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Civil Commitment: One Approach for the Management of Individuals Who Have Sexually Abused

2020

Literature Review and Policy Recommendations

Association for the Treatment of Sexual Abusers

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The Association for the Treatment of Sexual Abusers (ATSA) is an international, multi-disciplinary non-profit association of more than 3,000 professionals dedicated to preventing sexual abuse. ATSA promotes sound research, evidence-based and effective practice, informed public policy, and comprehensive prevention strategies that lead to the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse.

ATSA's members include leading researchers in the study of sexual violence; practitioners who evaluate and treat individuals adjudicated or convicted of sexual crimes and those at risk of offending; law enforcement and corrections officials; victim advocates; prosecutors, public defenders, and members of the judiciary; and other individuals who seek to end sexual abuse.

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INTRODUCTION

PURPOSE OF THIS PAPER

Sexual abuse is a public health issue. It is a pervasive yet preventable worldwide problem that impacts everyone – individuals, communities, institutions, and society as a whole. The dynamics that drive sexual offending are complex and multifaceted. Individuals convicted of sexual crimes are extremely diverse in terms of the frequency, types of offenses, reasons for, and future propensity of sexually abusive behavior. Because the majority of individuals convicted of sexual crimes eventually return to our communities, effective treatment and management are essential for preventing further abuse. Research consistently demonstrates that "one size fits all" approaches are not effective (Catalano, 2006; Black et al., 2011; Hanson et al., 2004; Hanson et al., 2009; Harris & Hanson, 2004; Hanson et al., 2014; Snyder, 2000). Evidence suggests that the most effective practices are based on a continuum of services available at a range of service level intensity, both community-based and within secure settings, and applied based on the individual's identified areas of risk and need in a manner that engages the individual by considering their individual characteristics (Andrews & Bonta, 2010a).

Sexual offender civil commitment (SOCC) laws permit the involuntary confinement of individuals with mental conditions and an exceptional risk to sexually recidivate. Similar to other mental health civil commitments, SOCC statutes are premised on the idea that the state must act with authority to protect citizens whose mental health condition is such that it places them or others at risk for harm. Civil commitment is a legal mechanism that may be one component of a comprehensive continuum of responses to sexual offending, which is reserved for individuals with exceptional risk and treatment needs. The U.S. Supreme court has clarified that the constitutionality of SOCC statutes rests on a treatment focus, non-punitive nature, strict procedural safeguards, and immediate release upon sufficient change in dangerousness (Kansas v. Hendricks, 521 U.S., 346, 1997; Kansas v. Crane, 534 U.S. 407, 2002).

In order to provide a review of civil commitment, the Sex Offender Civil Commitment Programs Network (SOCCPN) and the Association for the Treatment of Sexual Abusers (ATSA) co-published evidence-based documents in 2015 and have again joined in a collaborative effort to educate professionals, policy makers and communities about civil commitment in this 2020 update. The purpose of this document is to provide an overview of civil commitment and the role civil commitment may play for individuals convicted of sexual crimes within the broader

continuum of sexual-offense-specific management and treatment. **By imparting this information, neither ATSA nor SOCCPN is taking a position for or against the existence of SOCC.**

WHO IS ATSA?

The Association for the Treatment of Sexual Abusers (ATSA) is a non-profit, international, multi-disciplinary association of more than 3,000 professionals dedicated to the research and prevention of sexual abuse internationally. ATSA's members include leading researchers in the study of sexual violence, as well as practitioners who evaluate and treat individuals adjudicated or convicted of sexual crimes and those at risk of offending; law enforcement and corrections officials; victim advocates; prosecutors, public defenders, and members of the judiciary; and other individuals who seek to end sexual abuse. ATSA advocates for sound research, effective practice, informed policy, and comprehensive prevention programs to protect the public from sexual assault, while supporting the rehabilitation of individuals who have perpetrated harmful sexual behaviors.

CIVIL COMMITMENT

WHAT IS CIVIL COMMITMENT?

Sexual offender civil commitment laws, sometimes also referred to as Sexually Violent Predator (SVP) or Sexually Dangerous Person (SDP) statutes, provide for the involuntary commitment of individuals assessed with mental conditions and an exceptional risk to sexually recidivate. "Sexual Psychopath" laws were initially enacted in the 1930s and 1940s to allow for the prolonged commitment of sexually violent offenders for the purposes of treatment. The Sexual Psychopath laws provided the courts with an option of ordering treatment in a secure treatment program as an alternative to incarceration. In contrast, contemporary civil commitment laws provide for the involuntary commitment of individuals post-criminal sentence. After serving criminal sentences, individuals are civilly committed for an indeterminate period and not released until a court determines they have satisfied the criteria for a reduction in custody or release from the commitment.

There currently are 21 jurisdictions (20 states, plus the federal government) that have enacted laws permitting the civil commitment of sexually offending individuals with mental conditions and an exceptional risk to recidivate. According to a recent survey of civil commitment programs conducted by the Sex Offender Civil Commitment Programs Network (SOCCPN) and supplemented by data gathered by this paper's authors, there were approximately 5,362 individuals civilly committed pursuant to sexual offender civil commitment (SOCC) statutes in 2020 (Herbert et al., 2020). The SOCC population is predominantly comprised of adult males.

The State of Washington was the first to enact a civil commitment law for sexually offending individuals in 1990. Thereafter, similar laws were enacted in Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, and Wisconsin. Although state-to-state variation exists in the exact language of these laws, the criteria for commitment commonly require that the individual suffer from a mental condition, have a history of engaging in sexual offenses, and have a mental condition that creates an elevated probability for committing future acts of sexual violence. Although the vast majority of civilly committed individuals come from the adult correctional system, approximately half of the jurisdictions listed above allow for the civil commitment of adults who committed their offense behavior solely as a juvenile. In addition, the

Pennsylvania law is unique in that it applies only to youth adjudicated for a sexual offense who are "aging out" of the juvenile justice system. Furthermore, the majority of states with SOCC laws allow for the commitment of females, but only a few females have been committed to date.

Compared to other psychiatric civil and criminal commitments (e.g., danger to self or other, mentally ill offenders, not guilty by reason of insanity, and incompetent to stand trial), individuals subject to sexual offender civil commitment laws are more often primarily diagnosed with a paraphilic disorder rather than a non-sexual, major mental health disorder (such as a psychotic disorder or mood disorder). Personality disorders also are common.

Paraphilic disorders are a class of mental disorders defined by a persistent and atypical sexual interest and/or behavior that causes distress or dysfunction to a person. According to civil commitment program information, individuals subject to sexual offender civil commitment are typically diagnosed with conditions involving atypical sexual attraction to either certain groups of people (e.g., pre-pubescent or pubescent children) or activities (e.g., coercive or brutal sexual acts), and have acted on those interests. A significant portion also are diagnosed with personality disorders, and several states allow civil commitment for those who primarily suffer from a personality disorder.

The overwhelming majority of individuals who have committed a sexual offense do not meet the criteria for civil commitment, as this is an intervention reserved for those sexually offending individuals who present the highest level of risk. For example, in California, individuals considered to be sexually violent predators represent less than 1% of all individuals registered for sexual offenses (D'Orazio et al., 2019). In addition to having a mental condition (i.e., a diagnosed mental disorder), the individual must be assessed to pose a significant likelihood to reoffend because of that disorder. Each separate jurisdiction defines the threshold of "likelihood to reoffend," but most indicate the individual must be "likely" or "more likely than not" to reoffend.

To determine whether an individual meets the criteria for sexual civil commitment, individuals are evaluated by a mental health professional (or multiple professionals) and, if found to meet criteria, the individual is referred to the prosecuting authority for filing of the civil commitment petition. In several states, commitment is a two-step process involving a lower threshold of proof (e.g., probable cause for commitment) resulting in detainment followed by full commitment proceedings (e.g., beyond a reasonable doubt). The individual may agree to the commitment or stand trial for commitment. Depending on the jurisdiction, the trial may be by a jury or judge.

After an individual is committed, most SOCC programs provide for an automatic review of the need for continued commitment annually or biannually, while some jurisdictions require individuals to affirmatively petition the courts for such a review after a specified period of time. Most SOCC programs provide for a graduated release of committed individuals through a less restrictive alternative to inpatient commitment, often called a "conditional release program," or "provisional discharge." These programs allow individuals the opportunity to work, live, and receive treatment in the community while participating in strict programming that provides structure, monitoring, and supervision. Once granted a conditional release, individuals remain under the jurisdiction of the court and are reviewed annually until the court decides they have satisfied the criteria for release from commitment. At that point, the individual is unconditionally discharged from civil commitment. The individual does, however, remain subject to any existing legislation regarding individuals convicted of sexual crimes such as registration, residence restrictions, and/or other local ordinances, and in some jurisdictions there are special provisions in these areas for those who have ever been subject to SOCC (e.g., in California there is automatic lifetime registration for SVP individuals).

The civil commitment of individuals who have committed sexual offenses is a complex process. It is a process that has evolved over the years through legislative changes designed to keep the public safe from individuals who have engaged in serious and persistent sexual offenses. Although each jurisdiction may have some variation on the legal requirements for commitment, they are all similar in intention – to provide treatment to sexually offending individuals likely to reoffend due to mental conditions.

EVIDENCE-BASED PRACTICES

The causes and conditions that create sexual offending are complex and multifaceted. There also is no specific "profile" or "type" due to the variety of individual differences among these individuals. Because of these complexities, responding effectively to sexual abuse requires the involvement of a wide range of disciplines and agencies, as well as adherence to evidenced-based practices.

Effective and evidenced-based practices are grounded within the Risk-Need-Responsivity (RNR) principles of offender rehabilitation, which provide guidance concerning how much service, what types of interventions, and how services should be delivered to offending individuals. In brief, the Risk principle indicates that the intensity of services should be determined by the risk level of the individual, with higher risk individuals receiving more intensive services than lower risk

individuals. The Need principle maintains that interventions should target criminogenic needs (i.e., the factors that predispose an individual to sexual offending) associated with recidivism risk. The Responsivity principle states that interventions should be provided in a manner that incorporates the individual's unique characteristics such as learning style, level of motivation, and other individual factors that may impact delivery of services, so as to maximize their treatment response.

Risk assessment is an integral aspect of the RNR principles. Two of these principles, the Risk principle and the Need principle, require the use of empirically validated risk assessment tools. Risk assessment is one of the most important and most frequent tasks required of those working with individuals convicted of sexual crimes. Risk assessment provides guidance for level of supervision, intensity of services, and measuring changes in risk over time, as well as assisting management professionals in individualizing interventions. Research indicates that interventions for general offenders that adhere to the RNR principles are associated with significant reductions in recidivism, whereas interventions that fail to follow the RNR principles yield minimal reductions in recidivism and, in some cases, even result in increased recidivism (Andrews & Bonta, 2010a, 2010b). The RNR principles also are applicable for individuals convicted of sexual crimes, and sexual-offense-specific treatment that adheres to the RNR principles has been shown to be the most effective at reducing recidivism risk (Hanson et al., 2009).

A comprehensive approach to the management of individuals who have sexually abused is grounded on the RNR principles. There are five additional best practice components of systems that provide sexual offense interventions – victim centeredness, specialized knowledge/training, public education, monitoring and evaluation, and collaboration (CSOM, 2008). These five best practices underlay the range of interventions beginning with investigations, prosecutions, and dispositions, to assessment, supervision, treatment, reentry, and other forms of external management strategies, which could include registration/notification, incarceration, and civil commitment.

Applying RNR to civil commitment programs means accurately identifying individuals who present exceptional risk, providing prompt and adequate interventions to address the conditions that led to civil commitment, and providing prompt release from commitment when sufficient change is shown. Treatment should address the exceptional risk deemed present, and the factors underlying this risk including, but not limited to, the predisposing mental disorders. Interventions must be delivered in a manner that maximizes treatment response, which can be especially difficult considering the potentially indefinite nature of the commitment and the effect upon participants' sense of autonomy, dignity, locus of control, and

hope for the future. The provision of a positive, engaging therapeutic environment that provides interventions that residents see as responsive to their needs improves outcomes. The dosage and intensity of interventions should be responsive to shifts in risk. For example, less restrictive alternatives to full detainment should be applied when risk is sufficiently managed. Continuity of care is essential for successful outcomes.

The degree to which SOCC laws result in less recidivism compared to other interventions is largely unknown. Research is needed on representative samples of individuals released from civil commitment and those with comparable risk who were not civilly committed. Most states with SOCC laws do not routinely collect recidivism information. Some (e.g., Washington, New York, New Jersey, Virginia, California, and Texas) have published government or other non-peer reviewed publications on recidivism. Florida has published peer-reviewed data (DeClue & Rice, 2016; Wilson et al., 2012), and a study from Minnesota has used a statistical model to estimate recidivism rates (Duwe, 2013). Recidivism rates from a sample of high-risk individuals screened for civil commitment, but ultimately not committed and released without supervision, have been examined as well (Boccaccini et al., 2009). Recidivism rates of those who have been civilly committed differ widely from state to state, due to methodological differences in recidivism definition and sources, follow-up time, sample characteristics, and size, thus making comparisons not possible.

CONTINUUM OF SEXUAL-OFFENSE-SPECIFIC MANAGEMENT AND TREATMENT

SOCC is but one component of a full spectrum of interventions with sexually offending individuals that should be considered only for those presenting exceptional risk and after other less restrictive interventions have been applied. The following provides an overview of the interventions used in the overarching approach to the management and treatment of individuals who have engaged in sexually abusive behaviors.

MANDATED COMMUNITY-BASED SUPERVISION AND TREATMENT

Effective community-based supervision and treatment strategies are imperative for the prevention of sexual re-offense. Community supervision (i.e., parole, probation, and conditional release) provides accountability for offending individuals who are in the community. It is applied as an alternative to incarceration or post-incarceration to assist recently incarcerated individuals transitioning back into the community. It includes structure, support, treatment interventions, and case management.

Effective community supervision includes treatment and other collaborative partners, such as community support persons, victim advocates, and other involved professionals. A coordinated system for the management of individuals convicted of sexual crimes can enhance the safety of the community by facilitating successful offender reintegration, creating behavioral change, and preventing future sexual and non-sexual criminal behavior.

Sexual-offense-specific treatment is an essential component of community-based supervision and treatment that targets the individual causes and conditions related to the perpetration of sexually abusive behavior. Treatment methods focus on assisting individuals convicted of sexually abusive behavior to identify and change the internal and external factors that contribute to sexual offending; develop strategies to avoid, control, or productively address risk factors before re-offense may occur; and develop strengths, resiliencies, and competencies to live healthy lives. Treatment programs should follow the RNR principles to maximally reduce rates of sexual recidivism. Programs that do not follow RNR principles do not reduce recidivism and sometimes make participants more likely to reoffend than providing no treatment at all (Hanson et al., 2009). Community-based supervision and treatment should be applied until risk is sufficiently managed.

INSTITUTIONAL-BASED SUPERVISION AND TREATMENT

Institutional-based programs should be applied for moderate and higher risk offending individuals whose risk cannot be managed in a community setting. Effective treatment programs within prison, civil commitment, and other locked settings should be grounded on the RNR principles; utilize empirically validated risk assessment instruments, measures, and methods; employ treatment methodologies based in research and reflective of best practice standards and guidelines; and incorporate meaningful measurement of changes in risk over time.

Incarceration is one possible consequence for individuals convicted of sexual crimes, although not everyone convicted of sexual crimes receives a prison sentence and the length of prison sentences vary. Incarceration is often applied by the criminal justice system for punitive purposes. When it is applied for the purpose of preventing future offending, sentence length should correspond to risk level. Lengthy institutionalization of lower risk offending individuals is not necessary and can exacerbate risk. Some individuals convicted of sexual crimes under community supervision may exhibit increased risk, necessitating an increase in risk management from community-based supervision to incarceration.

While prison serves a community safety purpose due to removing individuals who have sexually offended from the community, this protection only lasts as long as the length of incarceration. Research has demonstrated that punishment in and of itself

does not deter future sexual reoffending, while effective interventions can reduce reoffense rates (Nagin, 2013; Smith et al., 2002). Therefore, it is important that sexual-offense-specific treatment is available during incarceration for individuals convicted of sexual crimes. Additionally, consideration for release on parole or other reductions in intensity of services should use information from treatment, particularly validated measures demonstrating risk reductions and treatment gains. Finally, transitional services are an important component for maintaining community safety, as research has demonstrated that prison-based treatment in conjunction with community-based reentry services reduces the risk for future sexual reoffending (Lowden et al., 2003). These transitional services should include, at a minimum, community-based supervision, additional therapeutic support, and community reintegration services.

IMPORTANCE OF REENTRY SERVICES

As noted above, it is important that reentry services be available as part of a comprehensive approach to sexual-offense-specific management and treatment. These can include professional supports, community reintegration resources, and referral services that are not necessarily a component of mandated community supervision and treatment. Research has demonstrated the availability of prosocial support and the provision of resources targeting criminogenic needs (e.g., employment, education, medical care, and housing) can reduce risk for sexual reoffending (Duwe, 2018; Wilson et al., 2009; Wilson et al., 2007). Although individuals convicted of sexual crimes are eligible for general reentry services in most states, there are few, if any, reentry programs that address their unique needs (CSG Justice Center, 2015).

While there is limited research on specialized reentry services for individuals convicted of sexual crimes, there is emerging evidence to support the use of the Circles of Support and Accountability (COSA) program. COSA was originally developed to assist in the reintegration of individuals assessed at a high risk to sexually recidivate by providing the individual with a supportive circle consisting of trained volunteers from the community. For high-risk individuals convicted of sexual crimes who participated in COSA, significant reductions in sexual reoffending have been observed (Duwe, 2018; Wilson et al., 2009; Wilson et al., 2007).

Although the availability of specific services will vary across jurisdictions, accessibility and use of reentry services such as less restrictive alternatives to inpatient commitment (e.g., conditional release) are an essential component of any attempt to reintegrate civilly committed individuals convicted of sexual crimes back into the community.

CIVIL COMMITMENT CHALLENGES AND BEST PRACTICE INFORMED SUGGESTIONS

The topic of sexual offending often triggers strong emotionality due to the harm done, as well as the inability of individuals to comprehend why a person would commit a sexual crime. This emotionality has contributed to the implementation of "Sexually Violent Predator" statutes. As one judge from California noted, "We purposely used 'predator' because it connotes something bad versus 'offender' (Nhan et al., 2012, p. 829)." The following describes some of the challenges and controversies of SOCC and a selection, but not an exhaustive list, of RNR-based suggestions.

WITHIN A CONTINUUM

Employing the principles of the RNR model, civil commitment should be used as an option for individuals who continue to demonstrate higher levels of risk following community- and/or prison-based supervision and/or treatment.

1. Every jurisdiction with SOCC should offer sexual-offense-specific treatment in its prison system. Treatment should focus on the reduction of risk by targeting criminogenic needs, and the intervention setting/level and intensity/dosage should be commensurate with the assessed level of risk and need.

NON-PUNITIVE AND TREATMENT-FOCUSED

The U.S. Supreme Court has twice upheld the constitutionality of these statutes. The Court has confirmed that civil commitment statutes do not constitute double jeopardy and are not ex post facto laws, since the purpose of civil commitment is to provide treatment, not punishment [*Kansas v. Hendricks* 521 US 366 (1997); *Kansas v. Crane*, 534 US 407 (2002)]. SOCC statutes should clarify and strengthen the focus on treatment.

2. SOCC statutes in individual states should be renamed in ways that prioritize person-first language. This will prevent emotion-based decision making and encourage fair decision making anchored in the Risk, Needs, and Responsivity principles. For example, Sexually Violent Predator laws should be renamed to Persons with Sexually Dangerous Behavior or a different title that reflects the inherent dignity in all humans.
3. SOCC decision making should be determined by the Risk, Needs, and Responsivity of the offending individual subjected to its provisions.
4. SOCC programs and the systems they are ensconced in should facilitate treatment engagement and monitor against punitive and prejudicial

practices. Ideally, all individuals subjected to SOCC will participate in treatment.

5. Evaluation, treatment, courtroom practices, and discharge conditions should monitor for bias and other features that would be expected to lead to unfavorable outcomes including treatment resistance.
6. SOCC proceedings and interventions should be implemented without preventable delays, and with respect to the loss of freedom of affected individuals.

A PATHWAY TO RELEASE

Although restrictive, the purpose of SOCC is to provide treatment and detainment only until the person no longer presents as likely to reoffend by nature of a mental condition. While it is possible that some individuals may meet commitment criteria indefinitely, others may not.

7. SOCC individuals must be provided unambiguous and understandable information on what is needed for them to be released.
8. Transition services are necessary for long-term positive outcomes. Conditional release and other less restrictive alternatives to inpatient commitment should be made available to SOCC individuals whose risk can be managed in the community.
9. Once risk and need are reduced to a level that is manageable within a community-based setting, there should be a mechanism to swiftly transition to less restrictive alternatives and full discharge, without preventable delays.

EFFECTIVE TREATMENT

Treatment and other interventions with SOCC individuals should be anchored in RNR.

10. SOCC programs should be applied in ways that are consistent with RNR principles.
11. SOCC programs should be subjected to review on the degree that they adhere with RNR.
12. SOCC programs should make publicly available information about their programming and completion rates and duration.
13. SOCC programs should include systematic program evaluation or research on their efficacy.
14. SOCC programs require adequate resources and training. This includes evaluators, treatment providers, and other support staff including administration and courtroom personnel. If society is going to confine the highest risk individuals following termination of their prison sentence in

order to get treatment, it is important that competent, skilled professionals work in these clinically complex systems. Evaluation and treatment staff must be particularly adept in diagnostic skills and risk assessment.

DISCUSSION

Implementation of a comprehensive and effective management strategy for individuals convicted of sexual crimes requires adherence to the RNR principles and recognition that "one size fits all" approaches are not effective at preventing future sexual crimes. Research has demonstrated that the most effective practices are based on a continuum of services available at all levels of management, both community-based and within locked settings; are individualized based upon an offender's identified areas of risk and need; and are delivered in a manner reflective of the offender's responsivity factors.

Civil commitment is but one component of a comprehensive continuum of responses to sexual offending. While future research is necessary to evaluate the impact civil commitment has on recidivism, it is an intervention presently used for a small group of individuals who have histories of committing sexual offenses that are repeated, violent, and/or predatory in nature. Such individuals should have had the opportunity to receive community- and/or prison-based supervision and treatment prior to being civilly committed. Similar to other management techniques, it is essential that civil commitment programs are evidence-based, grounded on the RNR principles; use empirically validated risk assessment instruments, measures, and methods; employ treatment methodologies based in research and reflective of best practice standards and guidelines; and incorporate meaningful measurement of changes in risk over time. Additionally, it is integral that civil commitment programs develop processes for individuals who are committed to be conditionally released to a less restrictive setting when deemed appropriate.

Sexual abuse is a pervasive, yet preventable, worldwide problem that impacts everyone. The dynamics of sexual offending are complex and multifaceted. Because of these complexities, responding effectively to sexual abuse requires the involvement of a wide range of disciplines and agencies, as well as adherence to evidenced-based practices. Given that the majority of individuals convicted of sexual crimes do eventually return to our communities, effective treatment and management are essential for the prevention of further abuse.

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