

WEST HEIDELBERG COMMUNITY LEGAL SERVICE

155 Oriel Road West Heidelberg 3081
Phone 9450 2002 Fax 9458 1067
ABN 48 964 511 645 (Reg No A0013686G)

BACKGROUND PAPER

‘AT RISK’ TOOLS OF ASSESSMENT AND SEXUAL OFFENDERS

Authored by Antonino Condello,
a La Trobe Law Student, as part of his clinical placement at
the West Heidelberg Community Legal Service.

Edited and supervised by Liz Curran,
Lecturer in Law and
Student Clinical Legal Education Supervising Solicitor
La Trobe Law/West Heidelberg Community Legal Service.

Project Aims

- To investigate ‘at risk’ tools of assessment used by corrections personnel.
- To identify whether risk assessment is capable of causing sex offenders an injustice.
- To illustrate how risk assessment will often determine whether a sex offender receives ‘help’ or treatment.
- To recommend reform in problem areas.

The assessment of offenders is one of the key requirements for effective correctional interventions. Without knowledge of an offender’s propensity to re-offend, it is difficult to make reasonable decisions about how these offenders should be managed, and how programs resources should be allocated¹. To determine whether a sex offender is likely to re-offend in the future, ‘at risk’ tools of assessment have been developed over time to provide public servants with a helpful framework to decide appropriate means of intervention for sex offenders. It is arguable that while these ‘at risk’ tools of assessment make the job of public servants easier, they may come at the cost of individual justice.

The nature of ‘at risk’ tools of assessment

Given the risk that sex offenders pose to the community, effective tools for assessing the probability of recidivism are crucial. Risk assessment usually refers to an uncertain prediction about a future harmful behaviour and an assessment of the frequency, impact and likely victims(s) of the behaviour (Kemshall, 2001)². Sex offenders can be assessed at several stages of criminal proceedings, such as pre-sentence, pre-release or post-release. The main objectives of risk assessment are to identify an offender’s amenability to treatment and their risk level of re-offending³.

The categorisation of sex offenders according to the risk that they will re-offend is important for a range of reasons. Not only is effective risk assessment and risk management crucial to public protection and to the reduction of harm to potential victims⁴, it is also fundamental for assisting corrections personnel in deciding appropriate treatment plans and supervision regimes for sex offenders. It may be necessary for higher risk offenders to undergo more intensive services, while lower risk offenders may require little or no services. In order to make these distinctions, risk assessment is highly necessary. If a sex offender is not assigned to the appropriate treatment program, it is unlikely to be effective in supporting the offender’s criminogenic (offence-related/specific) needs associated with reducing recidivism.

Accurate estimations of risk are maximised through the use of two distinct methods – actuarial techniques and clinical judgement – both of which have pros and cons⁵. The actuarial approach to risk assessment is based upon statistical calculations of probability. From the study of a large number of cases, static factors that statistically relate to risk of re-offending are identified. These factors are largely unchangeable characteristics of the offender, such as his or her sex, age or criminal history⁶. Actuarial approaches to risk assessment are easy to score and interpret and can be used to assess long-

¹ Ross, S., Pollard, J., et al, 2004, *VISAT Administration Manual*, Department of Justice – Corrections Victoria, Australia, p. 4.

² Cited in Lievore, D., 2004, *Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy*, Australian Institute of Criminology, Australia, p. 38.

³ *Risk Assessment – Chapter 5*, available at <www.hawaii.edu>, (23 May 2006).

⁴ Kemshall, H., *Risk Assessment and Management of Serious Violent and Sexual Offenders; A review of current issues*, 2002, available at <www.scotland.gov.uk/cru/kd01/green/raam-00.asp>, (8 May 2006).

⁵ Lievore, D., 2004, *op cit*, p. 39.

⁶ Kemshall, H., *Risk Assessment and Management of Serious Violent and Sexual Offenders; A review of current issues*, 2002, *op cit*, (8 May, 2006).

term recidivism potential. This approach also provides explicit rules for combining risk factors into specific probability estimates. For example, each risk factor could be given a weight and summed into a total score. The scores can then be associated with specific probabilities of recidivism⁷. Once such risk factors have been recognized, they are then validated into statistical probabilities, which indicate the offender's risk level of re-offending in the future. However, this approach cannot be used to identify treatment needs, evaluate change or predict the timing of re-offence⁸.

On the other hand, the clinical method to risk assessment is essentially a diagnostic assessment. It is based upon detailed interviewing and observation by the clinician in order to collect information on the social, environmental, behavioural and personality factors that have resulted in harmful behaviour(s) in the past⁹. The clinician rates each offender on a list of established risk factors, such as prior offences, education or marital status, which is then followed by an overall assessment of risk based on the observed combination of these factors¹⁰. The clinical approach to risk assessment is helpful for identifying treatment needs and deciding the most effective intervention plan for the offender. Clinical judgement identifies an offender with all factors present as a high-risk offender, while those with no risk factors present would be considered as low risk. However, this approach provides no explicit direction on how to gauge the risk of the typical offender who has some risk factors.

Grove and Meehl (1996) maintain that the actuarial approach has generally proved to be more accurate than clinical judgement in assessing an offender's risk level of re-offending¹¹. However, it has also been argued that a combination of clinical and actuarial methods provides the most reliable means of assessing risk and understanding the aetiology of sex offending (Grubin, 1999).¹²

Strengths and Weaknesses of Risk Assessment

There are many pros and cons pertaining to risk assessment of sex offenders, some of which are listed below.

Strengths:

Risk assessment can lead to more effective correctional interventions whereby public servants have the assistance of helpful tools to better direct the offender to more appropriate sex offender programs. Distinguishing offenders in terms of risk facilitates the delivery of appropriately targeted supervision regimes and treatment services to those who will benefit most from receiving such services.

Knowledge of sex offender risk improves public safety by guiding decisions regarding control and supervision.

Risk assessment focussing on dynamic risk factors or criminogenic needs indicate areas where risk can be reduced and where treatment can be effective¹³.

Weaknesses:

Prediction of sex offenders can never be perfect as it is focussed on likelihoods¹⁴. Corrections personnel and health professionals are therefore predicting an offender's propensity to re-offend often

⁷ Hanson Karl, R., *Risk Assessment*, 2000, available at <www.atsa/pdfs/infoPack-Risk.pdf>, (23 May 2006).

⁸ Hanson Karl, R., *Risk Assessment*, 2000, *ibid*, (23 May 2006).

⁹ Kemshall, H., *Risk Assessment and Management of Serious Violent and Sexual Offenders; A review of current issues*, 2006, *op cit*, (8 May 2006).

¹⁰ Hanson Karl, R., *Risk Assessment*, 2000, *op cit*, (23 May 2006).

¹¹ Hanson Karl, R., *Risk Assessment*, 2000, *ibid*, (23 May 2006).

¹² Cited in Lievore, D., 2004, *op cit*, p. 39.

¹³ Ross, S., Pollard, J., et al, 2004, *op cit*, p. 6.

with little training. This leads one to question how much weight should be given to these risk assessments that are not always so accurate. One of the major issues in risk assessment is avoiding under-prediction and over-prediction of offending.

Table One: Outcomes of risk predictions

	PREDICTION	PREDICTION
	Yes	No
OUTCOME		
Yes	True positive prediction	False negative prediction
No	False positive prediction	True negative prediction

Source: Kemshall, 2001¹⁵

Under-prediction or false negative prediction describes a situation where a risk of harm is not identified, but does in fact occur. On the other hand, over-prediction or false positive prediction is when harm is predicted but does not occur. These inaccuracies have consequences that affect not only the offender, but also the community and its resources as follows:

False negative predictions can heighten risk of harm to future victims, as potential repeat offenders may not receive appropriate treatment or surveillance likely to reduce their chances of re-offending. If risk is under predicted it can have grave physical consequences for future victims of the offender where the community may be exposed to a dangerous sex offender who has been erroneously categorised.

An under prediction of risk can have social consequences on the offender in that they may not be receive suitable treatment or surveillance or be admitted to programs where they can learn about victim empathy, understanding offence-related behaviour and relapse prevention strategies¹⁶ to reduce their propensity to re-offend.

False positive predictions not only waste expensive resources, but may also impinge upon the human rights of sex offenders if they are kept in preventative detention (Monahan, 1981) or sentenced indefinitely while there are other more appropriate means of managing these offenders in the community (e.g. community based programs)¹⁷. Over prediction may result in over-intervention¹⁸.

In the cases of false positive and false negative predictions, these factual errors can cause the sex offenders an injustice, as they may consequently become over-supervised by corrections, or effectively, denied treatment. Hence, performing astute risk assessment with trustworthy tools is extremely importance given the consequences that may follow from erroneous classification of risk.

¹⁴ Biles, D., *Sentence and Release Options for High-Risk Sexual Offenders*, available at <www.jcs.act.gov.au> (23 May, 2006).

¹⁵ Cited in Lievore, D., 2004, *op cit*, p. 38.

¹⁶ Howells, K., Heseltine, K., et al, *Correctional Offender Rehabilitation Programs: The National Picture in Australia*, available at <www.aic.gov.au/crc/reports/2000203-04.pdf>, (23 May 2006).

¹⁷ Allan, A., & Dawson, D., *Assessment of Risk of Re-offending by Indigenous Male violent and Sexual Offenders*, available at <www.aic.gov.au/publication/tandi2/tandi280.pdf>, (23 May 2006).

¹⁸ Lievore, D., 2004, *op cit*, p. 39.

Risk Assessment in Victoria

The Victorian State Budget (2001-02) announced a substantial amount of funding over the next four years as part of its Correctional Long Term Management Strategy, which includes the delivery of a framework to reduce re-offending¹⁹. This State project has identified the classification of risk as one of the major principles underpinning the reducing re-offending framework. Having said this, the determination of a sex offender's risk level should be performed by a validated assessment tool. The Victorian Intervention Screening Assessment Tool (VISAT) is a newly implemented risk assessment tool used by Corrections Victoria which focuses on identifying the needs and risk level of Victorian offenders in order to properly monitor offender intervention. It is arguable that this comprehensive tool has been developed in response to the State's project for improving the framework to reduce re-offending so that all offenders are properly assessed and placed on suitable programs according to their risk/needs level.

Victorian Intervention Screening Assessment Tool (VISAT)

The VISAT is used for assessing the risk of re-offending, criminogenic (offence-specific) and offence-related needs of male and female offenders aged 18 years and over²⁰. Its use provides both the user and the offender with an indication of the offender's risk of re-offending and criminogenic needs in a way that will facilitate corrections staff to develop and manage intervention. The VISAT incorporates elements of both the actuarial approach and clinical judgement. The ability of Corrections personnel to predict future criminal behaviour is improved when they base their predictions on statistical estimates of risk. However, the focus is largely on identifying dynamic (changeable) risk factors (i.e. family problems, attitudes, employment) or the criminogenic needs of the offenders, which indicate areas where risk can be reduced and where treatment can be effective²¹. As the VISAT employs a combination of both actuarial and clinical methods to risk assessment, the results emerging from this tool are arguably quite accurate, which means there is a lesser chance of obtaining false positives and false negatives.

One of the major advantages of the VISAT is that it is a Victorian instrument which allows the development team to monitor how it is used and then utilize this knowledge to "fine-tune" the content and scoring of the instrument²². Therefore, with regular review and monitoring of the VISAT, risk assessment may be said to further advance.

When using VISAT to assess offenders that have committed a sexual crime or have a sexual element to their crime, they are automatically categorized as high-risk/need offenders. Therefore, sex offenders are considered to be an extreme risk where immediate action is required, irrespective of their actual risk level of re-offending. The sex offender will then be referred by Corrections to a sex offender program for further assessment to see whether or not they qualify for admission into a sex offender program (SOP). One of the major service providers of assessment and treatment for sex offenders is the Carlton Community Sex Offender Programs.

Carlton Community Sex Offender Programs

The staff at the Carlton Community Sex Offender Programs is responsible for the provision of treatment and assessment of sex offenders in prisons and community corrections. Before an offender is admitted into a sex offender program, they are required to undergo assessment for treatment

¹⁹ Birgden, A., & McLachlan, C., *Corrections Victoria: Reducing re-offending framework: Setting the Scene (Paper No. 1)*, available at < www.justice.vic.gov.au >, (30 May 2006).

²⁰ Ross, S., Pollard, J., et al, 2004, *op cit*, p. 5.

²¹ Ross, S., Pollard, J., et al, 2004, *ibid*, p. 6.

²² Ross, S., Pollard, J., et al, 2004, *ibid*, p. 4.

suitability. Assessment for SOPs is a comprehensive process involving two segments; an interview, which provides the interviewer with insight about the offender and the offence they committed; and psychological tests or questionnaires about the way the offender perceives certain things, what social activities they enjoy and the like. After the assessment has been completed, a report will be written to the offender's case manager/corrections officer detailing what the Carlton Community SOPs believes is the best treatment plan for the offender²³. If a sex offender is offered a place in one of the programs, they will be notified as to the date, time and location of the program. Alternatively, if the offender does not receive a place, they are effectively excluded from receiving treatment offered by SOPs.

The treatment offered at SOPs is designed to support sex offenders in learning new ways of thinking. The offender is encouraged to reflect on the offence and understand why they committed it in the first place. The programs also focus on improving the offender's self-control and decision-making abilities and looks at strategies for enhancing the offender's life so they can reduce their risk of re-offending in the future. The offender will leave the program with a detailed release plan which involves building (or re-building) networks with family, friends and professionals²⁴. The offenders who are granted entry into such programs are required to complete three compulsory modules; 'Life Stories and Cognitive Distortions', 'Victim Empathy', and 'Relapse Prevention'. According to the needs of the offenders, they may be required to complete further modules, as well as the three compulsory modules (e.g. 'Social Competence' module)²⁵.

A recent study has shown that, on average, sex offenders who received treatment were less likely to re-offend than offenders who did not receive treatment (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002)²⁶. This suggests that those offenders who miss out on the sort of treatment discussed above have been shown to be at a higher risk of re-offending in the future. SOPs provide valuable treatment which can potentially reduce the risk of re-offending.

SOPs are funded to provide for a set number of assessments and places in treatment per year in the prison system and in community corrections. The demand usually exceeds the number of places that Sex Offender Programs are able to provide²⁷. As a consequence, SOPs review the offence history of all offenders who are eligible for assessment and treatment and allocate those places to those who present the higher risk or who could most benefit from the program²⁸. In effect, this lack of resources and funding places immense pressure on SOP personnel, which consequently forces them to deny these services to lower risk offenders. Those sex offenders who are excluded from these programs are not given an opportunity to undergo valuable treatment because they fail to satisfy the assessment criteria for admission into such programs.

The fact that lower risk sex offenders are being excluded from SOPs further emphasises the importance of accurate risk assessment and the essential role it plays in determining an offenders risk level of re-offending. A sex offender's risk level will often determine whether or not they receive treatment. If an offender does not present as a high enough risk of re-offending in the future, for example, then that offender is unlikely to be eligible to undergo treatment at a Carlton Sex Offender program, as they are restricted to accepting high-risk offenders. Hence it is important for Corrections to establish accurate estimates of risk to ensure that a sex offender receives appropriate intervention and is not caused any injustice by being erroneously categorized by Corrections. It is arguable that even those offenders who present as low or medium risk of re-offending would benefit from SOPs, and accordingly, it seems unfair to exclude these offenders on the basis that their risk level of re-

²³ Carlton Community Sex Offender Programs; Information for Offenders, available from 19-21 Argyle Place South, Carlton (VIC), 3053, pp. 5-8.

²⁴ Carlton Community Sex Offender Programs; Information for Offenders, *op cit*, p. 10.

²⁵ Carlton Community Sex Offender Programs; Information for Offenders, *ibid*, p. 11.

²⁶ Offender Programs Unit, *Programs for Sex Offenders (November 2005)*, available at <www.dcs.nsw.gov.au>, (23 May 2006).

²⁷ Carlton Community Sex Offender Programs; Information for Offenders, *op cit*, p.2.

²⁸ Carlton Community Sex Offender Programs; Information for Offenders, *op cit*, p.2.

offending is not high enough to warrant admission into a SOP. Furthermore, due to the lack of available positions in SOPs, a sex offender who is at a lower risk of re-offending may arguably be caused an injustice because they may not be given the opportunity to access these treatment services, despite the fact that they too may benefit from these programs.

Discussion

The author has established that 'at risk' tools of assessment are useful in that they provide public servants with a framework whereby they can best allocate their resources to those offenders who present as higher risk/need (or threat to the community). However, it has also been established that if Corrections personnel err in their risk assessment of sex offenders, they can potentially affect a sex offenders eligibility to participate in SOPs, which will in turn, cause them an injustice by depriving them of the opportunity to reduce their risk of re-offending via a treatment plan. Risk assessment is not a precise science and is difficult to make an accurate prediction of every offender due to their heterogeneity. It is therefore arguable that, regular review and evaluation of assessment tools would be beneficial for improving the effectiveness of such tools and reduce the chances of causing sex offenders any injustice.

The author also notes that a sex offender may also be caused an injustice if they are refused admission into a SOP on the basis that they are at a lower risk of re-offending. Lower risk offenders are likely to also benefit from these programs, but unfortunately, they are often not given a chance to participate due to the lack of resources and positions available in these programs. Each year the demand for sex offender treatment is usually outweighed by the available positions in these programs, which suggests that it is about time SOPs receive more attention and further funding so that they can treat a wider range of sex offenders, not just those who belong to the category of 'high risk/need'. This means that significantly fewer sex offenders will be excluded from such programs. The fact that these offenders continue to be declined treatment is causing them an injustice.

The issue seems two-fold and regular evaluation and review of risk assessment tools and the provision of more funding and support to SOPs would reduce the chances of any injustice being caused to sex offenders and also improve sex offender management here in Victoria. Therefore, it seems that risk assessment of sex offenders does indeed make the job of public servants easier, however, it may sometimes come at the cost of individual injustice.

Recommendations

Regular review and evaluation of risk assessment tools should take place to ensure they continue to be refined and improved.

Increased funding should be allocated to SOPs to enable such programs to accept a wider range of sex offenders, especially those offenders who do not particularly present as 'high-risk' offenders.

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