

# elements of change

## Highlighting Trends and Issues in the Criminal Justice System

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### Is Sex Offending Behavior in Prison Indicative of Risk in the Community?

**YES** Few studies focus on sex crimes that occur in prison (1). Those that do usually estimate the rate of sexual assault or discuss the characteristics of victims (2). Researchers have not studied the perpetrators' behavior as an indication of future dangerousness once the inmate is released back into the community.

Institutional sex offenders are inmates who commit sexual assaults while in prison but who have no criminal justice record of committing such crimes in the community. Often this crime is dismissed by those who believe it is a behavior unique to the prison environment or a result of deprivation. Consequently, many of these crimes are not prosecuted, nor are these offenders prioritized for treatment.

Do these inmates present a greater risk to the public upon release compared to inmates who committed sex crimes in the community? A recent study conducted by the ORS and the Sex Offender Treatment and Monitoring Program (SOTMP) at the Colorado Department of Corrections (CDOC) compared institutional sex offenders with inmates whose official records documented a sex crime. The inmates were tracked following release from prison. This *Elements of Change* presents the research approach and findings from that study.

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#### **What did the Study Find? These are dangerous offenders because:**

- ◆ *Institutional sex offenders were more likely to get arrested for both non-violent and violent crimes.*
- ◆ *The average time to rearrest was significantly shorter for institutional sex offenders compared to the other groups of inmates who committed sex crimes in the community.*
- ◆ *The findings suggest that, compared to other sex offenders in prison, inmates who engage in sexual offending behaviors while incarcerated in a highly structured environment are at greater risk to continue these types of crimes when released to a less structured community setting.*

(1) Hensley, C., & Tewksbury, R. (2002). Inmate-to-inmate prison sexuality: A review of empirical studies. *Trauma, Violence, & Abuse*, 3, 226-243.

(2) Struckman-Johnson, Cindy J. and David L. Struckman-Johnson. (2000). Sexual coercion rates in seven Midwestern prison facilities for men. *The Prison Journal* 80(4), 379-390.

## Background Information

The study sample included 2,029 sex offenders released from prison in Colorado between January 1, 1990 and July 30, 2002. Table one defines the three groups of sex offenders compared in the study. The second table describes the type of sex offenses the institutional sex offenders committed in prison.

Over 50,000 arrest records from the Colorado Crime Information Center (CCIC) were matched to CDOC records. The arrests (misdemeanor and felony) were organized into the following categories:

- ✘ *Sexual*—Any sexual offense including rape, child sexual assault, and indecent exposure.
- ✘ *Violent*—Murder, kidnapping, robbery using a weapon, aggravated assault, threats, arson, extortion, forced entry burglary, vehicular assault.
- ✘ *Other*—Fraud, DUI, trespassing, and similar offenses.
- ✘ *Any*—An arrest for any of the above three categories (sexual, violent or other).
- ✘ *Minor traffic violations were excluded.*



Table 1

THE THREE COMPARISON GROUPS OF SEX OFFENDERS		
<b>S5</b>	Present or past adult conviction for a felony sex offense	n=1598
<b>S4</b>	Present or past felony conviction whose factual basis involved a sexual offense and/or a juvenile or misdemeanor conviction	n=367
<b>S3</b>	Only known sexual offense committed <i>in prison</i> against staff or inmates	n=64

Table 2

TYPES OF SEXUAL OFFENSES S3 (INSTITUTIONAL SEX OFFENDERS) HAVE COMMITTED IN PRISON	
Indecent Exposure	45%
Inmate Sexual Assault	28%
Sexual Harassment	10%
Attempted Staff Sexual Assault	9%
Stalking	7%

Note: Does not add up to 100% due to rounding.

## Findings

***A larger proportion of institutional sex offenders were rearrested for violent crimes. See tables below...***

Table 3: Percentage of Offenders Arrested within 1 Year and 5 Years after Release

	S3 (n=64)		S4 (n=365)		S5 (n=1,598)	
	1 Year	5 Years	1 Year	5 Years	1 Year	5 Years
Sex Arrest	2%	6%	2%	9%	1%	10%
Violent Arrest	14%	52%	7%	38%	2%	19%
Other Arrest	22%	72%	17%	60%	6%	37%
Any Arrest	28%	75%	19%	65%	7%	43%

Note: Offenders can be in multiple crime type categories. Time at risk was not controlled after two years.

At one year from release, as shown in Table 3, the differences are minimal across the groups in terms of the proportion arrested for a new sex crime. However, a much larger proportion of the S3s (institutional sex offenders) were rearrested for a violent crime, compared to the S4s and S5s. Differences become more apparent during the five year period following release. By that time, over half (52%) of the institutional sex offenders had been arrested for a violent crime—the most likely crime to be reported to law enforcement (3)—compared to 38% and 19% for S4s and S5s, respectively.

Table 4: Median Time (Days) to New Arrest

	S3 (n=64)	S4 (n=365)	S5 (n=1,598)
Sex Crime	270	645	851
Violent Crime	390	442	663
Other Crime	198	296	478
Any Crime	180	281	456

The median reflects the midpoint of a series of numbers and is the best measure of the average when the events (in this case, number of days) are widely scattered. It is the only measure that can be used when some of the cases remain arrest-free. Using the median, Table 4 presents the average time to new arrest for each of the three groups of offenders. On average, the institutional sex offenders were rearrested with a new sex crime in 270 days (approximately nine months) and a new violent crime in 390 days (about 13 months). The median number of days until new crimes logged by the S3s is remarkably shorter compared to the other groups.

The information from Tables 3 and 4 suggest that institutional sex offenders have a greater likelihood of getting rearrested, and will likely get rearrested sooner, compared to other sex offenders released from prison. These findings suggest that institutional sex offenders may indeed be more dangerous than other types of sex offenders.

(3) Bureau of Justice Statistics, *Criminal Victimization in the United States*, Table 91 (2002). U.S. Department of Justice, Office of Justice Programs, Washington, D.C.

Table 5 shows examples of the history of criminal and institutional sex offending for those offenders coded S3 who were rearrested for a sexual crime.

Table 5: Example of Crimes of S3s

Original Conviction	Institutional Sex Offense	New Sex Arrest
Drug abuse, theft, and assault	File documentation not available	Sexual assault and pandering of a child
Burglary and vandalism	Multiple indecent exposures to female staff	Indecent exposure
Murder	Coerced sexual behavior with inmates	Sexual assault
Theft and assault	Sexual abuse of female staff (includes stalking and aggressive sexual gestures)	Sexual assault and indecent exposure
Vandalism and escape	Sexual harassment of a female nurse	Public indecency, sexual assault, and sexual assault on a child

The table above presents a few examples that illustrate the wide range of criminal behavior engaged in by institutional sex offenders. This information contradicts many assumptions about institutional sex offenders, especially the assumption that these offenders do not pose an escalated risk to the public. From this study, we conclude that this group is exceptionally dangerous, and prison resources should be prioritized to systematically address the problem of sexual assault in prison, including cases of hands-off sexual assaults.

### Caution: "Arrest" versus "Recidivism"

Recidivism implies the commission of a crime following release from prison. To measure recidivism, however, we must rely on information that documents new criminal behavior committed by the individuals in a study. This means that the new criminal episode must come to the attention of state authorities who then record the crime.

Surveys of crime victims show that approximately half of violent crimes are *not* reported to law enforcement (4). Studies of rape victims have found that 16% or fewer (5,6,7) of sex crimes were reported to law enforcement.

Arrest records from law enforcement, conviction information from the court system and prison commitment data are important sources of information. Each is commonly used to measure recidivism. It is important to remember that each source of information significantly under-represents the actual number of new crimes committed. True recidivism rates remain unknown.

(4) Bureau of Justice Statistics, *Criminal Victimization in the United States*, Table 91 (2002). U.S. Department of Justice, Office of Justice Programs, Washington, D.C.

(5) Kilpatrick, D.G., Edmunds, C.N. and Seymour, A. K. (1992). *Rape in America: A Report to the Nation*. National Victim Center and the Crime Victims Research and Treatment Center, Medical University of South Carolina, Charleston, SC.

(6) Colorado Sexual Assault Prevention Program in the Colorado Department of Public Health and Environment and the Colorado Coalition Against Sexual Assault (1999). *Sexual Assault in Colorado: Results of a 1998 Statewide Survey*. Colorado Department of Public Health and Environment, Injury Epidemiology Program, Denver, Colorado.

(7) Russell, D., (1983). Incidence and prevalence of intrafamilial and extrafamilial sexual abuse of female children. *Child Abuse and Neglect*, 7, (pp. 133-146).

## Recommendations for the Prison Management of this Population

This study highlights the importance of the Prison Rape Elimination Act, unanimously passed by both the House and the Senate and signed by the president in September 2003. In light of our research findings and the federal 2003 Prison Rape Elimination Act, we propose the following fundamental approach to the management of the problem of institutional sexual assault:

- ✓ Develop and implement policies and practices that respond to inmate sexual misconduct.
  - Require the initiation of a crime scene investigation in response to allegations of a sex crime.
  - Secure the crime scene.
  - Collect physical evidence, including specimens for DNA analysis, and maintain a secure chain of custody.
  - Separate and interview witnesses and the accused.
  - Ensure protection and safety of the alleged victim and, when necessary, witnesses.
- ✓ Respond to sexual offending behavior with institutional disciplinary procedures and, when possible, criminal charges.
  - Formal consequences provide documentation of the offender's risk and send a clear message that the behavior is unacceptable and will not be tolerated by the administration.
  - In some states, criminal convictions contain requirements to comply with DNA testing and register with law enforcement.
- ✓ Explore the use of community Sexual Assault Nurse Examiners (SANE) when an offender is a suspected victim of sexual assault. The nurses are trained to collect evidence and respond to the needs of the victim. This spares the cost of transporting the offender to an emergency room and decreases the conflict of interest correctional medical staff may have with evidence collection. Inmates may feel more secure talking to an outside service provider.
- ✓ Provide annual training for correctional staff and investigative staff on how to recognize this type of assault and respond to allegations or suspected sexual abuse.
- ✓ Conduct emergency drills that simulate sexual assault scenarios so staff can practice the implementation of procedures. This allows staff and administrators to test and, where necessary, improve the existing protocol.
- ✓ Develop inmate training and procedures at intake orientation that inform inmates of the zero tolerance policy, tactics inmates might use to set up victimization, how to report threats of victimization and policies on how reports are handled and consequences for perpetrators.
- ✓ Remove the perpetrators from the general population.
- ✓ Provide programming, higher inmate pay, and cultures that create safety and are respectful of inmates (fair, firm, and consistent) to decrease the need of inmates to demonstrate power and extort money.
- ✓ Provide treatment during the offender's incarceration (sex offender and/or violence treatment to address the sexual acting out).
- ✓ Provide intensive supervision and treatment as the offender transitions back into the community.
- ✓ If victims must be moved, provide safe placements that do not restrict their privileges.
- ✓ Provide treatment for victims of institutional sexual offenses.

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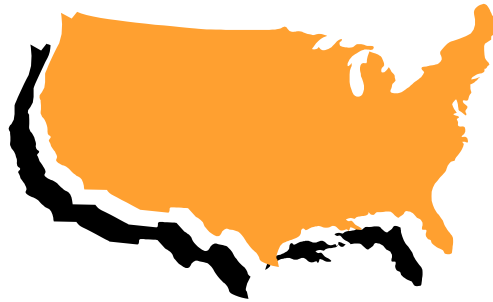
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## Institutional Sex Offenders Receiving Sex Offender Treatment in Other States



In a survey of state prison systems, 41% of the states identified institutional sex offenders as a group recommended for treatment. Some states treating institutional sex offenders include: Colorado, Connecticut, Hawaii, Massachusetts, New Hampshire,

New York, North Carolina, South Carolina, South Dakota, Tennessee, Vermont, and Virginia. To obtain more information about sex offender treatment nationwide, please visit the Colorado Department of Corrections State Sex Offender Treatment Program 50-State Survey at:

<http://www.doc.state.co.us/programs.htm>.

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