West Virginia Sexually Violent Predator Management Task Force: Final Report

A Comprehensive Report on the Workings, Findings, and Recommendations of the Legislatively Enacted West Virginia Sexually Violent Predator Management Task Force

Table of Contents

Executive Summary

The West Virginia Sexually Violent Predator Management Task Force met ten times over a seven-month period of time between October 2006 and May 2007, to fulfill its obligation as outlined in §62-11E-1. The following Problems have been identified and Recommendations offered.

Problems Identified:

1. **Definition** – *The current definition used to identify, screen, and track sex offenders is inadequate.*

2. **Fractured System** – *Many different entities are performing the same basic supervision and treatment functions, but solid linkages (continuum of care) do not exist.*

3. **Failure to Properly Screen/Identify** – *The current procedure used for the determination of Sexually Violent Predator fails to identify many truly dangerous offenders.*

4. **Use of Unproven Management Techniques** – *Sex Offender Management strategies have been implemented, while others are being discussed for future implementation, but there is no clear indication that these strategies are based upon sound empirical evidence.*

5. **Lack of Qualified Treatment Providers for Offenders** – *There is currently a severe lack of qualified treatment providers available for the treatment of sex offenders.*

6. **Lack of Treatment Resources for Victims of Sexual Crimes** – *There is a critical shortage of treatment resources for victims of sexual crimes; long term care is extremely scarce.*

Recommendations Offered:

1. **Use a More Appropriate Method of Management than Civil Commitment for Sexually Violent Predators in West Virginia.** – *The Task Force finds that inpatient Civil Commitment is overly expensive and legally inappropriate as an alternative for sexually violent predator management.*

2. **Modify the definition of Sexually Violent Predator and Sexually Violent Offender.** - *The Task Force recommends expanding the list of offenses included in the Sexually Violent Offender category (renamed Sexually Dangerous Offender) as well as expanding the definition of a Sexual Predator to more accurately describe and label these offenders.*

3. **Create a new Determination Procedure.** – *The Task Force recommends that the determination procedure be altered to remove the initial discretion as to whether an offender should be considered for sexual predator status. ALL convictions for sexually dangerous offenses should be evaluated for sexual predator status.*

4. **Create a new Subcommittee of the Governor's Committee on Crime, Delinquency, and Corrections.** – *The Task Force recognizes the extreme complexity and depth of this issue and therefore recommends the formation of a new Subcommittee that can continue to tackle Sex Offender Management issues in the future from a position of authority.*

Introduction

History and Background

Sex Offenders, and their actions, cause immeasurable harm to their victims and society as a whole. Some offenders will victimize again and again with little regard to the anguish and loss they cause. West Virginia has instituted laws and procedures that are meant to successfully arrest, prosecute, incarcerate, rehabilitate, and manage these offenders in the most fiscally responsible manner possible. However, the current sex offender management philosophy in the state is fractured amongst numerous government agencies and private entities.

In response to these and other shortcomings, the West Virginia Legislature passed, and Governor Joe Manchin III signed into law, the Child Protection Act of 2006. Within that legislation the West Virginia Sexually Violent Predator Management Task Force was created. This report represents the collective research, findings and recommendations of that Task Force, submitted to the Governor and Legislature for consideration.

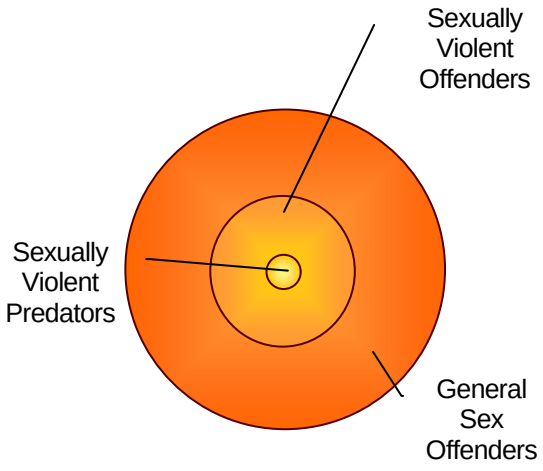
Purpose of Sexually Violent Predator Classification & Law

West Virginia law currently places convicted sex offenders in three broad categories.

The broadest category contains *General Sex Offenders*, which includes all individuals found guilty of any sexual offense.

Beyond the general sex offender category are more specific categories that include Sexually Violent Offenders and Sexually Violent Predators.

Sexually Violent Offenders are those that have been convicted of one of a specific list of sex crimes, defined by law, that are considered the "worst" of the sex offenses.



Finally, the smallest category, placed within Sexually Violent Offenders is *Sexually Violent Predators.* Predators are those that have been convicted of a sexually violent offense and have been found by the court to have a mental abnormality that predisposes them to commit additional sexually deviant acts.

These classifications exist so that sex offenders at various management levels are easily identified and tracked.

Current Procedure for Determination

The West Virginia Sex Offender Registration Advisory Board (WVSORAB) is charged with assisting the circuit courts of the state in determining whether a person convicted of sexually violent offenses should be required to register as a Sexually Violent Predator (SVP). The applicable statute is WV Code 15-11-et seq and the guidelines pertaining to the West Virginia Sex Offender Registration Act are specified in Title 81, Series 14.

The WVSORAB is comprised of six (6) members appointed by the Secretary of the Department of Military Affairs and Public Safety (MAPS). The Board is required to have representation from mental health, law enforcement, and victim advocacy professionals. The current members are:

Theodore A. Glance, WVU School of Medicine, President

Christi Cooper-Lehki, D.O., WVU School of Medicine

Steve Dolly, Asst. Prosecutor, Greenbrier County

Lt. D. L. Frye, WV State Police

Taunja Hutchinson, WV Department of Health and Human Resources

Marcia White, Women's Aid in Crisis

The SVP registration proceeding is initiated by the county's prosecuting attorney. The prosecutor provides a description of the charges and convictions of the offender. The prosecutor provides the court with a short and plain statement of the claim that the offender suffers from a mental abnormality or personality disorder that makes the offender likely to engage in predatory sexually violent offenses.

The order and all relevant case materials (specified in the guidelines) are forwarded to the West Virginia State police. The WVSORAB president is notified and a meeting is scheduled.

The finding and recommendation that the offender be required to register as a sexually violent predator is made by the WVSORAB only after the following has been found:

1. The offender has been convicted of a sexually violent offense. The term "sexually violent offense" is defined as a:

    a. sexual assault in the first degree

    b. sexual assault in the second degree

    c. sexual assault of a spouse

    d. sexual abuse in the first degree

2. The offender suffers from a mental abnormality or personality disorder that makes the offender likely to engage in predatory sexually violent offenses.

    a. The term “mental abnormality” is defined as a congenital or acquired condition of an offender that affects the emotional or volitional capacity of the offender in a manner that predisposes that offender to the commission of criminal sexual acts to a degree that makes the offender a menace to the health and safety of others.

    b. The term "predatory act" means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A report outlining the findings and recommendations is submitted to the court. The President, or his designee, shall sign the report and, if required, appear at the hearing where the motion is considered.

Child Protection Act of 2006

The Child Protection Act of 2006 was passed by the Legislature and signed by the Governor as a response to a growing concern over the safety of children in West Virginia. The Bill includes provisions to expand the state’s sex offender registry, creates a new registry for child abuse offenders, enhances supervision requirements for certain sex offenders, and a variety of other measures all focused on providing a better level of safety and security for the children in West Virginia.

Several major components of the Bill are specifically focused on the management of Sexually Violent Predators. The new code section, §62-11E-1, (see below) orders the creation of the West Virginia Sexually Violent Predator Management Task Force, of which, this report is a product.

The Task Force was created principally to investigate issues surrounding the management of Sexually Violent Predators and to offer recommendations to the Legislature and the Governor as to how the state should manage these offenders in the future.

Task Force Composition

The Task Force consists of a variety of experts in the fields of psychiatry/psychology, corrections, the legal system, human services, law enforcement, and victim services. This multi-disciplinary make-up allowed the Task Force to approach all the issues from many different angles and develop recommendations that are mutually beneficial. The Task Force is made up of the following individuals:

Task Force Members

Jim Rubenstein, Chairman
Commissioner
West Virginia Division of Corrections

Christopher D. Chiles
Prosecuting Attorney
Cabell County

David Clayman, Ph. D.
Forensic Psychologist
Clayman & Associates, Inc.

J. Norbert Federspiel
Director
West Virginia Division of Criminal Justice Services

Ryan Finkenbine, M.D.
Forensic Psychiatrist
West Virginia University School of Medicine

Theodore Glance
President
West Virginia Sex Offender Registration Advisory Board

Nancy Hoffman
State Coordinator
WV Foundation for Rape Information Services

Sheila Kelly
Assistant Commissioner
Bureau for Behavioral Health and Health Facilities

Mike Lacy
Director of the Division of Probation Services
West Virginia State Supreme Court

James Lee
Chairman
Community Corrections Subcommittee – Governor's Committee on Crime, Delinquency, and Corrections

Leah Macia
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Bailey & Glasser

Phillip Morrison
Executive Director
West Virginia Prosecuting Attorney's Institute

Jack Rogers
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West Virginia Public Defender Services

Major Dave Williams
Director of Training
West Virginia State Police

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Sandra Ashley
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Peoplework Solutions

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West Virginia Division of Corrections

Della Huddleston
Secretary
West Virginia Division of Corrections

Teresa McCourt
Director of Programs
West Virginia Division of Corrections

Charter

The Task Force Charter, as provided in §62-11E-1:

> (4) It is therefore the purpose of this article to establish a public-private task force to identify and develop measures providing for the appropriate treatment of sexually violent predators lasting until they are no longer dangerous to the public. The measures should reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.
>
> (d) It shall be the duty of the task force to develop measures for the appropriate treatment of sexually violent predators, assess resources and circumstances specific to West Virginia, examine constitutional, statutory and regulatory requirements with which such measures must comply, identify the administrative and financial impact of those measures and develop a plan for implementation of the measures by a date certain. In fulfilling those duties, the task force, at a minimum, shall:
>
> (1) Consult with psychiatrists and psychologists regarding the management of sexually violent predators, including, but not limited to, their diagnosis and treatment;
> (2) Evaluate current involuntary commitment procedures set forth in chapter twenty-seven of this code and how they may interact with the state's management of sexually violent predators;
> (3) Survey the mental health resources offered by state agencies, including, but not limited to, current treatment resources for sexually violent predators in all phases of the correctional, probation and parole systems;
> (4) Assess what, if any, state resources exist for use in the confinement of sexually violent predators;
> (5) Examine the interaction between criminal penalties for sexually violent offenses and the management of sexually violent predators;
> (6) Consider other states' approaches to managing sexually violent offenders released after the

completion of their criminal sentences;
(7) Conduct interviews with relevant personnel inside and outside of state government; and
(8) Determine the fiscal impact of any of its recommendations.

Summary of Findings

The successful management of sexual offenders is inherently difficult. That management becomes even more difficult with specialized groups of sex offenders, such as sexual predators. The difficulty in managing this population stems primarily from the lack of a strong body of evidence-based practices. Research studies are just beginning to provide the nation with a foundation for how to manage these criminal populations, but to date there is no foolproof method of ensuring that they do not re-offend. In West Virginia, several barriers have been identified in our current system of managing sexual predators. These barriers include:

Definition

West Virginia's current definition of Sexually Violent Predator is problematic. The qualifying offense feature of the definition is narrow in scope, creating gaps for high risk offenders to slip past. On the other hand, the mental abnormality component of the definition is too broad in scope, allowing inappropriate offenders to be channeled through the screening process.

The violence factor that must be present in the criminal offense to be deemed a predator eliminates a large population of *dangerous*, but not necessarily violent, sexual offenders. As an example, research indicates that some of the highest risk sexual offenders to re-offend in a sexual manner are those offenders who victimize boys outside the family[1]. These offenders could be found guilty of a myriad of offenses under the current code, which may not be one of the qualifying offenses. This leaves a large category of offenders who are at the highest risk for re-offending outside of the target population automatically.

The current requirement for a mental abnormality or personality disorder to be present is ineffective at adequately screening out those individuals who have mental health disorders that are not directly related to their likelihood of committing sexual offenses. This section of the definition does not effectively address the need to identify those who are predisposed to commit sexual offenses, and who have difficulty controlling their behaviors, and who are more likely to commit these offenses as a result of their mental health disorder.

Finally, the inclusion of "predatory acts" as a part of the definition results in the statute applying only to offenders who target strangers or establish a relationship with a victim for the primary purpose of victimization. This would potentially exclude offenders who prey on those with whom they have an already established relationship.

[1] Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2004

Fractured System

West Virginia lacks a comprehensive system of managing Sexual Predators. While the state has a number of agencies and organizations contributing to the overall management by performing specific functions, the overall system remains fractured.

The primary area of fracture is the existence of multiple information management systems amongst numerous West Virginia criminal justice agencies that do not share information across jurisdictions. Various agencies share responsibility for the management of sex offenders. From the initial arrest, through the courts, and into correctional supervision, agencies receive and store information about that offender independently. This creates critical gaps in what should be an integrated, comprehensive approach to managing that offender.

The second area of fracture is the supervision philosophy and methods under which various supervision agencies work. There are a total of 31 circuits within the state that encompass prosecution and probation supervision. While standards do exist for each of these areas, each circuit may have some differences in operations based on the philosophy of the judge presiding over that jurisdiction. In addition to the circuit system for the courts, the corrections system is responsible for incarceration of Sexual Predators as well as the parole supervision of these offenders being released from prison and any Sexual Predator under probation supervision from another state. Some offenders may discharge their sentence prior to parole eligibility; others may be paroled, while some may leave the supervision of the Division of Corrections to be returned to the supervision of the circuit court. Systems of management within these entities may be similar, but are not coordinated, creating incongruence when an offender's custody is transferred from one supervision agency to another.

Lastly, significant fragmentation exists based on the lack of a structured system of providing sound treatment services to the offender population. Those that offer services are from a variety of agencies and private practices. No governing body is currently charged with the specific licensure or certification of sex offender treatment providers and, as such, there exist no minimum standards for the provision of these services or the qualifications of those who provide these specialized interventions.

This fragmentation of the criminal justice system and those that provide treatment services to sexual predators makes it unfeasible to reliably track such known performance indicators as case outcomes, treatment plan completion, or even number of cases in the system.

Failure to Properly Screen/Identify

For those states who have legislation regarding sexual predators, the intent is to target only the highest risk or most dangerous offenders, which is typically a very small proportion of the broader group of sex offenders in each state. West Virginia's population of identified Sexual Predators is less than 1% of its total sex offender population, and 14 of the 19 identified Sexual Predators were identified by other states. Since June 15, 1999 the Sex Offender Registration Advisory Board has received only 5 referrals for consideration. The Child Protection Act of 2006 may eventually lead to an increase in the number of referrals, but it is perceived by the Taskforce to be a minor one. These numbers indicate that West Virginia's current referral methods are not effective at identifying a more realistic number of Sexual Predators.

Use of Unproven Management Techniques

Because of the fractured and flawed system of screening and identifying sex offenders for Sexual Predator status, West Virginia has not been able to adequately understand the extent and scope of this issue, the precise number of predatory offenders, or the full range of possibilities for addressing the problem. Some strategies have been implemented, while others are being discussed for future implementation, but there is no clear indication that these strategies are based upon sound empirical evidence. Further exacerbating the issue of fragmentation, legislation has not indicated a need to connect these strategies in a comprehensive manner to ensure that each is complementary of and linked together. Nor has the state associated these implemented strategies with funding for ongoing research on their efficacy.

Lack of Qualified Treatment Providers for Offenders

Sex offender assessment and treatment requires an approach unfamiliar to most mental health professionals. At this time, West Virginia does not require any formal process of certification or licensure of those providing treatment or diagnostic services to sex offenders, creating inconsistencies in the methods and underlying philosophical framework of treatment programs and services.

Lack of Treatment Resources for Victims of Sexual Crimes

West Virginia is fortunate to have the West Virginia Foundation for Rape Information and Services (WVFRIS), which is the coalition of the state's nine rape crisis centers. These centers offer 24-hour hotline services for victims of sexual assault and provide direct services in 33 of West Virginia's 55 counties. However, while the nine rape crisis programs support and advocate for those affected by sexual violence, many victims need long-term care that requires counselors with specialized training and knowledge in working with trauma survivors. With no state funding currently available for sexual assault services for victims, less than a dozen counties have these free specialized counseling services available through the rape crisis programs.

Task Force Operations

Procedures and Methods Used by the Task Force

Meeting Procedures

The initial Task Force meeting was held in November 2006. In December, the Task Force engaged Sandra Ashley of Peoplework Solutions to facilitate the process thereby allowing all members to fully participate in the meetings.

Each meeting began with an agenda review with structure provided to allow problem exploration, information gathering, review of programs and procedures in other states and consultation with experts in the field of management of sexual offenders. Group process determined the control of subsequent agendas.

Meeting formats allowed for planning and design based on evaluations both of evidence-based or promising practices in the field and the current strengths and needs of the system in West Virginia. Much of the strategic design was accomplished in small groups with large group consensus being used for decision making.

Each Task Force member received a copy of the last meeting minutes, flip chart notes and agenda prior to each meeting. A total of ten meetings were held in addition to those in conjunction with the public hearings. Meetings were a minimum of four hours in length with significant individual hours invested in research and education.

Final meetings consisted of compiling the recommendations and report to reflect the work of the Task Force.

Information Gathering Procedures

At the outset, the Task Force engaged the Center for Sex Offender Management (CSOM), the nationally renowned resource for information and expertise in the management of sex offenders, to include sexually violent predators. Dr. Kurt Bumby, a consultant with CSOM, worked on-site and through telephone consultation with the Task Force during the public hearings and regular meetings. Additionally, Dr. Bumby was fully available to staff of the Task Force via email and telephone for follow-up and more in-depth consultation services.

As indicated above, a great deal of research was conducted and reviewed by the Task Force both during regular meetings and as homework between regular meetings in order to prepare each member to make informed decisions and recommendations.

§62-11E-1:

(1) Consult with psychiatrists and psychologists regarding the management of sexually violent predators, including, but not limited to, their diagnosis and treatment;

The committee was fortunate to have representation by several of the state's leading forensic mental health professionals including Dr. Ryan Finkenbine, psychiatrist and coordinator of West Virginia University School of Medicine's Forensic Psychiatry program and Dr. David Clayman, a forensic psychologist. Dr. Finkenbine's staff at WVU was available to assist him in any aspect of the committee's deliberations. These staff constitute some of the most experienced and knowledgeable forensic specialists in the state with regard to sex offender treatment.

In addition Ted Glance, President of the Sex Offender Registration Advisory Board and Sheila Kelly, Assistant Commissioner of the Bureau for Behavioral Health and Health Facilities, are experienced licensed psychologists. Dr. Kurt Bumby is the clinical psychologist associated with the Center for Sex Offender Management, and was available, both on site and by telephone, to share his expertise in the assessment, treatment and management of violent sexual predators.

(2) Evaluate current involuntary commitment procedures set forth in chapter twenty-seven of this code and how they may interact with the state's management of sexually violent predators;

The Task Force finds that the current involuntary commitment procedures do not directly or indirectly address the special concerns associated with persons who are deemed sexually violent predators. It is important to note that in addition to the legal concerns with this practice, there was wide agreement among the Task Force that housing sexually dangerous offenders with mentally ill patients would put the mentally ill population at undue risk.

The Task Force began its evaluation with a review of the code. The pertinent sections are: §27-5-2, §27-5-3, §27-5-4 and §27-5-9. Generally, it is clear that the intent of the code meets a similar goal of sexually violent predator legislation, to improve public safety. This common goal, however, does not suffice to overcome the procedural and unique differences inherent between those with common mental illnesses who may harm themselves or members of the community and the special population of persons with mental disorders who are likely to engage in sex offenses. The shortcomings of the code in this regard are numerous:

1. The initial process for identifying a mentally ill individual may arise from "any adult person" in the community (§27-5-2(a)), as opposed to a prosecutor who has been involved in the criminal process. The identified individual must have been convicted or found not guilty by reason of mental illness of a sex crime versus, according to Chapter 27, a person residing in the community. In other words, any person in the community could potentially report to the Magistrate and request that the sex offender in their neighborhood be committed.

2. A clinical examination of the individual to offer information about risk factors at the initial stage of commitment may be conducted by a social worker or a licensed masters' level

psychologist (§27-5-2(e)) neither group of which is usually trained or experienced in the assessment of sex offenders.

3. A magistrate or mental health commissioner, as opposed to a circuit court judge, may make a "probable cause" determination that the individual is unsafe (§27-5-2(e)) at which time the individual may be placed into a general hospital for further evaluation. To allow an appointed mental health commissioner to make such determinations after a person has already been convicted is an apparent reduction in the threshold of judicial responsibility. Further, the Task Force is unaware that *any* general inpatient psychiatric hospital is equipped to provide for the further evaluation necessary for the purposes of the initial commitment.

4. The code does not call for a jury trial at the final commitment stage. The risk of a constitutional violation at this stage of the process in the absence of an impartial jury is great.

5. The code follows the historical progression of general civil commitment laws away from principles of parens patriae, wherein mentally ill persons were committed for treatment and necessity, to one of police power, whereby persons are removed from the community to protect the public, with or without treatment. This shift in rationale demands that persons who are dangerous are *imminently* dangerous. The dangerousness must be foreseeable and is likely to occur in the immediate future. This intent in the code is expressed as follows regarding the opinion of the clinical evaluator to determine if the individual "is likely to cause serious harm to himself, herself or to others *if not immediately restrained* (§27-5-3(a), emphasis added). With this concept of immediate danger in mind then, the code serves to protect the public from dangerous persons who are acutely mentally ill. Often, from a clinical perspective, the nature of this type of acute dangerousness abates within hours or days, or less commonly, weeks or months. The code does not, however, address the long term future harm that is likely to occur in persons who are Sexual Predators. The duration of harm, again from a clinical perspective is much longer, perhaps even as long as the time that the offender is alive. Therefore, this crucial difference alone, the difference in the imminent nature of harm, renders the current code unsuitable for the purposes of protecting the public from sexual predators.

6. The final outcome of a general civil commitment proceeding, according to the code, is that the individual may be ordered "to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months" (§27-5-4(k)1). As has been expressed elsewhere in this document, the Task Force has learned that the current mental health facilities in our state are inadequate to provide the necessary beds or care for an influx of perhaps dozens of new patients. An alternative solution, to construct a specific sex offender facility, has been found to be unworkable and exceedingly costly.

(3) Survey the mental health resources offered by state agencies, including, but not limited to, current treatment resources for sexually violent predators in all phases of the correctional, probation and parole systems;

Probation services for in-state offenders are handled by the WV Supreme Court through its 31 circuits. In these circuits, offenders are referred to treatment providers in the community.

Standardized Sex Offender Programs are available within ten correctional facilities across the State of West Virginia. These ten sites include all facilities within the Division of Corrections, as well as the two contracted facilities, where sex offenders are currently

housed. Additionally, sex offender treatment providers are contracted to provide services within six (6) parole offices across the state. The WV Division of Corrections uses three (3) primary assessment instruments in determining the risks and needs of individual sex offenders. Three assessments are utilized to ensure the most appropriate assignment of risk and identification of need for each offender. Taken together, the assessment findings are used to identify the estimated level of risk that a given offender poses to re-offend. Program plans are developed as a result of the findings of these assessments.

Additionally, in late 2005, the WV Division of Corrections conducted a survey of community treatment providers in order to measure the availability of sex offender treatment in the community. Almost 4,000 surveys were sent out and 777 were returned and analyzed. Of the 777 surveys returned, 144 reported that they provide sex offender treatment services (18.5%). The most common method of treatment reported was cognitive-behavioral, followed by systems approach, and psychoanalysis. However, there was a number of other treatment systems reported, suggesting a fractured and inconsistent philosophy amongst providers in the community. Please see Appendix A for the full report.

A systematic review of the state's availability of outpatient providers, and the training and certification of providers, was conducted by the West Virginia University School of Medicine Division of Forensic Psychiatry in 2003. The results of this endeavor, although not empirical, mirrored the results of the Division of Corrections survey of 2005. There were only 8 providers in the study, a phone survey of select "probable" providers, who offered they or a person in their outpatient office had received dedicated training in the management of sex offenders. Only three reported certification by a nationally recognized organization. Importantly, the WVU survey was conducted, in part, because other data shows that effective management of the special population of sex offenders requires specialized training to achieve meaningful results: a reduction in sexually offensive behaviors.

(4) Assess what, if any, state resources exist for use in the confinement of sexually violent predators;

The Division of Corrections' facilities are operating at peak capacity. Currently, over 20% of the population sentenced to the agency's legal custody is housed in Regional Jails while awaiting bed space in a DOC facility. In addition, there are currently no funded bed construction projects underway that would significantly alleviate this situation.

The state of West Virginia has two psychiatric hospitals for involuntary hospitalization of adult psychiatric patients: The William R. Sharpe Hospital in Weston (Sharpe Hospital) and the Mildred Mitchell Bateman Hospital in Huntington (Bateman Hospital). Both hospitals serve not only as providers of acute care for psychiatric patients but also as the only source of long term commitment for individuals with severe and chronic psychiatric illnesses. These hospitals also are the long term placement for individuals found incompetent by the court to stand trial for crimes because of mental illness or other cognitive or emotional deficit and for those who are adjudicated to be not guilty by reason of mental illness (NGRMI). This particular population of patients is known as the "forensic" population.

The forensic population was originally housed only at Sharpe Hospital. Over the last ten years the numbers of individuals labeled "forensic" and maintained at Sharpe have increased steadily to the point that the facility finds it difficult to treat both forensic patients

and civilly committed individuals with psychiatric illness. For that reason some forensic patients were transferred to Bateman Hospital (which faces its own operational challenges) and an initiative was begun to create transitional or long term housing for those forensic patients able to be safely housed in the community. The 2006 Legislature enabled funding for the development of three to four seven-bed transitional community homes for forensic patients. Two homes are in place (only one of which is fully operational) and two are under construction.

In March, 2007, Sharpe Hospital had a total capacity of 150 beds. In that month the population ran from a low of 149 to a high of 162. Included in that population was a total of 65 forensic patients, leaving only about 90 beds for general psychiatric care. In that same month, Bateman had a total capacity of 90 beds. The population of Bateman ranged from 85 to 100 in March but 20 of those patients were forensic. Because so many beds in both facilities are occupied by forensic patients, the state is forced to pay private psychiatric hospitals to treat diverted committed psychiatric patients that the state hospitals are unable to treat for both licensing and physical capacity reasons.

On an average day in May of 2007, Sharpe diverted an average of 31 patients per day at an average cost of $580 dollars or more per patient per day. Bateman diverted 40 at the same approximate rate. In 2006, the state spent $6,435,514 dollars to divert an overall average from both hospitals of 65 patients per day. On average, the two hospitals combined were over census by 76 patients per day in 2006. Costs for the treatment of patients diverted from the state psychiatric system due to lack of space are projected to rise to between $9 and $10 million dollars in FY 2006-2007. This does not include the cost to Medicaid and Medicare or other third party payments for committed but diverted patients.

There is no space whatsoever for more forensic patients, regardless of their offenses. Because of an agreement with the court, the hospitals are not to keep forensic patients on a waiting list for beds for more than 60 days, although in fact, that circumstance does occur. This creates an enormous conflict between the state's desire to conform to its agreement with the court and licensing regulations which mandate standards for patient care which are threatened by overcrowding.

In summary, the resources for housing and treating sexual predators in general are scarce.

(5) Examine the interaction between criminal penalties for sexually violent offenses and the management of sexually violent predators;

Outside of conventional criminal justice penalties such as incarceration, probation, parole or alternative sentences, there is currently no direct interaction between criminal penalties and the management of sexually violent predators except for: (1) conviction of certain criminal penalties requires a sex offender to register for life as opposed to ten-year registration, and (2) conviction of certain criminal penalties (§15-12-2(i)) opens a person to possible identification as a Sexually Violent Predator.

(6) Consider other states' approaches to managing sexually violent offenders released after the completion of their criminal sentences;

The Task Force gathered information from several states as to their methods of sex offender management, specifically related to civil commitment. Information was gathered from many states but a more intensive review was conducted of Arizona, Vermont, Wisconsin, Iowa, Minnesota, and Texas, as they represented a wide range of sex offender management practices and are regarded as the "leaders" in the development of successful management strategies. Additionally, Dr. Kurt Bumby of the Center for Sex Offender Management assisted the group by providing information about national trends relative to the management of sexually violent predators.

(7) Conduct interviews with relevant personnel inside and outside of state government

State government is well represented within the Task Force membership. As a result of that depth of representation, information, and relevant experiences, an opinion was gleaned from a diverse cross section of government personnel.

In addition to accessing state government personnel input, the Task Force members also interviewed and dialogued with interested stake holders within the private and non-profit sectors. This insight and information gathered was incorporated into the discussions and development of the recommendations within this report.

(8) Determine the fiscal impact of any of its recommendations.

See page 29 for funding summary.

Public Hearings

The Task Force held three public hearings, at Morgantown on January 17, 2007, Martinsburg on January 18, 2007 and Charleston on February 13, 2007. These hearings were used as forums where the Task Force could educate the public on the issues at hand and receive questions and comments from concerned citizens.

In spite of the Task Force's best efforts to solicit attendance, there was a low turnout. Methods of advertising included press releases, newspaper media exposure, and radio news. In addition, the Task Force made certain that the meetings were as accessible to the public as possible by scheduling them during evening hours, ensuring handicap accessibility, and providing interpretation services for the deaf and hard of hearing. Attendees were given the opportunity to speak to the Task Force, ask questions, submit written comments during the meeting, and submit comments later via the mail.

Overall, public perception as to the effectiveness or usefulness of the public hearings was positive. Generally speaking, those in attendance indicated that they found the information presented in the hearings useful and that they better understood the issues surrounding the effective management of sexually violent predators. However, the general feedback the Task Force received indicated that citizens thought that the definition and procedure

for determination for Sexually Violent Predators was too narrow. Attendees at all three hearings stated that more focus should be given to preventing sexually violent incidents prior to the initial offense rather than having purely reactionary policies.

Other than expressed concerns with an overly narrow definition and a lack of prevention measures, constituents did not appear overly concerned with current management strategies, as indicated by the general lack of stated global or specific concerns, or suggestions for significant change.

Please see Appendix B for a full breakdown of the feedback received from the Public Hearings.

Recommendations

The Task Force respectfully submits the following recommendations for the Governor's and Legislature's consideration:

Recommendation 1 – Use a More Appropriate Method of Management than Civil Commitment for Sexually Violent Predators in West Virginia

The evidence is clear and voluminous: civil commitment is not the best management strategy for the State of West Virginia. Civil commitment systems are extremely expensive; divert funds from traditional mental health systems; have the potential to damage the integrity of the mental health and criminal justice systems; and present lingering legal issues.

The Task Force reached consensus against the inpatient civil commitment of sexual predators. Inpatient civil commitment is an inappropriate fit for a criminal issue, resulting in unwise use of the mental health system's finances and resources to address the issues related to managing criminal offenders. The illegal behaviors of sex offenders should not be compared or treated similarly to the behaviors of individuals with severe mental illness.

Efforts toward the inpatient civil commitment of sex offenders would divert funds from the vital missions of victim protection and assessment, treatment, and community monitoring of sex offenders, as well as the general mental health population.

In a 2005 report issued by the Washington State Institute of Public Policy (see Appendix C for a cost table from the report), the cost associated with inpatient civil commitment of sexual predators ranged between $130 and $314 per day per offender. The same report indicated that based on operational costs, states with smaller numbers of offenders housed within these secure facilities experienced costs at the upper end of this range. Additionally, the report outlined that very few offenders are ever released from this custody, resulting in lifetime costs associated with this management practice.[2] In comparison, per diem operational rates in the two West Virginia facilities most equipped to deal with such a population, Mildred Mitchell-Bateman Hospital and the William R. Sharpe, Jr. Hospital, run at a significantly higher daily rate ($467 and $406 respectively) than the national averages.

In addition to the very high cost, the inpatient civil commitment of Sexual Predators without a severe mental illness to psychiatric hospitals following completion of their prison sentences creates significant problems that include:

- disruption of the state's ability to provide services for people with psychiatric illnesses:

[2] *Lieb, Roxanne. "Involuntary Commitment of Sexually Violent Predators: Comparing State Laws." March 2005. Washington State Institute for Public Policy.*

As discussed previously, the state's mental health system is operating at maximum capacity, both in terms of available bed space and service delivery. Adding a potentially large and continually growing population of Sexual Predators to this already burdened system would significantly decrease the availability of services for people with psychiatric illnesses. Diverting already scarce funds and resources to a criminal population jeopardizes the health and well-being of those law abiding citizens with mental health needs.

- undermining of the mission and integrity of the public mental health system, by placing criminal populations into a system not designed for such;

  It is important from a legal and public policy standpoint to ensure clear distinction between the criminal justice and mental health systems. The mental health system was never designed to carry out work directly related to the criminal nature of its clients. Its purpose and intent is to treat psychiatric illnesses. Placing Sexual Predators into this system would require a shift in the mental health system to accommodate their criminality, when an already established criminal justice system is in place to conduct this work.

- questions as to constitutionality and possible violations of an offender's civil rights.

  Although, civil commitment has been found to be constitutional in a number of areas, there is still significant concern as to its overall constitutionality. It remains a controversial issue, specifically relating to ongoing civil "confinement" following completion of a criminal sentence and holding someone indefinitely based upon what they "might" do.

Furthermore, the second Task Force recommendation to clarify and expand sex offender categories will advance public safety concerns by casting a wider net over those persons meeting the revised definition of sexual predator. This should result in larger numbers of individuals in need of monitoring and treatment. The new sexual predator definition will result in identification of more offenders than can be addressed by an inpatient civil commitment scheme.

Outpatient civil commitment was also considered as an alternative; however, with current legislation (Child Protection Act), sexual predators are already mandated to lifetime supervision, which typically would include mandatory treatment services and electronic monitoring. With such similar components already in place, and the constitutionality issue remaining, this option is not advisable.

In place of the inpatient civil commitment of sex offenders, the Task Force has recommended that the appropriate consequences for sex offenses are significant criminal penalties, of the sort enacted in the Child Protection Act of 2006 and, after release, lifetime intensive supervision and monitoring with mandatory outpatient treatment.

Recommendation 2 - Modify the definition of Sexually Violent Predator and Sexually Violent Offender

The Task Force recommends that the Legislature change the categories used to describe sex offenders in West Virginia. As stated above the terms and definitions used for

“Sexually Violent Offender” and “Sexually Violent Predator” are narrow and generally inadequate for successful sex offender management.

What follows is selected parts of WV § 15-12-2(i), recommended additions are underlined and deletions are strike through:

(i) For the purpose of this article, ~~"sexually violent offense"~~ “sexually dangerous offense” means:

(5) Sexual abuse by a parent, guardian, custodian as set forth in section five, article eight-d, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;
(6) Use of minors in filming sexually explicit conduct as set forth in section two, article eight-c, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;
(7) Imposition of sexual intercourse or sexual intrusion on incarcerated persons as set forth in section ten, article eight-d, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;
(8) Abduction of person; kidnapping or concealing child as set forth in section fourteen, article two, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;
(9) Detention of person in place of prostitution as set forth in section six, article eight, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;
(10) Soliciting, etc. a minor via computer as set forth in section fourteen-b, article three-c, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(k) For purposes of this article, the term "sexual~~ly violent~~ predator" means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually ~~violent~~ dangerous offense, as defined in Section 15-12-2(i), and ~~who suffers from~~ has a mental abnormality or personality disorder and volitional, emotional, or cognitive impairment that makes the person likely to harm others in a sexual manner. ~~engage in predatory sexually violent offenses.~~

(l) For purposes of this article, the term "mental abnormality" means a congenital and/or acquired condition of a person, that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

~~(m) For purposes of this article, the term "predatory act" means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization~~

These changes will appropriately broaden the scope of what a “Sexual Predator” can be and should allow better identification and determination of such.

The following code sections may need to be updated as well to reflect the proposed changes above to WV § 15-12-2(i):

- W. Va. Code, § 15-1I-2
  CHAPTER 15. PUBLIC SAFETY ARTICLE 1I. THE CHILD PROTECTION ACT OF 2006 § 15-1I-2. Legislative findings

- W. Va. Code, § 15-12-2
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-2. Registration

- W. Va. Code, § 15-12-2a
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER

REGISTRATION ACT § 15-12-2a. Court determination of sexually violent predator

- W. Va. Code, § 15-12-2b
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-2b. Creation of sex offender registration advisory board

- W. Va. Code, § 15-12-3a
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-3a. Petition for removal of sexually violent predator designation

- W. Va. Code, § 15-12-4
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-4. Duration

- W. Va. Code, § 15-12-5
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and State Police; petition to circuit court

- W. Va. Code, § 15-12-8
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting

- W. Va. Code, § 15-12-10
  CHAPTER 15. PUBLIC SAFETY ARTICLE 12. SEX OFFENDER REGISTRATION ACT § 15-12-10. Address verification

- W. Va. Code, § 17B-2-3
  CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL § 17B-2-3. What persons may not be licensed; exceptions

- W. Va. Code, § 62-11D-1
  CHAPTER 62. CRIMINAL PROCEDURE ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS § 62-11D-1. Definitions

- W. Va. Code, § 62-11D-2
  CHAPTER 62. CRIMINAL PROCEDURE ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS § 62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release

- W. Va. Code, § 62-11D-3
  CHAPTER 62. CRIMINAL PROCEDURE ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS § 62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties

- W. Va. Code, § 62-12-2
  CHAPTER 62. CRIMINAL PROCEDURE ARTICLE 12. PROBATION AND PAROLE § 62-12-2. Eligibility for probation

Recommendation 3 – Create a new Determination Procedure

Currently, in order for an offender to be reviewed for Sexually Violent Predator status, the Prosecutor must choose to forward the case to the Sex Offender Registration Advisory Board (Advisory Board). Historically, there have only been a handful of cases referred for assessment.

To better reflect the new procedure, the Task Force recommends that the Sex Offender Registration Advisory Board name be clarified to simply, Sex Offender Advisory Board.

The Task Force recommends that a new procedure be adopted where, upon an offender's conviction for a Sexually Dangerous Offense (new definition described above); the Circuit Clerk's Office will automatically refer the case to the Advisory Board for review. The Advisory Board will establish procedures to refer offenders for a formal diagnostic assessment by clinicians trained and experienced in the assessment of sex offenders, as needed. Upon review of a case and subsequent findings that all components of the Sexual Predator definition are met, the Advisory Board will refer the case back to the prosecuting attorney for final findings by the court. This new procedure, plus the expanded definitions proposed above, should sufficiently "widen the net" and reduce the chances of a truly dangerous sex offender avoiding the Sexual Predator label.

In the interest of public safety a greater number of offenders will require screening and assessment and therefore the numbers of potential cases that come before the Sex Offender Advisory Board will increase. In light of this change, the Task Force recommends that the position of President of the Advisory Board become a full-time state government position with two full time administrative assistant positions assigned to his or her supervision. The Advisory Board would continue to report to and be funded by the Department of Military Affairs and Public Safety. In addition, the Advisory Board members should be funded by the Department of Military Affairs and Public Safety. Further, the Task Force recommends, that given the specialized knowledge and experience necessary to serve in the role as President of the Advisory Board, that this person meet the same qualifications as modified from the recently passed Senate Bill 117, referenced in §27-6A-1 as either a "qualified forensic psychiatrist" or a "qualified forensic psychologist" (see below). Additionally, the Sex Offender Advisory Board President should have extensive training in the field of sex offending, sex offenders, sexual predators, experience in the risk assessment of sex offenders, and specialized knowledge and experience in the governmental regulation of sex offenders.

Requirements for Advisory Board President Position:

I. Either a qualified forensic psychiatrist or a qualified forensic psychologist.

AND

II. Has at least five (5) years of experience in the assessment of sex offenders.

OR

III. Either a qualified forensic psychiatrist or a qualified forensic psychologist that has served as a member of the Advisory Board.

(1) A "qualified forensic psychiatrist" is
(A) A psychiatrist licensed under the laws in this state to practice medicine who has completed postgraduate education in psychiatry in a program accredited by the Accreditation Council of Graduate Medical Education; and
(B) Board eligible or board certified in forensic psychiatry by the American Board of Psychiatry and Neurology

(2) A "qualified forensic psychologist" is:
(A) A clinical psychologist licensed under the laws of this state to practice psychology; and
(B) Board eligible or board certified in forensic psychology by the American Board of Professional Psychology

Funding Estimate:

The estimate below is based on 2006 commitments to WV Division of Corrections custody, 127 of these commitments were for crimes covered in the proposed Sexually Dangerous Offender definition. Accounting for probation and other alternatives sentences the Task Force estimates that 200 assessments could be conducted by the Advisory Board annually. The Meeting Cost estimate is based upon reimbursements to agencies for the Board Members time, their travel, meeting place, equipment and other various expenses. Electronic Meetings should be conducted whenever possible to reduce costs.

Board President Salary:	$70,000 + 40% for benefits =	$98,000.00
Two (2) Administrative Staff:	$50,000 + 40% for benefits =	$70,000.00
Office Rent, Computers, Travel, FF&E:	$19 sq ft 10 x 12 x 3 offices =	$125,000.00
Diagnostic Assessments/Evaluations (200 at $1,500)		$360,000.00

Board Members Reimbursements Paid to Agencies (includes travel):

Up to 48 meetings a year with Five (5) members (electronic meetings if possible to reduce travel costs)

Approximately $2,000.00 per meeting:	$96,000.00
Total Annual Operating Budget:	$749,000.00

Recommendation 4 - Create a new Subcommittee of the Governor's Committee on Crime, Delinquency, and Corrections

The Task Force recommends that the Governor and Legislature create a new subcommittee of the Governor's Committee on Crime, Delinquency, and Corrections called the Sex Offender Management Policy & Standards Subcommittee. The Division of

Criminal Justice Services (the agency) acts as the staff agency for the Governor's Committee and would extend those duties to the new Subcommittee.

The Sex Offender Management Policy & Standards Subcommittee (the Subcommittee) will serve as a policy and planning body responsible for establishing policies and identifying best practices regarding the coordination, administration and management of efforts in our state to address issues related to the prevention of injury and harm by sex offenders identified by the Criminal Justice System. In this role, it shall have authority to conduct studies, seek public input and make recommendations to the Governor and the legislature on system improvements for the management of sex offenders. It shall also have the authority to promulgate legislative rules and enforce those rules through administrative actions.

General Operations

Once every four years the Governor shall appoint thirteen members to the Subcommittee. The Subcommittee shall act as an oversight and recommendation committee to the Director and administration. One person from each of the following West Virginia organizations, disciplines or interested parties shall make up the thirteen member Subcommittee: Public Defender Services, Department of Health and Human Resources, Prosecutor's Institute, Division of Corrections, the state sexual assault coalition, a rape crisis center, State Police, State Supreme Court Probation Services, qualified expert forensic psychiatrist, qualified expert forensic psychologist, West Virginia Sheriff's Association, the Division of Juvenile Services, and Community Corrections. The President of the West Virginia Sex Offender Advisory Board and the Director of Criminal Justice Services will serve on the Subcommittee as ex-officio non-voting members.

Once a year the Subcommittee will elect one of its members as Chairperson to organize and coordinate meetings, recommendations and oversight. Individuals may be re-appointed to Subcommittee membership and may serve on other subcommittees of the Governor's Committee.

The Director of Criminal Justice Services will serve as administrative oversight for staff persons employed with that agency as staff for the Subcommittee.

The Subcommittee shall meet to discuss the organization's effectiveness at least every year during each four year cycle.

Director Responsibilities

The Director of Criminal Justice Services, through the operation of the Subcommittee, shall have the following responsibilities:

1. convene an annual meeting of the Subcommittee to discuss and review the effectiveness and progress of the agency and such other meetings as may be required to effect the purposes of the Subcommittee

2. prepare a comprehensive annual report of the activities of the agency for review by the Subcommittee and the governor;

3. develop and maintain a fiscally responsible budget for the operation of the Subcommittee;

4. develop, implement and maintain appropriate management and certification guidelines for community providers of sex offender treatment. Such certification guidelines shall be applicable to program providers as well as individual practitioners employed or contracted for services to sexual offenders. Providers shall commit to a management model that emphasizes public safety and which is a part of a comprehensive, multidisciplinary, supervision and treatment network.

5. Generally,

    a. support the development and implementation of evidenced-based and promising prevention programs, including prevention programs and public education programs intended to reduce sexual harm and injury through the execution of service contracts for approved programming by sexual assault service providers that meet the standards for the state sexual assault coalition and/or rape crisis centers in the state;

    b. direct the daily operation of the agency and office staff;

    c. advocate for policy and legislative change to reduce sexual harm and to protect the public's health and safety;

    d. assist stake-holding state agencies to provide continuing education regarding sex offender policies and procedures (including judges, prosecutors, defense attorneys, state police, mental health or treatment providers, parole, probation, corrections).

Areas of Focus

A person who has been deemed a sexual predator either through a West Virginia process or through an equivalent process in another state shall be managed by whatever agency has jurisdiction, through guidelines and standards established by the Subcommittee. The Subcommittee will focus its initial efforts in the following areas, and will include both juvenile and adult offenders in its considerations:

1. Registration

    a. The Subcommittee will explore the need to expand the Sex Offender Registry to include supervision and incarceration information. Additionally, work will be completed to further integrate West Virginia criminal justice agencies' information management systems to ensure one electronic record is created, updated, and utilized by all entities.

2. Monitoring

    a. The Subcommittee will conduct an investigation into the effectiveness, feasibility and financial impact of electronic monitoring (all types) on sex offenders.

    b. The Subcommittee will conduct an investigation into the effectiveness, feasibility, and financial impact of the comprehensive use of the containment model (partnerships between supervision officers, treatment providers, and polygraph examiners) in monitoring sex offenders.

c. Based on the findings of these investigations, establish standards and guidelines in the use of electronic monitoring and the containment model for supervision agencies to adhere to in their operational practices.

d. The Subcommittee will work in concert with criminal justice agencies to increase resources available to effectively implement either of these monitoring strategies.

3. Supervision

a. The Subcommittee will establish standard sex offender supervision guidelines for use by Parole and Probation Officers.

b. The Subcommittee will ensure that established standards and graduated sanctions to effectively address sex offenders who fail to comply with either the monitoring or treatment component of mandated management guidelines.

4. Treatment

a. The Task Force recognizes the ever-increasing number of individuals charged with and incarcerated for sexual offenses. Numbers alone necessitate consideration of expanded treatment modalities in the community, not only for those individual charged with a sexual offense and facing probation but also those who have completed their sentence and requiring on-going therapeutic management of aberrant sexual impulses. The need is particularly urgent for juveniles facing charges of sexual offending.

b. West Virginia has far too few clinically trained sexual offender specialists, particularly in the area of mental health and polygraphy. The Subcommittee will put into place recommendations for expanded training programs and standards for assessment and treatment of sexual offenders, paying particular attention to attempting to increase numbers of qualified polygraph examiners and mental health professionals.

c. Work force development is an enormous issue throughout all aspects of behavioral health service; it is even more challenging in the difficult area of sexual offender management. The Subcommittee will promote methods to increase the State's pool of trained assessment and treatment professionals in correctional facilities and in community settings through mechanisms such as statewide, grant-funded training opportunities and, perhaps, sponsored undergraduate and graduate-level scholarships and support for students interested in entering the field.

d. Some offenders have access to Medicaid or other third party payment mechanisms; however, it is speculated that the majority of adult offenders have no source of funding for treatment and therefore receive little opportunity to attempt to address their inappropriate impulses within the controlled but professional environments necessary for public safety. The Subcommittee will work to identify a well-funded source for payment for treatment of sexual offenders, institutionally and in the community.

5. Prevention (see Appendix D for more information on the importance of prevention)

    a. The Subcommittee will ensure that the State's system of managing sex offenders is victim-centered, and focused on tertiary (post-conviction) prevention.

    b. The Subcommittee will also play a supportive role to the State's sexual assault coalition in primary and secondary prevention, as outlined in Appendix D.

6. The agency will periodically study and provide to the Subcommittee outcome data about the overall effectiveness of each of its monitoring and treatment measures.

Funding Estimate

The Director and staff assigned to the Subcommittee shall be state funded positions. Offices and operating costs shall be state funded expenditures through the executive branch.

1. 2 FTE staff to Subcommittee

2. ½ FTE Research Analyst for Subcommittee

3. ½ FTE Secretary for Subcommittee

4. Travel and Meeting expenses for four committee meetings per year

5. Proportional overhead for office rent, supplies, utilities, computer and data management, etc.

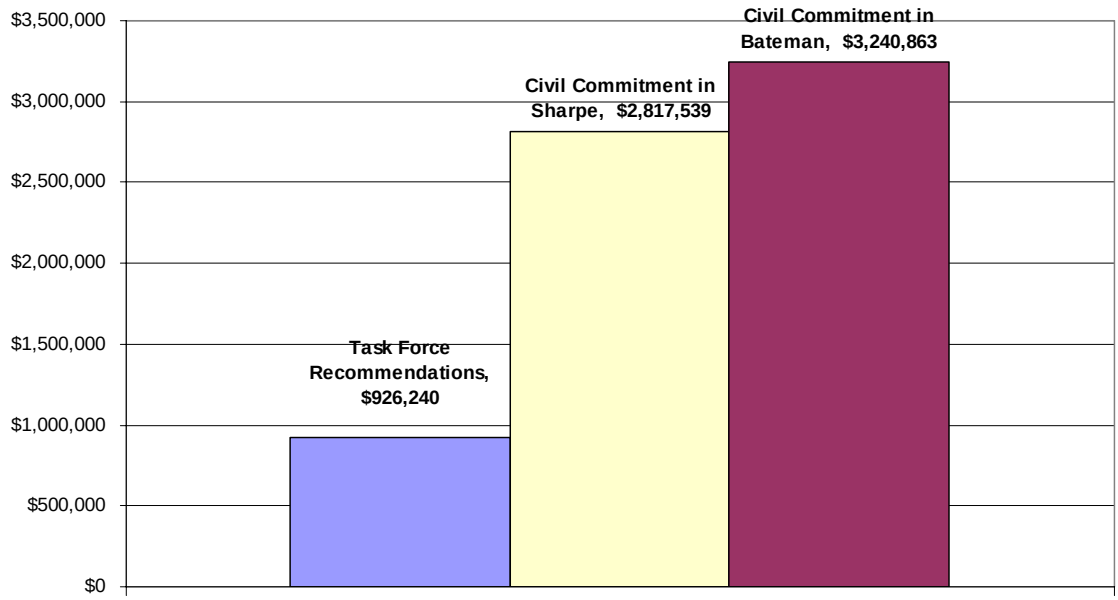
6. A total of $177,240 annually.

Total Funding Estimate for All Recommendations

Task Force Recommendations	*Initial Annual Cost*
Recommendation 3 – New Procedure for Advisory Board	**$749,000.00**
Recommendation 4 – Subcommittee	**$177,240.00**
Total	**$926,240.00**

The above chart outlines the total initial annual costs associated with implementing the recommendations of the Task Force. Additional funding should continue to be allocated to support the future recommendations and guidelines of the newly formed Subcommittee. However, even with additional funding these costs are significantly less than those involved with implementing even the smallest system of civil commitment. Costs associated with the civil commitment of the current 19 sexually violent predators in West Virginia are estimated below and are based upon daily operating costs at Bateman and Sharpe Hospitals. :

Hospital	*Initial Annual Cost*
William R. Sharpe, Jr. Hospital in Weston, WV	**$2,817,539.00**
Mildred Mitchell-Bateman Hospital in Huntington, WV	**$3,240,863.00**



Initial Annual Cost (19 Registered Sexually Violent Predators)

Costs associated with civil commitment, as shown above, would be expected to increase at a dramatic rate as more and more Sexual Predators are committed and few are released. These estimates also do not include the vastly expensive costs associated with the construction of a new facility to hold civilly committed Sexual Predators. As noted above, both of these mental health facilities are operating at capacity and many patients' care is being outsourced. Neither facility could absorb a new influx of commitments without significant construction.

Conclusion

Recommendations in Summary

The West Virginia Sexually Violent Predator Management Task Force met ten times over a seven-month period of time between October 2006 and May 2007, to fulfill its obligation as outlined in §62-11E-1. National expertise and consultation services were provided to this committee by the Center for Sex Offender Management, while state-level expertise was provided by the committee members and staff each representing the various disciplines that comprise sex offender management in West Virginia.

The Task Force was able to conduct a preliminary investigation into West Virginia's current system of sex offender management, and found that system to be both fractured and inadequate in a number of areas. Indeed, West Virginia lacks an integrated system of sex offender management, as evidenced by the independent nature of state governmental agencies and individual treatment providers. The current process of screening offenders for sexual predator status has failed to adequately identify the truly dangerous offenders with the highest risk of re-offending. The various supervision agencies have implemented management techniques that need serious investigation into their efficacy in order to ensure the most appropriate use of state resources. There is a critical lack of qualified treatment providers to adequately serve the sex offender population, and long-term treatment services for victims of sex crimes are also virtually non-existent.

The Task Force recognizes and respects individual views that the most appropriate course of action in managing the sexual predator population is to civilly commit in an effort to incapacitate through a form of incarceration. However, the Task Force is unable to support the notion of in-patient civil commitment for sexual predators due to its extreme cost, legal concerns, and its potential to divert funds from traditional mental health programs. Other, effective methods of supervision within prisons and the community exist that will help reduce the risk that these offenders pose to the general public at the same time that the State is spending significantly fewer tax dollars.

The low number of identified sexual predators in West Virginia is a red-flag that the current definition of sexual predator may not be sufficient to adequately identify those requiring high-end management and supervision. As a result, the Task Force suggests that a new broader definition be utilized in considering offenders for predator status.

Not only is the definition of sexual predator overly narrow, it is the finding of the Task Force that the current determination procedure is attributing to the low number of identified sexual predators. In order to correct this, the Task Force recommends a new determination procedure that will refer more cases to the Advisory Board for screening.

The issues and problems surrounding the management of this population are so enormous that the time frame allotted to the Task Force was insufficient to truly develop the comprehensive system that the State of West Virginia so desperately needs. As a result, the Task Force developed a plan to implement a structured committee that will address the specialized areas of registration, monitoring, supervision, treatment, and prevention.

The Task Force strongly encourages Governor Manchin and the West Virginia Legislature to take swift action in implementing and adequately funding the outlined recommendations.

Appendices

Appendix A - Sex Offender Treatment Provider Survey

West Virginia Division of Corrections
Office of Research & Planning
Jared Bauer, Research Analyst

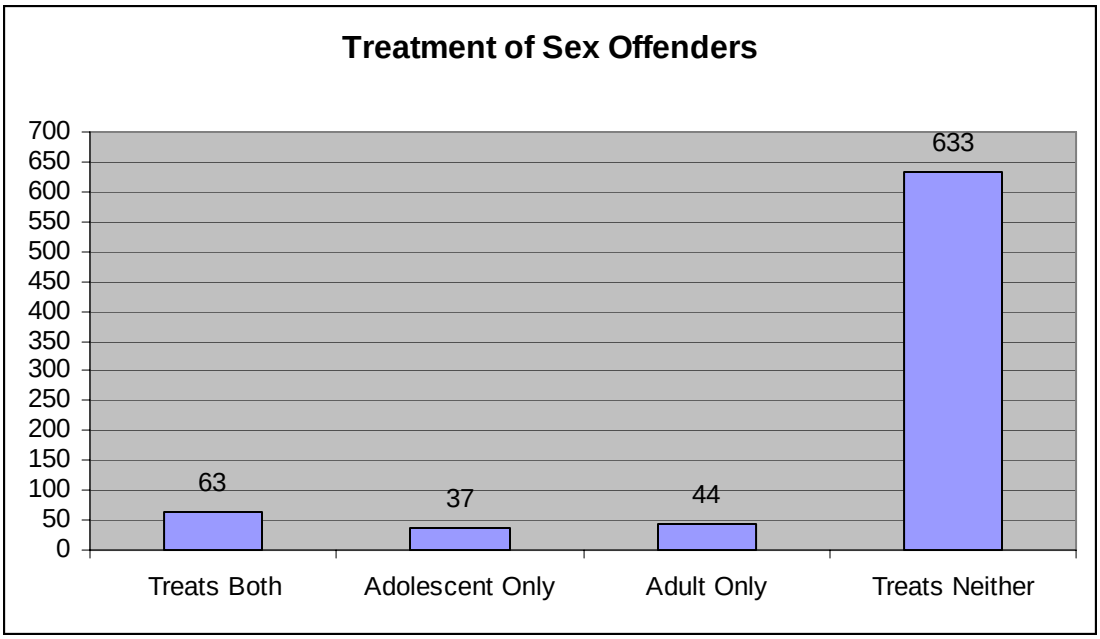
This study analyzed data on psychologists and social workers. A survey was written and sent out by the West Virginia Sex Offenders Management group, information was then gathered and analyzed by the Division of Corrections Office of Planning and Research. Of the 3786 surveys sent out, 777 were completed and returned for a response rate of 20.5%.

Of the survey questions, two were not included in the analysis: Question #3, “Are you currently treating sex offenders in your practice/work site?”; and Question #7, “If you are currently working with sex offenders, how many years have you been doing so?”. The ambiguous wording of the questions provided data that could not be used with confidence.

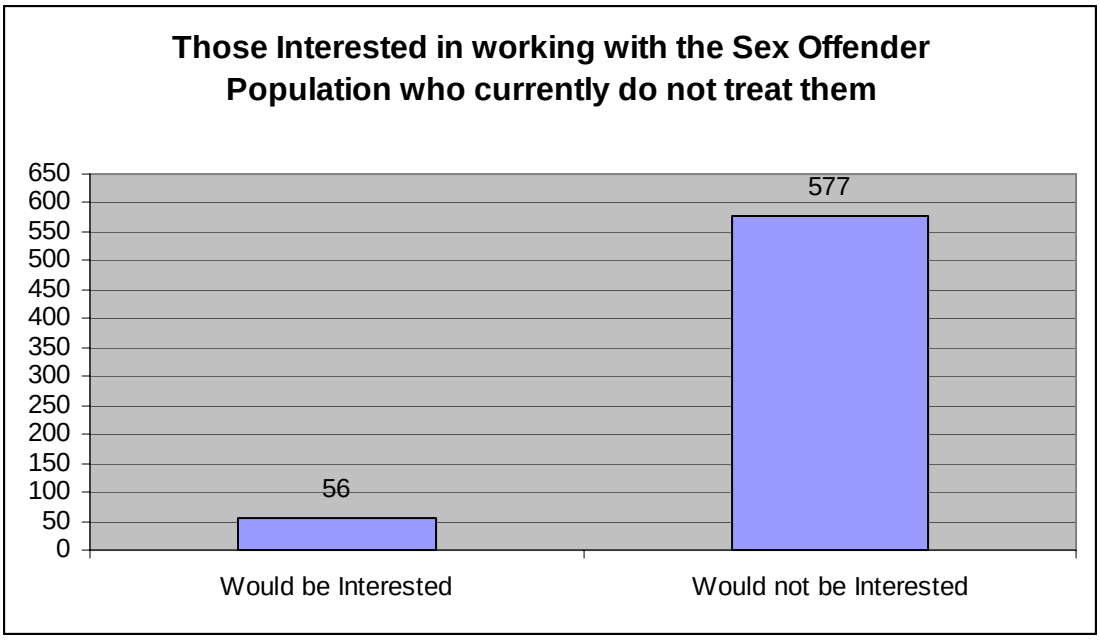
Questions that required a response from only those who treated sex offenders were gathered from those surveyed who answered “Yes” to either question: 4. “Do you treat adolescent sex offenders?”; or question 5. “Do you treat adult sex offenders?”.

Treatment and Interest:

Our findings showed that of the 777 responses, 144 persons provide services to sex offenders. Of those who provide service to sex offenders, forty-four provide services to adults only, thirty-seven to adolescents only, and sixty-three provide services to both adults and adolescents.



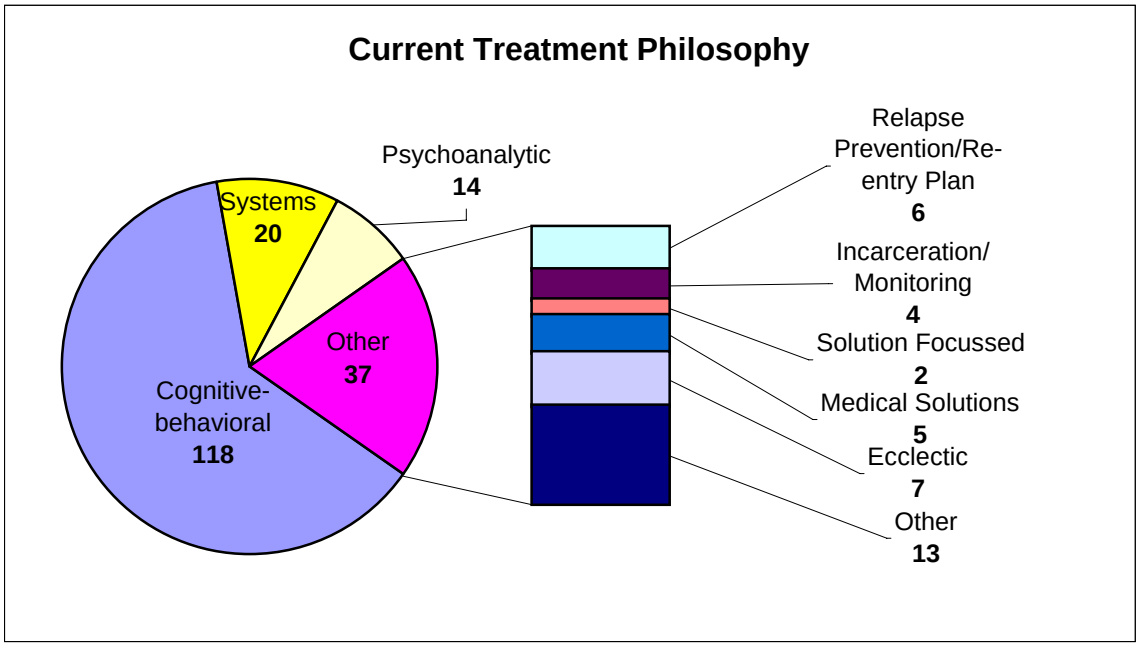
Of the 633 respondents who do not currently treat sex offenders there are fifty-six who are interested in working with the sex offender population.



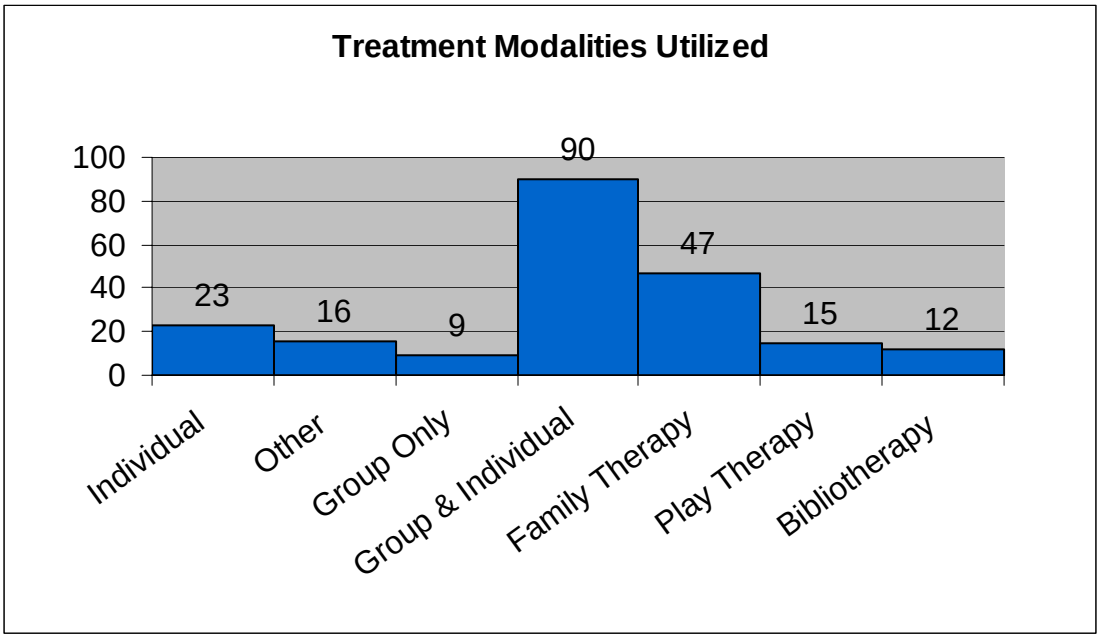
Philosophies, Modalities, and Tools:

The population that currently treats sex offenders uses a wide variety of treatment philosophies. The most popular of which is cognitive-behavioral (118), next is a systems approach (20), and psychoanalytic (14). There were a variety of written answers in the

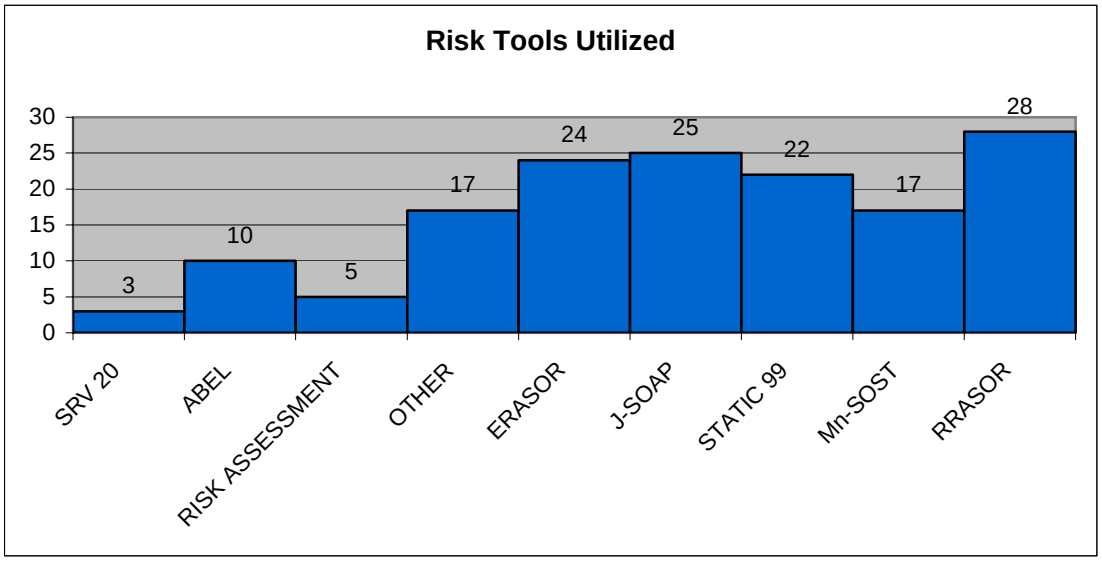
"other" column, with the most common being an 'eclectic' approach (7), and relapse prevention/re-entry plan (6). "Other" responses represented 19.5% of all answers.



Treatment modalities also varied with Group & Individual (90) being most popular, and Family Therapy (47) being the second most used. Individual (23) makes up the majority of the "Other" category, however, respondents often reported that they preferred group treatment but didn't have enough patients to have one. Bibliotherapy, play therapy, and group only therapy were all very close in number, ranging from nine to fifteen.



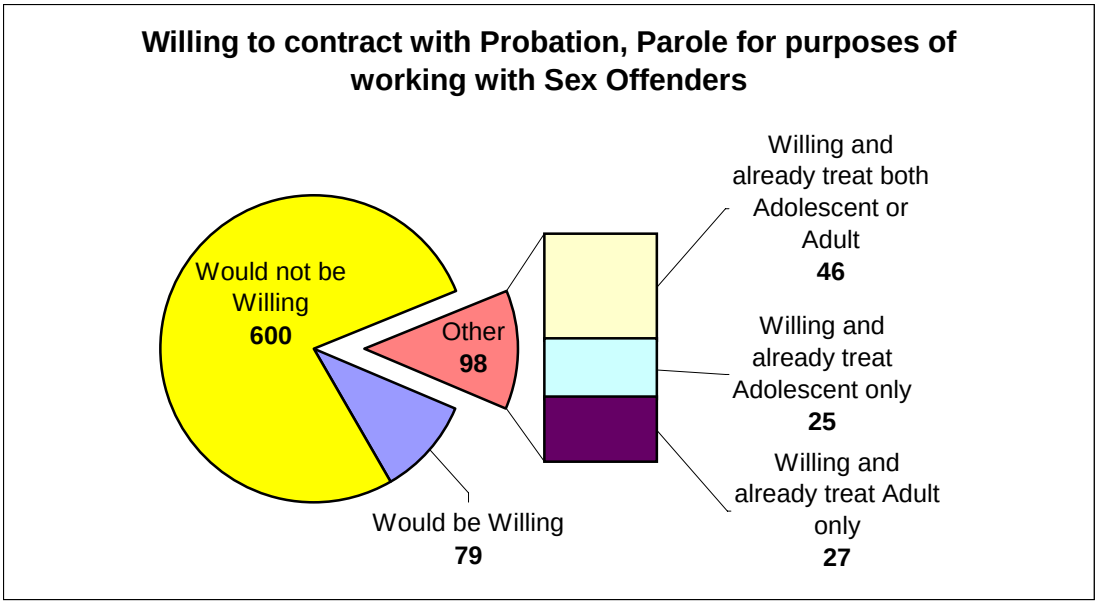
Common risk tools utilized were STATIC 99 (22), ERASOR (24), J-SOAP (25), and RRASOR (28). ABEL (10) and Risk Assessment (5) were the two most popular write in responses.



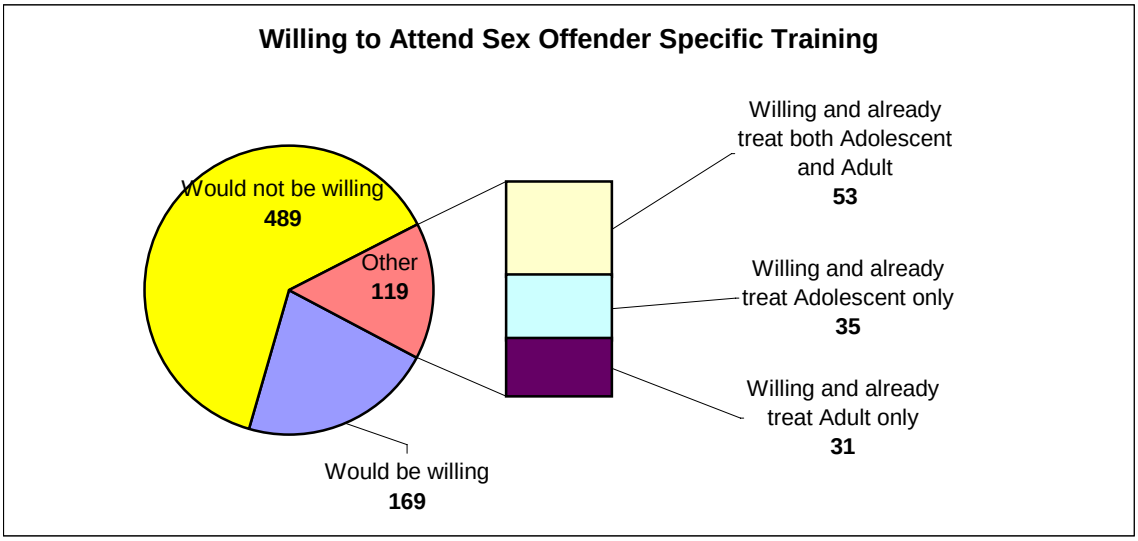
Contact, Contracts, and Training:

Those who currently treat sexual offenders felt that a close, open and continuous relationship with frequent meetings (preferably in person but occasional telephone would suffice) and progress reports are the type of contact there should be between the respondent, the supervising officer (Probation/Parole) and the client.

There was a fairly positive response to whether a person was willing to contract with Probation or Parole for purposes of working with sex offenders. One hundred seventy-seven were interested, with ninety-eight of those already treating sex offenders. Forty-six of those who are willing and are already treating sex offenders treat both adult and adolescent. Twenty-five of those who are willing and already treating sex offenders treat adolescents, and twenty-seven treat adults.



Numbers rise to two hundred eighty-eight when looking at how many of the respondents would be willing to attend sex offender specific training. One hundred nineteen of one hundred forty-four people who are already treating the sex offender population are willing to attend more training. And a staggering one-hundred sixty-nine people who do not currently treat sex offenders were interested.



Association for Treatment of Sexual Abusers (ASTA), and Involvement:

Of those who treated either adults, adolescents or both, the over-all thought of who must be involved in the treatment/management of the sex offender was that of a combination of players including: family, psychologist, justice system, significant others, ect… Twenty-two respondents reported only family. And twenty-one reported only judicial system.

It is important to note that only six people currently belong to the Association for Treatment of Sexual Abusers and of those six, all are currently treating sexual offenders.

Conclusion:

Of those that treat sex offenders, the majority treat both adult and adolescents. However, of those who do not currently treat sex offenders, fifty-six are interested in doing so. While fifty-six is relatively small compared to those that are not interested (577), it would mean a 38.8% increase in the overall number of people treating this population.

An even higher number of those who do not treat sex offenders would be willing to contract with probation and parole for the purpose of working with sex offenders. And, a total of 288 would be willing to attend sex offender specific training.

Appendix B – Public Hearing Feedback

What follows is a breakdown of the results of an evaluation form that attendees at the public hearings were encouraged to fill out and turn in:

WV Sexually Violent Predator Management Task Force – Public Meeting Comment Form (N=8)
Question Responses by Category:

	I Knew Nothing	I Knew Very Little	I Knew Some	I Knew Quite a Lot
How would you rate your knowledge of Sexually Violent Predators PRIOR TO this public meeting?			7	1
How would you rate your knowledge of sexually violent predators AFTER this public meeting?			5	3
How would you rate your knowledge of how WV manages sexually violent predators PRIOR TO this meeting?		4	3	1
How would you rate your knowledge of how WV manages sexually violent predators AFTER this public meeting?			4	3
	Very unsatisfied	Somewhat unsatisfied	Somewhat satisfied	Completely satisfied
What is your level of satisfaction with the way sexually violent predators are currently managed in WV?		2	4	

SVP Public Hearing Comments

- Prosecuting attorneys are not filing motions for predator hearings. Once a conviction has been made, it appears they feel their job is done. Maybe they need to be educated more on what to look for or a consulting body.

- Community notification process is not publicized enough and should happen more frequently.

- Civil commitment seems a costly, impractical option as there is 0 turnover of the population and no one will discharge by any other means than death. It appears the need for space; manpower would just continue to grow. Lifetime sentencing in correctional facilities would seem to be more practical rather than reinventing the wheel.

- "Child victim" predators are main focus. "Adult victim" predators tend to gain less attention.

- More funding should be appropriated to those developing sexual offender programming to attend training, gather/review resources. Recently within DOC all grant funding for this field of programming/management was lost. This was quite a shock considering the current legislative focus on sex offender management/treatment/sentencing.

- I would prefer that more emphasis be placed on prevention rather than punishment/management after the fact. Not only is prevention less expensive and more effective, but it also lowers the numbers of victims.

- I interview child sex abuse victims extremely often, and see the system from accusation through sentencing, or rejection of prosecution. My concern is that I wonder if all the systems the power points tonight states are happening are really happening? I have never heard of monitoring through polygraph. I am interested to find out. Also, has the subject been examined of why only 3 of the 17 SVOs are from WV?

- My wife and I would like the web site to list more specific information about the type of offender.

- Prosecutors should receive mandated training related to referring cases to the Advisory Board given the apparent low number of cases being referred.

- WV has a significant lack of outpatient programming available for <u>ALL</u> sex offenders once they are released from prison.

- Letter from a concerned citizen stating that they believed that sexual predators could not be rehabilitated. The writer also stated that they think it's not a mental health issue but a criminal one and should be treated as such.

- Another letter related that the author's niece had been murdered by a sex offender. The writer asked that guidelines be put into effect that would limit the options of the justice system so that offenders could not plea bargain and have parole guidelines strictly enforced.

- Another family member of the murdered niece wrote to express her opinions that sex offender sentences should be increased. She stated that child safety should be our most important priority in the state.

Appendix C – Washington State Institute on Public Policy – Civil Commitment Report

Full report available at: http://www.wsipp.wa.gov

* Projected through December 31, 2004.

Table 2

INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS: STATE-BY-STATE COMPARISON

Program Costs as Reported by States*

STATE	COST PER DAY PER CLIENT	COST PERYEAR PER CLIENT	ANNUAL SALARY AND BENEFITS OF TREATMENT OFFICER	PROJECTED TOTAL ANNUAL PROGRAM COST (IN MILLIONS)
Arizona	$220.00	$80,300	$37,360	$9.7
California	$293.00	$107,000	$56,492	$45.5
Florida	$137.00	$50,005	$39,176	$21.5
Illinois	$227.40	$83,000	$45,000	$19.0
Iowa	$182.07	$66,456	$55,500	$2.5
Kansas	$145.41	$53,075	$26,977	$6.6
Massachusetts	$136.99	$50,000	$50,000	$15.1
Minnesota	$314.00	$109,000	$47,000	$19.3
Missouri	$168.00	$61,320	$33,178	$6.8
New Jersey	$164.04	$59,939	$50,000	$16.7
North Dakota	$267.89	$97,780	$35,014	$3.2

Pennsylvania (juveniles only)	Not Available**	Not Available**	Not Available**	$2.5
South Carolina	$34.74	$12,680	$18,922	$1.2
Texas (outpatient)	$20.83	$31,000	$6,000 – 7,000	$0.5
Virginia	$220.00	$80,000	$125,000	$6.0
Washington	$289.00	$105,665	$104,026	$23.3
Wisconsin	$273.97	$100,000	$53,353	$24.7

* Cost figures represent states' reports and are not adjusted to take account of significant differences among states. ** Not applicable due to small enrollment.

Appendix D – Prevention

The Task Force was charged with identifying and developing measures providing for the appropriate treatment of sexually violent predators until they are no longer dangerous to the public and ensuring that those measures reflect the need to protect the public. In reality, the managing and monitoring of offenders occurs *to prevent re-offending.* Therefore, the management of sexually violent predators, or of any sex offender, is a matter of prevention.

Implementing treatment, electronic monitoring and registration systems are forms of tertiary prevention: ways to manage already identified offenders to prevent future offenses. By this point in the process, the cost is high to society on several levels. The offender has been through the criminal justice system through law enforcement involvement, the court system with criminal proceedings, and the corrections system with the incarceration and post-release management. The West Virginia Division of Corrections reports that 21% of the current prison population (April 2007) are sex offenders. The West Virginia Crime lab estimates that about 70% of the evidence processed in the lab is from sex offense investigations. None of those numbers is projected to decrease, as cited in the 2001 West Virginia Sex Offender Study published by the WV Statistical Analysis Center. This correctional population forecast estimates that 152 sex offenders will be admitted and 147 will be released on average per year between 2000 and 2010.

Each of these newly incarcerated offenders contributes to a different statistical category: an increased number of sexual assault victims. An even higher cost to society is the emotional trauma experienced by these victims.

Oregon's 2006 publication, "Recommendations to Prevent Sexual Violence In Oregon: A Plan of Action," cites a 1996 study that attaches a dollar amount to the crime of sexual violence.

> The National Institute of Justice estimates that rape and other sexual assaults of adults cause an annual minimum loss of 127 billion dollars, or about $508 per U.S. resident. This includes

tangible losses such as initial police response, medical care, mental health services, property damage or loss, and loss of productivity; and intangible losses such as loss of quality of life, pain, and suffering. These costs do not include the costs of investigation, prosecution or incarceration of offenders. This figure makes sexual assault the costliest crime, even higher than murder.

It is imperative, when considering prevention on any level, that an accurate assessment of the prevalence of the problem of sexual violence be made. Certain statistics in our state substantiate why a narrow focus on a subgroup of sex offenders, such as sexually violent predators, will not provide adequate protection to the public.

- The Rape in America Survey found that only 16 % of sexual assaults are actually reported to law enforcement. Similarly, the 1998 National Crime Victimization Survey found that victims of sexual assault were less likely to report to the police than any other crime.

- In the latest statistics available from the West Virginia State Police (2005), *of the **forcible** rapes actually reported to law enforcement, **only 22%** actually resulted in an arrest.*

These statistics indicate that even among reported sex offenses (with forcible rape being the most violent), a very small fraction of the sex offenses in West Virginia result in an arrest. Of those arrests, even fewer result in a conviction. Even fewer still will result in the offender receiving sexually violent predator status. Although this category of offender is the most violent, focusing solely on managing this category of sex offender gives a false sense of security to the public since so few receive this status.

In August 2003 the West Virginia Injury Prevention Program in the West Virginia Department of Health and Human Resources released "Rape in West Virginia: A Report to the State." Using West Virginia data extrapolated from the National Violence Against Women Survey and the National Women's Study and applying it to 2000 census data, the National Violence Against Women Prevention Research Center estimates that "more than one out of every nine adult women, or about 85,000 adult women in West Virginia, has been the victim of forcible rape sometime in her lifetime." This statistic is said to be conservative regarding the prevalence of sexual assault in West Virginia because it does not include non-forcible rapes (i.e., attempted rapes, drug facilitated rapes, or statutory rapes) nor does it include males.

With such a high estimated prevalence of sexual assault in West Virginia and so few reports, a core issue of adequately managing sex offenders in the state centers on *when* prevention methods should be initiated, not *if*. At the three public hearings that the Task Force conducted throughout the state in the spring of 2007, *it was clear that the citizens in West Virginia are concerned about the prevention of sexual violence before it occurs.* At each of the hearings, this sentiment was clearly expressed and was the only consistent message received at all three public hearings.

Other states that have recently examined this issue have reached similar conclusions, including Texas ("Focus Report: Should Texas Change Its Laws Dealing With Sex Offenders?" by the House Research Organization of the Texas House of Representatives, October 2006), Vermont ("Sex Offender Supervision and Community Notification and Study Committee Report," March 2005), and Iowa ("Iowa Sex Offender Treatment and Supervision Task Force Report to the Iowa General Assembly," January 2007).

Vermont's study, whose report touts its state as having one of the most comprehensive and innovative sex offender treatment programs in the country, *recommends a balanced approach that includes sexual violence prevention along with investigation, prosecution, and treatment programs*. Iowa's conclusions were very specific on the issue of prevention:

> An issue of perhaps the greatest interest to most Task Force members that was not a part of their charge was a belief in the benefit of viewing Iowa's efforts to protect children from sex crimes with as comprehensive a platform as possible. It has been suggested that much more can be done to prevent child-victim sex crimes than would be accomplished by only concentrating on what to do with the offenders *after* a crime has occurred…..Task Force members discussed the need for a range of preventive efforts and a need to think about sex crimes against children from other than just a "reaction-to-the-offender" perspective.

Primary and Secondary Prevention

Spearheaded by the Centers for Disease Control and Prevention, there is a national shift from tertiary prevention of sexual assault to primary and secondary prevention. Each state has been required, to receive designated grant funds, to create a five year prevention plan. In West Virginia the development of that plan is being coordinated by the West Virginia Injury Prevention Program in the West Virginia Department of Health and Human Resources, the state sexual assault coalition – the West Virginia Foundation for Rape Information and Services, and a committee of Key Players in Rape Prevention. **Currently there are no state dollars invested either in the prevention of sexual assault or for services for victims of sexual assault in West Virginia.**

A quick primer on the different types of prevention underscores how a multifaceted approach incorporates the management of sexually violent predators as a component – but only one component – in addressing sexual violence.

- *PRIMARY* -- Approaches that take place BEFORE violence has occurred to prevent initial perpetration or victimization
- *SECONDARY* -- IMMEDIATE RESPONSES after violence has occurred to deal with the consequences of violence in the short-term
- *TERTIARY* -- LONG-TERM RESPONSES after violence has occurred to deal with the lasting consequences of violence

Examples of tertiary prevention activities include focusing on the impact of the sexual assault on the victim (i.e., both immediate and long-term services to support victims) and the accountability of offenders (i.e., monitoring, registration, treatment.) *This is the type of prevention that currently is the prevention focus financially supported by the state.*

Secondary and primary prevention activities identify and intervene when early indicators of risk are present. These include risk-reduction strategies to avoid victimization and perpetration and addressing beliefs, behaviors and conditions that support and perpetuate sexual violence. National research has identified individual factors (e.g., alcohol/drug use), relationship factors (e.g., association with sexually aggressive/delinquent peers),

community factors (e.g., poverty, lack of institutional support from police and the judicial system), and societal factors (e.g., weak laws, social norms supportive of sexual entitlement) that increase a male's risk of committing rape.

Recommendations for Primary and Secondary Prevention

The Task Force's recommendations for primary/secondary prevention activities are research based and mirror the suggestions in other states' reports, including the Iowa study.

> …Comprehensive approaches to the prevention of child-victim sex crimes would also involve making sure parents have the tools they need to detect signs of adults with sex behavior problems, to both help teach their children about warning signs and to find the support they need for healthy parenting. School, faith-based and other community organizations might benefit from stronger supports and better tools they can use to more effectively promote positive youth development and the learning of respect for others, respect for boundaries, and healthy relationships. All of us who have children, or who live in communities where there are children, need to understand the limitations of our justice system and the importance of our own ability to play a role in preventing sexual abuse and protecting children from sex offenders, who are often the child's own family members.

Existing data in West Virginia provides information into key areas where education and risk reduction activities can be introduced. For example, statistics from the West Virginia State Police consistently show that the victims of over 2/3 of forcible rapes reported annually to law enforcement are children. Data indicates that the majority of offenders were acquaintances or friends of their victims, not intimate partners or family members. The victimization most often occurs in either the home of the offender or the victim.

The West Virginia Foundation for Rape Information and Services, through funding from the Centers for Disease Control and Prevention channeled through the West Virginia Injury Prevention Program at WVDHHR, coordinates effective sexual violence prevention programming on a small scale through the state's rape crisis centers. Currently nine centers each receive less than $25000 annually to coordinate *regional* prevention programming. This amount is woefully inadequate for the scope and pervasiveness of the problem and the types of comprehensive prevention programs necessary. The types of activities currently being conducted by these rape crisis centers on a very small scale include activities cited as recommendations by the Task Force:

- Educational programs to students on healthy relationships, risk reduction, prevention factors, anti-bullying programs,
- Training programs for allied professionals, such as the medical community and education system, where early screening and intervention can occur
- Parental education programs to alert families to signs of grooming behaviors of perpetrators and to increase safety factors for children

- Changing social norms, so that respectful behavior is the expected standard of behavior, victims are encouraged to report sexual assaults, and offenders are arrested, prosecuted and convicted

- Programs that encourage 'bystanders' to take responsibility for intervening when they suspect someone may be at risk for victimization

- Developing a comprehensive prevention program that incorporates sexual violence as a public health issue, not just a criminal justice concern

It is a recommendation of the Task Force that the government take a comprehensive approach in addressing the issue of sexual violence in West Virginia. While this requires addressing the issue of adequately managing sexually violent predators, it should not do so to the exclusion of efforts to prevent sexual assault from occurring in the first place. The state is encouraged to invest funds in the primary and secondary prevention of sexual violence. Such an investment will significantly reduce the costs in the criminal justice system, increase the safety of our citizens, and decrease the number of victimizations in our state.

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