

The Containment Approach to Managing Sex Offenders

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INTRODUCTION

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

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The author would like to thank the National Institute of Justice for funding to conduct this research. The author also thanks Ray Slaughter, the director of the Colorado Division of Criminal Justice and Carol Poole, the deputy director, for supporting the work of the Division's Research Office. Finally, the author wishes to thank the *Seton Hall Law Review* for its thoughtful review of this manuscript. The views expressed here reflect only those of the author.

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

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

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

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

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

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

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

Officially recorded "low" recidivism rates of sex offenders⁸ are—to some unknown but significant extent—a function of this lack of reporting by victims. The likelihood, then, of convicting an individual of sexual assault is relatively rare, given the low incidence of reporting.⁹ It becomes vital, then, that those offenders who *are* convicted of this crime be managed by the criminal justice system in ways that seek to eliminate their opportunities to rape again.

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

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

⁶ *Id.* at 193.

⁷ See RAPE IN AMERICA, *supra* note 1, at 4.

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

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

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

Through a series of research studies, researchers at the Colorado Division of Criminal Justice¹⁰ have identified a promising approach for protecting victims by making it difficult for sex offenders to reoffend.¹¹ Labeled the *containment approach*, this model is being adopted by jurisdictions nationwide. The containment approach operates in the context of multi-agency collaboration, explicit policies, and consistent practices that combine case evaluation and risk assessment, sex offender treatment, and intense community surveillance, all designed specifically to maximize public safety.

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

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

VICTIM-CENTERED PHILOSOPHY

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

¹⁰ This agency is located in the state Department of Public Safety.

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

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

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

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

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

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

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

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

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

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

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

MULTI-DISCIPLINARY COLLABORATION

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

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

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

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

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

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

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

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

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

CONTAINMENT-FOCUSED RISK MANAGEMENT

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

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