



## To what extent does civil commitment reduce sexual recidivism? Estimating the selective incapacitation effects in Minnesota



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### ARTICLE INFO

Available online 5 July 2013

### ABSTRACT

**Purpose:** This study examines the selective incapacitation effects of civil commitment on sexual reoffending among 105 Minnesota sex offenders who were civilly committed between 2004 and 2006.

**Methods:** The Minnesota Sex Offender Screening Tool-3, a sexual recidivism risk assessment instrument, was used to estimate what the four-year sexual recidivism rate would have been for these offenders had they been released to the community. Integration of Survival with Quality of Life (iSQoL) software was used to extrapolate the survival curves over a 50-year period to develop a lifetime sexual recidivism estimate.

**Results:** If the 105 civilly committed sex offenders had been released to the community, an estimated nine percent would have been reconvicted of a new sex offense within four years. Civilly committing these offenders therefore likely reduced the overall four-year sexual recidivism rate by 12 percent. The results further suggest that if these offenders had been released to the community, an estimated 28 percent would be rearrested for another sex offense within their lifetime.

**Conclusions:** To better align the costs of civil commitment with its public safety benefits, states operating these programs should emphasize the use of intermediate alternatives in the community for a more positive return on investment.

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### Introduction

More than 50 years after the enactment of sexual psychopath laws, which provided sex offenders inpatient treatment as an alternative to prison, Washington became the first state to implement a new civil commitment law in 1990 that confined sexually violent predators (SVP) following their incarceration (Levenson & D'Amora, 2007). Since that time, 19 other states have used civil commitment statutes to incapacitate dangerous sex offenders after they complete their prison sentences (Minnesota Office of the Legislative Auditor, 2011). An individual can be civilly committed as long as 1) he has a conviction for a sexually violent offense against an adult or child victim, 2) he has a mental disorder or condition that predisposes him to sexually reoffend, and 3) the mental disorder creates a high probability that the individual will sexually recidivate in the future (Jumper, Babula, & Casbon, 2011). This probability has often been interpreted to mean "more likely to (recidivate) than not" (i.e., 50 percent or higher) in many SVP statutes (Abracen & Looman, 2006). Despite several legal challenges over the last few decades, civil commitment statutes have been upheld by the U.S. Supreme Court as long as civilly committed individuals have access to treatment and can be released as soon as they have been sufficiently rehabilitated to no longer pose a threat to themselves or others (Janus, 2004).

Minnesota is one of 20 states that civilly commit high-risk sex offenders after they complete their prison sentence. Since the early 1990s, Minnesota has civilly committed more than 600 convicted sex offenders. The volume of commitments has accelerated over the last decade, particularly after Dru Sjodin was sexually assaulted and murdered in November 2003 by a released Minnesota sex offender. Yet, because only two civilly committed sex offenders have been released to the community, and one of those was subsequently recommitted, the size of the sex offender civil commitment population is projected to reach 1,000 before the end of this decade. Moreover, with an estimated annual cost of approximately \$120,000 annually per resident, the costs to operate the Minnesota Sex Offender Program (MSOP) have grown, too, largely as a result of the population increase. The expanding size and cost of the civil commitment program has attracted increased interest and concern within the state, prompting the Minnesota Office of the Legislative Auditor (OLA) to recently conduct an evaluation of MSOP (Minnesota Office of the Legislative Auditor, 2011).

The OLA (2011) report identified several factors that may help explain why Minnesota has, compared to the other 19 states that operate civil commitment programs, the highest number of civilly committed sex offenders per capita. First, Minnesota laws facilitate greater use of civil commitment for sex offenders because: 1) offenders can be committed for offenses involving emotional, rather than just physical, harm, 2) offenders are not allowed to request a jury trial, 3) hearsay evidence is permissible, 4) no periodic report to the courts justifying

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continued commitment is required, 5) release standards are relatively stringent, and 6) there are no intermediate alternatives between the two choices of committing or not committing a sex offender (Minnesota Office of the Legislative Auditor, 2011).

Second, the Minnesota Department of Corrections (MnDOC) is required, by statute, to refer high-risk sex offenders to the counties for civil commitment review. In the wake of significant public scrutiny and criticism following the murder of Dru Sjodin, the MnDOC began referring more high-risk sex offenders to the counties for civil commitment review in December 2003. Between January 1991 and November 2003, the MnDOC referred, on average, 26 offenders per year. Since December 2003, however, the MnDOC has referred roughly six times that number per year. Although the rate at which referred offenders are committed has dropped since 2003, this decline has not outpaced the growth in the number of referrals to the counties, resulting in a civil commitment population that has more than doubled in size over the last eight years (Minnesota Office of the Legislative Auditor, 2011).

Finally, because the decision whether to civilly commit a sex offender rests at the county level, some areas in the state have been much more likely than others to civilly commit referred sex offenders. In their report, the OLA found significant geographic variation across the state in the extent to which sex offenders are committed, even after controlling for sexual recidivism risk. As a result of this geographic inconsistency, the OLA concluded that while Minnesota may be committing too few offenders in some areas of the state, it may also be committing too many in other parts of the state (Minnesota Office of the Legislative Auditor, 2011).

#### Present study

When sex offenders are involuntarily civilly committed, their opportunities to commit another sex offense are sharply reduced, particularly if their commitment involves confinement in a high-security facility. But if civilly committed sex offenders had not been incapacitated and were instead released to the community, how many would likely reoffend sexually? This study attempts to estimate the selective incapacitation effects among 105 sex offenders civilly committed in Minnesota between 2004 and 2006 by capitalizing on evidence obtained from the recent development of the Minnesota Sex Offender Screening Tool-3 (MnSOST-3), an actuarial risk assessment instrument that predicts the likelihood of sexual reoffending within a four-year follow-up period (Duwe & Freske, 2012). In doing so, this research not only estimates what the likely four-year sexual recidivism rate would have been for the civilly committed sex offenders had they been released to the community, but also the extent to which their incapacitation reduced the overall sexual recidivism rate for Minnesota.

Given that civil commitment decisions are based on an offender's lifetime recidivism probability, this study also estimates the sexual recidivism rate among the 105 sex offenders over a 50-year follow-up period. In an effort to achieve an estimate of long-term sexual reoffending, this study analyzes sex offense recidivism data collected on sex offenders released from Minnesota prisons during the early 1990s. Using Integration of Survival with Quality of Life (iSQoL) software to extrapolate the survival curves observed among this older offender cohort over a 50-year period, these results are then applied to the 105 civilly committed offenders to generate lifetime sexual recidivism estimates.

The following sections review the literature on selective incapacitation, examine the relevant research on sex offender civil commitment, and provide a brief overview of civil commitment in Minnesota. Next, the sample, data, and methods used in this study are described. Following a presentation of the statistical analyses that estimate the selective incapacitation effects of civil commitment, the study concludes by discussing the implications of the findings.

#### Selective incapacitation

As the rehabilitative ideal began to fade during the 1970s (Auerhahn, 1999), the selective incapacitation concept rose to prominence (Austin, Clark, Hardyman, & Henry, 1999). By targeting particularly dangerous offenders for lengthy sentences, selective incapacitation attempts to increase public safety by removing these offenders from society for longer periods of time (Feeley & Simon, 1992). As Auerhahn (1999) points out, a key impetus for selective incapacitation arose from the "career criminal" literature, which showed that a relatively small minority of offenders are responsible for roughly half the crimes that occur. To prospectively identify these high-rate offenders at the time of sentencing, advocates of selective incapacitation during the 1970s and 80s proposed using prediction instruments to assess recidivism risk (Greenwood & Abrahamse, 1982).

But the notion of basing criminal sentences on predicted recidivism risk rather than the severity of the offense committed attracted a great deal of opposition. Critics noted, for example, that it would punish offenders for what they might do rather than what they have done (Von Hirsch, 1984), which becomes especially problematic when errors are made in predicting future criminal behavior. Moreover, as Auerhahn (1999) argues, false positives lead to an inefficient allocation of resources.

Interest in the use of predictive sentencing strictly for selective incapacitation purposes appears to have withered since the 1980s (Auerhahn, 1999). Still, as the recent evidence-based sentencing movement suggests (Marlowe, 2011), the use of recidivism risk assessment instruments to help inform criminal sentencing decisions continues to hold much appeal. In addition, as evidenced by the passage of Three Strikes legislation by more than 20 states during the 1990s (Chen, 2008), support for the selective incapacitation concept remains strong. Rather than using recidivism risk assessment instruments to identify high-risk offenders, Three Strikes legislation selectively incapacitates habitual offenders strictly on the basis of their criminal histories (Kovandzic, Sloan, & Vieraitis, 2004).

The extant literature reveals that use of the Three Strikes law has been relatively limited outside of California, which has the most broadly defined statute (Chen, 2008; Kovandzic, Sloan and Vieraitis, 2004). Among the states that have enacted Three Strikes legislation, there has also been a great deal of variation regarding the type and number of offenses that initiate the law's application, previous offenses that qualify as "strikes", and penalties associated with second and third strikes (Chen, 2008). Despite this variation, existing research suggests, on the whole, that while Three Strikes legislation is associated with an increased homicide rate, it has not significantly reduced crime overall (Kovandzic, Sloan and Vieraitis, 2004). In California, where Three Strikes has been used the most, the law has not produced greater incapacitation effects on crime in comparison to other states that have implemented Three Strikes (Chen, 2008).

Although sex offender civil commitment is not a criminal sentencing policy, there are several parallels that can be drawn with the selective incapacitation literature. First, like the initial selective incapacitation proposals that advocated use of prediction instruments to target high-risk offenders, actuarial risk assessment instruments are typically used to help identify offenders for commitment. Second, sex offender civil commitment programs have been criticized on grounds similar to those noted above for predictive sentencing (Slobogin, 2011; Vess, 2009). Third, just as Three Strikes legislation proliferated during the 1990s, so did the implementation of sex offender civil commitment programs. Of the 20 states that operate such programs, 16 began during the 1990s. Lastly, similar to the California experience with Three Strikes, Minnesota has, on a per capita basis, used civil commitment more than the other 19 states that have these statutes.

Given that selective incapacitation policies are grounded in the punitive ideologies of deterrence and just deserts (Austin et al., 1999), the increased use of civil commitment over the last few decades is consistent

with the broader effort to control sexual recidivism. Since the 1990s, many states in the U.S. have implemented longer prison sentences for sex crimes, sex offender registration and notification, residency restrictions, and lifetime probation and parole (Meloy, 2005). To a large extent, the guiding principle behind these legislative efforts is that the incidence of sexual offending can be reduced by increasing the risk and costs associated with committing a sex offense. Involuntary civil commitment has not been recognized by the courts as a legal punishment. Still, as long as civil commitment is perceived by potential offenders as a possible consequence, it might also have a general deterrent effect on sexual offending. It is worth noting, however, that in its decision regarding *Kansas v. Hendricks*, the U.S. Supreme Court stated that civil commitment for sex offenders would not be justified if it were used for general deterrence purposes. Writing for the majority, Justice Anthony Kennedy concluded that retribution and general deterrence should be reserved only for the criminal justice system (Alexander, 2004).

### Prior research on civil commitment

Much of the existing research consists of studies that have focused mainly on describing sex offenders who have either been civilly committed or referred for commitment. Examples include studies involving sex offenders from Arizona (Becker, Stinson, Tromp, & Messer, 2003), California (Vess, Murphy, & Arkowitz, 2004), Minnesota (Janus & Walbeck, 2000), Florida (Levenson, 2004; Levenson & Morin, 2006; Lucken & Bales, 2008), Illinois (Jumper, Babula, and Casbon, 2011), Washington State (Jackson & Richards, 2007; Milloy, 2007), and Wisconsin (Elwood, Doren, & Thornton, 2010).

Several findings from this literature are especially relevant for the present study. First, three studies have reported scores from the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R), the actuarial instrument the MnDOC used to assess sexual recidivism risk from the late 1990s through 2011. The MnSOST-R scores on the offenders in this study can thus be compared with the average scores observed for 229 civilly committed offenders from Florida (average MnSOST-R score = 10.4) (Levenson, 2004), 190 civilly committed offenders from Washington State (average MnSOST-R score = 7.6) (Jackson & Richards, 2007), and 331 civilly committed offenders from Wisconsin (average MnSOST-R score = 11.1) (Elwood et al., 2010). Second, this study presents recidivism findings for sex offenders who were referred for civil commitment but ultimately were released to the community. These findings can be compared with those reported by Milloy (2007), who found that 23 percent of the 135 referred but not committed sex offenders released from Washington State prisons were reconvicted of a new sex offense within six years.

Although the extant literature has yet to estimate the selective incapacitation effects of sex offender civil commitment, the recent study by Wilson, Looman, Abracen, and Pake (2012) is particularly notable because it examined recidivism outcomes among sex offenders in Florida who had been discharged from civil commitment. In their study, Wilson et al. (2012) compared 120 sex offenders who had been civilly committed at the Florida civil commitment center (FCCC) with 459 sex offenders who had participated in a high-intensity treatment program at the Royal Treatment Centre (RTC) in Canada. Although the RTC offenders had not been civilly committed, the two groups were comparable on a number of measures relating to sexual recidivism risk. Moreover, Wilson and colleagues (2012) collected recidivism data over a 30-month follow-up period on 254 sex offenders from the RTC group and 31 from the FCCC group. The results showed 3.2 percent of the FCCC offenders had sexually reoffended within 2.5 years compared to 5.5 percent of the RTC offenders.

### Sex offender civil commitment in Minnesota

Minnesota's civil commitment statute dates back to 1939, when it created a civil commitment law to indefinitely confine those considered

to have a "psychopathic personality". In 1994, the civil commitment law was modified. Under this revision, sex offenders can be civilly committed as long as they are regarded as a "sexually dangerous person" or meet the criteria for having a "sexual psychopathic personality" (Minnesota Office of the Legislative Auditor, 2011).

The civil commitment process for sex offenders, which can begin as early as the time of criminal sentencing, is initiated by any of Minnesota's 87 county attorneys, who must file a petition with the district court. Since 1991, the MnDOC has assisted county attorneys by screening offenders incarcerated in prison. Based on its review, the MnDOC then forwards cases that meet the statutory criteria to the county attorneys for further review. County attorneys must then decide whether to file a civil commitment petition. Most of the civilly committed sex offenders in Minnesota have been referred to the counties by the MnDOC, although county attorneys may still choose to file a petition on sex offenders who have not been referred by the MnDOC. If a petition is filed, the court then determines whether an offender will be civilly committed (Minnesota Office of the Legislative Auditor, 2011).

Sex offenders who are petitioned for commitment have the right to legal counsel, although they do not have the right to a jury trial in Minnesota. Because civil commitment in Minnesota does not include outpatient treatment options in the community, all civilly committed sex offenders are housed in a high-security facility. After sex offenders have been civilly committed and are eligible for release from prison, they are admitted to the Minnesota Department of Human Services (DHS) facility at Moose Lake. Sex offenders who have reached advanced stages of treatment or have low-functioning cognitive abilities are housed at the St. Peter DHS facility. Civil commits have the right to appeal the decision following their admission to MSOP. Those who fully complete the treatment program are ostensibly eligible for release. In late 2003, however, Minnesota's governor signed an Executive Order that barred the release of any civilly committed sex offenders unless required by law or a court order (Minnesota Office of the Legislative Auditor, 2011).

### Data and method

This study develops an estimate of the lifetime sexual recidivism rate for the 105 civilly committed sex offenders in two phases. In the first phase, results obtained during the development of the MnSOST-3 are used to generate an estimate of the four-year sex offense reconviction rate for the 105 civilly committed offenders. In the second phase, data collected on sex offenders released during the early 1990s are used to estimate the extent to which the four-year sex offense reconviction rate underestimates the lifetime sexual recidivism rate. These results are then applied to the estimated four-year sex offense reconviction rate among the 105 civilly committed sex offenders to produce an estimate of their lifetime sex offense rearrest and reconviction rates had they been released to the community.

### Samples

The sample used to develop the MnSOST-3 contained 2,535 sex offenders who were drawn from two separate samples: the sample used to cross-validate the MnSOST-R (the predecessor to the MnSOST-3) and a contemporary sample of released sex offenders. The MnSOST-R cross-validation sample contained 220 offenders released from Minnesota prisons during the early 1990s (Epperson, Kaul, Huot, Goldman, & Alexander, 2003), whereas the contemporary sample included 2,315 sex offenders released between 2003 and 2006. During this four-year period, there were 134 sex offenders who were released from prison but were not at risk to reoffend because they were civilly committed.

Of the 2,449 sex offenders in the contemporary sample (the 2,315 offenders released between 2003 and 2006 and the 134 civilly

committed offenders), 1,758 exited Minnesota prisons between 2004 and 2006. As shown in Table 1, nearly 80 percent of these offenders were reviewed by the MnDOC but were not referred to the counties for civil commitment review. Of the 366 offenders who were reviewed and referred by the MnDOC, 105 (29%) were civilly committed. The remaining 261 referred offenders were not civilly committed. Overall, 6 percent of the 1,758 sex offenders who exited Minnesota prisons between 2004 and 2006 were civilly committed.

The sample for the first phase of this study consisted of 1,758 sex offenders who exited Minnesota prisons between January 2004 and December 2006.<sup>1</sup> This sample was selected for several reasons. First, because sexual recidivism is the key outcome measure in the study, it was necessary to include only prisoners released prior to 2007 so as to allow for a sufficient follow-up period for sexual reoffending. Second, because the MnDOC's civil commitment referral process changed significantly toward the end of 2003, this study includes only offenders who were released after 2003.<sup>2</sup> Finally, a substantial amount of data have already been collected on sex offenders released during the 2004–2006 period for purposes of developing the MnSOST-3.

The sample for the second phase of this study consists of the 220 sex offenders who were used to develop the MnSOST-3 and cross-validate the MnSOST-R. This sample was selected to facilitate extrapolation from the estimated four-year sex offense reconviction rate to a lifetime sexual recidivism rate estimate because it contains all sex offenders released from Minnesota prisons during the early 1990s, giving them a long enough time to provide useful survival data on which to base analyses. Because the MnSOST-R cross-validation sample is an exhaustive sample of sex offenders released from Minnesota prisons during the early 1990s (Epperson, Kaul, Huot, Goldman, and Alexander, 2003), it is an appropriate sample to use for extrapolation purposes. As part of the data collection efforts to develop the MnSOST-3, recidivism data were gathered on the 220 offenders through the end of 2010, providing an average follow-up period of 18 years. To more fully describe the three samples used in this study—the civil commitment sample ( $N = 105$ ), the MnSOST-3 contemporary sample ( $N = 1,653$ ), and the MnSOST-R cross-validation sample ( $N = 220$ ) used in the development of the MnSOST-3—data pertaining to demographics, the nine MnSOST-3 items, risk assessment scores and sexual recidivism are provided in Table 2.

#### Measuring sexual recidivism

In this study, sexual recidivism is defined as either a rearrest or a reconviction for a new sex crime. In operationalizing sex crimes, this study included only hands-on sex offenses. In doing so, non-contact, sex-related offenses such as possession of child pornography or indecent exposure were excluded.

The sexual recidivism data used here are drawn from the MnSOST-3 study (Duwe & Freske, 2012). In that study, Duwe and Freske (2012) operationalized sexual recidivism as a sex offense reconviction so as to minimize the chances of including “false positives” that were instances of “pseudo recidivism”, e.g., an offender released in 2005 is reconvicted in 2008 for a sex offense committed in 1998. Although Duwe and Freske (2012) measured sexual recidivism as a reconviction, they collected rearrest and reconviction data on the offenders in their sample from both the Minnesota Bureau of Criminal Apprehension

**Table 1**  
Sample description for Minnesota sex offenders exiting prison, 2004–2006

	<i>N</i>	<i>% of Total</i>
Reviewed and Referred	366	20.8
Civilly Committed	105	6.0
Not Civilly Committed	261	14.8
Reviewed But Not Referred	1,392	79.2
<b>Total</b>	<b>1,758</b>	<b>100.0</b>

**Table 2**  
Descriptive statistics for three Minnesota sex offender samples

<i>Variables</i>	<i>Samples</i>		
	<i>MnSOST-3 Contemporary</i>	<i>MnSOST-R Cross-Validation</i>	<i>Civil Commitment</i>
<i>Demographics</i>			
Male	100.0%	100.0%	100.0%
Minority/Non-White	41.8%	29.5%	22.9%
Age at Release from Prison	35.52	35.37	38.27
<i>Criminal History</i>			
Felony Sentences	3.09	2.50	3.67
Violation of Order for Protection Convictions	0.08	0.01	0.10
Recent Disorderly Conduct Convictions	0.07	0.00	0.01
<i>Sexual Offending History</i>			
Predatory Offense Sentences	1.44	1.62	2.67
Predatory Offenses Involving Male Victims	0.07	0.26	0.54
Sex Offense Committed in Public Place	13.8%	15.9%	20.0%
<i>Programming/Supervision</i>			
Completed Sex Offender and Chemical Dependency Treatment in Prison	11.9%	6.8%	8.6%
Unsupervised Release	6.3%	18.2%	15.2%
<i>Risk Assessment</i>			
MnSOST-R	2.27	2.96	7.91
MnSOST-3	3.5%	7.0%	9.2%
<i>Sexual Recidivism</i>			
Reconviction for New Sex Offense in 4 Yrs.	2.8%	12.3%	
<i>N</i>	1,653	220	105

(BCA) and the Federal Bureau of Investigation (FBI). Whereas the BCA data include only arrests and convictions that occur in Minnesota, the FBI criminal history data contain information on arrests and convictions that took place outside Minnesota.

Recidivism data were collected through the end of 2010 for all of the sex offenders examined in this study except for the 105 who were civilly committed since they obviously did not have an opportunity to reoffend. As with any recidivism study, official criminal history data will likely underestimate the actual extent to which the sex offenders examined here recidivated.

#### Sexual recidivism results

Of the 1,653 sex offenders released between 2004 and 2006, 47 (2.8 percent) had been reconvicted of a new sex offense within four years of their release from prison.<sup>3</sup> Among the 220 sex offenders released from prison during the 1990s, 27 (12.3 percent) had been reconvicted of a new sex offense within four years (see Table 2). By the end of 2010, 41 (18.6 percent) had been reconvicted of a new sex offense. The four-year follow-up period therefore captured 66 percent of the reconvictions by the end of the follow-up period (the total average follow-up period was 18 years for the 220 offenders). The results further reveal that 63 (28.6 percent) of the offenders had been rearrested for a sex offense by the end of 2010, which indicates that 65 percent of the rearrests resulted in a new sex offense reconviction (41 reconvictions/63 rearrests).

As shown in Table 3, the four-year sex offense reconviction rates vary among referred and non-referred offenders. Among the 261 referred offenders who were not committed, 17 (6.5%) were reconvicted of a new sex crime within four years. Of the 1,392 offenders who were reviewed but not referred, 30 (2.2%) were recidivists within four years. The four-year rate for the referred but not committed offenders

**Table 3**  
Comparison of risk assessment and four-year sexual recidivism results among Minnesota sex offenders released from prison, 2004–2006

	Sexual Reconviction Rate	Average MnSOST-3 Score	Average MnSOST-R Score	N
Reviewed and Referred		6.7%	8.29	366
Civilly Committed		9.2%	7.91	105
Not Civilly Committed	6.5%	5.6%	8.44	261
Reviewed But Not Referred	2.2%	3.1%	1.12	1,392
Total for Non-Committed Offenders	2.8%	3.5%	2.27	1,653
<b>Total for All Offenders</b>	<b>2.8%</b>	<b>3.9%</b>	<b>2.61</b>	<b>1,758</b>

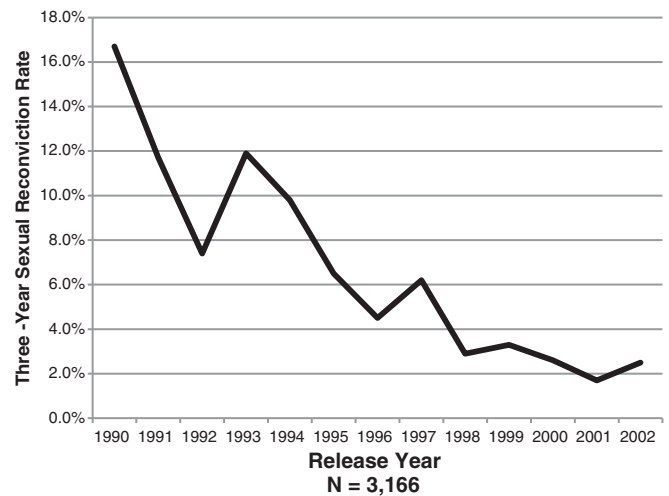
(6.5%) was therefore about three times higher than that of the offenders not referred for commitment (2.2%).

In addition to depicting sexual recidivism rates for non-committed offenders, Table 3 provides the average MnSOST-R and MnSOST-3 scores for the total sample. The MnSOST-R is the actuarial instrument the MnDOC used to assess sexual recidivism risk on sex offenders released from prison from the late 1990s through 2011. In January 2012, the MnDOC began using the MnSOST-3 to assess sexual recidivism risk. The data presented in Table 2 show that MnSOST-R and MnSOST-3 scores were higher for the referred offenders who were not committed in comparison to those who were not referred. Compared to previous research, the average MnSOST-R score (7.9) for the 105 civilly committed sex offenders is similar to the average reported for Washington State (7.6) (Jackson & Richards, 2007) but lower than that for Florida (10.4) (Levenson, 2004) and Wisconsin (11.1) (Elwood et al., 2010). Overall, the findings suggest that the sex offenders referred by the MnDOC to the counties have a greater reoffense risk, as borne out by the higher MnSOST scores and actual reoffense rates.

What is worth emphasizing, however, is that although referred (but not committed) offenders were more likely to reoffend sexually than the non-referred offenders, their overall rate of reoffending (6.5%) was still low. This rate is much lower than the 23 percent rate reported by Milloy (2007) over a six-year follow-up period. Besides having a follow-up period that was two years longer, the sample that Milloy (2007) studied was released from prison between 1990 and 1996. Conversely, the offenders examined in this study were released from prison between 2004 and 2006.

Evidence from both Minnesota and nationwide indicates that sexual recidivism has been on the decline over the last few decades (Jones, Finkelhor, & Halter, 2006; Minnesota Department of Corrections, 2007). For example, a 2007 report by the MnDOC examined sexual recidivism among 3,166 sex offenders released from Minnesota prisons between 1990 and 2002. The results showed that the three-year sexual recidivism rate for sex offenders released in 1990 was 16.7 percent (see Fig. 1). For sex offenders released in 2002, the three-year rate had dropped to 2.5 percent, a figure that is consistent with the overall rate seen here (2.8%). Moreover, the four-year sex offense reconviction rate for the 220 sex offenders from the MnSOST-R cross-validation sample was 12.3 percent compared to a four-year sex offense reconviction rate of 3.3 percent for the 2,315 sex offenders in the MnSOST-3 contemporary sample (Duwe & Freske, 2012).

Why the drop in sexual recidivism? Although existing research has yet to adequately examine this issue empirically, it is possible to speculate why sexual reoffending has been on the decline in Minnesota. By incapacitating more than 600 sex offenders since the early 1990s, the expanding use of civil commitment has likely had an effect, albeit to an unknown extent thus far, on the sexual recidivism rate. In addition, broad community notification applied to the highest-risk sex offenders significantly reduces sexual recidivism for Minnesota sex offenders (Duwe & Donnay, 2008). Further, compared to offenders discharged at the time of release from prison because



**Fig. 1.** Three-year sex offense reconviction rates for Minnesota sex offenders released from prison, 1990–2002.

they completed their sentence, those released to community correctional supervision are less likely to reoffend sexually (Duwe & Freske, 2012). When the Minnesota legislature increased the penalties for sex offenses in the late 1980s and early 1990s, it meant that sex offenders were not only going to spend more time in prison, but that they would also spend more time under community supervision. During the 1990s, Minnesota increased its use of intensive supervision with sex offenders. Due largely to longer and more intensive periods of supervision, sex offenders have returned to prison more frequently as technical violators (Minnesota Department of Corrections, 2007). Although it is unclear whether treatment availability has increased over time, research on Minnesota prison-based sex offender treatment shows it is effective in reducing sexual recidivism (Duwe & Goldman, 2009).

Sex offenders released from Minnesota prisons since the early- to mid-1990s have been more likely to be civilly committed, subjected to broad community notification, intensively supervised, have their supervision revoked for a technical violation, and incarcerated for longer periods of time. The growing use of these external constraints has likely been responsible, at least to some extent, for declining sexual recidivism rates observed in Minnesota since the early 1990s (Minnesota Department of Corrections, 2007). But given that crime in general has decreased over the last few decades, it is likely that the same macro-level factors associated with the overall drop in crime (e.g., changing law enforcement practices, demographics, decreased social tolerance for crime, etc.) have also played a role.

Another point worth emphasizing from the data presented in Table 2 is the close correspondence between the average MnSOST-3 scores, which are predicted probabilities of sexual recidivism within four years, and the observed four-year sexual reconviction rates. For example, the average MnSOST-3 score for all 1,653 non-committed offenders was 3.5 percent compared to an observed recidivism rate of 2.8 percent. Among the 261 referred offenders who were not committed, the average MnSOST-3 score was 5.6 percent, which was a slight underestimate of the observed rate (6.5%). Among the 1,362 offenders who were not referred, the average MnSOST-3 score (3.1%) was slightly higher than the observed recidivism rate for this group (2.2%). Given that the 105 civilly committed sex offenders in this study were scored on the MnSOST-3 and also exited prison during the same three-year period (2004–2006), the average MnSOST-3 score for these offenders provides a valid means for estimating how many would likely be reconvicted of a new sex offense within four years had they been released to the community. The validity of this

approach is critical because, as shown later, the average MnSOST-3 score anchors the lifetime sexual recidivism estimates.

### The selective incapacitation effects of civil commitment

The MnSOST-3, which consists of nine items, provides a prediction of a sex offender's probability of being reconvicted for a new sex offense within four years of release from prison (Duwe & Freske, 2012). In the MnSOST-3 development study, MnSOST-3 scores were obtained for the 134 civilly committed offenders who exited prison during the 2003–2006 period to further cross-check the predictive validity of the MnSOST-3 (Duwe & Freske, 2012). Of the 134 civilly committed sex offenders, 29 were excluded from this study because they exited prison prior to 2004. As shown earlier in Table 2, the average MnSOST-R score for the 105 civilly committed offenders (7.91) was higher compared to the non-referred offenders (1.12) but slightly lower than the referred but non-committed offenders (8.44). Perhaps not surprisingly, an offender's MnSOST-R score was not a significant predictor for whether a referred offender was subsequently committed. That the MnSOST-R score was not predictive of civil commitment among those who were referred likely reflects the fact that commitment decisions are heavily influenced by geographic location and typically consider additional information developed by prosecutors and the courts during the petition and commitment process (Minnesota Office of the Legislative Auditor, 2011).

The average MnSOST-3 score (9.2%) for the 105 civilly committed offenders, on the other hand, was higher than it was for either the non-referred (3.1%) or the referred but not committed offenders (5.6%). Although MnSOST-3 scores were not used, of course, to help determine whether referred offenders were committed, it significantly predicted whether referred offenders were committed in statistical analyses that were performed. What this result suggests is that among referred sex offenders, those with higher risk, per the MnSOST-3, have been more likely to be committed. It also suggests the possibility that Minnesota's civil commitment process considers factors present in the MnSOST-3, but absent from the MnSOST-R, that are significant predictors of sexual recidivism such as the total number of prior predatory offenses, the number of sex offenses involving male victims, and whether the offender will be released from prison to correctional supervision. Most important, however, this finding further underscores the validity of using MnSOST-3 scores to anchor the lifetime sexual recidivism estimates because the MnSOST-3 successfully differentiates those who were committed from those who were referred but not committed.

The average MnSOST-3 score (9.2%) suggests that 10 of the 105 civilly committed offenders likely would have been reconvicted for a new sex offense within four years had they been released to the community. Although MnSOST-3 scores are closely calibrated with observed rates of sexual recidivism, it is likely there is some degree of estimation error. For example, as shown earlier, the average MnSOST-3 scores were 0.7 percentage points higher than the observed rate for all non-committed offenders, 0.9 percentage points lower than the observed rate for the referred but non-committed offenders, and 0.9 percentage points higher than the observed rate for the non-referred offenders.

To determine the degree of error in using the average MnSOST-3 score to estimate the observed sexual recidivism rate, two methods were used. First, in developing the MnSOST-3, Duwe and Freske (2012) used the standard error of the predicted index to generate 95 percent confidence intervals (CI's) for individual MnSOST-3 scores. Therefore, just as the average MnSOST-3 score for the 105 civilly committed offenders can be used to estimate the four-year sexual recidivism rate, the average 95 percent CI's for these offenders can also be used to estimate the degree of estimation error. Second, because the estimated rate (9.2%) is a binomial proportion that is relatively close to 0 percent, this study also uses a method developed by Agresti and Coull (1998) for estimating binomial CI's.

**Table 4**  
Civil commitment selective incapacitation estimates over a four-year follow-up period

	Estimate	Lower Bound	Upper Bound
<i>Four-Year Follow-Up Period</i>			
<i>MnSOST-3 Averages</i>			
Sex Offense Reconviction Estimates	9.2%	5.2%	15.4%
Estimated # of Recidivists (out of 105)	10	5	16
<i>Agresti-Coull Method</i>			
Sex Offense Reconviction Estimates	9.2%	6.0%	15.6%
Estimated # of Recidivists (out of 105)	10	6	16

The results in Table 4 show very little difference in the two methods used to generate 95 percent CI's. The lower and upper bounds using average MnSOST-3 scores were 5.2 and 15.4 percent compared to 6.0 and 15.6 percent with the Agresti-Coull method. Combined, the findings suggest a 95 percent probability that the actual four-year sexual recidivism rate for the 105 civilly committed offenders would have been, at a minimum, 5.2 percent and, at most, 15.6 percent if they had been released to the community. Put another way, somewhere between 5 and 16 of the 105 civilly committed offenders likely would have been sexual recidivists within four years had they not been civilly committed.

These estimates can also be used to determine the impact on the overall sexual recidivism rate. If all 105 civilly committed offenders had been released to the community, then 1,758 offenders would have been at risk to recidivate as opposed to 1,653. Recall that 47 of the 1,653 sex offenders were recidivists within four years, resulting in a rate of 2.8 percent. If the 105 civilly committed offenders had been released to the community, an estimated 10 would have been sexual recidivists, resulting in a rate of 3.2 percent (57 recidivists out of 1,758 offenders). Civilly committing the 105 offenders therefore reduced the four-year sexual recidivism rate by 12 percent. Using the 95 percent CI estimates, which indicate between 5 and 16 of the 105 civilly committed sex offenders would have been sexual recidivists within four years, the results further suggest a 95 percent probability that civilly committing the 105 offenders reduced the four-year sexual recidivism rate between 4 and 21 percent.

### Selective incapacitation estimates using a 50-year follow-up period

It is worth noting that these estimates are based on a four-year follow-up period for recidivism. In making civil commitment decisions, however, an offender's lifetime probability for sexual recidivism is considered. As a result, the four-year estimates presented in Table 4 will underestimate the total number of lifetime sexual recidivists among the 105 civilly committed offenders. Moreover, although using sex offense reconviction to operationalize sexual recidivism reduces the chances of including pseudo recidivism events, it also likely misses new sex offenses because the recidivist was never apprehended, the charges for a sex offense the offender actually committed were dropped, or the offender plea bargained to another offense such as burglary, robbery, assault, etc. An important question, then, is: What is the extent of the underestimation when analyzing sexual recidivism as a reconviction within a four-year follow-up period?

In an effort to address this question, the study examines sex offense reconviction and rearrest data collected on the 220 sex offenders used to develop the MnSOST-3 and cross-validate the MnSOST-R. Given that most of the offenders in the sample were released during the early 1990s, the follow-up period ranges from a minimum of 175 months (almost 15 years) to a maximum of 230 months (a little more than 19 years). The average follow-up period for all 220 offenders was 219 months (18 years).

The rearrest data show that 63 of the 220 (29 percent) had been rearrested for a sex offense by the end of 2010. Similar to the reconviction data, most (70 percent) of the recidivists were rearrested

within the first five years after release, which is consistent with research showing that the risk for recidivism generally diminishes over time. Indeed, the longer offenders are able to successfully desist from crime while in the community, the lower their risk for sexually reoffending (Duwe & Goldman, 2009; Grubin, 2011). Moreover, research on sexual offending, as well as criminal offending in general, has demonstrated that the risk for recidivism generally decreases as offenders get older (i.e., they age out of crime) (Duwe & Freske, 2012; Langan & Levin, 2002; Thornton, 2006). Prentky and Lee (2007) have shown, for example, that sexual recidivism risk not only diminishes over time, but also is affected by age at release.

While the rearrest data indicate that 71 percent of the offenders had “survived” by the end of 2010, it is likely that some of these offenders will still sexually reoffend in the future (i.e., fail to survive). To obtain a lifetime sex offense rearrest estimate, iSQoL software was used to extrapolate the survival curve over a 50-year follow-up period. Among the 105 civilly committed sex offenders, the youngest offenders were born in 1985. The most recent lifetime expectancy data indicate that, on average, males born in 1985 will live to the age of 71 (National Center for Health Statistics, 2011). As such, it is reasonable to expect that the youngest offenders in this sample would live, on average, to the year 2056. The difference between 2056 and the last year the offenders in the civil commitment sample exited prison (2006) is 50 years, which is the length of the follow-up period used here to estimate lifetime sexual recidivism.

Developed by Hwang and Wang (1999, 2004), iSQoL integrates survival and quality of life data to generate extrapolated quality-adjusted survival estimates. Because quality of life data were not available for this sample, the “Survival only” option was selected within iSQoL. Extrapolated lifetime estimates were based on age at release and recidivism data for the 220 offenders, which were the “Age” and “Survival” input files that were loaded into iSQoL. The recidivism data for the 220 offenders show that every offender had an at-risk period of at least 175 months, while the longest at-risk period was 230 months. Therefore, within iSQoL, the follow-up period was set at 230 months. Because 175 months was the minimum follow-up period for the 220 offenders, the extrapolated survival curve from month 231 (the beginning of the extrapolation period) to month 600 (the end of the extrapolation period) is based on the observed survival curve from month 175 through month 230. Accordingly, within iSQoL, the beginning and end times for the extrapolated slope were set at 175 and 230 months, respectively, and a value of 600 was entered for the Extrapolation parameter. After fitting a simple linear regression involving the logit transformation of the survival function from months 175–230, the estimated regression line and

**Table 5**  
Lifetime selective incapacitation estimates for 105 civilly committed sex offenders

	Estimate	Lower Bound	Upper Bound
<b>Sex Offense Reconviction</b>			
10-Year Estimates	12.4%	8.2%	19.0%
Estimated # of Recidivists (out of 105)	13	9	20
20-Year Estimates	14.2%	9.8%	21.1%
Estimated # of Recidivists (out of 105)	15	10	22
30-Year Estimates	15.1%	10.6%	22.2%
Estimated # of Recidivists (out of 105)	16	11	23
40-Year Estimates	16.3%	11.4%	23.2%
Estimated # of Recidivists (out of 105)	17	12	24
50-Year Estimates	17.6%	12.2%	24.3%
Estimated # of Recidivists (out of 105)	18	13	26
<b>Sex Offense Rearrest</b>			
10-Year Estimates	18.6%	13.0%	25.4%
Estimated # of Recidivists (out of 105)	19	14	27
20-Year Estimates	21.9%	16.3%	29.5%
Estimated # of Recidivists (out of 105)	23	17	31
30-Year Estimates	23.7%	18.0%	31.6%
Estimated # of Recidivists (out of 105)	25	19	33
40-Year Estimates	25.8%	19.7%	33.6%
Estimated # of Recidivists (out of 105)	27	21	35
50-Year Estimates	28.0%	21.4%	35.7%
Estimated # of Recidivists (out of 105)	29	22	37

survival curve were then used to generate an extrapolated survival estimate beyond the observed follow-up period for months 231–600.

As shown in Fig. 2, the extrapolation estimate indicates that the rearrest rate at the end of the 600-month follow-up period would be 37.5 percent. Recall that the four-year sex offense reconviction rate was 12.3 percent. Therefore, the estimated lifetime sex offense rearrest rate is 3.05 times greater than the four-year sex offense reconviction rate. If we assume this same degree of underestimation applies to the 105 civilly committed offenders, then their projected lifetime sex offense rearrest rate would be 28.0 percent. The estimated four-year sex offense reconviction rate for these offenders was 9.2 percent based on their average MnSOST-3 score. Multiplying this rate by 3.05 yields an estimated lifetime sex offense rearrest rate of 28.0 percent.

Given the likelihood that this projected lifetime sex offense rearrest rate contains some degree of estimation error, 95 percent CIs were calculated. Because iSQoL output does not include confidence interval estimates, the Agresti-Coull method was used. As shown in Table 5, the lower bound is 21.4 percent and the upper bound is 35.7 percent. The results thus suggest that, at most, 37 of the 105 civilly committed offenders would likely be rearrested for a new sex offense within their lifetime. Overall, the lifetime sex offense rearrest rate is three, and possibly four, times higher than the four-year reconviction rate.

The results for sex offense reconviction, on the other hand, show that the four-year rate is about half the lifetime rate. Among the 220 sex offenders, the extrapolated lifetime sex offense reconviction estimate was 23.5 percent (see Fig. 2), which is 91 percent greater than the four-year rate of 12.3 percent. Applying this degree of underestimation to the 105 civilly committed offenders yields a lifetime sex offense reconviction rate of 17.6 percent. As shown in Table 5, the lower bound is, per the Agresti-Coull method, 12.2 percent and the upper bound is 24.3 percent.

**Discussion**

The findings suggest that 10 of the 105 civilly committed sex offenders would likely have been reconvicted of a new sex offense within four years had they been released to the community. Civilly committing these offenders decreased the four-year sex offense reconviction rate from 3.2 to 2.8 percent, a 12 percent reduction. Analyses performed on 220 sex offenders released during the early 1990s suggest that their estimated lifetime sex offense rearrest rate would be more than three times higher than their observed

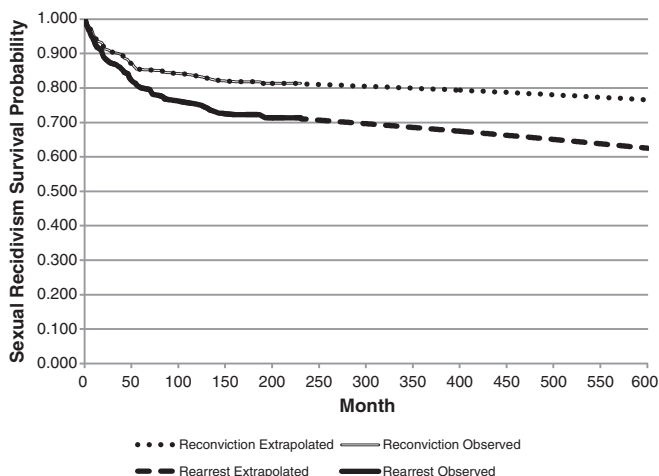


Fig. 2. 50-year sexual recidivism survival curves.

four-year sex offense reconviction rate. If we assume that this same degree of underestimation applies to the 105 civilly committed sex offenders, then an estimated 28 percent would have been rearrested for another sex offense in their lifetime had they been released to the community. Confidence interval estimates suggest the highest lifetime sex offense rearrest rate would be 36 percent.

### Limitations

Although this study has attempted to estimate the selective incapacitation effects for civil commitment within Minnesota, there are several caveats worth highlighting. First, because the lifetime rate reported here (28 percent) is an estimate based on several other estimates, it should be interpreted with caution. Most notably, in estimating sexual recidivism over a 50-year follow-up period, this study extrapolated the survival probabilities over more than 30 years. In general, the precision of the extrapolated survival probabilities declines as the amount of time increases between the end of the observed time period and the extrapolated estimate. Thus, the estimated lifetime rate should be viewed with more caution than estimated rates based on shorter follow-up periods (e.g., 25 years, 30 years, etc.).

Second, while the results suggest that civil commitment reduced the four-year sexual recidivism rate by 12 percent, this study did not address whether it had a general deterrent effect. There may be released sex offenders living in the community, for example, who have been deterred from sexually reoffending due to the threat of civil commitment. As a result, in determining the extent to which civil commitment reduces the sexual recidivism rate, the 12 percent reduction observed here should be regarded as a minimum estimate.

Third, in measuring lifetime sexual recidivism, this study used the most sensitive, official measure of reoffending available—rearrest. But given that a sex offense is the most underreported type of crime, it is unlikely the lifetime estimate captures all of the offenders who would have recidivated. More specifically, the MnSOST-R cross-validation sample likely contains some offenders who sexually reoffended but were never rearrested. As such, the upper bound rate of 36 percent may be a more reasonable lifetime recidivism estimate.

Finally, the estimated lifetime rate reported here applies only to the 105 civilly committed sex offenders examined in this study. It is unclear whether the sexual recidivism risk of sex offenders civilly committed in Minnesota before 2004 or after 2006 differs much from the 105 offenders included in this study. More broadly, it is even less clear whether these findings are generalizable outside Minnesota. As discussed earlier, Minnesota has, compared to the other 19 states that operate civil commitment programs, civilly committed sex offenders at a relatively high rate, which has subsequently resulted in the highest per capita commitment population. It is possible, therefore, that the estimate lifetime rate reported here may be lower compared to the other 19 states because Minnesota has been more likely to civilly commit those who are not the highest risk sex offenders.

### Implications for selective incapacitation and sex offender policy

Regardless of whether the lifetime sexual recidivism estimate is generalizable to other civil commitment populations, the findings still hold implications for selective incapacitation and, more narrowly, sex offender policy. Historically, Minnesota's correctional system has placed a premium on the use of community sanctions (e.g., probation, jail, etc.). Indeed, despite having a middling population size and crime rate compared to the other 49 states, the state has had, for some time, the second-lowest incarceration rate in the country (Guerino, Harrison, & Sabol, 2011). Yet, as evidenced by the highest per capita civil commitment population in the U.S., Minnesota has taken the opposite approach with sex offenders. Rather than using intermediate alternatives in the community to help manage high-risk sex offenders, Minnesota has relied heavily on the use of civil confinement in a

secure facility. In doing so, however, the state has employed a costly social resource that may produce diminishing returns as the civil commitment population continues to grow.

As noted earlier, Minnesota's use of civil commitment rivals California's outsized use of Three Strikes legislation. The relatively modest decrease in the sexual recidivism rate observed here (12 percent) is consistent with research showing that selective incapacitation policies such as Three Strikes have not had a major impact on crime rates. In discussing why California's comparatively high use of Three Strikes has not resulted in greater incapacitation effects on crime, Chen (2008) speculates that the state's broad application of the law may produce unintended consequences by requiring the use of limited prison beds for nonviolent offenders and older inmates who have aged beyond their peak crime years.

In his study on Three Strikes legislation, Caulkins (2001) argues that narrowly defined selective incapacitation strategies are more likely to be cost-effective as long as they target high-rate offenders. Elaborating on this point, Spelman (2009) notes that incapacitation can produce a benefit to society by preventing the occurrence of future crimes. As the prison population expands, however, these benefits grow at a diminishing rate. More specifically, incarcerating progressively less dangerous offenders produces progressively smaller benefits because these offenders are less likely to reoffend or, if they do recidivate, they are less likely to commit a serious offense.

The same holds true for civil commitment. As the civil commitment population expands, the chances increase that the state commits progressively less dangerous sex offenders. And if sex offenders who are less than high risk are being civilly committed, then the state may observe diminishing returns from the incapacitation of these offenders. Indeed, the social costs involved with civilly committing certain sex offenders may exceed the social benefits produced by their incapacitation (i.e., prevention of new sex offenses).

Still, a common argument is that the prevention of sexual violence transcends dollars and cents. If an intervention, such as civil commitment, prevents just one innocent person from being sexually victimized, then the intervention was worth it—whatever the cost. To be sure, such an argument recognizes the deeply destructive effects that sexual offending has on individuals who have been victimized as well as those who care about them. At the same time, however, it should not be a basis for thwarting efforts to produce a more cost-effective sex offender management system that preserves individual liberties—to the extent possible—without compromising public safety.

The results suggest that up to 36 percent of the civilly committed sex offenders would be rearrested for another sex offense in their lifetime. Whether this estimate is sufficiently high enough for a sample of civilly committed sex offenders is likely a matter of debate. What the results clearly imply, however, is that nearly two-thirds of these offenders would be unlikely to be rearrested for another sex offense in their lifetime if they were released to the community. In other words, for every true positive, there are likely two false positives.

This is not to say that the 105 civil commits examined here are low-risk sex offenders who could be safely released to the community without the imposition of external constraints such as community supervision, broad community notification, and participation in effective interventions such as community-based sex offender treatment or Circles of Support and Accountability (COSA) (Duwe, 2012; Wilson, Cortoni, & McWhinnie, 2009). On the contrary, it is important to remember that the average MnSOST-3 score for these offenders was more than three times greater than the overall average. Still, the sexual recidivism rate estimates reported in this study reflect the fact that sexual recidivism rates have declined over the last few decades and are currently low. And, as noted earlier, reasons for this decline—at least within Minnesota—may include the implementation of a tiered risk management system in which effective interventions and resources (e.g., treatment, community supervision, broad community notification, etc.) have been concentrated on high-risk offenders.



The apparent effectiveness of this system in helping lower sexual recidivism suggests that many high-risk sex offenders can be managed successfully in the community. The cost of civil commitment in a high-security facility also implies that this type of commitment should be reserved only for those offenders who have an inordinately high risk to sexually reoffend. Reducing the reliance on civil commitment in a high-security facility could involve fewer new commitments on the front end and more provisional discharges on the back end. In their report, the OLA recommended using a centralized, statewide panel to produce a more standardized review process, which could help guard against civilly committing sex offenders who are less than high risk. The OLA (2011) also proposed a stay of commitment option, which would allow offenders who are compliant with the conditions of their stay to live in the community. The relatively low sexual recidivism rate observed in the Wilson et al. (2012) study further indicates that sex offenders released from civil commitment can successfully transition from the institution to the community.

The decreased use of this type of civil commitment could also include the use of a model that employs less costly intermediate options between the two ends of the spectrum in Minnesota—civil commitment in a costly, high-security facility or no commitment. In several states that operate civil commitment programs (e.g., Texas and New York), civilly committed sex offenders receive treatment while living in a halfway house or other community setting. In their review of Texas' outpatient civil commitment program, which was established in 1999, Meyer and colleagues (2003) found that it cost less than \$30,000 per offender for one year.

The Minnesota experience illustrates that the stakes involved in civil commitment decisions are exceptionally high. The social costs arising from “false negative” and “false positive” commitment decisions are substantial. Contrary to popular perception, however, existing research indicates the vast majority of sex offenders, including those with a relatively high sexual recidivism risk, can be safely managed in the community. Therefore, to more closely align the costs of civil commitment with its public safety benefits, the evidence suggests that states operating these programs should emphasize the use of intermediate alternatives in the community for a more positive return on investment.

## Notes

1. Offenders included in the sample for this study were selected on the basis of when they exited prison (2004–2006 period), not when they were reviewed and/or referred for civil commitment. As such, the data presented here are not the same as that which the MnDOC provided the OLA for its evaluation of MSOP.

2. Prior to 2004, most high-risk sex offenders were individually reviewed by a small number of MnDOC staff experienced in sex offender management. The decision to refer was reached by discussion and consensus among these staff members. In 2004, a formal three-person committee consisting of experienced MnDOC staff was established. Meeting on a regular basis, this committee conducts file reviews on most released sex offenders and requests reports from MnDOC psychologists on cases requiring a more thorough review. Based on these file reviews, reports, and input from independent legal counsel, the committee makes recommendations to the Commissioner of Corrections as to whether an offender should be referred to the county attorney for review.

3. The four-year follow-up period used in this study is not necessarily synonymous with actual time at risk for recidivism, i.e., “street time”. For example, returns to prison, for either a technical violation revocation or a non-sex offense, shorten the at-risk periods for offenders. Although this study accounts for whether offenders were at risk for recidivism (i.e., whether they were civilly committed or not), it does not account for events that reduced the length of an offender's follow-up period. Rather, the four-year recidivism results presented in this study simply reflect the rate at which offenders sexually recidivated within four years of their release from prison to the community.

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