

JUVENILE SEX OFFENDERS RECOMMENDED FOR COMMITMENT UNDER WASHINGTON'S SEXUALLY VIOLENT PREDATOR LAW, WHERE NO PETITION WAS FILED

Washington's Sexually Violent Predator (SVP) statute¹ permits the civil commitment of sex offenders found to be a high risk to the public. Both adults and juveniles can be confined under the statute. Four other states (Florida, Illinois, South Carolina, and Wisconsin) apply the law to juveniles as well as adults. One additional state (Pennsylvania) authorizes civil commitment for adjudicated youth "aging out" of the juvenile justice system whose mental abnormality influences their risk to reoffend sexually.²

Statutory Requirements

In Washington, a "sexually violent predator" has the following definition:

- A person who has been convicted of a sexually violent offense or charged with a crime of sexual violence; and
- Suffers from a personality disorder or mental abnormality which is a congenital or acquired condition affecting the person's emotional or volitional capacity and predisposes the person to commit criminal sexual acts so that the person is a menace to the health and safety of others; and
- The mental abnormality or personality disorder makes a person, if not confined in a secure facility, likely to engage in future predatory acts of sexual violence directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists.³

Summary

Washington's Sexually Violent Predator (SVP) statute permits the civil commitment of adult and juvenile sex offenders found to be a high risk to the public. Since the law's enactment in 1990, to the end of 2003, 31 juvenile sex offenders were identified as possibly meeting the statutory criteria for civil commitment. These individuals represent approximately 1 percent of the total juvenile sex offenders paroled in this 13-year period.

The attorney general or prosecuting attorney declined to file on two-thirds (21) of these referrals; the individuals were released to the community. Follow-up data were available for all 21 juveniles through December 31, 2005.

- Fifteen individuals (71 percent) were convicted of at least one new offense, seven (33 percent) were convicted of new felony sex offenses, and one person was convicted of a new misdemeanor sex offense. Eight individuals (38 percent) were convicted of new nonsexual offenses.
- Nine individuals (43 percent) had at least one additional referral for civil commitment by the end of the follow-up period. Four offenders have been tried and civilly committed, while three others were admitted to the Special Commitment Center (SCC) and awaiting trial.
- Four youth (19 percent) had no new convictions or civil commitment referrals.
- Five individuals (24 percent) had at least one new conviction for failure to register as a sex offender.

¹ RCW 71.09.020

² Roxanne Lieb and Kathy Gookin, *Involuntary Commitment of Sexually Violent Predators: Comparing State Laws* (Olympia: Washington State Institute for Public Policy, March 2005).

³ The inclusion of "persons of casual acquaintance" was added to the statutory definition of "predatory" by the 2001 Legislature (Chapter 12, Laws of 2001, 2nd Sp. Sess.).

Juveniles are screened to determine if they meet this definition within 30 days of their admission to a state institution and/or during any time of confinement if relevant information becomes available. Youth under the jurisdiction of the Mental Health Division (MHD) of the Department of Social and Health Services (DSHS) and adjudicated for a sexually violent offense may also be reviewed.

The Sex Offender Oversight Committee, in the Juvenile Rehabilitation Administration, reviews cases to determine if additional information is needed, including a possible forensic psychological examination. Cases can then be presented to the End of Sentence Review Subcommittee for review. The ESR Subcommittee is an interagency group managed by the Department of Corrections whose role is to review sex offenders who appear to meet criteria for civil commitment.

If the Subcommittee determines that a juvenile case meets the statutory criteria for civil commitment, the DSHS Secretary submits a formal referral to the attorney general (or, in King County, the prosecuting attorney). The attorney general or prosecuting attorney then decides whether to file the SVP petition.

Prior to 1995, only offenders about to be released from total confinement were referred. Since 1995, an offender may also be referred if the person meets the criminal history criteria and has committed a “recent overt act,” which is “any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.”⁴

In all instances, if the attorney general or prosecutor decides to pursue the case for civil commitment, then a number of procedural protections are provided to the offender, including access to counsel, expert witnesses, and trial by jury. If the jury or court finds, beyond a reasonable doubt, that the individual is a sexually violent predator, then the individual is civilly committed to the state for the purpose of treating the mental condition that produced the predatory acts of sexual violence. The commitment continues until such time as the committing court or jury determines the individual is safe to be released to a less restrictive environment or unconditionally released to the community.

Relatively few juvenile offenders have been identified and recommended for civil commitment petitions. Exhibit 1 presents the flow of cases from the enactment of the law (July 1, 1990) to December 31, 2003.

As the Exhibit demonstrates, only 35 cases involving 31 youth have appeared to meet the statutory criteria for civil commitment referral (some individuals have been referred more than once). This accounts for approximately 1 percent of all cases of juvenile sex offenders placed on parole. The attorney general and/or prosecuting attorney declined to file on two-thirds of these referrals. Six individuals were committed (including one to a less restrictive alternative) during this time period.

Follow-up Data Sources

A 2003 Washington State Institute for Public Policy (Institute) study reviewed the subsequent criminal activity of adults recommended for possible commitment as sexually violent predators, where no petition was filed.⁵ This report describes the juvenile sex offenders referred for civil commitment from July 1, 1990, to December 31, 2003, for whom no petition was filed (declined).

Exhibit 1
Juvenile Civil Commitment Cases: July 1, 1990 to December 31, 2003

Referrals	Declines	Filings	Dismissals	Commitments	Awaiting Trial	Placed on Parole
35 (31 individuals)	23 (21 individuals)	12	2	6 (includes 1 less restrictive alternative)	4	3,416

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⁴ RCW 71.09.020

⁵ Cheryl Milloy, *Six-Year Follow-Up of Released Sex Offenders Recommended for Commitment Under Washington’s Sexually Violent Predator Law, Where No Petition Was Filed* (Olympia: Washington State Institute for Public Policy, December 2003).

A total of 21 juvenile sex offenders were identified. Eighteen of the youth were referred by JRA, while MHD referred the remaining three individuals. The referral letters prepared by DSHS to the attorney general or prosecuting attorney were reviewed. Where available, the letters from the prosecuting authorities, explaining why a petition was not filed, were also reviewed.

Follow-up information on new criminal arrests and convictions was collected from two data sources: the Institute's criminal justice database⁶ and the National Crime Information Center (NCIC) Interstate Identification Index reports.

Subsequent civil commitment referrals and their outcomes were obtained from databases maintained by DSHS, Department of Corrections, the Attorney General's Office, and the King County Prosecutor.

The data on recidivism and subsequent civil commitment referrals were available for all subjects through December 31, 2005.

Description of Juveniles

All of the 21 adjudicated juvenile sex offenders were male. At the time of the referral, they ranged in age from 16 to 27 years, with an average age of 19 years.

Criminal History

By definition, each of the subjects in the study had been adjudicated for at least one felony sexually violent offense. More than half (57 percent) the group had been adjudicated for more than one sex offense. The average age for the group's first adjudicated offense was 13.9 years, with a range of 10 to 17 years.

According to their official charges, most subjects (81 percent) committed sex offenses against children. Three individuals (14 percent) were adjudicated for Second Degree Rape. One subject (5 percent) was adjudicated for offenses in both categories.

At the time of their referrals, more than half (57 percent) of the group had prior nonsexual offense adjudications. The most serious offenses for three individuals were felony violent offenses (Third Degree Assault and Custodial Assault). One

individual had been adjudicated for a misdemeanor violent offense (Fourth Degree Assault). Five subjects had prior adjudications for felony nonviolent offenses, and two had been adjudicated for misdemeanor nonviolent offenses.

Subsequent Crimes and Referrals

Information on new arrests and convictions as well as new civil commitment referrals was collected for each subject. Not all individuals were released once the attorney general or prosecutor denied the petitions for civil commitment. Additionally, some of the original referrals were for recent overt acts under RCW 71.09, and the offenders may have been in the community under parole supervision at the time of their referral. Thus, a typical recidivism analysis with a uniform follow-up period could not be performed. The follow-up information for each case fell into three (sometimes overlapping) categories: no new conviction or civil commitment referral, new conviction, and new civil commitment referral.

No New Conviction or Civil Commitment Referral

Four (19 percent) youth had no new convictions or civil commitment referrals after their initial referral. Each individual was in the community for at least 46 months before the end of the follow-up period.

New Conviction

Fifteen (71 percent) individuals were convicted of at least one new offense after the initial referral for civil commitment. The convictions for seven of these individuals were for felony sex offenses, which they committed as adults. One additional youth was adjudicated for a misdemeanor sex offense (Fourth Degree Assault with Sexual Motivation) as a juvenile. Thus, eight subjects (38 percent) were convicted of or adjudicated for a new sexual offense.

Eight individuals were convicted of new nonsexual offenses. For one offender, the most serious new offense was a violent felony, while an additional two individuals had new convictions for misdemeanor violent offenses. Of the remaining five subjects with new nonsexual convictions, the most serious new offense was a felony nonviolent offense.

Five individuals (24 percent) had at least one new conviction for Failure to Register. Three of these youth had two or more convictions for this crime.

⁶ This database was created by merging databases from the Washington State Administrative Office of the Courts and Department of Corrections.

Exhibit 2
Status of 21 Juvenile Sex Offenders Referred for Civil Commitment
Between July 1, 1990 and December 31, 2003 for Whom No Petition Was Filed

Case Number	New Conviction	Offense Type (most serious)	New Referral	New Referral Status
01	No		Yes	Civilly committed
02	No		No	
03	Yes	Felony sex	Yes	Detained, awaiting trial
04	Yes	Felony sex	No	
05	Yes	Felony sex	Yes	Declined
06	Yes	Felony sex	Yes	Declined
07	No		Yes	Civilly committed
08	Yes	Felony nonviolent	No	
09	Yes	Felony nonviolent	Yes	Civilly committed
10	Yes	Felony violent	No	
11	Yes	Misdemeanor violent	No	
12	Yes	Felony sex	Yes	Detained, awaiting trial
13	No		No	
14	Yes	Felony sex	No	
15	Yes	Felony nonviolent	No	
16	Yes	Felony sex	Yes	Detained, awaiting trial
17	No		No	
18	Yes	Misdemeanor sex	Yes	Civilly committed
19	Yes	Felony nonviolent	No	
20	No		No	
21	Yes	Felony nonviolent	No	

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New Civil Commitment Referral

For nine (43 percent) of the subjects in this study, the initial referral for civil commitment was followed by at least one additional referral by the end of the follow-up period (December 31, 2005). These nine subjects were not all necessarily a subset of those individuals who were convicted of new offenses.

Of the nine individuals with new civil commitment referrals, two had not been charged with new crimes, but were referred for recent overt acts under RCW 71.09.

Three of the referrals were second referrals by JRA, and one was a second referral by MHD. The remaining five referrals were made by the Department of Corrections. The outcomes for these nine individuals were as follows:

- Two were declined by the prosecuting authorities.
- Three individuals were admitted to the Special Commitment Center and were awaiting trial.
- Four have been civilly committed.

Conclusions

From enactment of the Sexually Violent Predator law in Washington State to the end of 2003, 31 youth were recommended for filing under the statute; the attorney general or prosecuting attorney declined to file on two-thirds of these referrals.

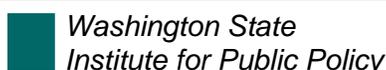
Of the 21 adjudicated juvenile sex offenders recommended for commitment, where no petition was filed, the follow-up study revealed:

- Four youth (19 percent) had no new convictions or civil commitment referrals after their initial referral.
- Nine juveniles (43 percent) had at least one additional referral for civil commitment by the end of the follow-up period. Four individuals have been tried and civilly committed, while three other offenders were admitted to the Special Commitment Center and were awaiting trial.
- Fifteen subjects (71 percent) were convicted of at least one new offense. Seven individuals were convicted of new felony sex offenses, and one person was convicted of a new misdemeanor sex offense. Eight individuals were convicted of new nonsexual offenses. Five individuals (24 percent) had at least one new conviction for failure to register as a sex offender.

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Document No. 06-04-1201



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