

11855 SENATE JUDICIARY

1 * Sec. 2. AS 12.55.100 is amended by adding a new subsection to read:

2 (e) While on probation and as a condition of probation for a sex offense, the
3 defendant shall be required to submit to regular periodic polygraph examinations. In
4 this subsection, "sex offense" has the meaning given in AS 12.63.100.

5 * Sec. 3. AS 12.55.125(i) is amended to read:

6 (i) A defendant convicted of

7 (1) sexual assault in the first degree or sexual abuse of a minor in the
8 first degree may be sentenced to a definite term of imprisonment of not more than 99
9 years and shall be sentenced to a definite term within the following presumptive
10 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

11 (A) if the offense is a first felony conviction, [AND] does not
12 involve circumstances described in (B) of this paragraph, and the victim was

13 (i) less than 13 years of age, 25 to 30 years;

14 (ii) 13 years of age or older, 20 to 30 [EIGHT TO 12]

15 years;

16 (B) if the offense is a first felony conviction and the defendant
17 possessed a firearm, used a dangerous instrument, or caused serious physical
18 injury during the commission of the offense, 25 to 35 [12 TO 16] years;

19 (C) if the offense is a second felony conviction and does not
20 involve circumstances described in (D) of this paragraph, 30 to 40 [15 TO 20]
21 years;

22 (D) if the offense is a second felony conviction and the
23 defendant has a prior conviction for a sexual felony, 35 to 45 [20 TO 30]
24 years;

25 (E) if the offense is a third felony conviction and the defendant
26 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40
27 to 60 [25 TO 35] years;

28 (F) if the offense is a third felony conviction, the defendant is
29 not subject to sentencing under (I) of this section, and the defendant has two
30 prior convictions for sexual felonies, 99 [30 TO 40] years;

31 (2) attempt, conspiracy, or solicitation to commit sexual assault in the

1 first degree or sexual abuse of a minor in the first degree may be sentenced to a
2 definite term of imprisonment of not more than 99 [30] years and shall be sentenced to
3 a definite term within the following presumptive ranges, subject to adjustment as
4 provided in AS 12.55.155 - 12.55.175:

5 (A) if the offense is a first felony conviction, [AND] does not
6 involve circumstances described in (B) of this paragraph, and the victim was

7 (i) under 13 years of age, 20 to 25 years;

8 (ii) 13 years of age or older, 15 to 25 [FIVE TO
9 EIGHT] years;

10 (B) if the offense is a first felony conviction, and the defendant
11 possessed a firearm, used a dangerous instrument, or caused serious physical
12 injury during the commission of the offense, 25 to 35 [10 TO 14] years;

13 (C) if the offense is a second felony conviction and does not
14 involve circumstances described in (D) of this paragraph, 25 to 35 [12 TO 16]
15 years;

16 (D) if the offense is a second felony conviction and the
17 defendant has a prior conviction for a sexual felony, 30 to 40 [15 TO 20]
18 years;

19 (E) if the offense is a third felony conviction, does not involve
20 circumstances described in (F) of this paragraph, and the defendant is not
21 subject to sentencing under (I) of this section, 35 to 50 [15 TO 25] years;

22 (F) if the offense is a third felony conviction, the defendant is
23 not subject to sentencing under (I) of this section, and the defendant has two
24 prior convictions for sexual felonies, 99 [20 TO 30] years;

25 (3) sexual assault in the second degree, sexual abuse of a minor in the
26 second degree, unlawful exploitation of a minor, or distribution of child pornography
27 may be sentenced to a definite term of imprisonment of not more than 99 [20] years
28 and shall be sentenced to a definite term within the following presumptive ranges,
29 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

30 (A) if the offense is a first felony conviction, 10 to 15 [TWO
31 TO FOUR] years;

1 (B) if the offense is a second felony conviction and does not
2 involve circumstances described in (C) of this paragraph, 10 to 25 [FIVE TO
3 EIGHT] years;

4 (C) if the offense is a second felony conviction and the
5 defendant has a prior conviction for a sexual felony, 15 to 30 [10 TO 14]
6 years;

7 (D) if the offense is a third felony conviction and does not
8 involve circumstances described in (E) of this paragraph, 20 to 35 [10 TO 14]
9 years;

10 (E) if the offense is a third felony conviction and the defendant
11 has two prior convictions for sexual felonies, 99 [15 TO 20] years;

12 (4) sexual assault in the third degree, incest, indecent exposure in the
13 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
14 commit sexual assault in the second degree, sexual abuse of a minor in the second
15 degree, unlawful exploitation of a minor, or distribution of child pornography, may be
16 sentenced to a definite term of imprisonment of not more than 99 [10] years and shall
17 be sentenced to a definite term within the following presumptive ranges, subject to
18 adjustment as provided in AS 12.55.155 - 12.55.175:

19 (A) if the offense is a first felony conviction, three to 12 [ONE
20 TO TWO] years;

21 (B) if the offense is a second felony conviction and does not
22 involve circumstances described in (C) of this paragraph, eight to 15 [TWO
23 TO FIVE] years;

24 (C) if the offense is a second felony conviction and the
25 defendant has a prior conviction for a sexual felony, 12 to 20 [THREE TO
26 SIX] years;

27 (D) if the offense is a third felony conviction and does not
28 involve circumstances described in (E) of this paragraph, 15 to 25 [THREE TO
29 SIX] years;

30 (E) if the offense is a third felony conviction and the defendant
31 has two prior convictions for sexual felonies, 99 [SIX TO 10] years.

1 * Sec. 4. AS 12.55.125(j) is amended to read:

2 (j) A defendant sentenced to a (1) mandatory term of imprisonment of 99
3 years under (a) of this section may apply once for a modification or reduction of
4 sentence under the Alaska Rules of Criminal Procedure after serving one-half of the
5 mandatory term without consideration of good time earned under AS 33.20.010, or (2)
6 definite term of imprisonment under (l) of this section may apply once for a
7 modification or reduction of sentence under the Alaska Rules of Criminal Procedure
8 after serving [THE GREATER OF (A)] one-half of the definite term [OR (B) 30
9 YEARS]. A defendant may not file and a court may not entertain more than one
10 motion for modification or reduction of a sentence subject to this subsection,
11 regardless of whether or not the court granted or denied a previous motion.

12 * Sec. 5. AS 12.55.125(l) is amended to read:

13 (l) Notwithstanding any other provision of law, a defendant convicted of an
14 unclassified or class A felony offense, and not subject to a mandatory 99-year
15 sentence under (a) of this section, shall be sentenced to a definite term of
16 imprisonment of [AT LEAST 40 YEARS BUT NOT MORE THAN] 99 years when
17 the defendant has been previously convicted of two or more most serious felonies
18 [AND THE PROSECUTING ATTORNEY HAS FILED A NOTICE OF INTENT TO
19 SEEK A DEFINITE SENTENCE UNDER THIS SUBSECTION AT THE TIME
20 THE DEFENDANT WAS ARRAIGNED IN SUPERIOR COURT]. If a defendant is
21 sentenced to a definite term under this subsection,

22 (1) imprisonment for the prescribed definite term may not be
23 suspended under AS 12.55.080;

24 (2) imposition of sentence may not be suspended under AS 12.55.085;

25 (3) imprisonment for the prescribed definite term may not be reduced,
26 except as provided in (j) of this section.

27 * Sec. 6. AS 12.55.125 is amended by adding a new subsection to read:

28 (o) In addition to the sentence imposed under (i) of this section on a defendant
29 convicted of a sexual offense, the court shall impose a period of probation of (1) 10
30 years if the defendant was convicted of an unclassified or class A felony, or (2) five
31 years if the defendant was convicted of a class B or class C felony. The period of

1 probation is in addition to any sentence received under (i) of this section and may not
2 be suspended or reduced. Upon a defendant's release from confinement in a
3 correctional facility, the defendant is subject to this probation requirement and shall
4 submit and comply with the terms and requirements of the probation.

5 * Sec. 7. AS 33.16.150(a) is amended to read:

6 (a) As a condition of parole, a prisoner released on special medical,
7 discretionary, or mandatory parole

8 (1) shall obey all state, federal, or local laws or ordinances, and any
9 court orders applicable to the parolee;

10 (2) shall make diligent efforts to maintain steady employment or meet
11 family obligations;

12 (3) shall, if involved in education, counseling, training, or treatment,
13 continue in the program unless granted permission from the parole officer assigned to
14 the parolee to discontinue the program;

15 (4) shall report

16 (A) upon release to the parole officer assigned to the parolee;

17 (B) at other times, and in the manner, prescribed by the board
18 or the parole officer assigned to the parolee;

19 (5) shall reside at a stated place and not change that residence without
20 notifying, and receiving permission from, the parole officer assigned to the parolee;

21 (6) shall remain within stated geographic limits unless written
22 permission to depart from the stated limits is granted the parolee;

23 (7) may not use, possess, handle, purchase, give, distribute, or
24 administer a controlled substance as defined in AS 11.71.900 or under federal law or a
25 drug for which a prescription is required under state or federal law without a
26 prescription from a licensed medical professional to the parolee;

27 (8) may not possess or control a firearm; in this paragraph, "firearm"
28 has the meaning given in AS 11.81.900;

29 (9) may not enter into an agreement or other arrangement with a law
30 enforcement agency or officer that will place the parolee in the position of violating a
31 law or parole condition without the prior approval of the board;

1 (10) may not contact or correspond with anyone confined in a
2 correctional facility of any type serving any term of imprisonment or a felon without
3 the permission of the parole officer assigned to a parolee;

4 (11) shall agree to waive extradition from any state or territory of the
5 United States and to not contest efforts to return the parolee to the state;

6 (12) shall provide a blood sample, an oral sample, or both, when
7 requested by a health care professional acting on behalf of the state to provide the
8 sample or samples, or an oral sample when requested by a juvenile or adult
9 correctional, probation, or parole officer, or a peace officer, if the prisoner is being
10 released after a conviction of an offense requiring the state to collect the sample or
11 samples for the deoxyribonucleic acid identification system under AS 44.41.035;

12 (13) from a conviction for a sex offense shall submit to regular
13 periodic polygraph examinations; in this paragraph, "sex offense" has the
14 meaning given in AS 12.63.100.

15 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. Sections 3 - 6 of this Act apply to offenses committed on or after
18 the effective date of this Act. References to prior offenses or convictions in secs. 3 and 5 of
19 this Act include offenses committed before, on, or after the effective date of this Act.

20 * Sec. 9. This Act takes effect July 1, 2007.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB218-DPS-AST-1-18-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to periodic polygraph examinations RDU Alaska State Troopers
for sex offenders and an increase in sentencing Component AST Detachments
 Sponsor Senator Bunde
 Requester Senate Judiciary Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The first section of this bill provides for the implementation and continued use of periodic polygraph examinations as a condition of probation or parole for sex offenders. This provision will have little or no impact to the Department of Public Safety, but will directly impact the Department of Corrections.

This bill also significantly increases sentences for convictions under sexual assault and sexual abuse. When a defendant is faced with a longer term of imprisonment, it is reasonable to expect that they may mount a more aggressive defense. It is difficult to predict if extra court testimony will be required as a result of this legislation or whether it increases the complexity of an investigation. At this juncture the department will absorb any unforeseen expenses associated with this legislation.

Prepared by: Lieutenant James Helgoe Phone 907-269-4532
 Division Alaska State Troopers Date/Time 1/18/06 4:23 PM
 Approved by: Commissioner William Tandeske Date 1/18/2006
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB218-LAW-CJL-1-18-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to periodic polygraph
examinations for sex offenders released on probation..." RDU: CRIMINAL
 Sponsor: Senator Bunde Component: Criminal Justice Litigation
 Requester: Senate Judiciary Component No.: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*****	*****	*****	*****	*****	*****
Travel	*****	*****	*****	*****	*****	*****
Contractual	*****	*****	*****	*****	*****	*****
Supplies	*****	*****	*****	*****	*****	*****
Equipment	*****	*****	*****	*****	*****	*****
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*****	*****	*****	*****	*****	*****
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	*****	*****	*****	*****	*****	*****
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill significantly increases presumptive sentencing for convicted sexual offenders. Passage of this legislation will have a fiscal impact on the Department of Law because convicted offenders will be less likely to plead to charges and will instead be willing to risk a jury trial as a result of facing much longer prison sentences than is reflected in current legislation. The fiscal impact is difficult to measure with any precision.

Prepared by: Kathryn Daughhettee, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 1/18/06 1:21 PM
 Approved by: Kathryn Daughhettee for David Márquez, Attorney General Date 1/18/2006
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 218
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to periodic polygraph examinations... RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Senator Bunde
 Requester (S) Finance Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This act increases the periodic presumptive sentencing ranges for a certain sex offense; this includes a 99-year mandatory penalty for individuals with two prior sex felony convictions. This bill also requires individuals convicted of sex offenses to submit to a polygraph examination.

 Due to the penalty increases, this bill will likely result in pressures that tend to increase criminal trials and increase the work necessary to prepare a case for trial or plea negotiation, thus putting an upward pressure on our case costs. The increased pressure, however, is indeterminate but may be mitigated by factors external to the Office of Public Advocacy, such as an offsetting plea bargaining policy. The Office of Public Advocacy, therefore, submits an indeterminate fiscal note.

Prepared by: Joshua P. Fink, Director Phone 907.269-3500
 Division: Office of Public Advocacy Date/Time 1/18/06 12:16 p.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date _____
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 218
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to periodic polygraph examinations... RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Senator Bunde
 Requester (S) Finance Component No. 1331

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

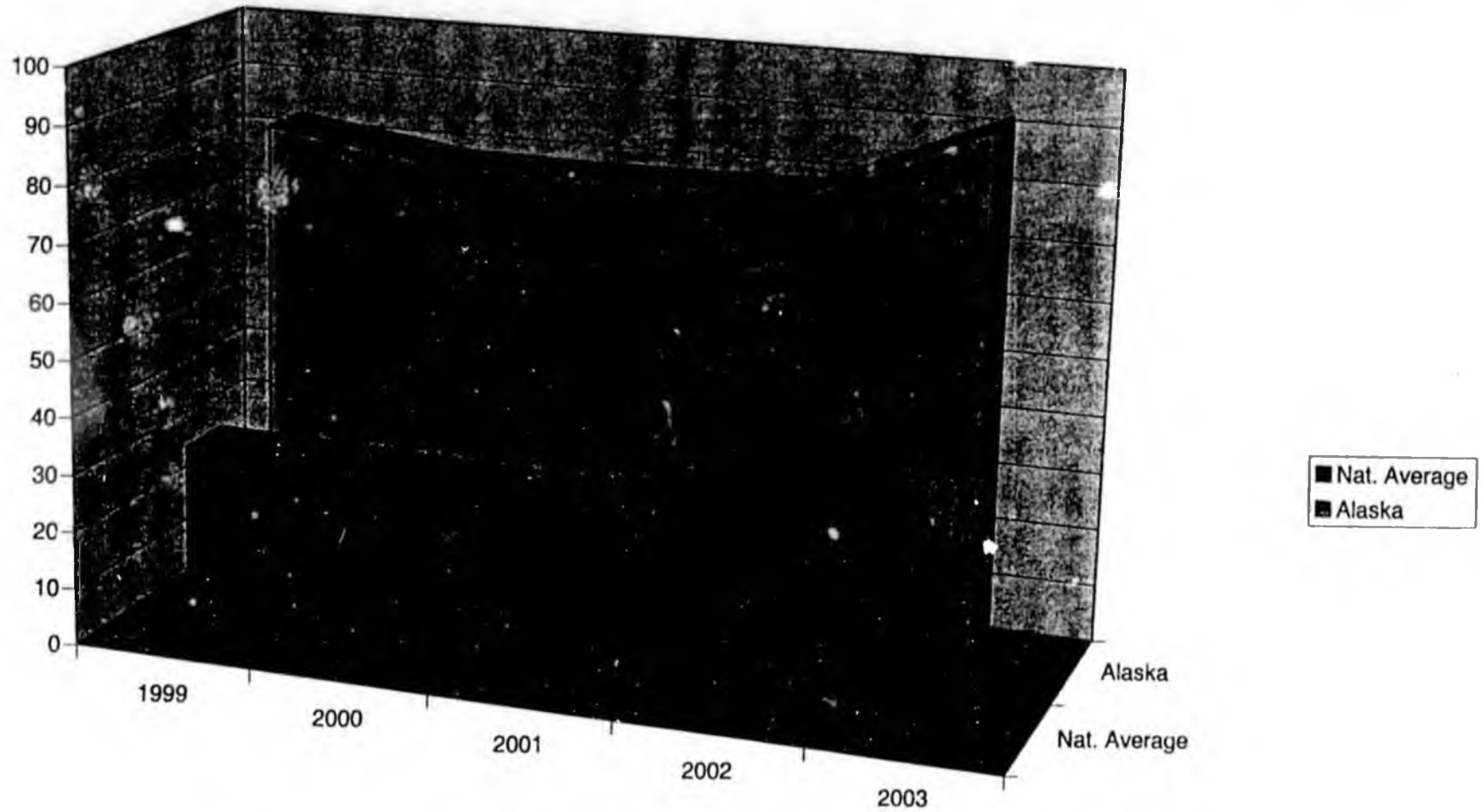
ANALYSIS: (Attach a separate page if necessary)

This act increases the periodic presumptive sentencing ranges for a certain sex offense; this includes a 99-year mandatory penalty for individuals with two prior sex felony convictions. This bill also requires individuals convicted of sex offenses to submit to a polygraph examination.

Due to the penalty increases, this bill will likely result in pressures that tend to increase criminal trials and increase the work necessary to prepare a case for trial or plea negotiation, thus putting an upward pressure on our case costs. The increased pressure, however, is indeterminate but may be mitigated by factors external to the Public Defender Agency, such as an offsetting plea bargaining policy. The Public Defender Agency, therefore, submits an indeterminate fiscal note.

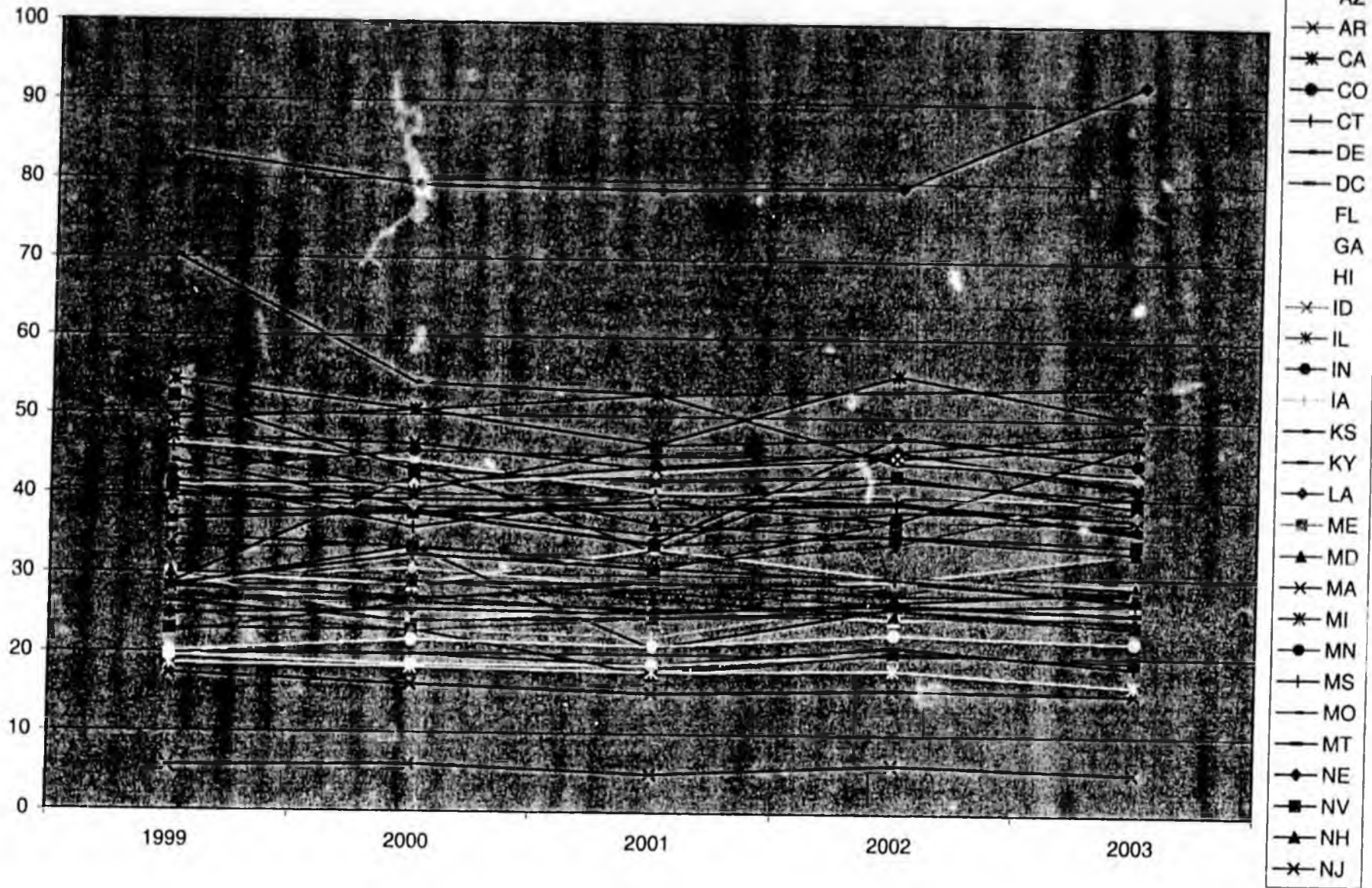
Prepared by: Quinlan Steiner, Director Phone 907.334.4414
 Division: Public Defender Agency Date/Time 1/17/06 1:00 p.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date _____
 Agency: Administration

Forcible rapes per 100,000



	1999	2000	2001	2002	2003
■ Nat. Average	34.16538462	33.42692308	32.62115385	34.08846154	33.68846154
■ Alaska	83.5	79.3	78.9	79.4	92.5

Forcible Rapes per 100,000

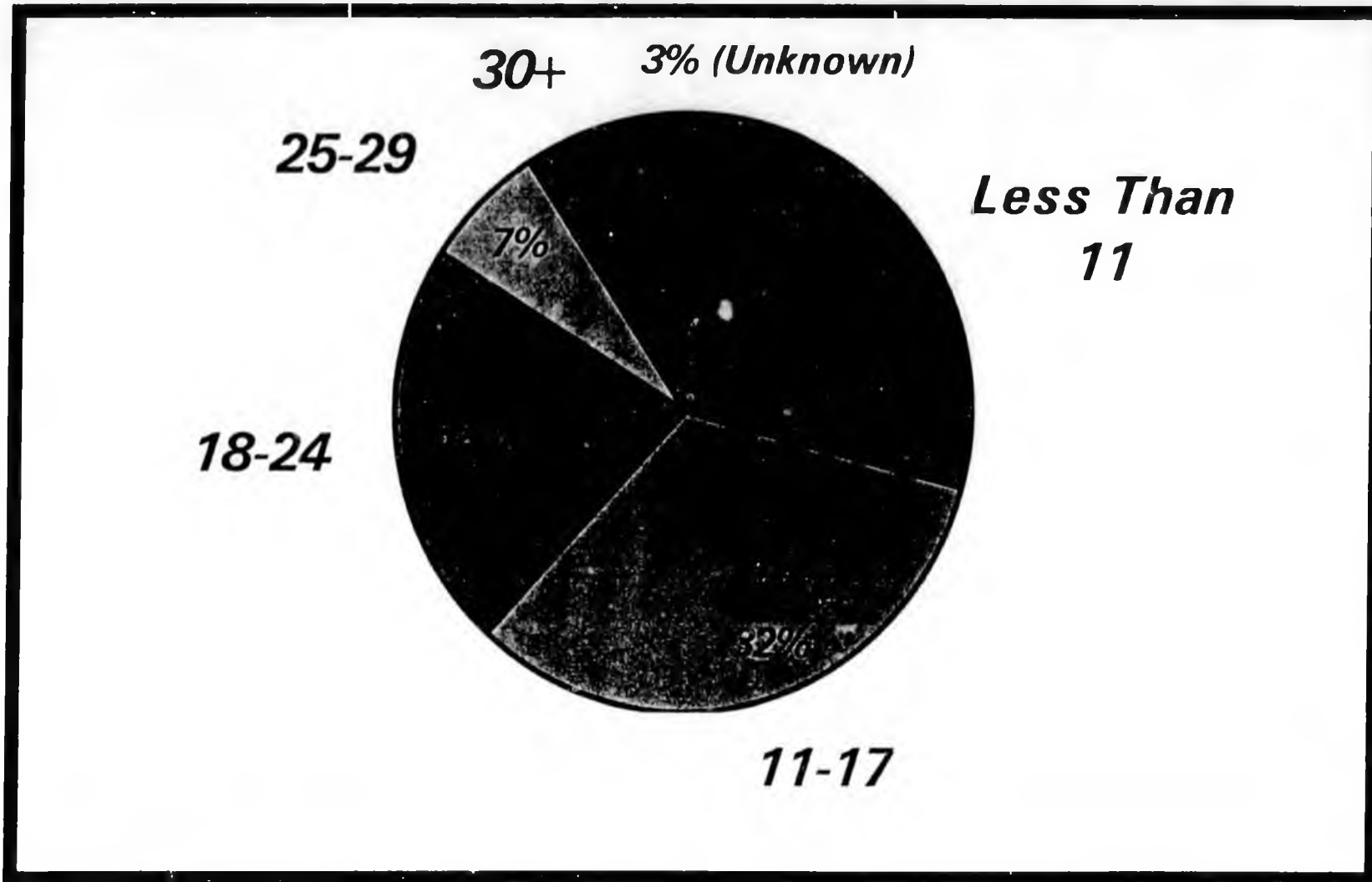


Forcible Rapes in Western States, 2003

State	Population	Forcible Rapes	Rapes per 100,000 Inhabitants
Alaska	648,818	600	92.5
New Mexico	1,874,614	937	50.0
Washington	6,131,445	2,864	46.7
Colorado	4,550,688	1,893	41.6
Nevada	2,241,154	874	39.0
Utah	2,351,467	892	37.9
Idaho	1,366,332	508	37.2
Oregon	3,559,596	1,218	34.2
Arizona	5,580,811	1,856	33.3
Hawaii	1,257,608	367	29.2
California	35,484,453	9,994	28.2
Montana	917,621	246	26.8

Source: Federal Bureau of Investigation, *Uniform Crime Report*, Table 5: "Crime in the United States, by State, 2003;" available online at www.fbi.gov/ucr/03cius.htm.

Age of Victim at Time of Rape





Forcible Rapes Increased 21.7%

**Reported rapes in Alaska
increased 21.7% from 2000 to
2003**

Although greatly underreported, there were 521 reported forcible rapes and 54 reported attempted rapes in 2003.

There are approximately 4300 registered sex offenders in Alaska communities.

Alaska Dept. of Public Safety Uniform Crime Reporting

**Only 16% of victims
in the
Rape in America
study reported
the rape.**

Kilpatrick, et al., 1992. Medical University of South Carolina.
N=4008 *Rape in America: A Report to the Nation.*

Arrest Rates are Low

27% of reported
sex crimes resulted
in an arrest

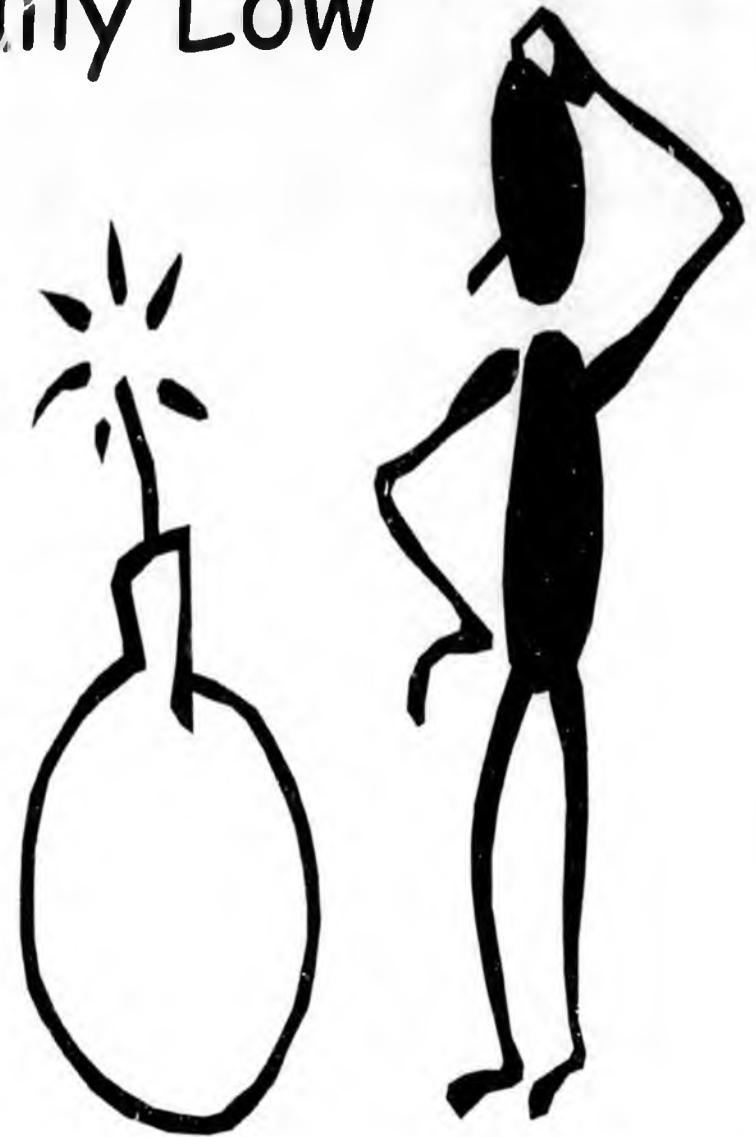


NIBRS 1991-1996, Snyder, 2000

In Colorado, between 1994-98, 54%-70% of those charged with a felony sex crime were convicted of a sex crime.

Sex Offender Recidivism Rates: Artificially Low

- Incest: 4-10%
- Rapists: 7-35%
- Child Molesters with female victims: 10-29%
- Child Molesters with male victims: 13-40%
- Exhibitionists: 41-71%



Crossover Admissions Pre & Post Polygraph N = 223

(Heil, Ahlmeyer, Simon, 2003)

Type of Crossover	Official records	Admissions after Treatment and polygraph testing
Both Adult & Child Victims	7.2%	70.0%
Both Male & Female Victims	8.5%	35.9%
Victims from 2 or more Relationship types	16.6%	79.8%

Secrets Revealed

Polygraph Research at the Colorado DOC Comparing Court Information v. Polygraph

	<u># of victims</u>	<u># of offenses</u>
Information at Sentencing	2 (1)	7 (1)
Sex History	83 (21)	394 (50)
1 st Polygraph	165 (24)	511 (95)
2 nd Polygraph	184 (26)	528 (95)

Alhmeyer et al., 2000, studied 35 sex offenders in treatment and polygraph testing at the CO Dept. of Corrections. Average admission (median) of contact & noncontact offenses

Polygraph Research at the Colorado DOC

Comparing Court Information v. Polygraph

Admissions of Hands-on Crossover Offending

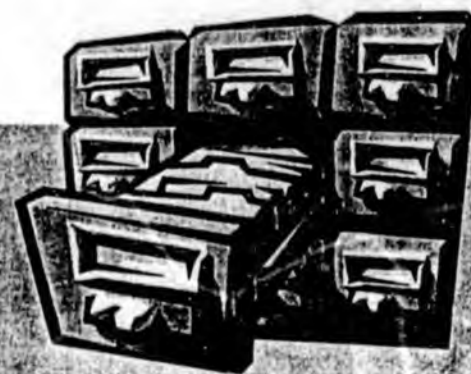
223 Sex Offenders Participating in SOTMP TC at the Colorado Department of Corrections

<u>Type of Crossover</u>	<u>Court</u>	<u>Polygraph</u>
Adult & Child Victims	7%	70%
Male & Female Victims	9%	36%
Multiple Relationships	20%	86%

180 convicted sex offenders on probation and parole in TX, WI, OR

Current Conviction Crime: Incest

n=80



Ever assaulted...

Assaulted strangers	35%
Assaulted from position of trust	57%
Assaulted adult victims	36%

Average Age of Onset

<u>Study</u>	<u>Type of Offender</u>	<u>Age of Onset</u>
Freeman-Longo(1985)	Rapist	18
	Child Molester	15
Elliot (1984)	Juvenile Rapists	16 peak
Emerick & Dutton(1993)	Juvenile Child Molesters	13 median
Ahlmeyer et al.(2000)	Inmates	12
English et al.(2001)	Supervised on Parole or Probation	12

Average Lag Time in Detection

<u>Study</u>	<u>Type of Offender</u>	<u># of Years</u>
Freeman-Longo (1985)	Rapist	6
	Child Molester	13
Elliot (1986)*	Paraphiliacs	10
Ahlmeyer et al.(2000)	Rapists and Child Molesters	16

Polygraph as a Deterrent



Abrams and Ogard, 1986

Studied the deterrent effect of polygraph on offenders on probation:

- Supervision **with** polygraph - **69%** successful compliance with probation
- Supervision **without** polygraph - **26%** successful compliance with probation

Effects of a Relapse Prevention Program on Sexual Recidivism: Final Results From California's Sex Offender Treatment and Evaluation Project (SOTEP)

Janice K. Marques,¹ Mark Wiederanders,^{1,3} David M. Day,¹
Craig Nelson,² and Alice van Ommeren¹

Final results from a longitudinal investigation of the effectiveness of cognitive-behavioral treatment with sexual offenders are presented. The study was a randomized clinical trial that compared the reoffense rates of offenders treated in an inpatient relapse prevention (RP) program with the rates of offenders in two (untreated) prison control groups. No significant differences were found among the three groups in their rates of sexual or violent reoffending over an 8-year follow-up period. This null result was found for both rapists and child molesters, and was confirmed in analyses using time to reoffense as the outcome and those controlling for static risk differences across the groups. Closer examination of the RP group's performance revealed that individuals who met the program's treatment goals had lower reoffense rates than those who did not. Although our results do not generally support the efficacy of the RP model, they do suggest a number of ways in which this kind of treatment program can be improved. This study also emphasizes the importance of including appropriate control groups in treatment outcome research. Additional controlled investigations are needed to address the many questions that remain about when and how treatment works for sexual offenders.

KEY WORDS: randomized clinical trial; sexual offender treatment; relapse prevention; treatment outcome; recidivism.

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Fifteen years ago, Furby, Weinrott, and Blackshaw (1989) conducted a thorough review of existing studies of sexual offender treatment, and concluded that, "There is as yet no evidence that clinical treatment reduces rates of sex offenses in general and no appropriate data for assessing whether it may be differentially effective for different types of offenders" (p. 27). They also called upon researchers and funding agencies to devote the time and resources necessary to conduct methodologically sound investigations of sexual offender recidivism and efforts to reduce it through treatment.

Since that time, dozens of outcome studies have been completed, many of which have found significant reductions in recidivism among treated groups (e.g., Borduin, Schaeffer, & Heilblum, 2000; Huot, 2002; Looman, Abracen, & Nicholaichuk, 2000; McGrath, Cumming, Livingston, & Hoke, 2003; Nicholaichuk, Gordon, Gu, & Wong, 2000; Zgoba, Sager, & Witt, 2003). As a result, recent reviews and meta-analyses have come to more optimistic conclusions about treatment effects (e.g., Craig, Browne, & Stringer, 2003; Gallagher, Wilson, Hirschfield, Coggeshall, & MacKenzie, 1999; Grossman, Martis, & Fichtner, 1999), and there appears to be a growing consensus that current treatment approaches can indeed lower an offender's risk of sexual reoffense. Perhaps the strongest evidence of this comes from the recent collaborative outcome data project conducted by Hanson et al. (2002). Although few of the studies in this meta-analysis used true randomized designs, data were included from a wide range of treatment programs and a total of over 9,000 sexual offenders. Overall, the sexual reoffense rate was lower for the treated offenders (12.3%) than for those in the comparison groups (16.8%). More importantly, studies of contemporary treatment approaches (cognitive behavioral or systemic) reported a reduction in sexual recidivism from 17.4 to 9.9%.

Despite this developing sense of optimism about sexual offender treatment, not everyone in the field is convinced. For example, Rice and Harris (2003) reviewed the studies in the Hanson et al. (2002) meta-analysis and indicated that most had designs that were too weak to support conclusions about treatment effects. Others (Berliner, 2002; Prentky, 2003) have emphasized that important questions remain about the size, significance and stability of treatment effects over time, and about whether current research results can be generalized to the highest risk offenders. Even those reporting positive findings have pointed out significant gaps in our knowledge base and have called for vigorous research to improve our understanding of how and when sexual offender treatment works (Gallagher et al., 1999; Hanson et al., 2002).

The study described here, California's Sex Offender Treatment and Evaluation Project (SOTEP), was a longitudinal investigation that was specifically designed to add to our developing knowledge base on treatment effectiveness. By rigorously testing the impact of a contemporary treatment approach on sexual offenders who volunteered for treatment, we hoped to provide at least some answers to the question, "What kinds of treatment work for what kinds of

offenders under what conditions?" This project represents the first true randomized trial of modern cognitive-behavioral approaches with incarcerated adult sexual offenders.

OVERVIEW OF SOTEP

In the early 1980s, the California State Legislature ended the state's Mentally Disordered Sex Offender commitment program and required that a new state hospital program be established for sexual offenders who volunteered for treatment during the last 2 years of their prison terms (California Laws, 1981). It was further mandated that this was to be a small (less than 50 beds) program that was "established according to a valid experimental design in order that the most effective, newest and promising methods of treatment of sex offenders may be rigorously tested." (California Laws, 1981, 1982). These requirements, along with the fact that there were over 16,000 sexual offenders in California prisons at the time, provided the conditions under which a random assignment study of treatment effectiveness could be conducted.

In 1984, the California Department of Mental Health's proposal for the innovative treatment program and its evaluation was accepted and subsequently funded by the Legislature. Important features of this new project included (a) an experimental design that included random assignment of volunteers to either treatment or no-treatment conditions; (b) an intensive, cognitive-behavioral inpatient treatment program designed specifically to prevent relapse among sexual offenders; (c) a 1-year aftercare program in the community; and (d) a program evaluation that measured both in-treatment changes and long-term outcomes, including a follow-up period in which recidivism rates for treated and untreated participants were tracked for at least 5 years. SOTEP's treatment program operated at Atascadero State Hospital from 1985-1995; data collection for the program evaluation began in 1985 and continued for 6 years after the treatment unit closed.

Although we have published findings from several earlier panels of outcome data (Marques, Day, Nelson, Miner, & West, 1991; Marques, Day, Nelson, & West, 1994; Marques, Nelson, West, & Day, 1994; Marques, 1999), these have been in the form of preliminary studies or progress reports. The analyses that we present here are based on the last panel of SOTEP outcome data (collected in 2001), and represent our final results.

METHOD

Design

The impact of SOTEP's treatment program was determined by comparing the postrelease activities of three matched groups of participants:

Relapse prevention (RP) group. Sexual offenders who volunteered to participate and were randomly assigned to treatment at Atascadero State Hospital.

Volunteer control (VC) group. Sexual offenders in prison who volunteered but were randomly selected for no treatment. This was the primary comparison group for the treatment outcome study.

Nonvolunteer control (NVC) group. Inmates who qualified for the project but chose not to participate. This was a secondary comparison group that allowed us to track sexual offenders who did not want treatment as well as those who did.

Procedure

Study participants were involved in four phases of the project:

Selection

Between 1985 and 1994, SOTEP staff regularly visited California prisons to identify and interview eligible inmates, and to collect background information from their records. In the interview, the study's methods were explained (including the randomized group assignments, the program's assessment and treatment methods, and the program evaluation data to be collected), a brief mental status exam was conducted, and consent forms were signed by inmates who agreed to participate. Then, pairs of those who volunteered were matched on the variables of age (over or under 40 years), criminal history (prior felony conviction or not), and type of offender (rapist, molester with male victim, molester with female victim, or molester with victims of both sexes). One member of each matched pair was then assigned at random to the RP group, and the other assigned to the VC group. Matched offenders for the NVC group were selected later, also at random, from the pool of inmates who did not volunteer for the study.

Treatment

During this phase, members of the treatment group participated in an intensive 2-year treatment program at Atascadero State Hospital, a licensed and JCAHO accredited secure forensic treatment facility in California's central coast region. Members of the two control groups remained in prison and did not receive any treatment services from project staff. It should also be noted that although California prisons employed clinicians and offered some counseling to inmates (such as anger management and substance abuse groups), there was no organized sexual offender treatment program in the state's Department of Corrections during the time that SOTEP's program operated (1985-1995). Shortly before their release from either hospital or prison, all study participants were scheduled for

an interview with SOTEP research staff, and were asked to complete several assessment measures.

Aftercare

Following their hospital stays, RP group members participated in the Sex Offender Aftercare Program (SOAP) for 1 year. These services, which were provided in the offender's community by contract clinicians who were trained in RP by SOTEP clinical staff, were a condition of the participants' parole. This meant that failure to attend SOAP could result in a parole revocation and return to prison. Members of the two control groups were also supervised by parole agents after their release from prison. With the exception of several small pilot programs during the 1990s, the Department of Corrections had no sexual offender treatment programs for inmates leaving prison during our study period. At the end of the aftercare phase, SOTEP research staff conducted interviews with all RP group members and with control group members who volunteered to be interviewed.

Follow-Up

This phase overlapped the aftercare phase, and continued until the end of June 2000, when all but a few study participants had been at risk for at least 5 years. During follow-up, SOTEP staff regularly reviewed a variety of official records on all participants and recorded new offense information. Because of the lag in the posting of reoffense data, it was necessary to continue data collection into 2001 to detect all of the reoffenses that had occurred during the follow-up period. In addition to official record information, we collected some follow-up information from interviews with participants during this period.

Participants

All of the sexual offenders in this study were men from institutions within the California Department of Corrections, where they were serving sentences for child molestation or rape. Inmates who had offended in concert (e.g., gang rape) or only against their biological children (incest) were excluded from eligibility. In addition, participation was limited to inmates who (a) were within 18–30 months of release, (b) were between the ages of 18 and 60 years, (c) had no more than two felony convictions prior to their instant offenses, (d) admitted committing a sexual offense, (e) did not have pending immigration holds or felony warrants, (f) had estimated IQs above 80, (g) spoke English, (h) did not have a psychotic or organic mental condition, (i) were not so medically debilitated as to require skilled nursing care, and (j) had not presented severe management problems in prison.

Over the course of the project, SOTEP collected information from the prison records of over 1,400 men who were eligible for the study. Nearly three quarters (72.4%) of the eligibles were serving terms for child molestation, and the remainder (27.6%) were convicted rapists. Approximately one third of the eligible inmates interviewed for the project volunteered to participate. Although the most common reasons inmates gave for volunteering were to understand themselves or get help for their problems, discomfort as sexual offenders in prison was also reported as a factor. Similarly, although many of the nonvolunteers indicated that they did not want treatment, others refused because they had good job assignments, were located near family, or did not want to become state hospital patients. Overall, volunteers did not differ from the nonvolunteers on demographic and criminal history factors, with the exception of offender type. Child molesters were more likely to volunteer than rapists, $\chi^2(1, N = 1407) = 10.67, p = .001$; among child molesters, those with male victims were more likely to volunteer than those with female victims or victims of both sexes, $\chi^2(2, N = 1018) = 6.98, p = .030$.

Our study sample consisted of 704 offenders: 259 assigned to the treatment (RP) condition, 225 assigned to the volunteer control (VC) condition, and 220 selected for the nonvolunteer control (NVC) condition. Differences in the *n*'s were due primarily to RP group attrition, which is addressed below. In terms of offender types, each of the three groups was approximately 50% molesters with female victims, 20% molesters with male victims, 8% molesters with female and male victims, and 22% rapists (with adult victims). Over a third (39.9%) of the sample had prior felony convictions, 22.4% had prior arrests for sexual crimes, and 18.4% had prior convictions for sexual crimes. The major racial/ethnic groups were White (70.2%), African American (15.2%), and Hispanic/Latino (12.6%). The RP group did not differ from the control groups except that (a) more (12.8%) of the RP group members had previously been committed for treatment as mentally disordered sex offenders (MDSOs) than had the control group members (6.4%), $\chi^2(1, N = 694) = 8.20, p = .004$; and (b) a larger proportion (66.3%) of the RP group members were unmarried than were control group members (58.7%), although this difference did not quite reach significance, $\chi^2(1, N = 680) = 3.81, p = .051$.

Attrition

A total of 259 individuals were randomly assigned to the treatment (RP) condition. Of these, 55 withdrew their consent after they learned of their selection but before they were transferred to Atascadero State Hospital. Of the 204 men admitted to the treatment program, 167 (82%) completed their sentences there and were discharged to our aftercare program. The remaining 37 (18%) did not complete the program; 27 of these voluntarily withdrew and 10 were returned to prison because they presented severe management problems in the hospital. The 37 dropouts consisted of 24 child molesters and 13 rapists. Fourteen of the

dropouts (10 child molesters and 4 rapists) left the program before completing 1 year of treatment (approximately half of the program); another 23 (14 child molesters and 9 rapists) left after completing over 1 year of treatment.

Comparisons between the 167 treatment completers and the 37 dropouts revealed that they did not differ significantly on our measures of static risk (described in the section on covariates below) or treatment need (described in the section on treatment subgroups below), or on demographic variables other than age. We did find that treatment dropouts were significantly younger than completers (34.1 years vs. 37.4 years), $t(202) = 2.25, p = .025$ (two-tailed). The dropout rate for rapists (27%) was higher than that for child molesters (15%), but this difference did not reach statistical significance, $\chi^2(1, N = 204) = 3.38, p = .065$. Within the dropout group, comparisons between those who left the program early (before a year) and those who left late (after a year) revealed no significant differences on static risk, level of treatment need, psychopathy, age, or any other demographic variables.

For our comparison groups, 225 of the volunteers were assigned to the VC group, and 220 were selected from the pool of nonvolunteers to be the NVC group. None of the control participants dropped out of the study.

As we have noted previously (Marques, Day, et al., 1994) we have been concerned about attrition in our treatment sample since the study began, and have attempted to minimize its impact on our design. First, we tried to limit the number of treatment dropouts by terminating participation only when an individual created severe management problems in the hospital (such as serious contraband violations, assaultive behavior, or interfering with the treatment of others).

Men who were not disruptive, even if their progress was not substantial, were retained in the RP group. We gave participants who asked to leave the program 24 hr in which to reconsider their decision and stay in treatment. We also decided early in the study to retain in the RP group those participants who left the program after receiving a substantial dose of treatment (1 year, about half of the program). Finally, 4 years into the study we changed our selection-phase procedure to minimize the design problems caused by participants dropping out of treatment before they arrived at the program. From that point on, control group members were not matched to RP group members until the treatment participant was actually transferred to the program.

Despite these attempts, we still had a number of RP group members who dropped out of the study before they received a substantial dose of our intervention. Our method for handling this problem is described in the Results section below.

Treatment Program

From the beginning (Marques, 1984), SOTEP was designed to provide a comprehensive cognitive-behavioral treatment program that was based on our

adaptation (Marques, 1982) of Marlatt's RP model (Marlatt, 1980; Marlatt & Gordon, 1985). The program embraced the basic theoretical concepts of RP, emphasized the long-term risk of reoffending, and explicitly targeted the problem of relapse. All of the program's components, which included a variety of cognitive, behavioral and skill-training elements, were organized around the RP framework. Both assessment and treatment procedures focused on the individual's specific risk factors for reoffense, from broad lifestyle factors and cognitive distortions to deviant sexual arousal patterns and deficits in coping skills. Overall, the program's goals were to have participants show (a) an increased sense of personal responsibility and decreased use of justifications for sexual deviance; (b) a decrease in deviant sexual interests; (c) an understanding of, and ability to apply, the basic concepts and techniques of RP; (d) an improved ability to identify high-risk situations, and (e) better skills in the areas of avoiding and coping with high-risk situations.

SOTEP's primary treatment structure was the core RP group, which met for three 90-min sessions each week throughout the program. This highly structured group was the setting in which each participant's cognitive-behavioral offense chain was constructed and was used to identify the risk factors and patterns that his RP program needed to address. Core group members worked on accepting responsibility for their offenses, modifying their cognitive distortions, examining how they set up their past crimes and learning what they had to do differently to avoid reoffense.

In addition to this intensive group work, RP group members participated in other components that addressed factors associated with sexual offending. The project's specialty groups were designed to provide the specific knowledge, attitudes and skills that the offender needed to identify and cope with potential high-risk situations. These included groups on sex education, human sexuality, relaxation training, stress and anger management, and social skills. All participants also completed a prerelease class designed to prepare them for "life on the streets" and were scheduled for weekly individual sessions with their assigned clinicians and nursing staff. Other program components were offered on a prescriptive basis. Participants with significant alcohol or drug abuse histories (about 69% of the treated group) were required to complete an RP-based substance abuse group. Individuals who showed patterns of deviant arousal in their phallometric assessments were offered behavioral treatment, usually olfactory aversion or orgasmic reconditioning. To maintain consistency and fidelity in the program, all treatment services (with the exception of individual sessions) were guided by manuals that specified the goals and treatment procedures for the group sessions, as well as the homework assignments to be completed by participants. All group sessions were videotaped; the tapes were randomly selected and reviewed in clinical supervision sessions, but program fidelity was not formally monitored in the program.

Measures

In-Treatment Measures

RP group members completed a variety of psychological tests and other instruments during their hospital stays, including pre-post tests in specialty groups and a battery of measures at intake and release from the program. Some of these were used primarily by clinicians for treatment planning, some were used to evaluate specific treatment components, and others were used to determine if RP group members were reaching the overall treatment goals described above (see Marques et al., 1991 for a complete description of the instruments used). For the outcome study presented here, only measures directly related to treatment needs and goals were considered. These included (a) one pretreatment self-report, SOTEP's motivational questionnaire; (b) two pre-post tests, phallometric assessment of deviant sexual interests and the Multiphasic Sex Inventory (MSI; Nichols & Molinder, 1984); and (c) two posttreatment measures, clinician ratings of how well the participant performed on two RP exercises. Although data from another pre-post measure, the Sex Offender Situational Competency Test (Miner, Day, & Nafpaktitis, 1989) were collected, they had not been coded and analyzed in time for inclusion here.

Outcome Measures

Study participants were followed in the community for a minimum of 1 year and a maximum of 14 years. In each year of follow-up, we collected data from both the FBI and the California Department of Justice concerning criminal activity ("rap sheets") and from the state's Department of Corrections concerning parole violations and returns to prison. When there were indications that an offense had occurred, we attempted to obtain the actual arrest and investigation reports that described the crime. Staff then rated the offense descriptions along a number of dimensions, including certainty that the offense occurred, type of offense (sexual, other violent, or other), and various levels of offense severity. Interrater agreements from year to year were evaluated using randomly selected samples of cases with reoffense activity. The overall agreements for the ratings were acceptable (89% for offense type, 100% for certainty of offender guilt, and 84% for sexual offense severity).

Possible sexual offenses were categorized as "hands on" (e.g., child molestation, rape, attempted rape), "hands off" (e.g., possession of child pornography, propositioning a minor, indecent exposure) or "high-risk behavior" (e.g., being in the presence of minors or loitering, behaviors that we considered risky or possible offense precursors but that were not sexual offenses per se). In the analyses presented here, "sexual reoffenses" included both hands-on and hands-off behaviors,

but did not include the group of high-risk behaviors. In terms of offense certainty, we only included crimes that were rated as at least "possible." In some cases then, offenses were counted if there was evidence that the crime occurred, even if charges were dropped or the offender was returned to custody for violating his parole conditions.

RESULTS

Our final panel of SOTEP data was analyzed in several steps. First, we conducted a set of main effects analyses, comparing the reoffense rates of our treated participants with those of our two control groups. We started with broad analyses that included treatment dropouts as well as completers, and used both sexual recidivism and nonsexual violent recidivism as outcomes. Next, we narrowed our focus to the major outcome of interest, sexual reoffending, and looked more closely at our groups and outcomes to determine if there were some types of offenders that did better with treatment, and if there were differences in the severity of the offenses that were committed by treated and untreated offenders. We also determined if our experimental groups differed in terms of their reoffense risk, and conducted main effects analyses that took levels of risk into account by including a measure of static risk as a covariate. Finally, we examined effects that were unique to the treatment group. The focus here was on our in-treatment measures, specifically whether they predicted outcome and whether they could be combined to identify subgroups of offenders who were more likely to succeed after discharge.

Main Effects Analysis

Table I presents the reoffense rates for all SOTEP study groups, with the group assigned to RP broken down into several subgroups: (a) those who withdrew before transfer to the treatment program, (b) those who left treatment before 1 year, and

Table I. Sexual and Violent Reoffense Rates for All Study Groups

Group	n	Years at risk	Sexual reoffense	Violent reoffense
		M	%	%
Relapse prevention (all assigned)	259	8.3	22.0	16.2
Withdrew prior to treatment	55	7.9	20.0	12.7
Relapse prevention < 1 year	14	8.4	35.7	28.6
Relapse prevention > 1 year	190	8.4	21.6	16.3
Volunteer control	225	8.4	20.0	11.6
Nonvolunteer control	220	8.3	19.1	15.0

Note. Relapse prevention group is broken down to show various subgroups that resulted from attrition.

(c) those who completed the program or left after a year or more of treatment. In addition to our primary outcome events (new sexual offenses), the table shows what percentage of the participants committed new crimes involving nonsexual violence. It should be noted that we avoided duplication in the table by using a hierarchical system for these data, that is, violent offenses were only counted if the individual did not have a new sexual offense.

The attrition in our RP group has complicated our analyses of treatment effects. For example, do we identify as our experimental group all participants randomly assigned to treatment or only those to whom treatment was delivered? Our solution to this problem was to collect recidivism data on all study participants, and then to test hypotheses in two ways, "treatment as assigned" and "treatment as delivered" (see Marques, Day, et al., 1994). In the first of these analyses, the randomization was preserved, and the RP group consisted of all individuals randomly selected for treatment, whether they entered the program or not. This was our broadly defined "intent to treat" sample. In the second analysis, only RP group members who actually participated in treatment were included, and the reoffense rates of those who received a substantial dose of treatment were compared with those who dropped out as well as those in the control groups. We expected that any conclusion regarding treatment effectiveness would be based on converging evidence from both of these tests.

Treatment as Assigned

This analysis compared the proportion of the RP intent to treat group who reoffended with the proportions who reoffended in the volunteer control (VC) and nonvolunteer control (NVC) groups. Because SOTEP participants had varying times at risk, recidivism incident data were analyzed using the LIFETEST survival rate analysis program (SAS Institute, 1999). In this procedure, time until recidivism, specifically the number of days between each participant's release from incarceration and the date of apprehension for a new offense, was the dependent variable rather than the simple presence or absence of reoffense. Although methods are sometimes used to adjust time-at-risk by subtracting temporary incarcerations for other offenses from total follow-up time, we essentially used calendar time until recidivism in our analyses. Specifically, each participant's reoffenses were tracked until (a) the end of our follow-up period (June 30, 2000), (b) the date of his death, or (c) the date he was incarcerated for a period of time that included the last date of follow-up.

Wilcoxon tests of the differences in the survival distributions across experimental groups failed to approach significance in the treatment as assigned analysis for both sexual reoffense, $\chi^2(2, N = 704) = 0.28, p = .870$, and nonsexual violent reoffense, $\chi^2(2, N = 704) = 0.66, p = .719$. For our primary outcome, sexual reoffense, the Kaplan-Meier display of the survival curves showed remarkably

Table II. Cumulative Failure Rates (Sexual Reoffense) Over 6 Time Gates

Group	Rate at given time gate					
	1 year	2 year	3 year	4 year	8 year	12 year
Relapse prevention < 1 year	21.4	28.6	28.6	28.6	28.6	35.7
Relapse prevention > 1 year	6.8	10.5	14.7	15.3	19.5	21.6
Volunteer control	6.2	10.7	13.3	16.0	19.1	20.0
Nonvolunteer control	5.5	11.4	13.2	15.9	18.2	19.1

Note. Relapse prevention includes all participants who were admitted to the treatment program.

similar patterns across all three groups, with reoffenses occurring steadily for the first 3 years after release, after which the rates of reoffense slowed, then almost leveled off at the 5-year point and beyond.

Treatment as Delivered

For this second comparison of the reoffense rates of our treated and untreated participants, we excluded the 55 men who dropped out before transfer to the hospital, and focused on the 204 in the RP group who had some treatment exposure. As Table I shows, these were further divided into two groups, those who left before 1 year and those who completed a year or more of the program. Wilcoxon tests of the differences in the survival distributions across experimental groups failed to reach significance in the treatment as delivered analysis for sexual reoffense, $\chi^2(3, N = 649) = 2.66, p = .448$. Kaplan-Meier survival curves appeared very similar across groups, except for the group of early treatment dropouts who demonstrated visually poorer survival times until sexual offending. As Table II demonstrates, early dropouts tended to reoffend in their first year after release. Because of the very small size of this group ($n = 14$), however, this difference was not statistically significant as was noted earlier.

When the outcome criterion was changed to nonsexual violent reoffense, the survival distributions of the groups were similar to those for the outcome of sexual reoffense. However, the pattern of early reoffense among the early dropouts was more pronounced, achieving statistical significance when time-until-violent offense was the criterion, $\chi^2(3, N = 649) = 8.76, p = .033$.

Treatment Interactions

Even without an overall treatment effect, it is possible that a subset of offenders did better with treatment than without. Our next set of analyses addressed this possibility, by examining the outcomes for offender subgroups. First, we calculated reoffense rates within the various types of offenders in our sample (molesters of females, molesters of males, molesters of males and females, and rapists), and

Table III. Sexual Reoffense Rates by Experimental Group for Various Offender Types

Group	Child molesters				
	All molesters	Female victim	Male victim	Male and female victim	Rapists
	% (n)	% (n)	% (n)	% (n)	% (n)
Relapse prevention	21.9 (32/146)	17.8 (16/90)	30.0 (12/40)	25.0 (4/16)	20.4 (9/44)
Volunteer control	17.2 (30/174)	14.2 (16/113)	22.7 (10/44)	23.5 (4/17)	29.4 (15/51)
Nonvolunteer control	20.6 (35/170)	14.8 (16/108)	17.2 (16/43)	15.8 (3/19)	14.0 (7/50)

Note. Relapse prevention includes all participants who completed at least 1 year of treatment.

compared these rates across the RP, VC, and NVC groups (see Table III). None of the observed differences between the treated and untreated groups approached statistical significance in either simple tests of proportions or in comparisons across survival distributions. It should be noted that the early dropout group was omitted in this and subsequent tables and analyses because of its small size, $n = 14$.

Next, we examined our results to determine if there were other subject characteristics that interacted with treatment, such as demographic variables or criminal history. To test for interactions we ran a logistic regression analysis with sexual reoffender (yes/no) as the dependent variable. In each equation, experimental group, a subject characteristic, and the group-by-subject characteristic interaction term were tested for significance. The subject characteristics entered in these equations were offender type (molester/rapist), age (under 40/40 plus), racial identification (White/non-White), prior MDSO status (yes/no), prior sexual offense felonies (yes/no), intoxicated at time of the instant offense (yes/no), physically injured victim (yes/no), and victim was a stranger (yes/no).

The interaction term was statistically significant in only one of these calculations, namely, intoxicated at the time of the offense, $\chi^2(1, N = 390) = 5.23$, $p = .022$. RP participants who were intoxicated at the time of the instant offense had a lower rate of sexual reoffense than RP participants who were not intoxicated (12.1% vs. 28.6%), whereas VC participants showed the reverse pattern (22.4% reoffense if intoxicated and 18.8% if not intoxicated). This significance, however, was eliminated when we applied a Bonferroni correction for multiple comparisons. A second test for interactions using Cox regression with survival hazard rate as the dependent variable yielded the same result as the logistic regression.

Severity of Reoffense

Our offense severity-coding data were used to examine qualitative differences in the reoffenses that were committed by individuals in our study groups. For these comparisons, a severe sexual offense was defined as one involving (a) sexual

penetration, (b) victim injury, (c) use of a weapon, or (d) incapacitation of the victim. We found that the VC group tended to commit more severe offenses than the RP or NVC groups, with the differences among the three groups being significant on two variables, sexual penetration, $\chi^2(2, N = 178) = 6.48, p = .039$ and victim injury, $\chi^2(2, N = 155) = 7.51, p = .023$. Again, however, applying Bonferroni corrections due to multiple tests had the effect of eliminating the significance of these two findings.

To explore the severity findings more closely, we focused on comparing the reoffenses of our RP group with those of the primary control (VC) group. Inspection of the data revealed that the RP group had a lower percentage of crimes that were rated as severe on three of the four indicators, sexual penetration (15.3% for the RPs vs. 33.3% for VCs), weapons (2.0% vs. 10.0%), and victim injury (7.6% vs. 14.6%). To avoid the multiple-tests problem and to more efficiently test these relationships we calculated a stepwise logistic regression in which offense severity variables were predictors and group was the dependent variable. In this equation two variables emerged as significant predictors, sexual penetration $\chi^2(1, N = 101) = 4.68, p = .031$, and incapacitation of the victim, $\chi^2(1, N = 101) = 4.85, p = .028$, with victim injury approaching significance, $\chi^2(1, N = 101) = 3.50, p = .062$. We also constructed composite measures of severity by combining the four indicators, but because the variables were not significantly correlated with each other this approach did not prove to be meaningful.

Main Effects Analysis with Covariates

Our matching variables (age, type of offense, and prior felony convictions) and randomization procedures were designed to create groups that were not significantly different from each other on important variables such as pretreatment risk. As noted above, however, we detected some differences in the experimental groups; for example, compared with the control groups, more of the RP participants were single or had a history of commitment as a mentally disordered sex offender. As a result, it has been necessary for us to conduct additional survival analyses to control for differences in pretreatment reoffense risk.

Although today's array of actuarial risk assessment instruments was not available when we designed our study in 1984, we did collect enough information on our participants to later score them on a shortened version of the Static-99 (Hanson & Thornton, 2000). It should be noted that the Static-99 combines items from the RRASOR (Hanson, 1997a) and the SACJ-Min (Grubin, 1998), and that an earlier panel of SOTEP data was used in the development of the RRASOR. Our adaptation of the Static-99, which we called "Static-Lite," included the following seven items from the Static-99: prior sex offenses, convictions for noncontact sex offenses, any unrelated victims, any stranger victims, any male victims, young, and never married.

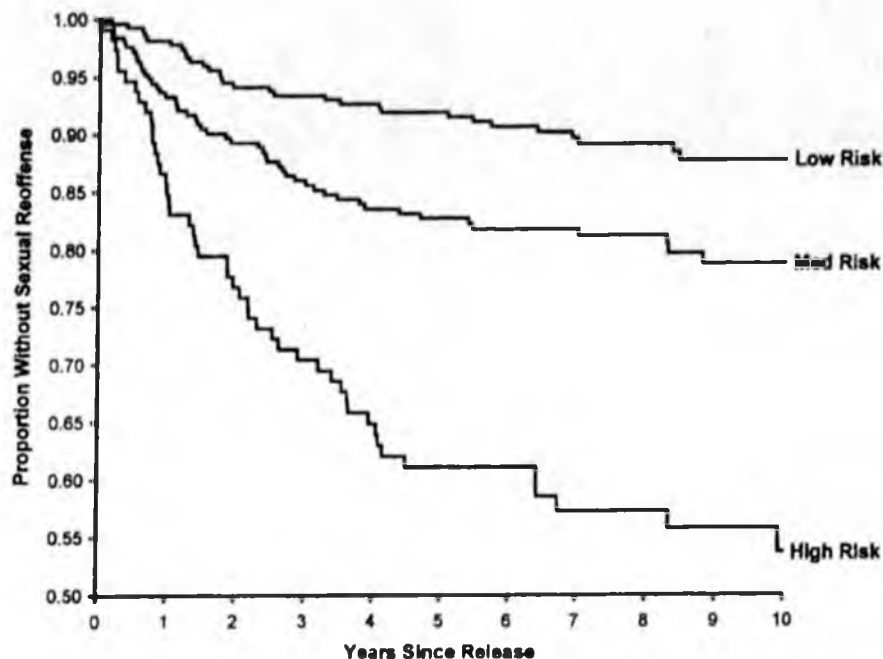


Fig. 1. Survival curves for groups differing on static risk (Static-Lite) scores.

Even though our sample did not include some of the highest risk offenders (e.g., those with three or more prior felony convictions), Static-Lite proved to be an adequate measure of risk, showing moderate predictive accuracy for sexual recidivism (ROC area = .68). As Fig. 1 demonstrates, there were clear differences in the rates of survival for high, medium and low risk individuals in our sample, $\chi^2(2, N = 635) = 54.9, p < .0001$.

Despite random assignment, the mean risk score of the RP group ($M = 2.25$) was significantly higher than the mean scores of the VC group ($M = 1.88$) and the NVC group ($M = 1.88$), $F(2, 635) = 3.71, p = .025$. To determine if this difference resulted from a nonrandom source, particularly attrition, we compared the Static-Lite scores of the various subgroups of offenders who were originally assigned to RP. No differences were found among the risk scores of the 167 treatment completers ($M = 2.28$), the 23 late dropouts ($M = 2.09$), the 14 early dropouts ($M = 2.21$), and the 55 individuals assigned to treatment who never showed up ($M = 2.11$), $F(3, 257) = .19, p = .904$.

As Table IV shows, when the groups were stratified by risk level, the RP group tended to have somewhat lower reoffense rates than the primary comparison group, the VCs. RP participants also appeared to fare better than NVC participants, with the exception of the medium risk group. In Table V, the reoffense rates of the two comparison groups have been adjusted to reflect what they would be if those

Table IV Sexual Reoffense Rates for Different Risk Groups

Group	Risk group ^a		
	Low	Medium	High
	% (n)	% (n)	% (n)
Relapse prevention	11.0 (8/73)	21.6 (16/74)	39.5 (17/43)
Volunteer control	11.1 (11/99)	21.9 (21/96)	43.3 (13/30)
Nonvolunteer control	12.1 (12/99)	14.6 (12/82)	46.2 (18/39)

Note. Relapse prevention includes all participants who completed at least 1 year of treatment.

^aRisk groups were defined by scores on Static-Lite, an abbreviated version of the Static-99 (Hanson & Thornton, 2000). Low includes scores of 0-1, medium includes scores of 2-4, and high includes scores of 5 and above.

groups had the same higher risk scores that the RP group did. These adjustments were made by calculating the odds ratio associated with an increase by one point in Static-Lite score, then using observed Static-Lite group means to determine the amount of hypothetical recidivism-increase to add to the VC and NVC group means. When static risk was controlled for, the RP group appeared to have the lowest reoffense rate, but this difference did not approach significance in either a simple test of proportions or in a Cox regression equation testing the survival hazard rate of the RP group versus that of the combined control groups.

Because the research literature and particularly meta-analyses of sexual offender treatment studies often describe findings in terms of effect size, an analysis was also conducted to derive effect size of the recidivism comparison between the two most conservatively defined and randomly assigned groups after controlling for risk. Specifically, survival times until recidivism of the 259 offenders originally assigned to treatment and the 225 VCs were entered into a Cox equation after first entering Static-Lite score. The odds ratio for Assigned RP versus VC was .965, between 95% confidence limits of .650 and 1.433. This again indicates (nonsignificantly) lower odds of reoffending among the RP group after controlling for risk.

Further inspection of Static-Lite scores showed that risk was unequally distributed across types of offenders when viewed by experimental group. To

Table V. Sexual Reoffense Rates Adjusted^a for Static-Lite Scores

Group	n	Static-Lite M	Observed rate	Adjusted rate
Relapse prevention	190	2.25	21.6	21.6
Volunteer control	225	1.88	20.0	23.8
Nonvolunteer control	220	1.88	19.1	23.0

Note. Relapse prevention includes all participants who completed at least 1 year of treatment.

^aFor Static-Lite differences using odds ratio to compute hypothetical increases (or decreases) in recidivism given static risk differences in groups.

Table VI. Adjusted^a Sexual Reoffense Rates for Various Offender Types

Group	Child molesters				Rapists (%)
	All Molesters (%)	Female victim (%)	Male victim (%)	Male and female victim (%)	
Relapse prevention	21.9	17.8	30.0	25.0	20.4
Volunteer control	21.3	16.4	33.2	22.9	30.2
Nonvolunteer control	24.4	17.5	42.8	16.5	17.2

Note. Relapse prevention includes all participants who completed at least 1 year of treatment.

^aFor Static-Lite differences using odds ratio to compute hypothetical increases (or decreases) in recidivism given static risk differences in groups.

investigate the extent to which risk may have affected results within offender type, we calculated adjusted recidivism rates for each offender type and experimental group in the same way we made hypothetical adjustments for main effects, specifically by using odds ratios to compute expected group recidivism rates given observed Static-Lite scores. Results (Table VI) show that these adjustments changed the picture of relative recidivism rates within offender types when compared with the observed (unadjusted) recidivism rates that were presented in Table III. However, tests of the differences across experimental groups in (adjusted) proportions of reoffenders found none approaching statistical significance.

RP Group Analyses

We conducted several sets of analyses on our RP group only, to examine the relationship between treatment progress and reoffense. We first examined whether our in-treatment measures were useful in predicting outcomes (sexual reoffenses). Next, we determined whether offenders with higher initial needs in areas that our program was designed to address had better outcomes than those with lower needs. Finally, we analyzed the extent to which participants who met treatment goals had better outcomes than those who did not.

In-Treatment Measures

Our first set of analyses was conducted to update our preliminary work (Marques, Nelson, et al., 1994) on the relationships between treatment measures and recidivism. As in the earlier study, we focused on a small set of in-treatment measures that were related to the SOTEP goals of having participants show (a) increased personal responsibility and decreased use of justifications for sexual abuse, (b) decreased deviant sexual arousal, and (c) an understanding of and ability to apply the techniques of RP. The measures we used were from two tests administered pre- and posttreatment (the MSI and a phallometric assessment) and

from two posttreatment only tests (both of which were clinician ratings of RP skills).

Pre-post comparisons were made on two scales from the MSI (the Justifications scale and the Cognitive Distortions and Immaturity scale) and on three indicators of deviance from the phallometric assessment (arousal to stimuli depicting female children, male children, and rape). The mean scores on both MSI scales were significantly lower at discharge than at intake; for Justifications, $t(168) = 5.55$, $p < .0001$ (one-tailed), and for Cognitive Distortions and Immaturity, $t(168) = 4.78$, $p < .0001$ (one-tailed). Significant pre-post changes were also found on the mean phallometric responses to stimuli of female children, $t(170) = 9.31$, $p < .0001$ (one-tailed); male children, $t(170) = 6.76$, $p < .0001$ (one-tailed); and rape, $t(170) = 8.14$, $p < .0001$ (one-tailed). Bonferroni corrections for multiple tests were applied to these pre-post comparisons; all reported in this paragraph remained significant at $p < .001$.

The relationship between our in-treatment measures and reoffense was examined by comparing the in-treatment scores of participants who sexually reoffended with those of participants who did not sexually reoffend. On the pretreatment measures, the scores differed significantly on only one measure, arousal to male children, $t(189) = 2.61$, $p = .005$ (one-tailed), with reoffenders having the higher scores. On the posttreatment measures, reoffenders had higher scores on two phallometric measures, arousal to male children, $t(163) = 2.73$, $p = .004$ (one-tailed), and arousal to female children, $t(163) = 1.70$, $p = .046$ (one-tailed). Neither the MSI scales nor the clinician ratings of participants' RP skills (see next section for more on these ratings) differentiated between reoffenders and those who did not reoffend. Bonferroni corrections for multiple tests applied to the statistics in this paragraph had the effect of eliminating the significance of posttreatment arousal to female children as a predictor of sexual reoffense. Pre- and posttreatment measures of arousal to male children remained as significant predictors of reoffense at $p < .05$.

Treatment Subgroups

In our final set of analyses, we identified several clinically relevant subgroups and determined how they responded to treatment. The three groups we were particularly interested in were treated individuals who (a) had the treatment needs that our program addressed, (b) learned the RP skills taught in the program, or (c) reached the program's overall treatment goals.

For the first analysis, we used our pretreatment measures to create a simple additive scale of 8 items designed to measure the participant's level of need. It should be noted that this "Need It" scale was developed a priori on the basis of our program's treatment targets rather than a posteriori on the basis of findings. Points were given for one item from our motivational questionnaire (subject blames others

for offending); three phallometric scores (arousal greater than 20% to stimuli of boys, girls or rape), and four MSI scores (above our sample median on Justifications, Cognitive Distortions and Immaturity, Child Molest or Rape scales). When the Need It scores of sexual recidivists were compared with those of nonrecidivists, no significant difference was found, $t(188) = -.09$, $p = .466$ (one-tailed). We also defined a "Needed It" subgroup (those with scores above 4) and compared their sexual reoffense rates with those of participants with fewer treatment needs. These rates, 20.7 and 25.4% respectively, did not differ significantly.

For the second analysis we divided our treatment group on the basis of how well they learned the RP model. Near the end of their hospital stays, participants completed two written RP exercises, a Decision Matrix (DM) that examined the consequences of offending versus abstaining, and a Cognitive-Behavioral Chain (CBC) that described the series of steps leading to their offenses and how they could intervene. These products were rated by the participant's primary clinician on a 7-point scale with 7 representing *highest quality*. We then defined High DM and High CBC subgroups as including individuals who scored above the mean on each of these measures. Sexual reoffense rates were very similar for High DM (20.3%) and Low DM (22.2%) participants. Although High CBC participants reoffended at a somewhat lower rate (16.9%) than did the low scorers (22.4%), this difference also failed to approach significance.

We also investigated the possibility that relationships between DM and CBC scores and reoffense depended on a participant's level of risk. Inspection of the data suggested that at least among high risk offenders, High CBC scorers had a lower reoffense rate (17.6%) than did Low CBC scorers (58.3%). However, Cox regression equations investigating the effects of DM, CBC and risk level on survival hazard rate revealed no statistically significant effects due to DM score, CBC score, or their interactions with Static-Lite.

In the third analysis, we created a priori another simple additive scale, in this case a 9-point scale designed to identify participants who derived benefit from the program or basically "got" the treatment we provided. Items in this "Got It" scale were from posttreatment measures that were relevant to our treatment program goals. Points were given for three phallometric scores (arousal greater than 20% to stimuli of boys, girls or rape), four MSI scores (above our sample median on Justifications, Cognitive Distortions and Immaturity, Child Molest or Rape scales), and the two RP ratings (below the mean on our CBC and DM measures). In this scale, because points indicated deviance or a lack of RP skills, low scores indicated a better treatment response.

When the Got It scores of sexual recidivists were compared with those of nonrecidivists, no significant difference was found, $t(156) = -1.34$, $p = .092$ (one-tailed). However, when Got It scores were used to divide RP participants into "Got It" and "Did Not Get It" subgroups on the basis of a median split ($<3 = \text{Got It}$), the difference in recidivism rates of the two groups (13.5 and 27.2%

Table VII. Sexual Reoffense Rates for RP Participants Differing on Static Risk and Treatment Progress

Got It? ^a	Static-Risk score			Overall rates % (n)
	Low	Medium	High	
	% (n)	% (n)	% (n)	
No	16.2 (6/37)	21.0 (8/38)	50.0 (14/28)	27.2 (28/103)
Yes	4.6 (1/22)	25.0 (5/20)	10.0 (1/10)	13.5 (7/52)

^a"Got It" scale included nine scores related to program goals, with scale scores above the sample mean indicating treatment progress.

respectively) approached significance, $\chi^2(1, N = 155) = 3.72, p = .054$. Further examination of this trend revealed that the relationship between our measure and sexual reoffense was not consistent across our three static risk groups. As Table VII shows, high-risk offenders who Got It reoffended at a significantly lower rate (10.0%) than did those who failed to reach treatment goals (50.0%), $\chi^2(1, N = 38) = 4.93, p = .026$ ($p = .028$, one-tailed, when Fisher's exact test was applied because of at least one cell having an expected count less than five). The differences in recidivism between those who Got It and those who did not failed to approach significance within the medium and low risk groups. However, in a Cox regression equation testing the effects of Got It and risk group on survival hazard rates Got It was a statistically significant predictor of time until reoffense, $\chi^2(1, N = 160) = 3.99, p = .046$, with the effect of risk level, $\chi^2(1, N = 160) = 7.26, p = .007$, also in the equation, and thus "controlled."

Finally, examination of our Got It subgroup revealed that the predictive value of Got It was largely accounted for by the child molesters in our treated sample. Among rapists, the relationship between Got It and reoffense rates did not approach significance. Among molesters, however, those who Got It reoffended at a significantly lower rate (9.3%) than those who Did Not Get It (31.3%), $\chi^2(1, N = 126) = 7.57, p = .006$.

DISCUSSION

Unlike most outcome studies of "current" treatments (see Hanson et al., 2002), we did not find an overall treatment effect for our cognitive-behavioral treatment program. Sexual offenders who were randomly assigned to our hospital-based RP program did not reoffend at a lower rate than those who were randomly assigned to the in-prison control groups. This was the case for both rapists and child molesters, and for low-risk offenders as well as high-risk offenders. A number of comments on this outcome have already been offered, including the straightforward conclusion that SOTEP (along with other random assignment

studies) simply does not support the effectiveness of treatment for adult sexual offenders (Rice & Harris, 2003). In the context of growing optimism about the benefits of sexual offender treatment, this study's message is, "Not so fast, we are still far from understanding how and when treatment works."

Although we accept that this simple cautionary note may be SOTEP's "take home" message, we also believe that it is important to examine this study closely and explore possible explanations for its null results. We started this examination with a review of our study design. In the ideal test of treatment, the only difference between the treatment and control conditions is the intervention. In SOTEP, however, the experimental conditions differed in several ways other than the presence or absence of the RP program we were testing. Most importantly, the RP group lived in a hospital, whereas both control groups lived in prison. In the state hospital, offenders were surrounded by sexually deviant peers and therapeutic staff who expected them to openly discuss their crimes and deviant interests. In prison, control group participants most likely hid their backgrounds and were surrounded by people who were highly intolerant of sexual deviance. As a result of such differences in experimental conditions, SOTEP cannot be viewed as a "pure" test of treatment but rather as a more complex comparison of treatment in a state hospital setting versus confinement in a prison setting.

The randomized experiment is considered the gold standard in program evaluation, and is the design least likely to result in groups that differ in systematic ways. Randomization does not, however, guarantee equivalent groups. In our case, men assigned to the RP group tended to be higher risk than those assigned to the control conditions. It is possible, though unlikely, that random variation also resulted in an RP group that was less motivated or more sexually deviant in ways that our data were not sufficient to test.

Given that we were taking a new (in 1984) treatment model for addictive behaviors and applying it to a different group of clients, we decided to screen our study participants. For example, we did not accept individuals who categorically denied their offenses or had substantial criminal careers (three or more prior felony convictions). The criminal history screening no doubt eliminated some of the highest risk offenders from our study, resulting in a rather low base rate (20%) of sexual reoffending as well as a relatively small group of high-risk offenders for us to treat. It may be that our intervention was too intense for our group of mostly low to medium risk offenders. Some (e.g., Hanson, 2000; Nicholaichuk, 1996) have even suggested that intensive treatment may make low-risk offenders worse. It should be noted, however, that we also screened out the lowest risk group (those who molested only their biological children), and that we did not find that treatment made any subgroup of offenders more likely to reoffend.

One other aspect of our study design that may have affected the results is our management of attrition. To minimize this problem, we made an effort to keep RP participants in the program once they began treatment. We did not require

them to demonstrate motivation, fully engage in treatment, or show improvement to stay in the program. The only individuals who were terminated from treatment were those who presented severe management problems at the hospital. As a result, we had some participants who were quite comfortable just "programming," attending treatment activities but not really making the commitment to change that is important to the RP model (Marques, Nelson, Alarcon, & Day, 2000). SOTEP's minimal standard for treatment completion resulted in a low treatment dropout rate (18%) that is in sharp contrast with the rate in programs that set more rigorous performance standards, such as the 50% noncompletion rate reported by McGrath et al. (2003) in their RP program. It is possible that our results reflect in part our willingness to retain individuals with low motivation or performance.

The most obvious place to find explanations for our results is not in the study's design but in its treatment program. Twenty years ago the RP model was new and promising, and adapting it for use with sexual offenders trying to avoid relapse made a great deal of sense. Using RP as our framework, we designed a program that included the components found in programs at that time (e.g., sexual arousal modification, cognitive restructuring, social skills training, victim empathy, stress and anger management), and organized these around a core RP treatment group that focused on the individual's offense patterns, risk factors, and skills needed for avoiding relapse. We also included an aftercare component to help participants maintain treatment gains after discharge from the hospital.

Although this basic RP approach is still popular and considered "current" treatment in the field, in several ways our program did not reflect today's state of the art. First, because we only accepted individuals who admitted their offenses and volunteered for treatment, we did not emphasize the need to build and maintain motivation. As an RP program we were focused on the maintenance stage of behavior change, and our interventions were designed to provide skills participants could use to anticipate and avoid relapse. SOTEP did not have a treatment readiness phase or other components (such as motivational interviewing; Miller & Rollnick, 1991) designed to prepare individuals to change and to engage them in treatment. We also did not target the decrease in motivation that some treated offenders show after release to the community (Barrett, Wilson, & Long, 2003). We learned from interviews with reoffenders that a number of our treatment failures did not use the self-management skills they had acquired in the program, and some did not even accept the basic goals of self control and relapse avoidance (Marques et al., 2000). As Mann (2000) has pointed out, RP is unlikely to be successful with clients who do not accept its goals, model, and methods.

Our program included individual sessions and some prescriptive components (such as sexual arousal modification and substance abuse treatment), but most interventions were provided in groups by therapists using treatment manuals. Although manualized treatments enhance program integrity, they have the disadvantage of limiting the extent to which interventions are based on individual case formulations and treatment plans (Hollin, 2002). When asked about this, SOTEP

clinicians indicated that our highly structured approach did not allow them to do more intensive work with participants who needed it, such as those who were not committed to change or needed more sessions to practice coping skills (Marques et al., 2000).

Although we viewed each participant's RP program as "individualized" (on the basis of his offense chain and risk factors), core RP group sessions were essentially the same for all participants. Membership of the core groups was mixed, with most having molesters and rapists as well as individuals with different levels of risk, need and treatment involvement. It is possible that having some unmotivated and highly deviant members present may have negatively affected the engagement and expectations of other group members. Group diversity may also have limited the extent to which interventions were modified for different types of offenders. For example, we did not distinguish between "avoidance goal" molesters (who see molesting children as a problem behavior they want to stop) and "approach goal" molesters (who hold positive views regarding sex with children) (see Ward & Hudson, 1998, 2000), or adapt RP interventions to fit these different offense pathways (Bickley & Beech, 2003).

One important way that SOTEP differed from most current programs is that discharge was unrelated to treatment progress or perceived reoffense risk. We used in-treatment measures but these played no role in determining when a participant was released to the community. In fact our mandate (California Laws, 1982) required that the length of an offender's sentence was not to be affected by his participation in the program. On the positive side, this requirement helped us avoid the problem of individuals "faking good" to get released earlier. On the negative side, there was no pressure on participants to engage fully and actively pursue treatment goals. Although it is difficult to assess the importance of this factor, most current programs do provide clear external incentives for offenders to participate and advance in treatment (Seto, 2002).

Our aftercare component, SOAP, has been criticized for being too intensive (Marshall & Anderson, 2000), but in our view it was too circumscribed. For one year after their release, RP group members were under standard parole supervision by the Department of Corrections and were seen twice a week by a SOTEP-trained clinician in group or individual sessions. These treatment providers were encouraged to communicate with parole agents, but this was not required unless the participant failed to attend treatment sessions. SOAP did not include maintenance polygraph examinations, GPS or other surveillance techniques, medications for individuals experiencing deviant arousal, or social and supportive services. It provided some continuity of care, but clearly fell short of the interdisciplinary, individualized, case management model of aftercare that is now recommended (Prentky, 2003). Although it has not been rigorously tested, this "containment approach" (English, 1998) represents the current thinking in the field (Association for the Treatment of Sexual Abusers [ATSA], 2004; California Coalition on Sexual Offending, 2001; Center for Sex Offender Management, 2000; Colorado

Sex Offender Management Board, 1999). As we learned in interviews with our treatment failures, a number of RP participants were facing high-risk situations soon after entering the community (Marques et al., 2000). It is possible that additional surveillance and teamwork could have prevented some of these early failures.

In addition to comparing our program to current best practices in sexual offender treatment, we have examined it from the broader perspective of offender rehabilitation, or the "what works" literature (Gendreau & Andrews, 1990; Lösel, 1995; McGuire, 2002). Andrews and Bonta (1998, 2003) have provided a clear framework for this examination. They have determined that effective programs meet three principles: (a) *risk* (they treat higher risk rather than lower risk cases), (b) *need* (they target dynamic risk factors), and (c) *responsivity* (they use powerful behavior change strategies). First, SOTEP did not focus on high-risk offenders. Second, our treatment targets included some (e.g., deviant sexual arousal and cognitive distortions) but not all of the established dynamic risk factors for sexual offending. Finally, the program was based on cognitive-behavioral interventions and thus adhered to the general responsivity principle. At best, then, SOTEP was consistent with two of the principles; a more stringent view would be that it met only the responsivity principle. According to Andrews and Bonta (2003), programs adhering to all three principles can expect a 26% reduction in recidivism; those following two principles an 18% reduction, and those adhering to one component only a 2% reduction. From this perspective our null result is not at all surprising. Although hindsight based on currently available concepts cannot improve SOTEP results, the risk-need-responsivity model provides a framework that can be used now to build more effective treatment programs for sexual offenders.

SOTEP's 1984 treatment model may have fallen short of today's state of the art in some areas, but in others it was quite up to date, for example, our measurement of treatment progress. We found some interesting and encouraging trends in the data from our in-treatment measures, most importantly that RP participants who "got" treatment (had good posttreatment scores on a simple additive scale) reoffended at lower rates than those who didn't. This difference was significant for child molesters (over three quarters of our sample) but not for rapists, a finding that may reflect our scale's emphasis on deviant sexual interests. It also suggests that a one-size-fits-all measure of treatment progress should not be used with diverse groups of offenders.

Our "Got It" scale was also a significant predictor of sexual reoffense for the high-risk offenders in our sample. Within that subgroup, individuals who didn't "get" the treatment had a much higher sexual reoffense rate (50%) than those who did (10%). Although this finding was based on a small ($n = 36$) subgroup of treated offenders, it is consistent with other recent studies in which assessments made during or after treatment have been found to increase the accuracy of reoffense predictions made by actuarial assessments alone (Beech, Fisher, & Thornton, 2003; Beech, Friendship, Erikson, & Hanson, 2002; Thornton, 2001). It is also similar

to the finding reported by Langton, Barbaree, Seto, Harkins, and Peacock (2002) that their high-risk (psychopathic) offenders with poor treatment behavior had the highest risk of recidivism. In a broader sense, our results are supportive of the field's current emphasis on the measurement of dynamic factors that predict reoffense (Hanson & Harris, 2000) or indicate treatment benefit (Mann & Thornton, 2000; Thornton, 2002).

Because "Got It" was composed of ad hoc measures and was not cross-validated, we do not recommend this home-grown measure for use elsewhere. We do, however, encourage others studying treatment outcomes to include relevant in-treatment measures in their designs. Standardized, empirically-validated measures of treatment progress are badly needed in this field to enhance our ability to understand the relationships between short-term and long-term treatment effects.

Although SOTEP was most concerned with measuring the effects of treatment, our strongest findings were in the area of static risk factors. Even our shortened version of Hanson and Thornton's Static-99 (2000) turned out to be a powerful predictor of sexual reoffense risk and an important covariate in our analyses. To avoid potentially misleading distortions in study results, we urge researchers who plan to assess the effects of treatment to control for prior risk by using an appropriate actuarial measure for both treatment and comparison groups.

The most important safeguard against misleading results, however, remains a randomized design. Some (e.g., Hanson, 1997b) have argued against investing heavily in longitudinal studies of small, innovative programs such as SOTEP, suggesting that it is probably more productive to conduct a range of less elaborate studies that can be combined to yield sound evidence regarding treatment effects. Although we have also encouraged real-world programs to collect outcome data and contribute to our developing knowledge base on treatment effectiveness (Marques, 1999), we do not agree that this is all that is required. Our results underscore the importance of including adequate comparison groups in treatment outcome studies. It may be difficult to obtain funding and to conduct randomized clinical trials but we strongly believe that more of these are needed to move this field forward.

If we were to design a new test of treatment now, we would do some things differently than we did 20 years ago. We would make sure that the program (a) had treatment intensity and content that were tailored to offenders' risk levels, treatment needs and responsivity factors; (b) regularly monitored progress toward treatment goals to make sure that participants were "getting" the treatment provided; and (c) had an aftercare component based on an individualized, interdisciplinary case management model, not just on therapy sessions. We would also make some changes in the study design, such as (a) including more high-risk offenders; (b) conducting pretreatment assessments on all participants; and (c) increasing the sample size to shorten the follow-up period needed. We would not, however, design a study with a less rigorous evaluation component than

SOTEP. Questions about whether and when sexual offenders can be treated are extremely important, not just to our field but to victims, policy makers and the public. The only way to provide answers with confidence is to build a knowledge base on thoughtful and well-controlled studies of treatment effectiveness.

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SB

222

SENATE COMMITTEE REPORT

DATE: 2/16/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 222

SB 222 PROTECTION OF PERSONAL INFORMATION

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, filing police reports regarding identity theft, and furnishing consumer credit header information; and amending Rule 60, Alaska Rules of Civil Procedure."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indef.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indef.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>	✓			

CHANGES IN CS SB 222, VERSION "S"

Friday, March 10, 2006

1. Page 2, line 2.
Notification of breach only to impacted persons not entire databases.
2. Page 2, lines 12-13.
Requires written notification by law enforcement when they lift a delay on notification.
3. Page 3, line 24.
Deletes section 45.48.070 on Minimum Contacts.
4. Page 3, line 27.
Breach of security includes acquisition or reasonable belief of acquisition.
5. Page 4, lines 7-21.
Ensures clarity in the definition of "personal information" and include encrypted data when the encryption key has been accessed or acquired.
6. Page 6, lines 10 and 13-23.
Clarifies that insurance companies can hold an application as incomplete (or other listed actions) when a security freeze is in place.
7. Page 8, line 19 and page 9, line 23.
Clarifies language in the "Notice of Rights" outlined in section 45.48.170 to ensure consistency with the bill's effects.
8. Page 10, line 19.
Deletes the section previously numbered 45.48.200 on Minimum Contacts.
9. Page 12, Line 8.
Clarifies freeze exemptions to include credit score if to a consumer at their request.
10. Page 12, lines 14-18.
Improves clarity and conforms to California law in the "re-seller" exemption.
11. Page 16, line 28 – page 17, line 3.
Clarifies that local law may authorize collection of Social Security Numbers.
12. Page 17, lines 1-3.
Clarifies that state agencies may adopt regulations to authorize collection of Social Security Numbers.
13. Page 17, lines 4-8.
Ensures state or local agencies can disclose SSN to another state, local, or federal governmental agency when required to carry out the agency's duties.
14. Article five, pages 17-20.
Adds government agencies to the disposal of records section.

24-LS1419S
Bannister
3/10/06

CS FOR SENATE BILL NO. 222()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS THERRIAULT AND GUESS, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to breaches of security involving personal information, credit report
 2 security freezes, consumer credit monitoring, credit accuracy, protection of social
 3 security numbers, disposal of records, factual declarations of innocence after identity
 4 theft, filing police reports regarding identity theft, furnishing consumer credit header
 5 information, and truncation of credit and debit card information; and amending Rule
 6 60, Alaska Rules of Civil Procedure."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 45 is amended by adding a new chapter to read:

9 **Chapter 48. Personal Information Protection Act.**

10 **Article 1. Breach of Security Involving Personal Information.**

11 **Sec. 45.48.010. Disclosure of breach of security.** (a) If a person owns or uses
 12 personal information that includes personal information on a state resident, and a
 13 breach of the security of the information system containing the personal information

1 occurs, the person shall, after discovering or being notified of the breach, disclose the
2 breach to each state resident whose personal information was subject to the breach.

3 (b) An information collector shall make the disclosure required by (a) of this
4 section in the most expedient time possible and without unreasonable delay, except as
5 provided in AS 45.48.020 and as necessary to determine the scope of the breach and
6 restore the reasonable integrity of the information system.

7 **Sec. 45.48.020. Allowable delay in notification.** An information collector
8 may delay disclosing the breach under AS 45.48.010 if an appropriate law
9 enforcement agency determines that disclosing the breach will interfere with a
10 criminal investigation and provides the information collector with a written request for
11 the delay. However, the information collector shall disclose the breach to the state
12 resident as soon as the law enforcement agency informs the information collector in
13 writing that disclosure of the breach will no longer interfere with the investigation.

14 **Sec. 45.48.030. Methods of notice.** An information collector shall make the
15 disclosure required by AS 45.48.010

16 (1) by a written document;

17 (2) by electronic means if making the disclosure by the electronic
18 means is consistent with the provisions regarding electronic records and signatures
19 required for notices legally required to be in writing under 15 U.S.C. 7001 et seq.
20 (Electronic Signatures in Global and National Commerce Act); or

21 (3) if the information collector demonstrates that the cost of providing
22 notice would exceed \$250,000, that the affected class of state residents to be notified
23 exceeds 500,000, or that the information collector does not have sufficient contact
24 information to provide notice, by

25 (A) electronic mail if the information collector has an
26 electronic mail address for the state resident;

27 (B) conspicuously posting the disclosure on the Internet
28 website of the information collector if the information collector maintains an
29 Internet site; and

30 (C) providing a notice to major statewide media.

31 **Sec. 45.48.040. Exception for employees and agents.** In AS 45.48.010 -

1 45.48.090, the good faith acquisition of personal information by an employee or agent
2 of an information collector for a legitimate purpose of the information collector is not
3 a breach of the security of the information system if the employee or agent does not
4 use the personal information for a purpose unrelated to a legitimate purpose of the
5 information collector and does not make further unauthorized disclosure of the
6 personal information.

7 **Sec. 45.48.050. Waivers.** A waiver of AS 45.48.010 - 45.48.090 is void and
8 unenforceable.

9 **Sec. 45.48.060. Violations.** (a) If an information collector violates
10 AS 45.48.010 - 45.48.090 with regard to the personal information of an individual, the
11 individual or a state agency may bring a civil action in court to

12 (1) recover the damages suffered by the state resident;

13 (2) enjoin from further violations of AS 45.48.010 - 45.48.090 an
14 information collector who engages in business and the security breach occurred to the
15 personal information used or owned by the information collector in the business.

16 (b) The rights and remedies available under this section are in addition to any
17 other rights and remedies available under another law.

18 (c) In this section, "state agency" means

19 (1) a department, division, or office in the executive branch of state
20 government that has authority under the statutes of this state to regulate the operation
21 of the information collector; or

22 (2) the Department of Law if another state agency does not have
23 authority under the statutes of this state to regulate the operation of the information
24 collector.

25 **Sec. 45.48.090. Definitions.** In AS 45.48.010 - 45.48.090,

26 (1) "breach of the security" means unauthorized acquisition, or
27 reasonable belief of unauthorized acquisition, of personal information that
28 compromises the security, confidentiality, or integrity of the personal information
29 maintained by the information collector; in this paragraph, "acquisition" includes
30 acquisition by

31 (A) photocopying, facsimile, or other paper-based method;

1 (B) a device, including a computer, that can read, write, or
2 store information that is represented in numerica' form; or

3 (C) a method not identified by (A) or (B) of this paragraph;

4 (2) "information collector" means a person who owns or uses personal
5 information in any form if the personal information includes personal information on a
6 state resident;

7 (3) "personal information" means information in any form on an
8 individual that is not encrypted or redacted, or is encrypted and the encryption key has
9 been accessed or acquired, and that consists of a combination of

10 (A) an individual's name, address, or telephone number; in this
11 subparagraph, "individual's name" means a combination of an individual's

12 (i) first name or first initial; and

13 (ii) last name; and

14 (B) one or more of the following information elements:

15 (i) the individual's social security number;

16 (ii) the individual's driver's license number or state
17 identification card number;

18 (iii) the individual's account number, credit card
19 account number, or debit card account number;

20 (iv) account passwords or personal identification
21 numbers or other access codes.

22 Article 2. Credit Report Security Freeze.

23 Sec. 45.48.100. Security freeze authorized. A consumer may prohibit a
24 consumer credit reporting agency from releasing all or a part of the consumer's credit
25 report or information derived from the credit report without the express authorization
26 of the consumer by placing a security freeze on the consumer's credit report.

27 Sec. 45.48.110. Placement of security freeze. (a) To place a security freeze, a
28 consumer shall make the request to the consumer credit reporting agency

29 (1) by certified mail;

30 (2) by telephone if the consumer provides the consumer credit
31 reporting agency with certain personal identification; or

1 (3) through a secure electronic mail connection if the consumer credit
2 reporting agency makes a secure electronic mail connection available to the consumer.

3 (b) A consumer credit reporting agency shall place a security freeze within
4 five business days after receiving a request under (a)(1) of this section and
5 immediately after receiving a request under (a)(2) or (3) of this section.

6 **Sec. 45.48.120. Confirmation of security freeze.** (a) Within five business
7 days after a consumer makes the request under AS 45.48.110, a consumer credit
8 reporting agency shall send a written confirmation of the placement of the security
9 freeze to the consumer.

10 (b) At the same time that the consumer credit reporting agency sends a
11 confirmation under (a) of this section, the consumer credit reporting agency shall
12 provide the consumer with a unique personal identification number or password to be
13 used by the consumer when the consumer authorizes the release of the consumer's
14 credit report or information derived from the report under AS 45.48.130.

15 **Sec. 45.48.130. Access and actions during security freeze.** (a) While a
16 security freeze is in place, a consumer credit reporting agency shall allow a third party
17 access to a consumer's credit report or information derived from the credit report if the
18 consumer requests that the consumer credit reporting agency allow the access.

19 (b) To make a request under (a) of this section, the consumer shall contact the
20 consumer credit reporting agency by telephone, certified mail, or secure electronic
21 mail connection, authorize the consumer credit reporting agency to allow the access,
22 and provide the consumer credit reporting agency with

23 (1) proper identification to verify the consumer's identity;

24 (2) the unique personal identification number or password provided
25 under AS 45.48.120(b); and

26 (3) the proper information necessary to identify the third party to
27 whom the consumer credit reporting agency may allow the access or the time period
28 during which the consumer credit reporting agency may allow the access to third
29 parties who request the access.

30 (c) A consumer credit reporting agency that receives a request from a
31 consumer under (b) of this section shall comply with the request immediately after

1 receiving the request by telephone or electronic mail or within three business days
2 after receiving the request by certified mail.

3 (d) If a security freeze is in place, a consumer credit reporting agency may not
4 release the credit report or information derived from the credit report to a third party
5 without the prior express authorization of the consumer.

6 (e) If a security freeze is in place on a consumer's credit report and
7 information derived from the credit report and if a third party applies to a consumer
8 credit reporting agency to provide the third party with access to the consumer's credit
9 report or information derived from the credit report, the consumer credit reporting
10 agency and, except as provided for insurers under (f) of this section, the third party
11 may treat the third party's application as incomplete unless the consumer authorizes
12 the access under (a) of this section.

13 (f) If an insurer requests access to a consumer report on which a security
14 freeze is in place, unless the consumer authorizes access under (a) of this section, the
15 insurer may

16 (1) treat the consumer's application as incomplete;

17 (2) decline the consumer's application if the consumer does not lift the
18 security freeze for the insurer after a request by the insurer or the insurer's agent;

19 (3) treat the consumer as if the consumer has a neutral credit rating;

20 (4) exclude the use of credit information as a factor and use only
21 underwriting criteria; or

22 (5) treat the consumer in a manner that is otherwise approved by the
23 division of insurance.

24 (g) A consumer credit reporting agency shall notify a consumer that a third
25 party has attempted to access the consumer's credit report or information derived from
26 the report if a third party requests a consumer credit reporting agency to provide the
27 third party with access to the credit report or information, a security freeze has been
28 placed, and the purpose of the access is not for the sole purpose of account review.

29 (h) This section is not intended to prevent a consumer credit reporting agency
30 from advising a third party that requests access to a consumer's credit report or
31 information derived from the credit report that a security freeze is in effect.

1 (i) The procedures used by a consumer credit reporting agency for
2 implementing the provisions of this section may include the use of telephone,
3 facsimile, or electronic means if making the disclosure by the electronic means is
4 consistent with the provisions regarding electronic records and signatures required for
5 notices legally required to be in writing under 15 U.S.C. 7001 et seq. (Electronic
6 Signatures in Global and National Commerce Act), Internet, electronic mail, or
7 another electronic method.

8 **Sec. 45.48.140. Removal of security freeze.** (a) Except as provided by
9 AS 45.48.130, a consumer credit reporting agency may not remove a security freeze
10 unless

11 (1) the consumer requests that the consumer credit reporting agency
12 remove the security freeze under (b) of this section; or

13 (2) the consumer made a material misrepresentation of fact to the
14 consumer credit reporting agency when the consumer requested the security freeze
15 under AS 45.48.110; if a consumer credit reporting agency intends to remove a
16 security freeze on a consumer's credit report under this paragraph, the consumer credit
17 reporting agency shall notify the consumer in writing five business days before
18 removing the security freeze.

19 (b) A consumer credit reporting agency shall remove a security freeze
20 immediately after receiving a request for removal from the consumer who requested
21 the security freeze if the consumer provides proper identification to identify the
22 consumer and the unique personal identification number or password provided by the
23 consumer credit reporting agency under AS 45.48.120.

24 **Sec. 45.48.150. Prohibition.** When dealing with a third party, a consumer
25 credit reporting agency may not suggest, state, or imply that a consumer's security
26 freeze reflects a negative credit score, history, report, or rating.

27 **Sec. 45.48.160. Charges.** (a) Except as provided by (b) of this section, a
28 consumer credit reporting agency may not charge a consumer to place or remove a
29 security freeze, to provide access under AS 45.48.130, or to take any other action,
30 including the issuance of a personal identification number or password under
31 AS 45.48.120, that is related to the placement of, removal of, or allowing access to a

1 credit report or information derived from a credit report on which a security freeze has
2 been placed.

3 (b) If a consumer fails to retain a personal identification number or password
4 issued under AS 45.48.120, a consumer credit reporting agency may charge the
5 consumer up to \$5 for each time after the first time that the consumer credit reporting
6 agency issues the consumer another personal identification number or password
7 because the consumer failed to retain the personal identification number or password.

8 **Sec. 45.48.170. Notice of rights.** When a consumer credit reporting agency is
9 required to give a consumer a summary of rights under 15 U.S.C. 1681g (Fair Credit
10 Reporting Act), a consumer credit reporting agency shall also give the consumer the
11 following notice:

12 **Consumers Have the Right to Obtain a Security Freeze**

13 You may obtain a security freeze on your credit report at no
14 charge to protect your privacy and ensure that credit is not granted in
15 your name without your knowledge. You have a right to place a
16 "security freeze" on your credit report under state law (AS 45.48.100 -
17 45.48.290).

18 The security freeze will prohibit a consumer credit reporting
19 agency from releasing your credit score and any information in your
20 credit report without your express authorization or approval.

21 The security freeze is designed to prevent credit, loans, and
22 other services from being approved in your name without your consent.
23 When you place a security freeze on your credit report, within five
24 business days you will be provided a personal identification number or
25 password to use if you choose to remove the freeze on your credit
26 report or to temporarily authorize the release of your credit report to a
27 specific third party or specific third parties or for a specific period of
28 time after the freeze is in place. To provide that authorization, you must
29 contact the consumer credit reporting agency and provide all of the
30 following:

- 31 (1) proper identification to verify your identity;

1 (2) the personal identification number or password
2 provided by the consumer credit reporting agency;

3 (3) proper information necessary to identify the third
4 party or third parties who are authorized to receive the credit report or
5 the specific period of time for which the report is to be available to
6 third parties.

7 A consumer credit reporting agency that receives your request
8 to temporarily lift a freeze on a credit report is required to comply with
9 the request immediately after receiving your request if you make the
10 request by telephone or electronic mail, or within three business days
11 after receiving your request if you make the request by certified mail.

12 A security freeze does not apply to circumstances where you
13 have an existing account relationship and a copy of your report is
14 requested by your existing creditor or its agents or affiliates for certain
15 types of account review, collection, fraud control, or similar activities.

16 If you are actively seeking credit, you should understand that
17 the procedures involved in lifting a security freeze may slow your own
18 applications for credit. You should plan ahead and lift a freeze, either
19 completely if you are shopping around, or specifically for a certain
20 creditor, a few days before actually applying for new credit.

21 You have a right to bring a civil action against someone who
22 violates your rights under these laws on security freezes. The action can
23 be brought against a consumer credit reporting agency.

24 **Sec. 45.48.180. Notification after violation.** If a consumer credit reporting
25 agency violates a security freeze by releasing a consumer's credit report or information
26 derived from the credit report, the consumer credit reporting agency shall notify the
27 consumer within five business days after the release, and the information in the notice
28 must include an identification of the information released and of the third party who
29 received the information.

30 **Sec. 45.48.190. Violations and penalties.** (a) A consumer who suffers
31 damages as a result of a person's violation of AS 45.48.100 - 45.48.290 may bring an

1 action in court against the person and recover, in the case of a violation where the
2 person acted

3 (1) negligently, actual damages, including loss of wages, and, when
4 applicable, damages for pain and suffering;

5 (2) knowingly,

6 (A) damages as described in (1) of this subsection,

7 (B) punitive damages that are not less than \$100 nor more than
8 \$5,000 for each violation as the court determines to be appropriate; and

9 (C) other relief that the court determines to be appropriate.

10 (b) A consumer may bring an action in court against a person for a violation or
11 threatened violation of AS 45.48.100 - 45.48.290 for injunctive relief, whether or
12 not the consumer seeks another remedy under this section.

13 (c) Notwithstanding (a)(2) of this section, a person who knowingly violates
14 AS 45.48.100 - 45.48.290 is liable in a class action for an amount that the court
15 allows. When determining the amount of an award in a class action under this
16 subsection, the court shall consider, among the relevant factors, the amount of any
17 actual damages awarded, the frequency of the violations, the resources of the violator,
18 and the number of consumers adversely affected.

19 (d) In this section, "knowingly" has the meaning given in AS 11.81.900.

20 **Sec. 45.48.200. Limited application.** A consumer credit information agency
21 may not release all or a part of the information on a consumer that the consumer credit
22 information agency has received from a consumer credit reporting agency if the
23 consumer has placed a security freeze on the consumer credit reporting agency under
24 AS 45.48.100.

25 **Sec. 45.48.210. Reports not covered.** The provisions of AS 45.48.100 -
26 45.48.290 do not apply to a credit report if the credit report is

27 (1) a report that only contains information relating to transactions or
28 experiences between the consumer and the person making the report;

29 (2) a communication of the information that is described in (1) of this
30 section or that is taken from a consumer's credit application if

31 (A) the communication is limited to internal communication

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within the organization of the person making the report; and

(B) the consumer is informed by a clear and conspicuous written disclosure that the information contained in the credit application may be communicated as allowed under (A) of this paragraph, except that, if a credit application is taken by telephone, the consumer shall initially be informed orally when the application is taken, and a clear and conspicuous written disclosure shall be made to the consumer in the first written communication to the consumer after the application is taken;

(3) a report containing information solely about a consumer's character, general reputation, personal characteristics, or mode of living and the information is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom the consumer is acquainted or who may have knowledge concerning those items of information; or

(4) a credit report furnished for use in connection with a transaction that consists of an extension of credit to be used solely for a commercial purpose.

Sec. 45.48.220. Exemptions. The provisions of AS 45.48.100 - 45.48.290 do not apply to the use of a credit report by

(1) a person, the person's subsidiary, affiliate, or agent, or the person's assignee with whom a consumer has or, before the assignment, had an account, contract, or debtor-creditor relationship if the purpose of the use is to review the consumer's account or to collect a financial obligation owing on the account, contract, or debt;

(2) a subsidiary, an affiliate, an agent, an assignee, or a prospective assignee of a person to whom access has been granted under AS 45.48.130 if the purpose of the use is to facilitate the extension of credit or another permissible use;

(3) a person acting under a court order, warrant, or subpoena;

(4) an agency of a state or municipality that administers a program for establishing and enforcing child support obligations;

(5) the Department of Health and Social Services, its agents, or its assigns when investigating fraud;

(6) the Department of Revenue, its agents, or its assigns when

1 investigating or collecting delinquent taxes or unpaid court orders or when
2 implementing its other statutory responsibilities;

3 (7) a person if the purpose of the use is prescreening allowed under 15
4 U.S.C. 1681 - 1681w (Fair Credit Reporting Act);

5 (8) a person administering a credit file monitoring subscription service
6 to which the consumer has subscribed;

7 (9) a person providing a consumer with a copy of the consumer's credit
8 report or credit score at the consumer's request.

9 **Sec. 45.48.290. Definitions.** In AS 45.48.100 - 45.48.290,

10 (1) "account review" means activities related to account maintenance,
11 account monitoring, credit line increases, and account upgrades and enhancements;

12 (2) "consumer" means an individual who is the subject of a credit
13 report;

14 (3) "consumer credit information agency" means a person who acts
15 only as a reseller of consumer information by assembling and merging information
16 contained in the data bases of consumer credit reporting agencies and does not
17 maintain a permanent data base of consumer information from which new consumer
18 credit reports are produced;

19 (4) "consumer credit reporting agency" has the meaning given in
20 AS 45.48.990, but does not include a consumer credit information agency;

21 (5) "security freeze" means a prohibition against a consumer credit
22 reporting agency from releasing all or a part of a consumer's credit report or
23 information derived from the credit report without the express authorization of the
24 consumer;

25 (6) "third party" means a person who is not

26 (A) the consumer who is the subject of the consumer's credit
27 report; or

28 (B) the consumer credit reporting agency that is holding the
29 consumer's credit report.

30 **Article 3. Consumer Credit Monitoring; Credit Accuracy.**

31 **Sec. 45.48.300. Required disclosure.** A consumer credit reporting agency

1 shall, if a consumer makes the request and the request is not covered by the free
2 disclosure provision of 15 U.S.C. 1681j(a) - (d) (Fair Credit Reporting Act), clearly
3 and accurately disclose to the consumer the information described under
4 AS 45.45.310.

5 **Sec. 45.48.310. Information to be disclosed.** (a) The following information
6 shall be disclosed under AS 45.45.300:

7 (1) all information in the consumer's file when the consumer makes the
8 request, except that this paragraph may not be construed to require a consumer credit
9 reporting agency to disclose information concerning credit scores, risk scores, or other
10 predictors that are governed by 15 U.S.C. 1681g;

11 (2) the sources of the information described in (1) of this subsection;

12 (3) an identification of each person, including each end user identified
13 under 15 U.S.C. 1681e, who procured a report on the consumer

14 (A) for employment purposes during the two-year period that
15 precedes the date when the consumer's request is made; or

16 (B) for a purpose other than employment purposes during the
17 one-year period that precedes the date when the consumer's request is made;

18 (4) the dates, original payees, and amounts of any checks that

19 (A) provide the basis for an adverse characterization of the
20 consumer; and

21 (B) are included in the file when the disclosure is made or can
22 be inferred from the file;

23 (5) a record of all inquiries that were received by the consumer credit
24 reporting agency during the one-year period that precedes the request and that identify
25 the consumer in connection with a credit or insurance transaction that was not initiated
26 by the consumer; and

27 (6) a statement that the consumer may request and obtain a credit score
28 if the consumer requests the credit file and not the credit score.

29 (b) The information to be disclosed under (a)(3) of this section must include

30 (1) the name of the person or, if applicable, the full trade name under
31 which the person conducts business; and

1 (2) the address and telephone number of the person if requested by the
2 consumer.

3 (c) A consumer credit reporting agency is not required to disclose the
4 information described in (a)(3) of this section if

5 (1) the end user is an agency of the United States government and
6 procures the consumer's credit report from the consumer credit reporting agency to
7 determine the eligibility of the consumer to receive access or continued access to
8 classified information; in this paragraph, "classified information" has the meaning
9 given in 15 U.S.C. 1681b; and

10 (2) the individual who is in charge of the end user makes a written
11 finding as prescribed under 15 U.S.C. 1681b(b)(4)(A).

12 **Sec. 45.48.320. Cost of disclosure.** (a) A consumer credit reporting agency
13 may impose a reasonable charge on a consumer for making a disclosure under
14 AS 45.48.300. The charge may not exceed

15 (1) \$2 for each of the first 12 requests from the consumer in a calendar
16 year;

17 (2) \$8 for each request beyond the 12 requests covered by (1) of this
18 subsection in a calendar year.

19 (b) The consumer credit reporting agency shall disclose the charge to the
20 consumer before making the disclosure under AS 45.48.300.

21 **Sec. 45.48.330. Form of disclosure.** (a) A consumer may make the request
22 under AS 45.48.300 in writing, in person, by telephone if the consumer has made a
23 written request for the disclosure, by electronic means if the consumer credit reporting
24 agency offers electronic access for any other purpose, or by any other reasonable
25 means that is available from the consumer credit reporting agency.

26 (b) To make a request in person under (a) of this section, the consumer shall,
27 after reasonable notice to the consumer credit reporting agency, appear during normal
28 business hours at the consumer credit reporting agency's place of business where the
29 consumer credit reporting agency normally provides disclosures under AS 45.48.300.

30 **Sec. 45.48.340. Timing of disclosure.** A consumer credit reporting agency
31 shall provide a consumer with the disclosure under AS 45.48.300 within

1 (1) 24 hours after the date on which the request is made if the
2 disclosure is made by electronic means under AS 45.48.330(a); or

3 (2) five days after the date on which the request is made if the
4 disclosure is made in writing, in person, by telephone, or by any other reasonable
5 means that is available from the consumer credit reporting agency, except by
6 electronic means.

7 **Sec. 45.48.350. Credit accuracy.** (a) A person who does business in the state
8 by distributing information about an individual's credit history, score, or ranking shall,
9 when notified that the information that the person is distributing is inaccurate,
10 immediately stop distributing the information until the accuracy of the information can
11 be verified or the inaccuracies in the information corrected.

12 (b) If a person who does business in the state by distributing information about
13 an individual's credit history, score, or ranking releases information about an
14 individual that is inaccurate, the person shall, as quickly as possible after discovering
15 that inaccurate information is being distributed,

16 (1) repair, to the extent possible, the damage to the individual caused
17 by the release of the inaccurate information; and

18 (2) pay fair and reasonable compensation to the individual for the
19 damage caused to the individual by the release of the inaccurate information.

20 (c) If a person fails to comply with (b) of this section, an individual may bring
21 an action in court to compel the person to comply with (b) of this section.

22 (d) In this section, "does business in the state" means engages in activities that
23 provide at least the minimum contacts required by substantive due process for the state
24 to exercise jurisdiction over the person who is engaging in the activities.

25 **Article 4. Protection of Social Security Number.**

26 **Sec. 45.48.400. Use of social security number.** (a) A person may not, without
27 the consent of the individual.

28 (1) intentionally communicate or otherwise make available to the
29 general public an individual's social security number;

30 (2) print an individual's social security number on a card required for
31 the individual to access products or services provided by the person;

1 (3) require an individual to transmit the individual's social security
2 number over the Internet unless the Internet connection is secure or the social security
3 number is encrypted;

4 (4) require an individual to use the individual's social security number
5 to access an Internet site unless a password, a unique personal identification number,
6 or another authentication device is also required in order to access the site;

7 (5) print an individual's social security number on material that is
8 mailed to the individual unless

9 (A) state or federal law requires the social security number to
10 be on the material; or

11 (B) the social security number is included on an application or
12 other form, including a document sent as a part of an application process or an
13 enrollment process, sent by mail to establish, amend, or terminate an account, a
14 contract, or a policy, or to confirm the accuracy of the social security number;
15 however, a social security number allowed to be mailed under this
16 subparagraph may not be printed, in whole or in part, on a postcard or other
17 mailer that does not require an envelope, or in a manner that makes the social
18 security number visible on the envelope or without the envelope being opened;

19 (6) refuse to do business with an individual because the individual
20 does not consent to the receipt by the person of the social security number of the
21 individual, unless the person is expressly required by state or federal law, in
22 connection with doing business with an individual, to collect or submit the individual's
23 social security number to the state or federal government; this paragraph does not
24 prohibit a person from asking for another form of identification from the individual.

25 (b) Unless expressly required by federal or state law, a person may not sell,
26 lease, loan, trade, rent, or otherwise disclose an individual's social security number to
27 a third party for any purpose without the individual's written consent.

28 **Sec. 45.48.410. Additional governmental prohibition; social security**
29 **numbers.** A person who is a state or local governmental agency, except for an agency
30 of the judicial branch, may not ask an individual to provide the agency with a social
31 security number unless state, federal, or local law expressly authorizes the agency to

1 ask the individual to provide the social security number to the agency. A state agency
2 may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement
3 this section.

4 **Sec. 45.48.415. Interagency disclosure.** Notwithstanding the other provisions
5 of AS 45.48.400 - 45.48.420, a state or local governmental agency may disclose an
6 individual's social security number to ~~another~~ ^{where required} state or local governmental agency or to
7 an agency of the federal government if the disclosure is required in order for the
8 agency to carry out the agency's duties and responsibilities.

9 **Sec. 45.48.420. Penalties.** (a) A person who knowingly violates AS 45.48.400
10 is liable to the state for a civil penalty not to exceed \$3,000.

11 (b) An individual may bring a civil action in court against a person who
12 knowingly violates AS 45.48.400 or 45.48.410 and may recover actual damages or
13 \$5,000, whichever amount is greater, and court costs and attorney fees allowed by the
14 rules of court.

15 (c) A person who knowingly violates AS 45.48.400 is guilty of a class A
16 misdemeanor.

17 (d) In this section, "knowingly" has the meaning given in AS 11.81.900.

18 **Article 5. Disposal of Records.**

19 **Sec. 45.48.500. Disposal of records.** (a) A business and a governmental
20 agency shall take, in connection with and after the disposal of the records, all
21 reasonable measures necessary to protect against unauthorized access to or use of the
22 records of the business or governmental agency that contain personal information.

23 (b) Notwithstanding (a) of this section, if a business or governmental agency
24 has otherwise complied with the provisions of AS 45.48.500 - 45.48.590 in the
25 selection of a third party engaged in the business of record destruction, the business or
26 governmental agency is not liable for the disposal of records under AS 45.48.500 -
27 45.48.590 after the business or governmental agency has relinquished control of the
28 records to the third party for the destruction of the records.

29 **Sec. 45.48.510. Measures to protect access.** The measures required to be
30 taken under AS 45.48.500 include

31 (1) implementing and monitoring compliance with policies and

1 procedures that require the burning, pulverizing, or shredding of paper documents
2 containing personal information so that the personal information cannot practicably be
3 read or reconstructed;

4 (2) implementing and monitoring compliance with policies and
5 procedures that require the destruction or erasure of electronic media and other
6 nonpaper media containing personal information so that the personal information
7 cannot practicably be read or reconstructed; and

8 (3) after due diligence, entering into a written contract with a third
9 party engaged in the business of record destruction to dispose of records containing
10 personal information in a manner consistent with AS 45.48.500 - 45.48.590.

11 **Sec. 45.48.520. Due diligence.** In AS 45.48.510(3), due diligence ordinarily
12 includes performing one or more of the following:

13 (1) reviewing an independent audit of the third party's operations and
14 its compliance with AS 45.48.500 - 45.48.590;

15 (2) obtaining information about the third party from several references
16 or other reliable sources and requiring that the third party be certified by a recognized
17 trade association or similar organization with a reputation for high standards of quality
18 review;

19 (3) reviewing and evaluating the third party's information security
20 policies and procedures, or taking other appropriate measures to determine the
21 competency and integrity of the third party.

22 **Sec. 45.48.530. Policy and procedures.** A business or governmental agency
23 shall comprehensively describe and classify as the official policy of the business or
24 governmental agency in the writings of the business or governmental agency the
25 policies and procedures that relate to the adequate destruction and proper disposal of
26 personal records. In this section, "writings" includes corporate handbooks, employee
27 handbooks, and similar corporate documents.

28 **Sec. 45.48.540. Exemption.** A business or a governmental agency is not
29 required to comply with AS 45.48.500 - 45.48.530 if federal law requires that the
30 business or governmental agency act in a way that does not comply with AS 45.48.500
31 - 45.48.530.

1 **Sec. 45.48.550. Civil penalty.** An individual, a business, or a governmental
2 agency that knowingly violates AS 45.48.500 - 45.48.590 is liable to the state for a
3 civil penalty not to exceed \$3,000. In this section, "knowingly" has the meaning given
4 in AS 11.81.900.

5 **Sec. 45.48.560. Court action.** An individual who is damaged by a violation of
6 AS 45.48.500 - 45.48.590 may bring a civil action in court to enjoin further violations
7 and to recover damages for the violation and court costs and attorney fees allowed by
8 the rules of court.

9 **Sec. 45.48.590. Definitions.** In AS 45.48.500 - 45.48.590,

10 (1) "business" means a person who conducts business in the state or a
11 person who conducts business and maintains or otherwise possesses personal
12 information on state residents; in this paragraph,

13 (A) "conducts business" includes engaging in activities as a
14 financial institution organized, chartered, or holding a license or authorization
15 certificate under the laws of this state, another state, the United States, or
16 another country;

17 (B) "possesses" includes possession for the purpose of
18 destruction;

19 (2) "dispose" means

20 (A) the discarding or abandonment of records containing
21 personal information;

22 (B) the sale, donation, discarding, or transfer of

23 (i) any medium, including computer equipment or
24 computer media, that contains records of personal information;

25 (ii) nonpaper media, other than that identified under (i)
26 of this subparagraph, on which records of personal information are
27 stored; and

28 (iii) equipment for nonpaper storage of information;

29 (3) "governmental agency" means a state or local governmental
30 agency, except for an agency of the judicial branch;

31 (4) "personal information" means information that identifies, relates to,