

# Background

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## SUMMARY

*Minnesota has implemented stricter prison sentences for sex offenders in recent years, but the state still relies considerably on community supervision of sex offenders by a variety of state and local corrections agencies. There are relatively few statewide policies that address the nature of this supervision, partly reflecting Minnesota's fragmented responsibilities for offender supervision. More than 7,000 adults living in Minnesota communities are registered with the state as "predatory offenders" due to crimes (mainly sex offenses) committed as adults, and there is some public notification regarding 27 percent of these offenders. The overwhelming majority of sex offenders are male, but there are few other traits that characterize a "typical" sex offender. Registered sex offenders were less likely to reside in suburban Twin Cities counties than in most other parts of the state. Studies have shown that sex offenders have lower recidivism rates than other types of offenders, but these studies should be viewed with caution because of underreporting of sex crimes.*

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**T**here is widespread public concern about the risks posed by sex offenders. Their crimes can leave long-lasting scars on victims, families, and communities. As a result, sex offenders have been a topic of considerable legislative discussion and action, particularly in the past two decades. This chapter provides an overview of sex offenders and their supervision in the community by addressing the following questions:

- **What is a "sex offense," and what types of sentences do convicted sex offenders receive?**
- **How is community-based correctional supervision organized in Minnesota? Which corrections agencies have responsibility for supervising sex offenders?**
- **What are Minnesota's statutory requirements for sex offender registration and community notification? To how many offenders do these requirements apply?**
- **Do some areas of Minnesota have higher concentrations of sex offenders than others? What has previous research shown about the characteristics and recidivism rates of sex offenders?**

## CRIMINAL PENALTIES

In Minnesota, there are five categories—or degrees—of “criminal sexual conduct,” as shown in Table 1.1. First-degree criminal sexual conduct is considered the most serious of these categories. Most criminal sexual conduct offenses are felonies, although certain fifth-degree offenses are gross misdemeanors.<sup>1</sup> The categories of criminal sexual conduct are differentiated by factors such as the nature of the sexual contact, the ages of the victim and perpetrator, and the degree of force or coercion. For example, according to the House of Representatives Research Department:

“Criminal sexual conduct in the first and second degree typically apply to conduct involving personal injury to the victim; the use or threatened use of force, violence, or a dangerous weapon; or victims who are extremely young. Criminal sexual conduct in the third, fourth, and fifth degree typically address less aggravated conduct and apply to other situations in which the victim either did not consent to the sexual conduct, was relatively young, or was incapable of voluntarily consenting to the sexual conduct due to a particular vulnerability or due to the special relationship between the offender and the victim.”<sup>2</sup>

**Table 1.1: Categories of Criminal Sexual Conduct**

| Category      | Description  | Statutory Sentencing Provisions  |
|---------------|--|--|
| First Degree  | Involves (1) sexual penetration with another person, or (2) certain sexual contact with a person under 13 years old - as specified in <i>Minn. Stat.</i> (2004), §609.342. | Mandatory minimum prison sentence of 144 months. Maximum sentence of 30 years in prison and/or a \$40,000 fine.  |
| Second Degree | Involves sexual contact with another person - as specified in <i>Minn. Stat.</i> (2004), §609.343.   | Mandatory minimum prison sentence of 90 months for certain offenses. Maximum sentence of 25 years in prison and/or a \$35,000 fine.  |
| Third Degree  | Involves sexual penetration with another person - as specified in <i>Minn. Stat.</i> (2004), §609.344.   | Maximum sentence of 15 years in prison and/or a \$30,000 fine.   |
| Fourth Degree | Involves sexual contact with another person - as specified in <i>Minn. Stat.</i> (2004), §609.345.   | Maximum sentence of 10 years in prison and/or a \$20,000 fine.   |
| Fifth Degree  | Involves (1) non-consensual sexual conduct, or (2) certain lewd conduct - as specified in <i>Minn. Stat.</i> (2004), §609.3451.  | Maximum sentence for repeat violations is 5 years in prison and/or a \$10,000 fine. For non-repeat offenders, maximum sentence is one year in jail and/or a fine of \$3,000. |

SOURCE: *Minn. Stat.* (2004), §§609.342-609.3451.

<sup>1</sup> For felonies, a sentence of imprisonment for more than one year may be imposed. Gross misdemeanors may have jail sentences up to one year in length, and misdemeanors may have jail sentences up to 90 days.

<sup>2</sup> Minnesota House of Representatives Research Department, *Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws* (St. Paul, September 2003), 3.

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**The courts may sentence convicted offenders to prison or probation.**

Besides the categories of criminal sexual conduct shown in Table 1.1, there are some other felony-level sex offenses, such as possession or distribution of child pornography, use of a minor in a sexual performance, and soliciting a minor to engage in sexual conduct or prostitution, among others.<sup>3</sup> There are also misdemeanor-level sexual offenses that do not involve physical contact, such as indecent exposure and making obscene phone calls. State law also defines crimes involving sexual activity between consenting adults—such as prostitution and adultery—but such crimes are usually not classified as “criminal sexual conduct.”

When persons are convicted of a sex offense, the courts have two main sentencing options. First, the courts can sentence offenders to prison for felony-level offenses. Minnesota’s sentencing guidelines suggest lengths of prison sentences for various crimes.<sup>4</sup> State law requires a minimum prison sentence of 144 months for offenders sentenced for first-degree criminal sexual conduct, and there is a minimum prison sentence of 90 months for certain offenders sentenced for second-degree criminal sexual conduct.<sup>5</sup> Offenders sent to prison must serve at least two-thirds of their sentence in prison. The remainder of the sentence—called “supervised release”—is a period when the offender lives in the community under the supervision of the Minnesota Department of Corrections or a county corrections agency. Before offenders start supervised release, the Minnesota Department of Corrections determines the “conditions of supervision” with which the offender must comply. Supervised release can be revoked by the department if an offender violates these conditions, in which case the offender would return to prison for part or all of his remaining sentence.

Second, rather than imposing a prison sentence, the court can “stay” the prison sentence of a convicted offender. When a sentence is stayed, the court may place the offender on probation for a period of time prescribed by the court. The court may set conditions of supervision for an offender on probation—for example, requiring the offender to go to jail for up to a year or complete a sex offender treatment program.<sup>6</sup> If an offender violates the terms of probation set by the court, the court can impose the prison sentence that was previously stayed.

Compared with other states, Minnesota relies more on probation and less on prison to manage its criminal population (including sex offenders). According to the U.S. Department of Justice, Minnesota had 2,953 adults on probation per 100,000 adult residents in December 2003—which was 57 percent higher than the national rate.<sup>7</sup> Minnesota’s probation rate per 100,000 residents was the fourth

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<sup>3</sup> *Minn. Stat.* (2004) §§617.246, 617.247, 609.322, 609.324, and 609.352.

<sup>4</sup> The guidelines establish “presumptive” sentences based on offenders’ criminal history and the severity of the offense. Judges may deviate from the guidelines if there are “substantial and compelling circumstances,” but they must make written findings of fact as to the reasons for the departure. In all cases, statutorily-set minimum and maximum sentences preempt the guidelines.

<sup>5</sup> *Minn. Stat.* (2004), §§609.342, 609.343.

<sup>6</sup> *Minn. Stat.* (2004), §609.135.

<sup>7</sup> Lauren E. Glaze and Seri Palla, *Probation and Parole in the United States, 2003* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, July 2004), 3.

highest among the 50 states. Meanwhile, federal data show that Minnesota had the lowest number of prison inmates per 100,000 residents among the 50 states.<sup>8</sup>

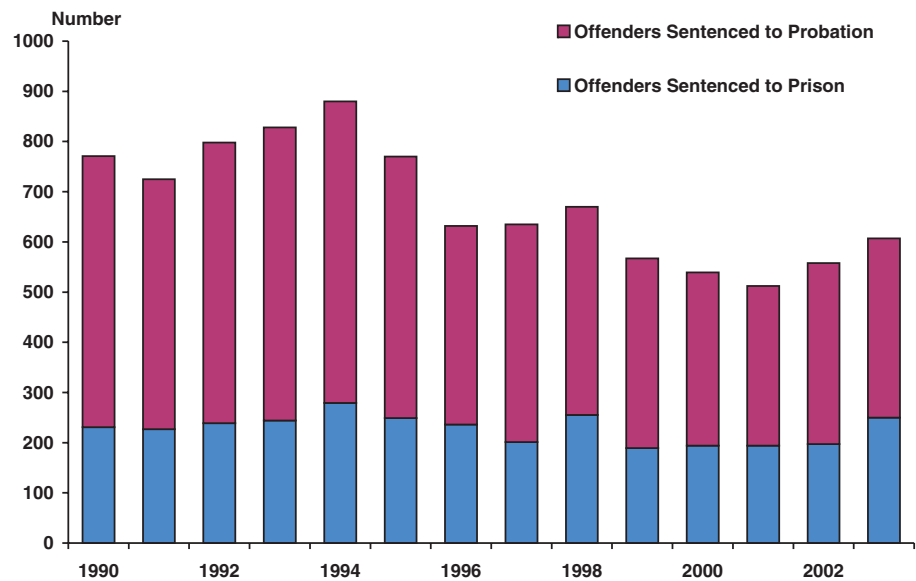
Figure 1.1 shows Minnesota sentencing practices for persons convicted of felony-level sex offenses. As the figure shows,

- **Minnesota's number of felony-level sex offense convictions has decreased since the mid-1990s.**

The number of offenders sentenced for felony sex offenses rose from 771 in 1990 to 880 in 1994. Since then, the number of sentenced offenders dropped to 512 in 2001, then rose to 607 in 2003.

**The number of persons sentenced for felony-level sex offenses peaked in 1994.**

**Figure 1.1: Number of Persons Sentenced for Felony-Level Sex Offenses, 1990-2003**



Source: Minnesota Sentencing Guidelines Commission.

The sentencing data also indicate that:

- **In recent years, a larger share of felony-level sex offenders have been sentenced to prison, and the average length of their prison sentences has increased.**

The proportion of Minnesota's felony-level sex offenders who were sentenced to prison increased from 30 percent in 1990 to 41 percent in 2003. The felony-level

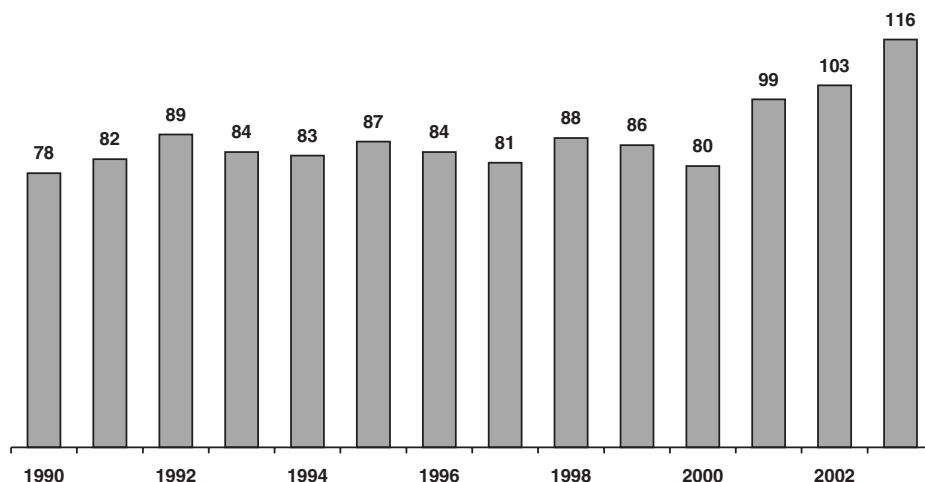
<sup>8</sup> Paige M. Harrison and Allen Beck, *Prisoners in 2002* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, July 2003), 1. This report was based on December 2002 data, and the rates were computed per 100,000 residents (not just adults). Minnesota was tied with Maine for the lowest rate.

sex offenders who were not sent to prison usually served time in a local jail as part of their probation sentence.<sup>9</sup> In 2003, 89 percent of sex offenders sentenced to probation received jail time as a condition of probation.<sup>10</sup>

In addition, Figure 1.2 shows that the average pronounced prison sentence for felony-level sex offenders grew from 78 months in 1990 to 116 months in 2003. This largely reflects stricter penalties that have been adopted by the Legislature over the past 15 years. In particular, the 2000 Legislature adopted the statutory minimum prison sentence of 144 months for persons convicted of first-degree criminal sexual conduct; previously, these offenders faced prison sentences of 86 to 158 months.<sup>11</sup> The Legislature also required longer sentences for certain repeat or “patterned” sex offenders.<sup>12</sup>

**Figure 1.2: Average Length (in Months) of Prison Sentences for Felony-Level Sex Offenders, 1990-2003**

**On average, the length of prison sentences for sex offenders increased in recent years.**



NOTE: The average sentence in each year is based on cases that were sentenced in that year.

SOURCE: Minnesota Sentencing Guidelines Commission.

Stricter prison sentences have contributed to growth in the sex offender population in Minnesota prisons. As shown in Figure 1.3, the number of sex offenders in

<sup>9</sup> Jail sentences are up to one year in length, while prison sentences are more than a year.

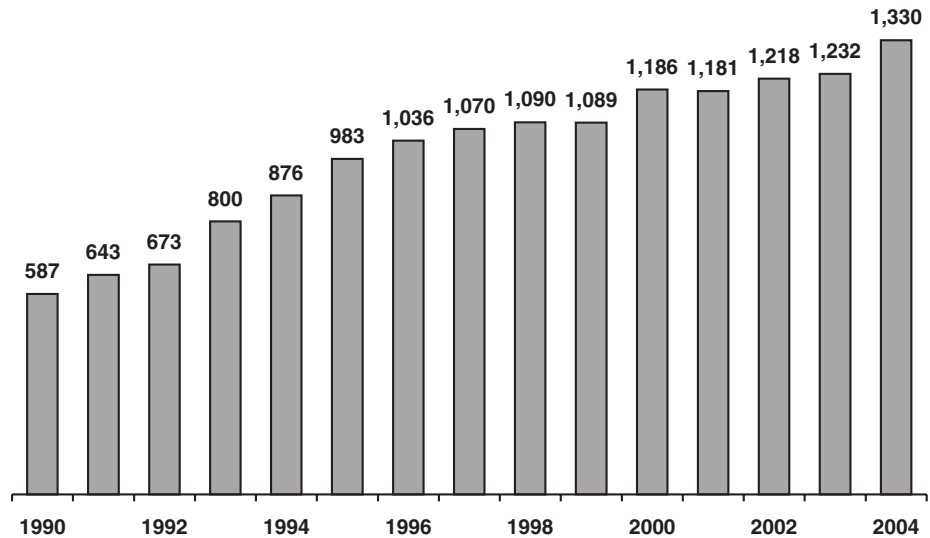
<sup>10</sup> Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Criminal Sexual Conduct (CSC) Offenses, Offenders Sentenced in 2003* (St. Paul, October 2004), 6.

<sup>11</sup> *Laws of Minnesota* (2000), ch. 311, art. 4, sec 2, subd. 2. The length of the recommended sentence in state sentencing guidelines previously ranged from 86 months (for offenders with a criminal history score of zero) to 158 months (for those with a score of six). Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Criminal Sexual Conduct (CSC) Offenses, Offenders Sentenced in 2003*, 4.

<sup>12</sup> *Minn. Stat.* (2004), §§609.108, subd. 1 and 609.109, subd. 3-4. For specified crimes, these statutes set penalties that can include life imprisonment, “not less than double the presumptive sentence under the sentencing guidelines,” and “not less than 30 years.”

**Figure 1.3: Total Number of Sex Offenders in Minnesota Prisons, 1990-2004**

Most of Minnesota's growing population of sex offenders in prison will eventually be released into a community.



NOTE: These totals are based on prison populations as of January 1 each year.

SOURCE: Minnesota Department of Corrections.

Minnesota prisons increased 127 percent during the past 14 years—from 587 in January 1990 to 1,330 in January 2004. However,

- **The increase in Minnesota's prison population and other factors suggest that community-based corrections agencies will supervise an increasing population of sex offenders released from prison.**

First, given the small number of sex offenders with lifetime sentences, there will probably be increasing numbers of sex offenders released to the community in future years.<sup>13</sup> Second, because sex offenders are receiving longer prison sentences than they used to, they will be eligible for longer periods of supervised release once they leave prison. Third, the 1998 Legislature established a period of “conditional release” for sex offenders released from prison that will lengthen the periods of community supervision for some offenders.<sup>14</sup> The law specifies circumstances in which offenders will be placed on conditional release for five or ten years, minus the time served on supervised release.

While sex offenders sentenced to *prison* have faced longer sentences in recent years, we found that:

- **Over the past decade, the average length of probation sentences for felony sex offenders has been fairly constant.**

<sup>13</sup> The Minnesota Department of Corrections analyzes the impact of sentencing changes on the number of prison beds needed, but it has not analyzed the impact of these changes on the expected size of the supervised release population. As of mid-2004, there were seven Minnesota offenders serving life sentences for crimes involving sex offenses.

<sup>14</sup> *Laws of Minnesota* (1998), ch. 367, art. 6, sec. 5, subd. 6.

As shown in Table 1.2, sex offenders sentenced to probation (rather than prison) were placed under correctional supervision for periods ranging from an average of 11.9 years in 1991 to 14.3 years in 1999. According to Minnesota law, the length of probation for felony-level offenses cannot exceed the maximum time the offenders could serve in prison under the sentencing guidelines.<sup>15</sup> But the courts have not significantly changed the length of probation sentences for sex offenders despite increases in the length of prison sentences.

**In 2003, the average length of a probation sentence for a sex offender was 13 years.**

**Table 1.2: Number of Sex Offenders Sentenced to Probation and Average Sentence, 1991-2003**

| Year | Number of Felony Sex Offenders Sentenced to Probation | Average Length of Probation (in Years) |
|------|---|--|
| 1991 | 498   | 11.9                                   |
| 1992 | 559   | 12.4                                   |
| 1993 | 584   | 13.6                                   |
| 1994 | 601   | 13.2                                   |
| 1995 | 521   | 13.6                                   |
| 1996 | 396   | 13.8                                   |
| 1997 | 434   | 13.6                                   |
| 1998 | 413   | 13.0                                   |
| 1999 | 373   | 14.3                                   |
| 2000 | 345   | 13.7                                   |
| 2001 | 318   | 13.6                                   |
| 2002 | 361   | 13.6                                   |
| 2003 | 357   | 13.0                                   |

Source: Minnesota Sentencing Guidelines Commission.

## SUPERVISION BY COMMUNITY-BASED CORRECTIONS AGENCIES

Earlier, we observed that Minnesota’s criminal justice system relies more on probation and less on imprisonment than do most states.<sup>16</sup> Compared with other states, Minnesota’s community-based corrections system is also unusual in its organizational structure. Specifically, under current law,

- **Minnesota has a complex, multi-agency system of community-based correctional supervision, with no single agency responsible for statewide coordination.**

For example, one review of state practices singled out Minnesota and three other states as having “particularly complex combinations of responsibility for

<sup>15</sup> *Minn. Stat.* (2004), §609.135, subd. 2. Generally, the probation period shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer. The defendant must be discharged from probation six months after the term of the stay expires (unless the stay has been revoked or extended or the defendant has already been discharged).

<sup>16</sup> The state-by-state data on probation and imprisonment pertain to all criminal offenders, not just sex offenders.

probation services.”<sup>17</sup> In two-thirds of states, a state-level executive or judicial agency is the exclusive provider of adult probation services.<sup>18</sup> In contrast, Minnesota relies on a mix of state and local corrections agents to supervise criminal offenders, with some agents employed by the courts and some by administrative agencies. Also, in about one-third of Minnesota’s counties, the corrections agency that supervises adult felons is different from the agency that supervises juvenile offenders.

Table 1.3 provides an overview of the agencies responsible for supervising adult, felony-level sex offenders. About 66 percent of the state’s adult, felony-level sex

**Table 1.3: Minnesota Agencies Supervising Adult, Felony-Level Sex Offenders**

| Probation System                          | Agents are Employed by:     | Percentage of Minnesota’s Felony-Level Sex Offenders Supervised by These Agencies, June 2004 (N=4,212) | Number of Agencies or District Offices | Counties Served <sup>a</sup>  |
|---|-----------------------------|--|--|---|
| Community Corrections Act (CCA)           | County corrections agencies | 66%  | 16 agencies <sup>b</sup>               | <u>31 counties</u> : Aitkin, Anoka, Blue Earth, Carlton, Chippewa, Cook, Crow Wing, Dakota, Dodge, Fillmore, Hennepin, Kandiyohi, Koochiching, Lac Qui Parle, Lake, Morrison, Nobles, Norman, Olmsted, Polk, Ramsey, Red Lake, Rice, Rock, St. Louis, Stearns, Swift, Todd, Wadena, Washington, Yellow Medicine   |
| Minnesota Department of Corrections (DOC) | State corrections agency    | 34%  | 12 district offices <sup>c</sup>       | <u>56 counties</u> : Becker, Beltrami, Benton, Big Stone, Brown, Carver, Cass, Chisago, Clay, Clearwater, Cottonwood, Douglas, Faribault, Freeborn, Goodhue, Grant, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kittson, Lake of the Woods, LeSueur, Lincoln, Lyon, McLeod, Mahnomon, Marshall, Martin, Meeker, Mille Lacs, Mower, Murray, Nicollet, Otter Tail, Pennington, Pine, Pipestone, Pope, Redwood, Renville, Roseau, Scott, Sherburne, Sibley, Steele, Stevens, Traverse, Wabasha, Waseca, Watonwan, Wilkin, Winona, Wright |

<sup>a</sup>DOC provides Intensive Supervised Release to adult felons in many of the CCA counties. In our calculation of the percentages of offenders supervised by CCA and DOC agencies (66 and 34, respectively), we assigned Intensive Supervised Release cases to the agency of supervision.

<sup>b</sup>Rock-Nobles Community Corrections and Region 6W Community Corrections (Chippewa, Lac Qui Parle, Swift, and Yellow Medicine counties) have arranged for DOC to supervise their sex offenders, although they sometimes supervise these offenders after the offenders have completed treatment or other programming. Thus, for practical purposes, there are 14 CCA agencies that supervise sex offenders.

<sup>c</sup>The office that supervises offenders on Intensive Supervised Release is counted here as a separate district office.

SOURCE: Minnesota Department of Corrections and OLA analysis of DOC Statewide Supervision System data.

<sup>17</sup> LIS, Incorporated, *State and Local Probation Systems in the United States: A Survey of Current Practice* (Washington, D.C.: National Institute of Corrections, July 30, 1993), 7.

<sup>18</sup> Office of the Legislative Auditor, *Funding for Probation Services* (St. Paul, January 1996), 15. State-level agencies were the exclusive providers in 35 states, and local-level agencies were the exclusive providers in another 8 states.

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**Minnesota's community correction system relies on a mix of state and local agencies to supervise offenders.**

offenders are supervised by county agents in Community Corrections Act (CCA) agencies, and the remainder are supervised by Minnesota Department of Corrections agents.<sup>19</sup>

Individual counties choose whether to participate in the Community Corrections Act. The act, passed in 1973, gives participating counties flexibility to design their own community-based corrections strategies.<sup>20</sup> Not surprisingly, the 16 CCA administrative agencies have varying policies and procedures for offender supervision. The Community Corrections Act authorized the Commissioner of Corrections to make block grants to participating counties to pay for a portion of their community corrections services. Some CCA agencies serve single counties—such as Hennepin County Community Corrections, the largest CCA agency. In contrast, the Arrowhead Community Corrections Region has a single CCA agency that serves five counties in northeastern Minnesota.

State employees with the Minnesota Department of Corrections (DOC) supervise adult felons in the 56 counties that do not participate in the Community Corrections Act. These DOC agents are funded entirely by the department's biennial appropriation. The department has uniform policies and procedures that govern supervision practices in these counties.

The organization and funding of correctional supervision for juvenile and adult misdemeanor offenders is even more complicated than the system of supervision for adult felons. As shown in Table 1.4, juveniles offenders are supervised by county employees in the 31 CCA counties, by state employees in the 27 DOC counties, and by judicial employees in 29 “county probation officer” (CPO) counties. CCA agencies can use their state block grants to pay for part of their supervision costs, while the DOC and “county probation officer” counties receive state reimbursements for up to half of the salaries of their juvenile probation officers.<sup>21</sup> Altogether, juvenile offenders are supervised by 42 separate administrative agencies (41 county agencies plus the Minnesota Department of Corrections), and each of these agencies establishes its own supervision practices and procedures. In contrast, adult felony-level offenders are supervised by 17 separate administrative agencies (16 county agencies plus DOC).

There are few requirements in Minnesota law that are applicable to community-based corrections agencies' general practices for supervising

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<sup>19</sup> Our discussion does not focus on adult misdemeanants, for two reasons. First, there are relatively few sex offenders on probation for misdemeanor-level offenses. In December 2002, adult misdemeanants represented just 6 percent of all sex offenders on probation in Minnesota, and most were for “gross misdemeanors” rather than simple “misdemeanors.” Second, although simple misdemeanants are supervised by the same agencies that supervise juvenile offenders (see Table 1.4), responsibility for gross misdemeanants in non-CCA counties is based on “local judicial policy” (*Minn. Stat.* (2004), §244.20) and, thus, is hard to categorize. In some counties, gross misdemeanants are supervised by DOC; in some, they are supervised by court-employed “county probation officers.”

<sup>20</sup> *Minn. Stat.* (2004), §401. To qualify for state CCA funding, counties must have a corrections advisory board, designate an administrative officer, and have a state-approved comprehensive plan for correctional services.

<sup>21</sup> The “DOC counties” contract with DOC to provide supervision to juvenile offenders. They are billed for the cost of DOC's probation officers, but they can obtain state reimbursement for 50 percent of the salary costs. The CPO counties rely on court or county employees to supervise juvenile offenders, and they can receive state reimbursement for half of these employees' salaries under *Minn. Stat.* (2004), §244.19.

**Table 1.4: Minnesota Agencies Supervising Juvenile Sex Offenders**

| Probation System                          | Agents are Employed by:  | Percentage of Minnesota's Juvenile Sex Offenders Supervised by These Agencies, December 2002 (N=656) | Number of Agencies or District Offices | Counties Served   |
|---|--|--|--|---|
| Community Corrections Act (CCA)           | County corrections agencies  | 53%  | 16 agencies <sup>b</sup>               | <u>31 counties</u> : Aitkin, Anoka, Blue Earth, Carlton, Chippewa, Cook, Crow Wing, Dakota, Dodge, Fillmore, Hennepin, Kandiyohi, Koochiching, Lac Qui Parle, Lake, Morrison, Nobles, Norman, Olmsted, Polk, Ramsey, Red Lake, Rice, Rock, St. Louis, Stearns, Swift, Todd, Wadena, Washington, Yellow Medicine |
| Minnesota Department of Corrections (DOC) | State corrections agency   | 17%  | 11 district offices                    | <u>27 counties</u> : Becker, Beltrami, Benton, Clay, Clearwater, Cottonwood, Douglas, Faribault, Hubbard, Kittson, Lake of the Woods, LeSueur, Lincoln, Lyon, McLeod, Mahnomon, Marshall, Martin, Murray, Pennington, Pipestone, Redwood, Renville, Roseau, Sibley, Watonwan, Winona                            |
| County Probation Officers (CPO)           | District courts (with or without county board approval) <sup>a</sup> | 30%  | 25 agencies                            | <u>29 counties</u> : Big Stone, Brown, Carver, Cass, Chisago, Freeborn, Goodhue, Grant, Houston, Isanti, Itasca, Jackson, Kanabec, Meeker, Mille Lacs, Mower, Nicollet, Otter Tail, Pine, Pope, Scott, Sherburne, Steele, Stevens, Traverse, Wabasha, Waseca, Wilkin, Wright                                    |

<sup>a</sup>In counties that have human services boards pursuant to *Minn. Stat. (2004)*, §402, and in counties with populations over 200,000 that have not organized pursuant to this chapter, the district court is authorized by law to hire probation officers, and *Minn. Stat. (2004)*, §244.19, subd. 1 does not require approval of these actions by county boards. In other CPO counties governed by *Minn. Stat. (2004)*, §244.19, the court may appoint probation officers "with approval of the county boards."

<sup>b</sup>Rock-Nobles Community Corrections and Region 6W Community Corrections (Chippewa, Lac Qui Parle, Swift, and Yellow Medicine counties) have arranged for DOC to supervise their sex offenders, although they sometimes supervise these offenders after the offenders have completed treatment or other programming. Thus, for practical purposes, there are 14 CCA agencies that supervise sex offenders.

SOURCE: Minnesota Department of Corrections, and Office of the Legislative Auditor's analysis of Department of Corrections, *2002 Probation Survey* (St. Paul, September 2004).

offenders on probation or supervised release. The law says that probation services shall be "sufficient in amount to meet the needs of the district court in each county."<sup>22</sup> Probation agencies must also have written policies for classifying adult offenders, and the Minnesota Department of Corrections must help these agencies find training and technical assistance to develop "effective, valid classification systems."<sup>23</sup> For the Intensive Supervised Release program (which serves high-risk offenders released from prison), the law prescribes that caseloads shall not exceed 30 offenders per two agents.<sup>24</sup>

In addition to these general provisions that pertain to supervision of various types of offenders, the law establishes some requirements that are specific to sex offenders who live in the community or are about to be released from prison. For

<sup>22</sup> *Minn. Stat. (2004)*, §244.19, subd. 2.

<sup>23</sup> *Minn. Stat. (2004)*, §244.24.

<sup>24</sup> *Minn. Stat. (2004)*, §244.13, subd. 2.

**No single agency oversees probation in Minnesota, and corrections agencies have considerable latitude to determine how they will supervise offenders.**

example, the law prescribes procedures for sex offenders to register with the state,<sup>25</sup> and for notifying communities about offenders released from prison;<sup>26</sup> we discuss these issues in the next section. The law also says that convicted sex offenders are required to undergo professional assessments (see discussion in Chapter 3)<sup>27</sup> and submit DNA samples.<sup>28</sup> However,

- **State laws and statewide administrative policies have few requirements regarding the amount and nature of community supervision of sex offenders.**

The main statutory requirement regarding sex offender supervision is a requirement that all state or local agents who supervise sex offenders must receive specialized training from DOC.<sup>29</sup> For sex offenders (and other offenders) sentenced to probation, Minnesota has no statewide administrative rules governing their supervision—perhaps because there is no single agency that oversees probation in the state. For sex offenders released from prison on supervised release, the Minnesota Department of Corrections has policies that address certain aspects of the offenders’ supervision. For example, the department’s policies specify “special conditions” that can be included in the release plans of sex offenders being released from prison, such as prohibiting the offenders from purchasing or possessing sexually explicit materials.<sup>30</sup> Also, in cases where offenders have allegedly violated their supervised release, the Department of Corrections determines whether to revoke supervised release or amend the conditions of supervision.<sup>31</sup> But, for most sex offenders under correctional supervision, the state and local supervising agencies have considerable latitude to determine the extent and nature of supervision.

## SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION

Besides setting criminal penalties and authorizing community-based correctional supervision, Minnesota policy makers have taken other steps to help address the risks posed by sex offenders. In this section, we describe state requirements for (1) registering sex offenders, and (2) notifying the public about sex offenders

<sup>25</sup> *Minn. Stat.* (2004), §243.166.

<sup>26</sup> *Minn. Stat.* (2004), §244.052.

<sup>27</sup> *Minn. Stat.* (2004), §609.3452.

<sup>28</sup> *Minn. Stat.* (2004), §609.117. The law also requires that offenders convicted of offenses that arise out of circumstances involving a criminal sexual conduct charge must submit a biological specimen for DNA analysis.

<sup>29</sup> *Minn. Stat.* (2004), §241.67, subd. 6.

<sup>30</sup> DOC Policy 106.112. This policy identifies “standard conditions of release” that pertain to all offenders released from prison. Additional conditions (including special conditions specific to sex offenders) can be added at the discretion of DOC’s Hearings and Release Unit. In addition, the department’s policies specify conditions for persons assigned to DOC’s Intensive Supervised Release Program—including the length of time that offenders will spend in various phases of the program. The ISR policies are followed by DOC and by those local agencies that contract with DOC to provide ISR services. As noted in Chapter 2, ISR is available in most, but not all, Minnesota counties.

<sup>31</sup> DOC Policy 205.010 and DOC, “Guidelines for Revocation of Parole/Supervised Release.”

released from prison. We offer no recommendations for changes in existing law, but this section discusses the number of offenders who are subject to present requirements for registration and community notification.

## Predatory Offender Registration

Since 1991, offenders convicted of or charged with certain “predatory” crimes have been required to register their residence and other information with the Bureau of Criminal Apprehension (BCA).<sup>32</sup> This information is also forwarded to the Federal Bureau of Investigation and kept in a national registry of sex offenders. Predatory offenders are required to update their supervising agents or local law enforcement agencies about key changes (such as new addresses or vehicles), and offenders who fail to do so can be charged with a felony. The requirement applies to sex offenders who commit predatory offenses in Minnesota, as well as offenders who have committed similar offenses in other states but now live, work, or attend school in Minnesota.

Offenders are required to register for at least ten years from the date of conviction or (if appropriate) the date of release from incarceration or civil commitment.<sup>33</sup> Registration periods may be extended if offenders fail to register or if they violate the terms of their probation, supervised release, or conditional release. The law also specifies that certain offenders must register for life and, as of June 2004, about 6 percent of all registered offenders in Minnesota were subject to lifetime registration.<sup>34</sup>

BCA’s Predatory Offender Registry provides criminal justice personnel with a central repository of information about sex offenders and where they are located in the community. Authorized law enforcement officials and corrections agents can access the database through a secure Internet-based application in their own agencies.<sup>35</sup> Corrections agents typically monitor compliance with registration requirements for offenders they supervise. In some communities, local law enforcement periodically verifies sex offender residences, particularly in instances where the offenders who are required to register have served their sentences and are no longer under correctional supervision. The BCA also sends out verification letters annually, which the offender must return within 10 days of receipt. Some corrections agencies, such as the Minnesota Department of

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**A statewide registry contains information on persons defined as “predatory offenders.”**

<sup>32</sup> *Minn. Stat.* (2004), §243.166. The Predatory Offender Registry is a database of offenders that have been convicted and/or charged with certain sex crimes or violent crimes. An offender must register if charged with one of the following offenses and convicted of this offense or another committed during the same set of circumstances: certain first-degree murder and kidnapping; first-, second-, third-, fourth-, and certain fifth-degree criminal sexual conduct (or attempted conduct); indecent exposure, false imprisonment, solicitation, and possession of photographs offenses which involve a minor victim; certain patterned offenses; or comparable federal offenses or crimes in other states. Offenders who have been committed as sexually dangerous persons, sexual psychopathic personalities, or mentally ill and dangerous if charged with one of the aforementioned offenses must also register.

<sup>33</sup> *Minn. Stat.* (2004), §243.166, subd. 1, 6. In the case of non-incarcerated juveniles, the registration period starts on the date of adjudication as a delinquent.

<sup>34</sup> Bureau of Criminal Apprehension data, June 2004. This estimate includes juvenile and adult offenders with a Minnesota address, including incarcerated offenders.

<sup>35</sup> As of December 2004, there were about 3,924 authorized users of the system, representing 360 agencies.

Corrections, have policies that require their supervising agents to verify through on-site visits that sex offenders actually reside at the registered residence.<sup>36</sup>

We examined the number of adults who presently live in Minnesota communities and are registered as predatory offenders with BCA.<sup>37</sup> Our estimate excluded offenders who were juveniles at the time of their initial registration or at the time they committed their offense.<sup>38</sup> Our analysis also excluded offenders who (1) have completed the full duration of their required registration, 2) have moved out of state (although they may work in Minnesota), 3) have been deported, 4) are deceased, or 5) reside in prison, jail, or a secure mental health facility.<sup>39</sup> We found that:

- **In June 2004, there were about 7,000 adults living in Minnesota communities who were registered as “predatory offenders” due to offenses committed as adults.**

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**A majority of sex offenders in the community who are required to register with the state are supervised by a corrections agency.**

Not all sex offenders who are registered with the Minnesota Bureau of Criminal Apprehension are supervised by a corrections agency. Many registered offenders have completed their prison or probation sentences. For example, state law requires some offenders to register with BCA for the rest of their lives; in contrast, the law does not authorize courts to sentence offenders to lifetime probation.<sup>40</sup> Sex offenders released from prison are required to register with BCA for at least ten years; however, an offender would have to receive at least a 30-year prison sentence to be eligible for ten years of post-prison supervised release in the community.<sup>41</sup> We obtained statewide data from the Minnesota Department of Corrections regarding adults who were on probation or supervised release for a sex offense.<sup>42</sup> We found that:

- **As of June 2004, about 4,500 adults in Minnesota were under community-based correctional supervision for a sex offense.**

<sup>36</sup> For example, DOC Policy 201.020 requires quarterly home visits for this purpose—for those offenders under the department’s supervision.

<sup>37</sup> Offenders “in the community” include those living at private residences or residential facilities, plus homeless offenders. Offenders in prisons, jails, or security hospitals were not included.

<sup>38</sup> For the analyses in this chapter, we excluded about 1,250 persons who were adults in June 2004 but were juveniles at the time they committed their offense. We focused on persons initially required to register as adults partly because practices regarding juvenile registration have varied around Minnesota. Corrections officials said that district court judges have stayed adjudication of some juveniles partly to defer the state’s registration requirements—thus, contributing to inconsistencies in registration practices for juveniles.

<sup>39</sup> Without excluding these categories, the total number of offenders in the Predatory Offender Registry is much higher. As of December 2004, BCA’s database had a total of 15,700 predatory offenders.

<sup>40</sup> *Minn. Stat.* (2004), §243.166, subd. 6(d).

<sup>41</sup> On the other hand, there are a small number of persons on probation for sex offenses in Minnesota who are not required to register with BCA. In December 2002, there were 277 persons on probation for a misdemeanor or gross misdemeanor, and some of these offenses are not covered by the registration law.

<sup>42</sup> The data were from the department’s Statewide Supervision System, which identifies each offender on supervision by community corrections agencies throughout the state. In addition to the 4,500 adults who were under supervision for a sex offense, some registered predatory offenders may have been under correctional supervision for offenses other than sex offenses.

Chapter 2 discusses the nature of community-based correctional supervision in more detail.

## Community Notification

Minnesota law requires local law enforcement agencies to disclose certain information about individual sex offenders who are being (or have been) released from prison. Making such information available is intended to “protect the public and counteract the offender’s dangerousness.”<sup>43</sup>

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**When sex offenders are released from prison, state law requires notification of certain people in the community.**

Since late 1996, every sex offender released from prison has been assigned a “risk level” indicating the offender’s likelihood to reoffend. To determine the offender’s risk level, a Department of Corrections’ End-of-Confinement Review Committee (ECRC) evaluates information about the offender, including seriousness of the offense for which the offender was convicted, prior offense history, offender characteristics, response to treatment, history of substance abuse, the availability of community support, attitude about reoffending, and physical condition.<sup>44</sup> The ECRC then designates the sex offender as a Level I, Level II, or Level III offender, with Level III signifying the highest risk to the community. Offenders are notified about their risk level assignment prior to their release, and they have the right to appeal. Between 1996 and 2004, 62 percent of the offenders reviewed by ECRCs were designated as Level I, 26 percent were Level II, and 13 percent were Level III.<sup>45</sup>

Depending on the assigned risk level, local law enforcement then discloses certain information about the offender, described in Table 1.5. The law does not specify exactly what information about the offender must be disclosed, and it gives law enforcement agencies latitude to determine which individuals or organizations to inform. However, the law says that decisions about public disclosure “must relate to the level of danger posed by the offender, to the offender’s pattern of offending behavior, and to the need of community members for information to enhance their individual and collective safety.”<sup>46</sup>

When a Level III offender is released from prison, the local law enforcement agency typically conducts a public meeting in the area where the offender will be living. There were about 300 such meetings during the first six years following passage of the community notification law, and these meetings were attended by an estimated 75,000 people.<sup>47</sup> The Minnesota Department of Corrections also posts information about Level III offenders on its public website.

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<sup>43</sup> *Minn. Stat.* (2004), §244.052, subd. 4.

<sup>44</sup> *Minn. Stat.* (2004), §244.052, subd. 3.

<sup>45</sup> This is based on 4,140 offenders released from prison during this period. Offenders’ initial risk level assignments can change if they violate their conditions of release and their release is revoked.

<sup>46</sup> *Minn. Stat.* (2004), §244.052, subd. 4.

<sup>47</sup> Department of Corrections website: <http://www.doc.state.mn.us/level3/history.htm>; accessed November 11, 2004.

**Table 1.5: Public Notification Requirements Regarding Level I, II, and III Offenders**

| Type of Offender | The local law enforcement agency:  |   |
|------------------|--|---|
|                  | MAY disclose information to:   | MUST disclose information to:   |
| Level I          | <ul style="list-style-type: none"> <li>• Other law enforcement agencies</li> <li>• Witnesses to or victims of the offense</li> </ul>   | <ul style="list-style-type: none"> <li>• Victims of the offense who have specifically requested disclosure</li> <li>• Adult members of the offender’s immediate household</li> </ul>  |
| Level II         | <ul style="list-style-type: none"> <li>• Other law enforcement agencies</li> <li>• Witnesses to or victims of the offense</li> <li>• Agencies and groups the offender is likely to encounter, including staff of educational institutions, day care establishments, and organizations that serve persons likely to be victimized by the offender<sup>a</sup></li> <li>• Individuals that law enforcement believes are likely to be victimized by the offender, based on the offender’s previous patterns and victim preferences</li> </ul> | <ul style="list-style-type: none"> <li>• Victims of the offense who have specifically requested disclosure</li> <li>• Adult members of the offender’s immediate household</li> </ul>  |
| Level III        |  | <ul style="list-style-type: none"> <li>• Witnesses to and victims of the offense</li> <li>• Adult members of the offender’s immediate household</li> <li>• Other law enforcement agencies</li> <li>• Agencies and groups the offender is likely to encounter, including staff of educational institutions, day care establishments, and organizations that serve persons likely to be victimized by the offender</li> <li>• Individuals that law enforcement believes are likely to be victimized by the offender, based on the offender’s previous patterns and victim preferences</li> <li>• Other members of the community whom the offender is likely to encounter<sup>a</sup></li> </ul> |

NOTE: The Level III portion of the law says that law enforcement “shall disclose” information to the persons and entities described in the Level I and II portions of the law. Thus, although some of these persons and entities were categorized in the “may disclose” category for Levels I and II, we categorized them in the “must disclose” category for Level III.

<sup>a</sup>The law says that “likely to encounter” means that “(1) the organizations or community members are in a location or in close proximity to a location where the offender lives or is employed, or which the offender visits or is likely to visit on a regular basis, other than the location of the offender’s outpatient treatment program; and (2) the types of interaction which ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably certain.”

SOURCE: *Minn. Stat.* (2004), §244.052, subd. 4.

Earlier, we noted that about 7,000 registered adult predatory offenders lived in Minnesota communities as of June 2004. Table 1.6 presents a profile of these offenders. We found that:

- **Under present law, 27 percent of the registered adult sex offenders living in Minnesota communities in mid-2004 were subject to community notification.**

**Table 1.6: Number of Minnesota Adults Registered as Predatory Offenders, by Type of Residence, June 2004**

| Residence Type                   | Registered Offenders |          |         |                         | Total |
|----------------------------------|----------------------|----------|---------|-------------------------|-------|
|                                  | Level III            | Level II | Level I | Unassigned <sup>c</sup> |       |
| Community Residence <sup>a</sup> | 112                  | 470      | 1,321   | 5,153                   | 7,056 |
| Incarcerated <sup>b</sup>        | 234                  | 229      | 421     | 1,057                   | 1,941 |
| Total                            | 346                  | 699      | 1,742   | 6,210                   | 8,997 |

NOTE: Excludes offenders who were deported and offenders required to register for offenses committed as juveniles.

<sup>a</sup>Includes offenders reporting a residence type of "Residence," "Homeless," or "Residential Facility" (such as a halfway house).

<sup>b</sup>Includes offenders in prisons, jails, or security hospitals.

<sup>c</sup>Includes offenders released from prison prior to community notification requirements, and offenders sentenced to probation rather than prison.

SOURCE: Office of the Legislative Auditor's analysis of data from the Bureau of Criminal Apprehension and Department of Corrections, June 2004.

**Under state law, sex offenders on probation are not assigned a "risk level" and, thus, are not subject to community notification requirements.**

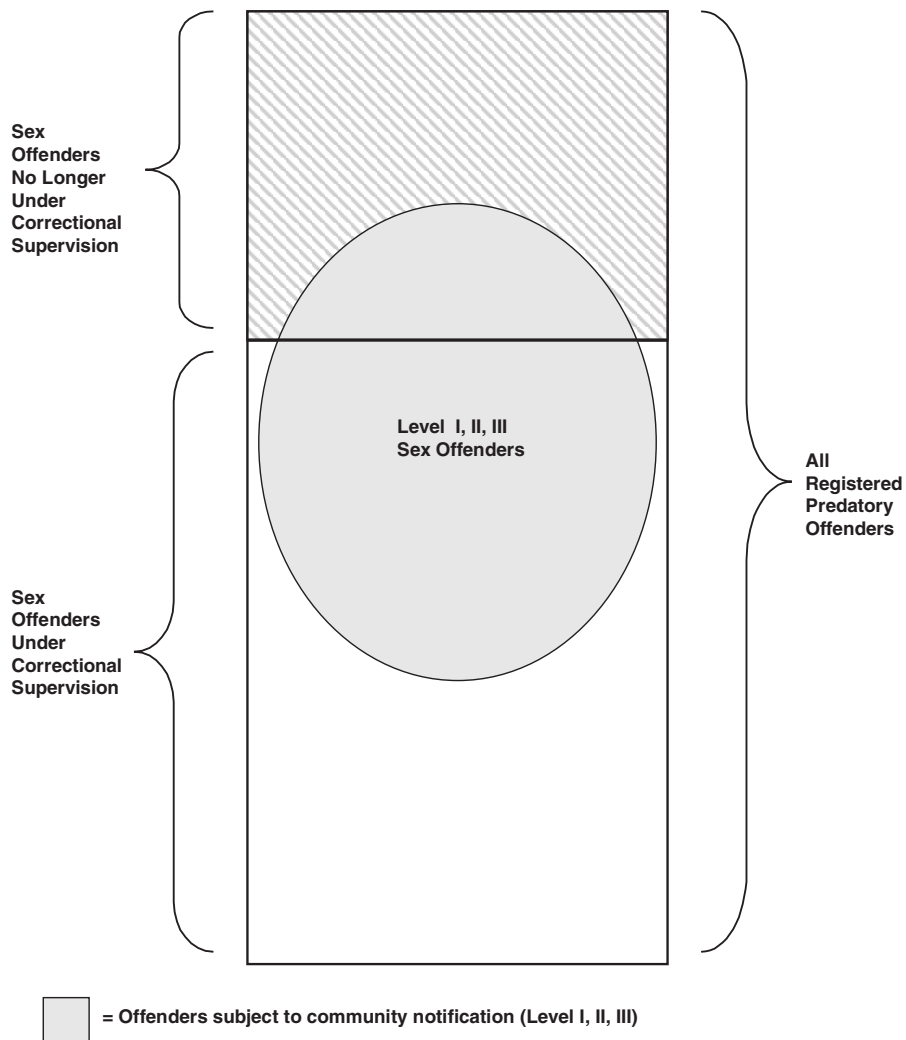
Again, state law requires community notification only for offenders categorized as Level I, II, or III at the time they were released from prison. State law does not require community notification for the remaining 73 percent of registered adult sex offenders. This group includes (1) sex offenders who were sentenced to probation rather than prison, and (2) sex offenders who were released from prison before the community notification law took effect in 1996. Offenders sentenced to prison have typically committed more serious offenses or have longer criminal histories than offenders sentenced to probation, so the law targets community notification resources toward released prisoners, particularly those judged to be high risks for new offenses.

It is worth noting that a small fraction of the 7,056 registered offenders living in Minnesota communities were Level III offenders, who are subject to the broadest levels of community notification. There were 112 Level III offenders living in Minnesota communities in June 2004, and they comprised less than 2 percent of the registered predatory offenders living in Minnesota communities. Thus, while the release of a Level III offender often receives considerable attention, there may be other sex offenders residing in communities for whom there is limited or no notification required under current law. On the other hand, public meetings regarding individual Level III offenders provide an opportunity for law enforcement and corrections officials to help educate the public about the range of sex offenders who live in communities, including those who are not subject to community notification.

Figure 1.4 shows graphically that the largest category of sex offenders living in Minnesota communities are those who are required to register with the state (about 7,000).<sup>48</sup> A smaller group of sex offenders are under correctional

<sup>48</sup> Again, offenders "in the community" include those living in private residences or residential facilities, as well as homeless offenders. They do not include offenders in jail, prison, or security hospitals.

**Figure 1.4: Illustration of Sex Offender Populations Subject to Registration, Correctional Supervision, and Community Notification**



NOTE: This figure is presented for illustration purposes—to show that registered sex offenders may be subject to correctional supervision, community notification, neither, or both. The number of offenders in some of these categories is difficult to determine precisely, so this figure represents a rough approximation. This figure does not reflect the fact that some offenders may be under supervision for low-level sex offenses that do not require registration.

SOURCE: Office of the Legislative Auditor.

supervision (about 4,500), and a still smaller group of sex offenders are subject to community notification (about 1,900). It is also important to note that many of the higher-risk offenders who are subject to registration and community notification requirements have completed their full sentence and corrections agencies no longer have authority to supervise them. As shown in Table 1.7, we estimated that 67 percent of Minnesota’s Level III offenders and 57 percent of Level II offenders living in Minnesota communities were supervised by corrections agencies in June 2004.<sup>49</sup>

**Table 1.7: Supervision Status of Registered Predatory Offenders (Risk Levels II and III) Living in Minnesota Communities, Estimated as of June 2004**

| Supervision Status  | Level II Offenders (N=470) | Level III Offenders (N=112) |
|---|----------------------------|-----------------------------|
| Registered and Under Correctional Supervision for a Sex Offense | 57%                        | 67%                         |
| Registered, but Completed Prison Sentence                       | <u>43</u><br>100%          | <u>33</u><br>100%           |

SOURCE: Office of the Legislative Auditor’s analysis of data from the Bureau of Criminal Apprehension and Department of Corrections, June 2004.

**The law specifies how long offenders will be subject to registration and community notification.**

Community notification is supposed to be an ongoing process, not simply a one-time event that occurs when a sex offender is released from prison. The law requires a law enforcement agency to continue disclosing information about an individual offender for as long as the person is required to register as a predatory offender with the Bureau of Criminal Apprehension.<sup>50</sup> But the law typically requires registration to occur for a limited time period, not for an offender’s entire life.<sup>51</sup> For example, of Level I, II, and III offenders who were registered with BCA in June 2004 and living in Minnesota communities, we found that 75 percent were currently required to register until at least January 2010, but only 13 percent were currently required to register until at least January 2015. These offenders’ actual registration periods could eventually be extended if they fail to register, commit new offenses, or violate the terms of probation, supervised release, or conditional release. Still, under existing law, it is plausible that many

<sup>49</sup> We used BCA’s database of predatory offenders to identify Level II and III offenders living in Minnesota communities. We then determined which of these offenders were still under correctional supervision for a sex offense by looking them up in DOC’s Statewide Supervision System and Correctional Operations Management System. Some of the offenders who we characterized as no longer under correctional supervision could have been under supervision for a crime other than a sex offense.

<sup>50</sup> *Minn. Stat.* (2004), §244.052, subd. 4.

<sup>51</sup> Among Level II and III adult offenders who had completed their sentences and were no longer under correctional supervision, we found that less than 2 percent were required to register for life.

of the state's higher risk sex offenders who live in Minnesota communities today may not be subject to community notification requirements a decade from now.<sup>52</sup>

## OFFENDER AND VICTIM CHARACTERISTICS

In this section, we provide a profile of Minnesota sex offenders, based on existing data. However, it is difficult to describe the characteristics of a "typical" sex offender. According to the U.S. Justice Department:

"Although many practitioners describe sex offenders with such words as "manipulative," "secretive," "devious," and "deceptive," a set of characteristics (e.g., physical, mental, psychological, personality, emotional) that is common to all or most sex offenders has not been identified. Because of the diversity in the demographic and social makeup of those who commit sex offenses, a profile of a "typical" sex offender does not exist..."<sup>53</sup>

While sex offenders are a diverse population in many respects, most sex offenders share one demographic trait. Specifically,

- **The overwhelming majority of convicted sex offenders are males.**

For example, males comprised 98 percent of the persons sentenced in Minnesota in 2003 for criminal sexual conduct, and they comprised 98 percent of the state's registered predatory offenders, as of June 2004.

## Location of Sex Offenders in the Community

We used statewide data from the Bureau of Criminal Apprehension and the Minnesota Department of Corrections to examine a snapshot (as of June 2004) of the locations of sex offenders living in Minnesota communities. Overall, the number of registered sex offenders was almost evenly split between the seven-county Twin Cities area (49 percent) and the rest of Minnesota (51 percent).<sup>54</sup> However, we found that:

- **Suburban Twin Cities counties had fewer registered and high-risk adult sex offenders per 1,000 population than outstate counties (as a group), Hennepin County, and Ramsey County.**

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**Ninety-eight percent of sex offenders are males.**

<sup>52</sup> While notification requirements for some offenders presently in the community may lapse in the next decade, additional offenders will become subject to notification requirements following sentencing or imprisonment.

<sup>53</sup> U.S. Department of Justice, Center for Sex Offender Management, *An Overview of Sex Offender Management* (Washington, D.C., July 2002), 1.

<sup>54</sup> In 2003, the seven-county metropolitan area had about 54 percent of Minnesota's total population.

As shown in Table 1.8, the seven-county Twin Cities metropolitan area had 1.26 registered adult sex offenders per 1,000 population in June 2004, compared with 1.53 in outstate Minnesota. But the rates in suburban Twin Cities counties were lower than the rates in Hennepin (1.38) and Ramsey (1.66) counties. Statewide, the counties with the highest rates of non-incarcerated, registered offenders per 1,000 population were Kanabec (3.10), Cass (2.84), and Pine (2.78).

**Table 1.8: Registered Adult Sex Offenders Per 1,000 Population, June 2004**

| <u>Region/County/City</u>                  | <u>Registered Adult Sex Offenders<br/>Per 1,000 Population</u> |
|--|--|
| Seven-County Twin Cities Metropolitan Area | 1.26   |
| Outstate Minnesota                         | 1.53   |
| Statewide                                  | 1.39   |
| Selected Counties/Cities                   |  |
| Ramsey                                     | 1.66   |
| Hennepin                                   | 1.38   |
| Anoka                                      | 1.17   |
| Dakota                                     | .90  |
| Washington                                 | .90  |
| Scott                                      | .79  |
| Carver                                     | .71  |
| Kanabec                                    | 3.10   |
| Cass                                       | 2.84   |
| Pine                                       | 2.78   |
| Minneapolis                                | 2.30   |
| St. Paul                                   | 2.13   |

SOURCE: Office of the Legislative Auditor's analysis of: Bureau of Criminal Apprehension data, June 2004; Minnesota State Demographic Center, *2003 Minnesota County Population Estimates*. The Minneapolis and St. Paul figures were based on BCA data as of November 2004.

**Some counties  
have  
disproportionate  
shares of the  
state's higher  
risk sex  
offenders.**

In addition, Table 1.9 shows the location of sex offenders released from prison who lived in Minnesota communities. Hennepin County had 22 percent of Minnesota's general population, but it had disproportionately high shares of the state's higher-risk sex offenders, including 33 percent of the Level II offenders and 48 percent of the Level III offenders. Two other large counties (Ramsey and St. Louis) also had disproportionate shares of Minnesota's Level I, II, and III offenders. In contrast, Twin Cities suburban counties all had disproportionately low shares of these offenders, compared with their shares of the state's population.<sup>55</sup>

Some urban centers had above-average concentrations of sex offenders. There were 1.39 registered sex offenders per 1,000 population statewide, but the rates for Minneapolis (2.30) and St. Paul (2.13) were higher. Also, of the 112 Level III offenders who lived in Minnesota communities as of August 18, 2004, 48 lived in

<sup>55</sup> We also examined counties' shares of the all sex offenders under correctional supervision. All suburban counties had disproportionately low shares of these offenders compared with their share of Minnesota's total population.

**Table 1.9: Reported Residence of Registered Adult Sex Offenders, by Assigned Risk Levels, June 2004**

| Region/County                              | Percent of Minnesota's Population-2003 (N=5,088,006) | Registered Adult Sex Offenders Whose Risk for Reoffending was Assessed Prior to Release From Prison |   |  |
|--|--|---|---|--|
|  |  | Percent of Level I Sex Offenders (N=1,321)  | Percent of Level II Sex Offenders (N=470) | Percent of Level III Sex Offenders (N=112) |
| Seven-County Twin Cities Metropolitan Area | 53.9%  | 51.8%   | 56.4%                                     | 65.2%                                      |
| Outstate                                   | 46.1   | 48.2  | 43.6                                      | 34.8                                       |
| Selected Counties                          |  |   |   |  |
| Hennepin                                   | 22.4   | 26.3  | 32.6                                      | 48.2                                       |
| Ramsey                                     | 10.1   | 14.6  | 14.7                                      | 16.1                                       |
| Dakota                                     | 7.4  | 3.5   | 2.3                                       | 0.0  |
| Anoka                                      | 6.2  | 4.3   | 3.2                                       | 0.9  |
| Washington                                 | 4.2  | 1.4   | 1.5                                       | 0.0  |
| Scott                                      | 2.1  | 0.8   | 1.5                                       | 0.0  |
| Carver                                     | 1.5  | 0.8   | 0.6                                       | 0.0  |
| St. Louis                                  | 3.9  | 5.1   | 4.9                                       | 6.3  |
| Olmsted                                    | 2.6  | 3.3   | 2.3                                       | 4.5  |

SOURCE: Office of the Legislative Auditor's analysis of: Bureau of Criminal Apprehension data, June 2004; Minnesota State Demographic Center, 2003 Minnesota County Population Estimates.

Minneapolis and 12 lived in St. Paul.<sup>56</sup> State law says that corrections agencies, “to the greatest extent feasible, shall mitigate the concentration of level III offenders....”<sup>57</sup> However, a 2003 Department of Corrections report said: “Because of limited placement options, rarely does a supervising agency have a choice between two separate placements for an offender that would allow

mitigation of the concentration of level three offenders near schools or other level three offenders to be taken into consideration.”<sup>58</sup>

## Other Characteristics

### Offender Age

Table 1.10 shows the age at the time of the offense of adults who were sentenced by Minnesota courts in 2003 for criminal sexual conduct. The median age of adult sex offenders sentenced in 2003 was 30, slightly above the median age (28) of all adult offenders who were sentenced for felonies in 2003. However, it is

<sup>56</sup> Office of the Legislative Auditor analysis of data from the Minnesota Department of Corrections Level III website. Five of the Minneapolis residents and one St. Paul resident were in jail at the time of our review.

<sup>57</sup> *Minn. Stat.* (2004), §244.052, subd. 4a.

<sup>58</sup> Minnesota Department of Corrections, *Level Three Sex Offenders, Residential Placement Issues: 2003 Report to the Legislature* (St. Paul, January 2003), 9.

**Table 1.10: Age (at Time of Offense) of Persons Sentenced as Adults for Criminal Sexual Conduct, 2003**

| <u>Age at Time of Offense</u> | <u>Number of Sentenced Offenders</u> | <u>Percent of Sentenced Offenders</u> |
|-------------------------------|--------------------------------------|---------------------------------------|
| <18                           | 17                                   | 2.8%                                  |
| 18-24                         | 204                                  | 33.6                                  |
| 25-29                         | 82                                   | 13.5                                  |
| 30-34                         | 81                                   | 13.3                                  |
| 35-39                         | 80                                   | 13.2                                  |
| 40-44                         | 63                                   | 10.4                                  |
| 45-49                         | 38                                   | 6.3                                   |
| 50-54                         | 14                                   | 2.3                                   |
| 55-59                         | 12                                   | 2.0                                   |
| 60+                           | <u>16</u>                            | <u>2.6</u>                            |
| Total (All Ages)              | 607                                  | 100.0%                                |

SOURCE: Minnesota Sentencing Guidelines Commission.

### Most victims of sex offenses are under age 18.

important to consider that juveniles also comprise a significant part of the sex offender population. Previous studies have estimated that juveniles account for up to one-fifth of all rapes and almost one-half of all cases of child molestation.<sup>59</sup> Nearly 20 percent of sex offenders under community-based correctional supervision in Minnesota are juveniles.<sup>60</sup>

#### Age of Victims

According to the Minnesota Sentencing Guidelines Commission, 32 percent of the state's felony sex offense sentences in 2003 involved crimes against persons under age 13. Another 52 percent of cases involved victims who were ages 13 to 17, and 15 percent of the cases involved adult victims.<sup>61</sup> Some research has shown that a significant share of sex offenders have histories of victimizing both adults and children, although the exact amount of such "crossover" remains a topic of continued research.<sup>62</sup>

<sup>59</sup> U.S. Department of Justice, Center for Sex Offender Management, *Understanding Juvenile Sexual Offending Behavior: Emerging Approaches and Management Practices* (Washington, D.C., December 1999), 1.

<sup>60</sup> This estimate was based on (1) June 2004 data regarding adults under correctional supervision for a sex offense, and (2) December 2002 data regarding juveniles on probation.

<sup>61</sup> Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Criminal Sexual Conduct (CSC) Offenses, Offenders Sentenced in 2003*, 5.

<sup>62</sup> Peggy Heil, Sean Ahlmeyer, and Dominique Simons, "Crossover Sexual Offenses," *Sexual Abuse: A Journal of Research and Treatment*, 15, n. 4 (October 2003): 221-236; based on official records, self-reports, and polygraph tests, this study found that 70 percent of a sample of Colorado sex offenders in prison and 18 percent of a sample of parolees had a history of victimizing both adults and children (p. 229). The authors said that studies that use polygraphs or guarantees of confidentiality have reported higher levels of "crossover" than studies that have relied solely on official records or offender self-reports. Kim English, Linda Jones, Diane Pasini-Hill, Diane Patrick, and Sydney Cooley-Towell, *The Value of Polygraph Testing in Sex Offender Management: Research*

**Most sex offenders commit their crimes against family members or acquaintances.**

## Gender of Victims

In Minnesota cases involving persons sentenced in 2003 for criminal sexual conduct, 88 percent of victims were female, and 12 percent were male.<sup>63</sup> Some sex offenders commit their offenses against both males and females; for example, a recent study found that 36 percent of a Colorado prison inmate sample and 10 percent of a Colorado parolee sample admitted to offenses against both males and females.<sup>64</sup>

## Victim's Relationship With the Offender

According to data submitted by prosecutors to the Minnesota Sentencing Guidelines Commission, 32 percent of persons sentenced in 2003 in Minnesota for felony-level sex offenses committed their offenses against family members. In addition, prosecutors classified 50 percent of the offenders as "acquaintances" of their victims, 8 percent as in "positions of authority" over the victims, and 7 percent as strangers to their victims.<sup>65</sup>

## Types of Offenses

In a 1999 study of sex offenders sentenced to probation, the Minnesota Department of Corrections categorized offenders based on the crimes that led to their probation sentences (but not their full criminal records). The study determined that 22 percent of the offenders were rapists—that is, they used force and penetrated their adult or child victims. Another 36 percent of the offenders committed child incest—that is, the victim (under age 18) and offender were related, and the offense did not involve both force and penetration. In addition, 35 percent of the offenders were classified as child molesters—that is, the victim (under age 18) and offender were not related, and the offense did not involve both force and penetration. Five percent of the offenders committed adult molestation or incest.<sup>66</sup> However, as noted earlier, some sex offenders commit multiple types of offenses over time. For example, a Colorado study found that 64 percent of a

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Report Submitted to the National Institute of Justice (Denver, CO: Colorado Department of Public Safety, December 2000); this study reported that 33 percent of a sample of sex offenders under community supervision had both adult and juvenile victims, based on information from polygraphs, treatment, and other records (p. 30).

<sup>63</sup> Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Criminal Sexual Conduct (CSC) Offenses, Offenders Sentenced in 2003*, 5.

<sup>64</sup> Heil, Ahlmeyer, and Simons, "Crossover Sexual Offenses," 229. This study relied on polygraphs and treatment-related disclosures, not just official records of prior criminal history.

<sup>65</sup> Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Criminal Sexual Conduct (CSC) Offenses, Offenders Sentenced in 2003*, 5. "Position of authority" is defined in *Minn. Stat.* §609.341, subd. 10, as "any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child...." It is plausible, however, that prosecutors counted parents as "family members" when reporting the offender's relationship to the victim, rather than as persons in "positions of authority."

<sup>66</sup> Minnesota Department of Corrections, *Community-Based Sex Offender Program Evaluation Project: 1999 Report to the Legislature* (St. Paul, October 1999-revised January 2000), 18-20. This study was based on a review of about 1,400 offenders sentenced to probation in 1987, 1989, or 1992. Two percent of the offenders were sentenced for more than one of these types of sex offenses.

sample of inmates known to have committed incest also admitted to victimizing children who were not relatives.<sup>67</sup>

### **Offender’s Method of Ensuring Victim Compliance**

A Minnesota Department of Corrections study found that 27 percent of sex offenders on probation had used physical force as part of their crime of conviction, and less than 2 percent used a weapon.<sup>68</sup> The study said that the remainder of the offenders relied on “implicit coercion,” intimidation, threats of harm, or taking advantage of a sleeping victim.

### **Offender’s Marital Status at Time of Offense**

A Minnesota Department of Corrections study found that 47 percent of adult sex offenders sentenced to probation were single at the time of their offense. About 42 percent were married or separated, and 10 percent were divorced.<sup>69</sup>

## **RECIDIVISM**

The only way to fully protect the general public from known criminals is to permanently incarcerate them in state prisons or local jails. Non-incarcerated offenders will always pose some risk to the general public, even though many are subject to ongoing supervision by corrections agencies.

We examined previous research regarding repeat offenses by sex offenders. We found that:

- **National and Minnesota studies have generally shown that sex offenders in the community have lower recidivism rates than other types of criminal offenders, but such findings should be considered with caution because many sexual offenses are undetected.**

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**Large-scale studies have found relatively low rates of rearrest and reconviction among sex offenders.**

Sexual offenses can have enormous impacts on the victims, so even low rates of sexual recidivism are a matter of serious concern. Still, researchers have noted that previous studies “contradict the popular view that sexual offenders inevitably reoffend.”<sup>70</sup>

For example, the U.S. Department of Justice tracked about 9,700 male sex offenders released from prisons in 15 states (including Minnesota) in 1994. Within the first three years of release, 5.3 percent were rearrested for a sex crime

<sup>67</sup> Heil and others, “Crossover Sexual Offenses,” 232.

<sup>68</sup> Minnesota Department of Corrections, *Community-Based Sex Offender Program Evaluation Project: 1999 Report to the Legislature*, 18. In 3 percent of the cases, the victim required emergency medical treatment as a result of the crime.

<sup>69</sup> *Ibid.*, 15.

<sup>70</sup> R. Karl Hanson and Monique T. Bussiere, “Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies,” *Journal of Consulting and Clinical Psychology*, 66, n. 2 (1998): 357.

and 3.5 percent were reconvicted for a sex crime.<sup>71</sup> In addition, sex offenders' overall rearrest and reconviction rates for any type of crime (not just sex offenses) were 43 percent and 24 percent during the follow-up period, respectively. This was lower than the 68 percent rearrest and 47 percent reconviction rates reported for all categories of released prisoners, as a group.<sup>72</sup>

Canadian researchers R. Karl Hanson and Kelly Morton-Bourgon reviewed 95 previous studies and found that, on average, 13.7 percent of sex offenders had a new sex offense over an average follow-up period of six years.<sup>73</sup> The researchers said there is a consensus that sexual recidivism is associated with at least two broad factors: (1) deviant sexual interests, and (2) unstable, antisocial lifestyles.<sup>74</sup> In addition, Hanson found that offenders who committed incest tended to have lower rates of recidivism than rapists and extra-familial child molesters. Rapists' highest rates of recidivism occurred between ages 18 and 24, while extra-familial child molesters had their highest recidivism rates between ages 25 and 35.<sup>75</sup>

A 1997 study by our office found that 10 percent of Minnesota sex offenders were rearrested for a sex offense within three years of release from prison, and 18 percent of sex offenders on probation were rearrested for a new sex offense in their first three years on probation. In our analysis of various categories of criminals, sex offenders were among the least likely to be rearrested for new crimes.<sup>76</sup> A 1999 study by the Minnesota Department of Corrections found that 9 percent of Minnesota sex offenders on probation were rearrested for a sex offense during a 76-month follow-up period.<sup>77</sup> The department has not reported on statewide sex offender recidivism rates since this 1999 study.<sup>78</sup>

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**However, many sex offenses are not reported to law enforcement.**

It is likely, however, that the recidivism rates reported in these studies would be higher by some undetermined amount if all sexual offenses were detected. According to the U.S. Justice Department, only 31 percent of rapes and sexual

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<sup>71</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, D.C., November 2003).

<sup>72</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994* (Washington, D.C., June 2002).

<sup>73</sup> R. Karl Hanson and Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (Ottawa: Public Safety and Emergency Preparedness Canada, 2004). The studies used various measures of new offenses—typically new convictions, new arrests, or combinations of multiple measures.

<sup>74</sup> *Ibid.*, 1. The authors said that deviant acts include those that are unusual (such as fetishism, exhibitionism, cross-dressing, voyeurism, or auto-erotic asphyxia) or illegal.

<sup>75</sup> R. Karl Hanson, *Age and Sexual Recidivism: A Comparison of Rapists and Child Molesters* (Ottawa: Department of the Solicitor General Canada, 2001).

<sup>76</sup> Minnesota Office of the Legislative Auditor, *Recidivism of Adult Felons* (St. Paul, January 1997).

<sup>77</sup> Minnesota Department of Corrections, *Community-Based Sex Offender Program Evaluation Project*, 29. This study suggested that the earlier study by the Office of the Legislative Auditor may have overstated the rearrest rate of sex offenders on probation by counting arrests for probation violations as arrests for new sex offenses.

<sup>78</sup> In Minnesota Department of Corrections, *Level Three Sex Offenders, Residential Placement Issues: 2003 Report to the Legislature*, 4, the department reported that 13 Level III sex offenders who were released from prison in 1997, 1998, or 1999 were known to have been rearrested for a sex offense by March 2002. The department did not indicate what percentage of the released Level III offenders these repeat offenders comprised.

assaults were reported to the police between 1992 and 2000.<sup>79</sup> In addition, during sex offender treatment and polygraph examinations, offenders sometimes admit to previously undetected offenses they committed while under correctional supervision.<sup>80</sup>

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<sup>79</sup> Timothy C. Hart and Callie Rennison, *Reporting Crime to the Police, 1992-2000* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, March 2003). The department's estimates are based on interviews with persons about their crime victimizations. The 31 percent rate was the lowest rate of any violent crime.

<sup>80</sup> English and others, *The Value of Polygraph Testing in Sex Offender Management*, 35. In this study, 21 of 147 sex offenders admitted to sexually abusing victims during supervision periods ranging from 3 to 24 months.