

## The Containment Approach to Managing Sex Offenders

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### INTRODUCTION

According to the *Rape in America* study by the Medical Center of the University of South Carolina, most victims are raped by someone they know.<sup>1</sup> Nearly half (forty-seven percent) are raped by someone very close to them: a father, stepfather, boyfriend, husband, ex-husband, or other relative. Only twenty-two percent were raped by a stranger. Further, five out of six rape victims do not report the crime to authorities.<sup>2</sup> Child victims and victims who know the perpetrator are least likely to report their victimization: twenty-eight percent of child rape victims never reported the crime(s) until the researcher asked.<sup>3</sup> Dr. Stefanie Doyle Peters found rape-related trauma is related to the frequency and duration of the abuse, and victims with perpetrators who live with them are frequently abused for years.<sup>4</sup> In further analysis of the data generated by the *Rape in America* study, nearly forty-two percent of those who were assaulted in childhood were raped more than once.<sup>5</sup> Half (fifty-five percent) of the series

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<sup>1</sup> NATIONAL VICTIM CENTER & CRIME VICTIMS RESEARCH AND TREATMENT CENTER, *RAPE IN AMERICA: A REPORT TO THE NATION* 4 (1992) [hereinafter *RAPE IN AMERICA*].

<sup>2</sup> *Id.* at 5; PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, *FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY* (2000), available at <http://www.ncjrs.org/pdffiles1/nij/183781.pdf> (last visited June 8, 2004).

<sup>3</sup> Daniel W. Smith et al., *Delay in Disclosure of Childhood Rape: Results from a National Survey*, 24 *CHILD ABUSE & NEGLECT* 273, 278 (2000).

<sup>4</sup> Stefanie Doyle Peters, *Child Sexual Abuse and Later Psychological Problems, in LASTING EFFECTS OF CHILD SEXUAL ABUSE* 101, 113, 115 (Gail Elizabeth Wyatt & Gloria Johnson Powell eds., 1988).

<sup>5</sup> Benjamin E. Saunders et al., *Prevalence, Case Characteristics, and Long-Term*

assaults were perpetrated by brothers, and seventy-seven percent were committed by fathers or stepfathers.<sup>6</sup>

Because most rape victims are children and/or know the perpetrator, reporting the crime becomes a complicated process. Over two-thirds (seventy-one percent) of the women in the *Rape in America* study said they were concerned about their family knowing and/or being blamed for the assault (sixty-nine percent).<sup>7</sup> Nearly all of the women in the *Rape in America* study said that they thought the following would increase reporting: public education about acquaintance rape (ninety-nine percent) and laws protecting the victim's privacy (ninety-seven percent).

Officially recorded "low" recidivism rates of sex offenders<sup>8</sup> are—to some unknown but significant extent—a function of this lack of reporting by victims. The likelihood, then, of convicting an individual of sexual assault is relatively rare, given the low incidence of reporting.<sup>9</sup> It becomes vital, then, that those offenders who *are* convicted of this crime be managed by the criminal justice system in ways that seek to eliminate their opportunities to rape again.

In light of the rapid growth of civil commitment laws that attempt to significantly delay imprisoned sex offenders from returning to the community, it may come as a surprise to many that most convicted sex offenders remain in or return to the community rather than being held in prison. Aware of the risk sex offenders in the community present to past or potential victims, criminal justice

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*Psychological Correlates of Child Rape among Women: A National Survey*, 4 CHILD MALTREATMENT 187, 192 (1999).

<sup>6</sup> *Id.* at 193.

<sup>7</sup> See RAPE IN AMERICA, *supra* note 1, at 4.

<sup>8</sup> See U.S. DEP'T OF JUSTICE, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994 (2003) [hereinafter RECIDIVISM OF SEX OFFENDERS]. In a recent study, the U.S. Bureau of Justice Statistics found that only 3.5 percent of nearly 9700 sex offenders released from prison were reconvicted for a sex crime in a three-year follow-up period. *Id.* However, 38.6 percent were returned to prison for other crimes during this period. *Id.* Further, convicted sex offenders were four times more likely to be rearrested for a sex crime in the three years following release from prison. *Id.*

<sup>9</sup> See JENNIFER K. GROTPETER & DELBERT S. ELLIOTT, VIOLENT SEXUAL OFFENDING (2002). A longitudinal crime study of a general population sample of more than 1700 subjects over twenty-five years found eighty self-reported subjects committing a serious sexual assault; only two (1.1 percent) were arrested for a sex crime, and neither were convicted. *Id.* Furthermore, agency records of postdischarge patients were found to underestimate actual reoffending by a factor of more than six. Henry J. Steadman et al., *Violence by People Discharged from Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods*, 55 ARCHIVES OF GEN. PSYCHIATRY 393, 396 (1998). Additional problems also occur at the points of arrest and prosecution, but will not be addressed here.



professionals in many jurisdictions have begun to reform the traditional methods of managing these cases. Many professionals working with this population recognize that inconsistencies and gaps in the case management of sex offenders often inadvertently give sex offenders opportunities to reoffend.

Through a series of research studies, researchers at the Colorado Division of Criminal Justice<sup>10</sup> have identified a promising approach for protecting victims by making it difficult for sex offenders to reoffend.<sup>11</sup> Labeled the *containment approach*, this model is being adopted by jurisdictions nationwide. The containment approach operates in the context of multi-agency collaboration, explicit policies, and consistent practices that combine case evaluation and risk assessment, sex offender treatment, and intense community surveillance, all designed specifically to maximize public safety.

This Article summarizes the five-part containment approach to managing adult sex offenders. The five components were identified from comprehensive field research in dozens of jurisdictions across the country.<sup>12</sup> The containment approach consists of the following aspects:

1. A philosophy that values victim protection, public safety, and reparation for victims as the paramount objectives of sex offender management;
2. Implementation strategies that depend on agency coordination and multidisciplinary partnerships;
3. A containment-focused case management and risk control approach that is individualized based on each offender's characteristics;
4. Consistent multi-agency policies and protocols; and
5. Quality control mechanisms, including program monitoring and evaluation.

#### VICTIM-CENTERED PHILOSOPHY

"What's best for the victim and the community?" This question lies at the crux of this approach. The containment approach is based on an explicit philosophy that defines victim protection and community safety as primary objectives of sex offender management.

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<sup>10</sup> This agency is located in the state Department of Public Safety.

<sup>11</sup> See generally *MANAGING ADULT SEX OFFENDERS: A CONTAINMENT APPROACH* (Kim English et al. eds., 1996) [hereinafter *MANAGING ADULT SEX OFFENDERS*].

<sup>12</sup> Much of this research was funded by the National Institute of Justice, U.S. Department of Justice. The findings reported here represent the views of the author and not the Department of Justice.

Research on the effects of sexual assault on victims confirms that the consequences of this crime are often brutal and long-lasting.<sup>13</sup> Because most sexual assaults occur in the context of a relationship established and manipulated over time, the victim is often confused and made to feel responsible by the perpetrator. Experts on sexual abuse explain that this violation of a trusting relationship causes great confusion and nearly unbearable trauma to the victim.<sup>14</sup> Professor Roland Summit points to the psychological damage inherent in the full range of sexually abusive behaviors when he emphasizes not just rape but touching: "Sexual touching, so often trivialized by words such as fondling or molestation (annoyance), is only the physical expression of a climate of invasion, isolation and abandonment."<sup>15</sup> A victim-centered philosophy, then, assumes that every sexual assault, from a violent stranger-rape to voyeurism by a family member, represents a significant act resulting in fear and a sense of betrayal. The victim's need for safety and empowerment thus becomes a priority in the management of the offender's case.

Explaining that sexual abuse is a complex process rather than an act or series of acts, Professor David Finkelhor notes, "Clinicians have often observed that the harm of some sexual abuse experiences lies less in the actual sexual contact than in the process of disclosure or even in the process of intervention."<sup>16</sup> Understanding this point is vital for professionals interested in implementing the containment approach. The power and authority of police officers, lawyers, judges, and social workers can weigh as heavily on the victim as on the perpetrator.

For example, even well-intentioned community notification laws may have a devastating effect on the victim if the perpetrator is a family member. Recognizing this, an Oregon statute explicitly directed probation and parole officers to develop and implement the notification plan on a case-by-case basis to guard against re-victimization of family members. This process required the officer to understand the full impact of notification and other policies on the

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<sup>13</sup> See RAPE IN AMERICA, *supra* note 1, at 7; John Briere & Marsha Runtz, *Post Sexual Abuse Trauma*, in LASTING EFFECTS OF CHILD SEXUAL ABUSE, *supra* note 4, at 85, 88. Sexual assault victims, compared to non-rape victims, are at significantly higher risk to abuse alcohol and drugs, to suffer from depression, anxiety, nightmares and social isolation, to experience low self-esteem, somatic symptoms, sexual difficulties, dissociative symptoms, and to attempt suicide. *Id.*

<sup>14</sup> See JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 51-52, 62-63 (1997).

<sup>15</sup> Roland C. Summit, *Hidden Victims, Hidden Pain: Societal Avoidance of Child Sexual Abuse*, in LASTING EFFECTS OF CHILD SEXUAL ABUSE, *supra* note 4, at 55.

<sup>16</sup> David Finkelhor, *The Trauma of Sexual Abuse: Two Models*, in LASTING EFFECTS OF CHILD SEXUAL ABUSE, *supra* note 4, at 77-78.



victims of sex crimes. In an effective containment approach, the healthy recovery of the victim and the well-being of the community guide policy development, program implementation, and the actions of professionals working with both sexual assault victims and perpetrators.

Adopting a victim-centered philosophy sometimes requires a significant shift in management values, as every case management decision will require considering the risk the offender presents to past and potential victims. Probation and parole agencies may be challenged to dissolve usual job and agency boundaries so that risk management decisions can be made quickly and in an ongoing fashion. New information about the offender's risk to reoffend is revealed in the first months and years of supervision, so intervention strategies and policies must encourage an elastic response to risk. Although most sex offenders do not have an extensive arrest or conviction record, research indicates that many sex offenders have a long history of hurting many types of victims.<sup>17</sup> The lack of officially recorded contacts with the criminal justice system can cloud risk assessments conducted with actuarial scales since these assessments usually depend on past (documented) criminal history to predict future criminal behavior.

#### MULTI-DISCIPLINARY COLLABORATION

The containment model for managing sex offenders in the community calls for the creation of intra-agency, inter-agency, and inter-disciplinary teams. These teams can overcome the fragmentation that usually results from the multi-layered nature of the criminal justice system. These teams are valuable for several reasons:

- They vastly improve communication among the agencies involved;
- They allow for quicker and less intrusive responses to victims;<sup>18</sup>
- They promote the exchange of expertise and ideas;
- They facilitate the sharing of information about specific cases;
- They increase team members' understanding of what

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<sup>17</sup> Sean Ahlmeyer et al., *The Impact of Polygraphy on Admissions of Victims and Offenses in Adult Sexual Offenders*, 12 SEXUAL ABUSE: J. OF RES. & TREATMENT 123, 134-35 (2000).

<sup>18</sup> JOEL EPSTEIN & STACIA LANGENBAHN, U.S. DEP'T OF JUSTICE, THE CRIMINAL JUSTICE AND COMMUNITY RESPONSE TO RAPE 61 (1994).

everyone on the team needs to do to perform his/her job well; and

- Perhaps most importantly, they foster a unified and comprehensive approach to the management of sex offenders.

Collaborating agencies should include sex offender treatment programs, law enforcement, probation, parole, schools, social services, rape crisis centers, hospitals, prisons, polygraph examiners, researchers, and victim advocate organizations. In a call to collaborate across disciplines and within communities for the purpose of addressing the epidemic of sexual assault, the American Medical Association added the following to the list above: attorneys, emergency room staff, universities, and victims' assistance centers.<sup>19</sup>

Interagency and multi-disciplinary collaboration can occur in many ways. In Colorado, for example, a state-level Sex Offender Management Board with multi-disciplinary membership is defined in legislation and meets monthly. The board has issued guidelines for the evaluation, treatment, and behavioral monitoring of adult sex offenders, including sex offenders with developmental disabilities. It also developed release criteria for sex offenders serving lifetime probation or parole sentences, a sentencing strategy undertaken in lieu of civil commitment. In Oregon, a quarterly meeting is held for all the probation and parole officers from across the state who specialize in the supervision of adult sex offenders. In Ohio, a parole officer took it upon herself to meet her colleagues working in the local police department's sex crime unit, and they subsequently worked together to solve cases.

Frequently, line staff initially forges these types of relationships, with one committed professional seeking out the expertise of another. Regular meetings and communication ensue. These small acts of collaboration are changing the way this work gets done in many jurisdictions across the country.

#### CONTAINMENT-FOCUSED RISK MANAGEMENT

Case processing and case management in a containment approach must be tailored to the individual sex offender and his or her deviant sexual history. The approach depends on obtaining and sharing key pieces of information about the abuser. Professionals must be prepared to consistently respond to that information to

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<sup>19</sup> American Medical Association, *Sexual Assault in America* (Nov. 6, 1995) (unpublished position paper, on file with author).



minimize the offender's access to victims and high-risk situations. Most jurisdictions consider community supervision to be a privilege, and a condition of this privilege in the context of sex offender containment is the offender's waiver of confidentiality. The waiver allows the sharing of important information about risk and treatment progress (or lack thereof) with the judge, probation and parole officer, offender, and family members or significant others (sometimes including the victim's therapist).

When a sex offender first begins to serve a sentence of probation or parole, sources of information about the offender are usually limited to police reports, the pre-sentence investigation, sometimes a psychosexual evaluation or risk assessment, and some criminal history information.<sup>20</sup> To manage risk effectively, the team needs to know much more, including information about the offender's preferred victim types, sexual assault history (including age of onset), the frequency and extent of deviant sexual arousal and behaviors, and events, behaviors, or emotional states that are precursors to reoffense. Most offenders have more victims, more types of victims, and have committed more sex crimes than the crime of conviction and the offender's self-report would suggest.

Additional, crucial information about a sex offender's modus operandi will be obtained through sex offense-specific treatment, validated and expanded by post-conviction polygraph examinations performed by specially trained examiners. Like the urinalysis testing with drug offenders, the polygraph examination is a tool to gauge an offender's progress and compliance with treatment and supervision expectations. Many offenders report a lengthy existence of secretive assaultive behaviors, and the use of the post-conviction polygraph exam is thought to assist them in making the transition to honesty.<sup>21</sup> The use of polygraphs should be officially required by the criminal justice system (in the form of supervision conditions) whose representatives can issue consequences for noncooperation.

The key to the modus operandi is the requirement that the offender disclose the details of a lifetime of sexual obsessions and abuse history. Early in the treatment process, the offender will be assigned the job of writing a sex history log detailing all sexual

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<sup>20</sup> Information on parolees may be even less available, if the conviction records and prison records do not accompany the offender's release onto parole. Ideally, when offenders are on parole, information on prison treatment and behavior, as well as information on the crime of conviction will accompany the offender's movement into the community.

<sup>21</sup> See Kim English et al., *Sexual Offender Containment: Use of the Postconviction Polygraph*, 989 ANNALS N.Y. ACAD. SCI. 411, 418, 419, 421 (2003).

activity, consenting and non-consenting, a description of the victim (age, gender, relationship to offender), and the circumstances surrounding the assault. In this exercise, the offender reveals the lifestyle he or she has carefully designed to deceive others and promote deviant sexual activity, including methods of victim selection and efforts to keep the abuse a secret. The information is verified using a polygraph examination, and deceptive findings on the exam lead to a variety of consequences for the offender, most commonly payment for a second examination. This information, not readily disclosed by the perpetrator, will be used to manage current and future risk and also to assure that the offender receives treatment that is appropriately directed at real patterns of behavior.

There are three anchors in containment-focused risk management: 1) supervision, 2) therapy, and 3) polygraph examinations. Each benefits from the distinct function of the others. "The criminal justice supervision activity is informed and improved by the information obtained in sex-offender-specific therapy, and therapy is informed and improved by the information obtained during well-conducted post-conviction polygraph examinations."<sup>22</sup>

Each anchor must be perceived by the offender as separate yet aligned with the other. These three components are discussed below:

1. *Criminal justice supervision.* First and foremost, sexual assault is a crime that gives the criminal justice system jurisdiction over convicted sex offenders. The entire team is empowered primarily by the authority of the criminal justice system, which can exercise its containment powers through a number of limits, including: specialized terms and conditions for sex offenders, lengthy probation and parole sentences, restrictions on high-risk behaviors, restrictions on contact with children, random home visits, urinalysis testing, electronic monitoring, and verified law enforcement registration.

The criminal justice system can also invoke consequences against the offender for non-participation in treatment, violation of supervision conditions, and/or behaviors that represent a risk to any potential victim. Consequences for failure to follow the directives of treatment and supervision can take a variety of forms. At a minimum, surveillance can be increased (house arrest, electronic monitoring, additional home visits by the supervising officer, requirements to phone the officer or others with location information, for example), and orders for additional treatment sessions (with a corresponding

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<sup>22</sup> Kim English, *The Containment Approach: An Aggressive Strategy for the Community Management of Adult Sex Offenders*, 4 PSYCHOL., PUB. POL'Y & L. 218, 225 (1998). See generally *id.*



increase in treatment fees assessed against the offender) can be imposed. Intermediate sanctions include community service activities, short-term jail sentences, or placement in a halfway house for sex offenders. At the extreme end of the sanction continuum is revocation of the community sentence and placement in prison.<sup>23</sup> The anticipation of these potential consequences provides incentives for an offender to participate actively in treatment, obtain regular polygraph examinations, and comply with conditions of supervision.

Not surprisingly, sanctions must be invoked immediately to encourage compliance. Many treatment providers and polygraph examiners have reported that without the leverage of the criminal justice system's consequences for noncompliance, they could not work with sex offenders. Change is difficult. When the offender engages in a long-term process to change a lifetime of behaviors and fantasies that have been self-gratifying and exciting, it is expected for this effort to ebb at times. The dangerousness presented by an offender's inconsistent effort to change is obvious, and is intolerable in terms of public safety. The availability of a variety of consequences invoked quickly, then, is a vital and ongoing aspect of risk management. Without consistent pressure on the offender to adhere to the behavioral expectations detailed in the conditions of supervision and treatment contract, community safety must depend on the offender's good will. According to trauma expert Dr. Judith Herman of Harvard, "Vigorous enforcement of existing criminal laws prohibiting sexual assault might be expected to have some preventive effect since both the compulsive and opportunistic offenders are keenly sensitive to external controls."<sup>24</sup> Vigorous enforcement translates into supervision and surveillance strategies that are customized to each offender's individual assault patterns. Once these patterns are known, the officer can design specific restrictions in terms of employment (e.g., working around children), limit leisure time activities (e.g., cruising the streets in an automobile), monitor the offender's telephone bills for use of 900 numbers,<sup>25</sup> restrict the

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<sup>23</sup> Prison sentences are, of course, not the end of risk management concerns. Most prisoners eventually are released into the community.

<sup>24</sup> Judith Herman, *Sex Offenders: A Feminist Perspective*, in *HANDBOOK OF SEXUAL ASSAULT: ISSUES, THEORIES, AND TREATMENT OF THE OFFENDER* 188 (W.L. Marshall et al. eds., 1990) [hereinafter *HANDBOOK OF SEXUAL ASSAULT*].

<sup>25</sup> We have been informed of sex offenders who have generated telephone bills in the thousands of dollars by using 900 numbers. While this is not a crime, compulsive phone calling represents out-of-control behavior, and this may be a prelude to more dangerous acts. Also, the additional financial burden creates a level of stress that may seduce the offender into psychologically escaping into an assaultive fantasy which is often the first step in the next assault.

offender's use of alcohol and drugs, and/or confiscate items used to entice children (toys and video games, kittens or puppies) or stimulate deviant sexual fantasies.

Dr. William Pithers's description of the assault pattern is a reminder of the need to be alert to what may, at first, appear to be accidental or occasional victim access: "Many aggressors, seeking to minimize their responsibility for offenses, would also have us believe their behaviors are the product of irresistible impulses overwhelming their self-control. . . . In reality, many offenders carefully plan offenses so that they appear to occur without forethought."<sup>26</sup> Hudson et al. state that "[m]uch of the optimism that has pervaded the treatment of sexual offenders in the last 15 years has come from the notion that the processes that these men follow are comprehensible and, therefore, under ideal circumstances, at least controllable."<sup>27</sup> To this end, they describe three potential types of planning in the "seduction process": covert planning, explicit planning, and chance contact.<sup>28</sup>

This very attention to planning increases the likelihood of detection once case managers have complete information about the offender. Equipped with such information, the criminal justice agent is well-positioned to identify precursor behaviors that can be managed by applying appropriate restrictions.

The intensity of supervision required of the probation or parole officer is significant, and collaboration with other professionals takes time and care. Case-specific supervision requires planning, documentation, and on-site meetings with the offender at home and work. Often, safety considerations require that fieldwork be conducted in teams of two officers. Ongoing training is also necessary to keep professionals at the top of their game. Probation and parole officers should have caseloads limited to twenty or twenty-five sex offenders, and they should have flexibility in work hours to monitor the offender's activities at night and on weekends. Halfway houses with twenty-four-hour monitoring of the facility and the offender's location should be available in all jurisdictions so that a safe residential option is available to criminal justice officials managing these cases. Criminal justice policymakers must explore the reallocation of resources if they intend to take the leadership role

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<sup>26</sup> William D. Pithers, *Relapse Prevention with Sexual Aggressors: A Method for Maintaining Therapeutic Gain and Enhancing External Supervision*, in HANDBOOK OF SEXUAL ASSAULT, *supra* note 24, at 343, 344.

<sup>27</sup> Stephen M. Hudson et al., *Offense Pathways in Sexual Offenders*, 14 J. OF INTERPERSONAL VIOLENCE, 779, 779 (1999).

<sup>28</sup> *Id.* at 783.



necessary to implement a containment approach.

2. *Sex offense-specific treatment.* Sex offender treatment targets the thoughts, feelings, denial, minimizations, motivations, justifications, and lifelong behaviors and thought patterns that are, in fact, fused to the sexual assault itself. The supervising officer works closely with the treatment provider to learn the offender's long-term patterns that *precede* actual assaults. This vital information, necessary for risk management, but historically outside the scope of criminal justice system intervention, is the stuff of therapy.

Sex-offense-specific treatment of offenders differs from traditional therapy in a number of important aspects.<sup>29</sup> First, in sex-offense-specific treatment, the therapist best cares for the client by not accepting the client's description of his or her sexual past as complete or even true. In addition, the therapist's primary commitment is to the community at large; public safety is paramount.<sup>30</sup> The focus of treatment is on assaultive behavior that harms others; substance abuse, the offender's abusive childhood, and the feelings the offender has toward therapy are secondary (although still important) concerns that the therapist must manage. The offender's manipulation and rationalizations that precede the assault are considered part of the crime, not an explanation for the assault. Treatment providers help the offender to disclose the full extent of his or her deviant sexual history. Holding on to these powerful secrets is not therapeutic and, if allowed by the therapist, may perpetuate the secrecy at the core of the offender's lifestyle.

Sex offense-specific treatment occurs primarily in group therapy settings. Working in a group, therapists are less likely to succumb to the subtle manipulations that offenders have perfected over a lifetime. A group of offenders, coached by the therapist, can often recognize and confront others' familiar manipulations. Descriptions of cognitive distortions and psychological defense mechanisms, the step-by-step sexual assault cycle that clients use to set up opportunities to assault victims, and the development of a concrete prevention plan are the material of treatment.

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<sup>29</sup> In fact, many sex offender treatment professionals do not refer to this intervention as *therapy*, since it differs significantly from what they were taught in graduate school. Rather, it is typically referred to simply as sex offense-specific treatment.

<sup>30</sup> "Public safety is paramount" is one of a dozen guiding principals that introduce the COLORADO STANDARDS FOR THE ASSESSMENT, EVALUATION, TREATMENT AND BEHAVIORAL MONITORING OF ADULT SEX OFFENDERS. This publication is available from the Colorado Division of Criminal Justice, 700 Kipling, Denver, Colorado, 80215.

One essential role of treatment in the containment approach is to obtain the details needed by criminal justice officials to develop risk management plans as well as to assist sex offenders in developing internal controls over their offending behaviors. Offenders are expected to assume full responsibility for the damage they inflict and to take measures to prevent future abusive behaviors. The threat of criminal justice consequences helps motivate these non-voluntary clients to engage fully in treatment.

3. *Post-conviction polygraphs.* The post-conviction polygraph examination is the third element of the containment strategy. The polygraph examination strengthens sex offender treatment and supervision by verifying the accuracy and completeness of self-reported sexual history information gained in treatment and by periodically monitoring the offender's compliance with criminal justice and treatment conditions. An examiner who specializes in this type of exam conducts regular polygraph examinations. This use of the polygraph, while non-traditional, is not uncommon. Our 1998 telephone survey<sup>31</sup> of a nationally representative sample of more than six hundred probation and parole supervisors across the nation found that the post-conviction polygraph was used in jurisdictions in thirty states.

Sex offense-specific treatment, criminal justice supervision and post-conviction polygraphs have a synergistic effect on each other. The threat of the polygraph increases the scope and accuracy of the sexual history information obtained by the treatment provider. Conversely, the polygraph examiner uses the information obtained in treatment and supervision to design test questions that verify the accuracy of this information. The criminal justice supervisor uses this information to manage risk, and the therapist uses the information to design a meaningful treatment plan that is informed by the full scope and variety of the offender's sexual deviancy.

Studies of sex offenders' self-reports of sex crimes reveal that most offenders have engaged in a considerable number of lifetime sexual assaults. Abel et al. studied 561 men seeking voluntary treatment.<sup>32</sup> The researchers found the ratio of arrest to self-reported

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<sup>31</sup> See Diane Patrick et al., *How Is the Post-Conviction Polygraph Examination Used in Adult Sex Offender Management Activities? The Second National Telephone Survey of Probation and Parole Supervisors*, in KIM ENGLISH ET AL., *THE VALUE OF POLYGRAPH TESTING IN SEX OFFENDER MANAGEMENT* app. A (2000).

<sup>32</sup> See Gene G. Abel et al., *Multiple Paraphilic Diagnoses among Sex Offenders*, 16 BULL. OF AM. PSYCHIATRY & THE LAW 153 (1988) [hereinafter Abel et al., *Multiple Paraphilic Diagnoses*]; Gene G. Abel & Joanne-L. Rouleau, *The Nature and Extent of Sexual Assault*, in HANDBOOK OF SEXUAL ASSAULT, *supra* note 24, at 9-20.



(anonymous) sex crime was approximately 1:30 for those who engaged in rape and child molesting, and 1:150 for exhibitionists and voyeurism.<sup>33</sup> Further, Abel et al. also found that exhibitionists were highly likely to engage in additional sexually assaultive behaviors: "46 percent had been nonfamilial female pedophilia, 22 percent in male nonincestuous pedophilia, 22 percent in female incestuous pedophilia and 25 percent in rape."<sup>34</sup> A more recent study<sup>35</sup> of 180 convicted adult sex offenders' self-reports of sex crimes obtained in conjunction with the polygraph examination found the following:

- 56.5 percent of the twenty-three offenders who assaulted boys ages five and younger also assaulted girls in the same age category and 26.0 percent of this group reported assaulting adult women.
- 64.3 percent of twenty-eight offenders who disclosed assaulting boys six to nine years of age reported assaulting girls in the same age category; 39.3 percent reported assaulting adult women.
- Eighty cases were convicted of incest but 104 admitted family victims. Of the 104, 34.8 percent self-reported assaulting strangers and 56.7 percent said they also had victimized another from "a position of trust." Two-thirds (64.4 percent) disclosed assaulting victims outside the family.<sup>36</sup>

The point here is not that sex offenders "cross-over" from one category of victim to another, since this phenomenon has been understood for many years. Rather, the assault history of each offender must be understood so that the duration, frequency, and variety of dangerous behavior is fully known by those who intend to provide treatment and supervision. Studies of cohorts of sex offenders can be used by those without the benefit of the polygraph examination to generalize the possibility for cross-over. For example, among the incest perpetrators discussed above, two-thirds reported assaulting victims outside the family. For professionals managing incest perpetrators, this is a reasonable generalization. Since only one-third of the offenders in the English et al. study were found non-deceptive on the polygraph exam, it is likely that the extent of cross-over found in that sample remains an underestimate.<sup>37</sup>

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<sup>33</sup> Abel et al., *Multiple Paraphilic Diagnoses*, *supra* note 32, at 157.

<sup>34</sup> *Id.* at 163.

<sup>35</sup> English et al., *supra* note 21, at 419-20.

<sup>36</sup> *Id.* at 420.

<sup>37</sup> *Id.* at 421-22.

The polygraph must be used in conjunction with sex offense-specific treatment. These two components, acting together and consistently supported by criminal justice supervision and consequences for noncompliance, provide a powerful incentive for an offender to be truthful and to refrain from behavior for which he or she will surely be caught. Without the use of the polygraph examination process, the information necessary to manage the risk of offenders is incomplete, and the offender's risk to the community remains uncertain.

The use of the post conviction polygraph is best described as a process because it requires the collaborative efforts of the examiner, the therapist, and the criminal justice supervisor. The examiner must understand the case and be prepared for the test by conferring with the therapist and the case manager. The examiner remains completely neutral, that is, with no vested interest in the outcome of the exam. This role differs from the other two professionals in the team. The therapist may hope that the offender has revealed all during group treatment, and the supervising officer may be continually suspicious. The polygraph examiner focuses on the technical and physiological requirements of the exam itself, the threats to validity, careful construction of questions, a methodical execution of the pretest (where every question is reviewed with the offender), the test itself (measuring heart rate, blood pressure, respiration, and perspiration), and the post-test (review of test results with the offender). Communication among the supervising officer, the treatment provider, and the polygraph examiner is absolutely key to the successful implementation of this management tool. Lack of communication, or too much focus on "passing the polygraph" rather than being honest and trustworthy, will eventually undermine the use of the this containment strategy.



## INFORMED AND CONSISTENT PUBLIC POLICIES

The fourth component of a sex offender containment approach requires local criminal justice practitioners to develop public policies at all levels of government that institutionalize and codify the containment approach. These policies should be based on research, should hold offenders accountable and, to be effectively implemented in the field, must empower those who work closely with these cases. Policies must define and structure the discretion authorities need to manage each offender individually. Criminal justice practitioners must also codify local and agreed-upon practices that support a victim-oriented approach to sex offender risk management. According to a 1996 book by English et al., written guidelines for the uniform processing of sex assault cases should include, at a minimum, the following:

- The acceptance or rejection of plea agreements in cases of sexual assault;
- The weight given in sentencing to an offender's denial of the crime;
- The use of polygraph information;
- Family reunification assessment protocols;
- Pre-sentence investigation report information;
- Failure to progress in treatment;
- Revocation procedures;
- Third-party liability/duty to warn potential victims;
- Employment restrictions for sex offenders under criminal justice supervision;
- Length of community supervision (i.e., lifetime).<sup>38</sup>

There are at least two important reasons for clearly stating policies. First, the offender deserves to know what is expected of him or her and what to expect from the criminal justice/mental health system, and these clear expectations will help keep the focus on the offender "working his program" rather than complaining about the system. Second, some policies undermine sex offender containment and minimize the seriousness of the crime. Policies that undermine sex offender containment include allowing plea bargains to lesser charges, to non-sex crimes, or to misdemeanor sex crimes when the evidence exists to fully prosecute the case. Lowering the charge, granting diversion, or issuing a deferred judgment at best facilitates the minimization of the case to the offender ("it wasn't that bad, I

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<sup>38</sup> See Kim English et al., *A Model Process: A Containment Approach*, in *MANAGING ADULT SEX OFFENDERS*, *supra* note 11, at 2-1, 2-14.

won't do it again") and the victim ("I'm not important to the court") and, at worst, eliminates the sexual assault history in the official record. Prosecutors and judges who specialize in sex crimes and receive regular training from national entities understand the power of the court to set in motion the healing process.<sup>39</sup> Aiding in the minimization process will ultimately make it harder for the offender to begin and sustain the lifelong changes required to ensure public safety.

Clear, consistent, and documented agreements on sex offender policies, combined with the cooperation of agencies responsible for managing sex offenders, then, are essential to enable the containment process outlined here to proceed. Written procedures and protocols should describe how and when team interactions occur. The range of activities that require such documentation is quite large, but primary among them is the need for open communication and information sharing at all stages of the process of managing sex offenders in the community.

#### QUALITY CONTROL

The containment approach requires broad discretion on the part of the criminal justice system professionals, treatment providers, polygraph examiners, and others collaborating to ensure public safety. This discretion allows for quick responses to the ongoing assessment of risk and progress, and it recognizes that these cases often involve complicated relationships between the perpetrator and the victim. Such discretion must be systematically monitored to ensure fairness and justice. For this reason, quality control is fundamental to the administration of any sex offender management program, project, or system-wide process. Quality control activities should include, at a minimum:

- Monthly, multi-agency case review meetings to ensure that prescribed policies and practices are implemented as planned;
- The requirement of annual training on the topics of sexual assault, conflict resolution, teaming, victimization, trauma, family reunification, treatment efficacy, and research related to each of these;
- Developing and tracking performance measures associated with the policies and procedures specified in

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<sup>39</sup> See John Q. LaFond & Bruce J. Winick, *Sex Offender Reentry Courts: A Proposal for Managing the Risk of Returning Sex Offenders to the Community*, 34 SETON HALL L. REV. 1173, \*26-31 (2004).



the jurisdiction;

- Videotaping of all polygraph examinations to avoid recanted statements and to facilitate periodic review of examinations (including chart reviews) by a quality control team; and
- The collection of case data describing the characteristics of offenders who fail in treatment or commit new sex crimes so gaps in containment can be identified and closed.

Sexual abuse cases are difficult to manage, and offenders attempt to manipulate the management system just as they did their victim(s). Containment professionals can burn out, get soft, miss "red flags," become cynical, and otherwise become ineffective. Empathy toward victims and repeated exposure to traumatic material can also result in compassion fatigue.<sup>40</sup> Police, firefighters, and other emergency workers report that they are most vulnerable to compassion fatigue when dealing with the pain of children.<sup>41</sup> In addition, "trauma is contagious."<sup>42</sup> Compassion fatigue, a near certainty in this work, presents a significant threat to the quality of the program, and the well-being of the dedicated professionals who are working to make our world safer.

Working together as a team is the first line of defense against this common phenomenon. Honest communication among team members is the first step in developing a continuum of quality control mechanisms. The next step is a process that brings together agency administrators who actively support the protocols and stand behind the staff that enforce the protocols and make difficult decisions in the field. Ongoing training, flexible hours, a supportive environment, and safe working conditions are important ways that administrators can help fight compassion fatigue.

A final aspect of quality control consists of clearly defined and agreed-upon measures of success. It is challenging to identify measures of detection, detention, and revocation that target

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<sup>40</sup> See generally COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED (Charles R. Figley ed., 1995) [hereinafter COMPASSION FATIGUE]; SECONDARY TRAUMATIC STRESS: SELF-CARE ISSUES FOR CLINICIANS, RESEARCHERS, & EDUCATORS (B. Hudnall Stamm ed., 1995) [hereinafter SECONDARY TRAUMATIC STRESS].

<sup>41</sup> See Randal D. Beaton & Shirley A. Murphy, *Working with People in Crisis: Research Implications*, in COMPASSION FATIGUE, *supra* note 40, at 51; Charles R. Figley, *Compassion Fatigue: Toward a New Understanding of the Costs of Caring*, in SECONDARY TRAUMATIC STRESS, *supra* note 40, at 21.

<sup>42</sup> HERMAN, *supra* note 14, at 140.

offenders *before* the commission of a new assault. Addressing these issues requires the allocation of resources for monitoring and evaluation. Indeed, resource allocation is a key component of quality control.

#### CONCLUSION

The five-part containment model process for managing adult sex offenders summarized here establishes a framework within which agencies and communities can develop specific practices to promote public safety and victim protection. Just as the containment triangle itself must be tailored to the individual characteristics of the sex offender, so should the method of implementing this model process vary based on the context and needs of each community.