Framework for Dynamic Risk Assessment*, 14 SEXUAL ABUSE: J. RES. & TREATMENT 139, 139-44 (2002); CSOM, *Overview*, *supra* note 1, at 5.

⁶¹ Exposure to potential risks in a variety of settings is an ongoing management issue requiring vigilance on the part of supervision officers with respect to monitoring the day-to-day activities, behaviors, and community adjustment of sex offenders. See Cumming & McGrath, *supra* note 28, at 246 (stressing the necessity for supervisory officers to monitor the released offender carefully); Scott, *supra* note 27, at 16.4.

⁶² Information from reliable collateral contacts can offer support for or refute the veracity of offenders' reports and can provide insight into the actual day-to-day activities, attitudes, and adjustment of the offenders. See Scott, *supra* note 27.

⁶³ *Id.*; see also Jim Pettett & Debbie Weirman, *Monitoring with Surveillance Officers*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 11.1-11. Through intensive field work, surveillance officers can provide routine monitoring of sex offenders' activities and adherence to case plans and specialized conditions, subsequently increasing the amount of time that assigned supervision officers can dedicate to other critical case management responsibilities and collaborative activities.

⁶⁴ As one component of an overall sex offender management strategy, the polygraph is used to assess supervision and treatment compliance, and to facilitate disclosure. See, e.g., Sean Ahlmeyer et al., *The Impact of Polygraphy on Admissions of Victims and Offenses in Adult Sexual Offenders*, 12 SEXUAL ABUSE: J. RES. & TREATMENT 123 (2000); Gerry D. Blasingame, *Suggested Clinical Uses of Polygraphy in Community-Based Sexual Offender Treatment Programs*, 10 SEXUAL ABUSE: J. RES. & TREATMENT 37, 37-38 (1998); Cumming & McGrath, *supra* note 28, at 241; English, *The Containment Approach*, *supra* note 1, at 228-30; English et al., *Community Containment*, *supra* note 1,

circumstances, the combination of close monitoring and surveillance of offenders, intensive field contacts, collaboration between sex offender management professionals, and active community supports will lead to proactive risk management. Inevitably, however, supervision officers and others involved in the sex offender management process will encounter situations involving high-risk behaviors, violations of supervision conditions, or non-compliance with treatment expectations. When such violations occur, it is preferable that supervision officers utilize a range of pre-revocation interventions, responses, or graduated sanctions,⁶⁵ although in some circumstances (e.g., repeated non-compliance, very high risk activities, new criminal behavior) an immediate and severe response may be required in order to ensure victim and community safety, including potential revocation of community supervision and subsequent incarceration.⁶⁶

VI. REGISTRATION AND COMMUNITY NOTIFICATION

In recent years, there has been an unprecedented level of legislative activity specific to sex offenders, with the enactment of a variety of statutes designed to hold sex offenders accountable and ensure protection of the public.⁶⁷ Sparked by the Congressional enactment of the Jacob Wetterling Crimes Against Children and

at 273-75; Peggy Heil et al., *Crossover Sexual Offenses*, 15 SEXUAL ABUSE: J. RES. & TREATMENT 221, 223-24 (2003); Michael A. O'Connell, *Polygraphy: Assessment and Community Monitoring*, in REMAKING RELAPSE PREVENTION, *supra* note 5, at 285, 290-91; Suzanne Pullen et al., *Using the Polygraph*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 15.1-15; Scott, *supra* note 27.

⁶⁵ This may include imposing additional restrictions or special conditions, increasing the frequency of office visits and other contacts, restricting or electronically monitoring offender movement, or addressing the issue(s) within the context of treatment. RESPONDING TO PAROLE AND PROBATION VIOLATIONS: A HANDBOOK TO GUIDE LOCAL POLICY DEVELOPMENT chs. 6-7 (Madeline Carter ed., 2001).

⁶⁶ Among other factors, decisions about the nature and level of response to violation behaviors should in part be driven by the seriousness of the behavior, risk level of the offender, degree to which community safety was jeopardized, level of responsibility assumed by the offender, and ability and willingness of the offender to develop and adhere to a realistic plan to address the behavior. See, e.g., CUMMING & BUELL, *supra* note 19, at 49-52; Cumming & McGrath, *supra* note 28; English, *The Containment Approach*, *supra* note 1, at 225-26; English et al., *Community Containment*, *supra* note 1, at 271; Linda Jones et al., *Summary of the National Telephone Survey of Probation and Parole Supervisors*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 3.1, 3.7-8.

⁶⁷ See generally SCOTT MATSON & ROXANNE LIEB, MEGAN'S LAW: A REVIEW OF STATE AND FEDERAL LEGISLATION (Washington State Institute for Public Policy 1997); PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1; Levesque, *supra* note 15; Pratt, *supra* note 52.

Sexually Violent Offender Registration Act in 1994,⁶⁸ the widespread passage of sex offender registration laws in all states requires offenders to provide identifying information to law enforcement agencies for maintenance in a centralized repository. As one component of the comprehensive approach to sex offender management, it has been argued that such registries have the potential to enhance community safety, as offenders will be more easily tracked and monitored by criminal justice agencies.⁶⁹ Furthermore, as these registries contain identifying information and offense summary data about sex offenders residing in a particular jurisdiction, the investigation of sex crimes can be facilitated and enhanced; law enforcement officials and other criminal justice agents can utilize the registry data to narrow the focus of investigations, compare forensic evidence, and identify potential suspects with similar crime patterns. Finally, it is suggested that placement of an offender's name on a law enforcement registry will provide an additional deterrent to engaging in further criminal activity, due to the increased visibility and scrutiny by the criminal justice system and the public at large.⁷⁰

Community notification laws were established in response to heightened concerns about the unknown presence of convicted sex offenders in local communities, and, as such, were designed to guide public access to—or dissemination of—information about registered sex offenders.⁷¹ A primary goal of community notification is to

⁶⁸ Under the Wetterling Act, in order to maintain federal funding at existing levels to support state and local law enforcement, all states were required to create registries for offenders convicted of sexually violent offenses or crimes against children. Three subsequent amendments to the Wetterling Act have been enacted, requiring states to release registration information to the public, affording discretion to states with respect to the determination and process for releasing registry information, requiring heightened registration expectations for specific classes of sex offenders, and expanding the population of registerable offenders. See MATSON & LIEB, *supra* note 67; Pratt, *supra* note 52, at 143-44; CSOM, *Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches, and Management Practices* (1999) [hereinafter CSOM, *Understanding Juvenile Sexual Behavior*], available at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited July 7, 2004).

⁶⁹ See, e.g., MATSON & LIEB, *supra* note 67, at 3-4; Suzanne Pullen & Kim English, *Law Enforcement Registration and Community Notification*, in MANAGING ADULT SEX OFFENDERS, *supra* note 1, at 5.1; Bruce J. Winick, *A Therapeutic Jurisprudence Analysis of Sex Offender Registration and Community Notification Laws*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS, *supra* note 1, at 213, 216-17; CSOM, *Understanding Juvenile Sexual Behavior*, *supra* note 68.

⁷⁰ Wayne A. Logan, *Sex Offender Registration and Community Notification: Emerging Legal and Research Issues*, ANNALS N.Y. ACAD. SCI. 989, 337-351 (2003).

⁷¹ Following the passage of Megan's Law at the federal level in 1996, all states were, in essence, required to release information to the public about convicted sex offenders when necessary to protect community safety. See MATSON & LIEB, *supra*

enhance community safety through increasing the visibility of sex offenders and encouraging community members to take protective safety measures.⁷² While all states have provisions that authorize the public release of specific information about registered sex offenders, differences exist with respect to the manner by which such notification occurs.⁷³ The first category, broad notification, describes the active disclosure of specific information about registered sex offenders. In some states, broad notification applies to all sex offenders, although in most jurisdictions that utilize a broad community notification approach, information is only provided to the community for a subset of sex offenders. The second approach is more limited and discretionary in scope than the broad notification practice, in that the active dissemination of information is restricted to those individuals or organizations with increased vulnerability to specific offenders or classes of offenders, with law enforcement officials often having the discretion about whom should receive such information and which offenders are subject to community notification.⁷⁴ While concerns have been raised with respect to potential negative implications of certain community notification practices,⁷⁵ it has been suggested that community notification can be implemented effectively within the context of multidisciplinary

note 67, at 3-4.

⁷² See, e.g., Lucy Berliner, *Community Notification: Neither a Panacea Nor a Calamity*, 8 SEXUAL ABUSE: J. RES. & TREATMENT 101, 101-03 (1996); CSOM, *An Overview of Sex Offender Community Notification Practices: Policy Implications and Promising Approaches 2* (1997) [hereinafter CSOM, *An Overview of Sex Offender Community Notification Practices*], available at <http://www.csom.org/pubs/notify.pdf> (last visited July 7, 2004); CSOM, *Community Notification and Education* (2001) [hereinafter CSOM, *Community Notification and Education*], available at <http://www.csom.org/pubs/notedu.pdf> (last visited July 7, 2004). See generally MATSON & LIEB, *supra* note 67.

⁷³ MATSON & LIEB, *supra* note 67; CSOM, *An Overview of Sex Offender Community Notification Practices*, *supra* note 72; CSOM, *Community Notification and Education*, *supra* note 72.

⁷⁴ See sources cited *supra* note 73.

⁷⁵ It has been suggested that certain community notification practices may produce unintended negative consequences for offenders and their families, including additional stigmatization, harassment, and ostracizing of offenders; inability to obtain employment; inability to secure suitable housing; disruption to family members and other personal relationships; and negative impact on victims. See, e.g., MATSON & LIEB, *supra* note 67, at 19-20; R.E. Freeman-Longo, *Prevention or Problem*, 8 SEXUAL ABUSE: J. RES. & TREATMENT 91 (1996); Pratt, *supra* note 52; Simon, *supra* note 21, at 307-11 (describing the "populist punitiveness" of Megan's Law); Elizabeth Rahmberg Walsh, *Megan's Laws—Sex Offender Registration and Notification Statutes and Constitutional Challenges*, in 2 THE SEX OFFENDER, *supra* note 27, at 24-1; Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Examining the Importance of Neighborhood Meetings*, 18 BEHAV. SCI. & L. 393, 404, 405 (2000); Zevitz & Farkas, *supra* note 52; CSOM, *Community Notification and Education*, *supra* note 72.

planning, as part of a broader sex offender management strategy.⁷⁶

VII. CONCLUSION

Addressing the unique, complex and multifaceted challenges associated with the management of sex offenders necessitates a comprehensive and integrated strategy. The comprehensive approach to sex offender management addresses both the principles and the interrelatedness of the activities of sex offender management. While it is critical that those responsible for the management of sex offenders—whether law enforcement officials, prosecutors, judges, treatment providers, community supervision officers, or others—assure that their approaches reflect best practice in their specific domain of offender management, singular efforts focused narrowly on only one or a few components of sex offender management have limited potential at best. To maximize the potential for victim and community safety, policymakers and practitioners must assure that their system of sex offender management is both comprehensive—spanning the full range of activities described—and systemic in design. Such a system should be guided by core philosophies that serve as a foundation for practice. Equally important, each component of the sex offender management strategy—investigation, prosecution, disposition, assessment, treatment, reentry, supervision, registration and notification—must be built upon empirical knowledge and emerging practice. These core philosophies and best practice efforts will be most effective when they are based upon a commitment by all stakeholders to a shared goal—community safety—and an agreed upon approach to its achievement. Such an approach holds the greatest promise for community safety.

⁷⁶ Lucy Berliner, *Victim and Citizen Perspectives on Sexual Offender Policy*, 989 ANNALS N.Y. ACAD. SCI. 464 (2003); CSOM, *An Overview of Sex Offender Community Notification Practices*, supra note 72; CSOM, *Community Notification and Education*, supra note 72.