

# Offender Assessment and Treatment

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## SUMMARY

*Offender assessment and treatment are supposed to play key roles in Minnesota’s strategy for managing sex offenders, but there is significant room for improvement. State law requires most convicted sex offenders to undergo specialized assessments—in part, to determine their treatment needs. But, in some parts of Minnesota, these assessments have been postponed until after sentencing, potentially delaying admission to treatment. Also, many repeat sex offenders have not been referred to the Minnesota state security hospital for assessments, contrary to state law. There is considerable dissatisfaction among directors of community-based corrections agencies with the availability of treatment for sex offenders while in prison and after their release from prison. In addition, the components of sex offender treatment programs have not been specified in state rules, and program quality varies. Corrections professionals generally support the aims of sex offender treatment, although previous research has not conclusively determined whether (or in which situations) treatment reduces offenders’ recidivism risks. The Minnesota Department of Corrections should collect additional information on sex offender treatment participation and periodically track sex offenders’ treatment outcomes.*

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Sex offender treatment is often regarded as one part of a broader effort to contain and possibly change the behaviors of sex offenders. As described by one sex offender treatment provider,

“[A] primary purpose of therapy is to help the offender move through and beyond denial. ... Unless the offender can become acquainted with and accept these hidden sides of himself, he will not learn to manage or even recognize the concealed feelings that fuel his deviant sexual behavior. Honest disclosure of the disgusting and embarrassing actions he has committed brings the offender into direct and forceful contact with these important parts of himself. This process of disclosure forces the offender to tell others the very things about himself that he is afraid to face.”<sup>1</sup>

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<sup>1</sup> Michael Knapp, “Treatment of Sex Offenders,” *Managing Adult Sex Offenders on Probation and Parole: A Containment Approach* (Lexington, KY: American Probation and Parole Association, January 1996), 13-3, 4.

In Minnesota, most convicted sex offenders are assessed to determine their need for treatment, and most are directed to participate in specialized sex offender programs. In this chapter, we address the following questions:

- **How do community-based corrections agencies assess sex offenders' need for community-based treatment?**
- **Does the Minnesota Department of Corrections adequately oversee and evaluate Minnesota's sex offender treatment services?**
- **To what extent do imprisoned sex offenders complete treatment programs before they are released to the community?**
- **Is there enough treatment available for sex offenders who are under correctional supervision in the community? How do state and county corrections officials rate the quality of Minnesota's community-based sex offender treatment programs?**
- **What has research shown about the impact of sex offender treatment?**

This chapter discusses some, but not all, types of sex offender assessments. We focused on the assessments conducted to determine sex offenders' needs for community-based treatment (or civil commitment) following conviction, as required by state law.<sup>2</sup> However, we did not evaluate the risk assessments that are conducted for community notification purposes prior to release of sex offenders from prison.<sup>3</sup>

## SEX OFFENDER ASSESSMENT

### Compliance with State Requirements for Post-Conviction Assessments

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**State law requires independent assessments of convicted sex offenders.**

Minnesota law requires that persons convicted of a sex offense receive an “independent professional assessment of [their] need for sex offender treatment.”<sup>4</sup> The court may waive the assessment for (1) persons who had adequate assessments prior to conviction, and (2) persons convicted of offenses for which a commitment to prison is presumed by the state's sentencing guidelines. Thus, the statutory requirement for sex offender assessment pertains to offenders who are presumed to be sentenced to probation, not prison.<sup>5</sup> These assessments must be

<sup>2</sup> *Minn. Stat.* (2004), §609.3452.

<sup>3</sup> Pre-release assessments are done by “End-of-Confinement Review Committees,” starting at least 90 days prior to the offender's prison release. Offenders are assigned risk levels I, II, or III (III is the highest risk), and state law prescribes whom may be notified of the offender's release, based on the risk level.

<sup>4</sup> *Minn. Stat.* (2004), §609.3452, subd. 1.

<sup>5</sup> Based on an offender's crime of conviction and previous criminal record, the sentencing guidelines specify “presumptive” sentences. The law authorizes judges to depart from presumptive sentences, although they must state their reasons for departures.

done by persons who are “experienced in the evaluation and treatment of sex offenders.”<sup>6</sup>

The law requires the court to order a sex offender assessment “when a person is convicted of a sex offense.”<sup>7</sup> While this statutory language does not specify the exact timing of the assessment, a subsequent provision of the law implies that treatment-related assessments should be completed prior to the court’s sentencing decision:

“If the assessment indicates that the offender is in need of and amenable to sex offender treatment, the court shall include in the sentence a requirement that the offender undergo treatment, unless the court sentences the offender to prison.”<sup>8</sup>

However, we found that:

- **Sex offender assessments have been postponed until after sentencing in some parts of Minnesota, apparently in response to elimination of state funding for these assessments.**

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**Since 2003, local corrections agencies have not received state reimbursement for sex offender assessments.**

Until 2003, DOC reimbursed community-based corrections agencies for part of the cost of state-required assessments of felony-level sex offenders. But, in response to the state’s budget shortfall, the department eliminated this funding for the fiscal year 2004-05 biennium—a total of \$295,000. The courts are still mandated to order the assessments, but the costs are now borne by counties or the offenders themselves.<sup>9</sup> We conducted a statewide survey of the directors of Community Corrections Act (CCA) agencies and DOC district offices, and nearly one-third of the directors reported that DOC’s elimination of state funding for sex offender assessments has resulted in a reduction in the number of pre-sentence assessments.<sup>10</sup> Specifically, some directors told us that assessments have been increasingly deferred until after sentencing as offenders have been expected to bear more of the cost. As one director said: “Many clients do not have the funds to pay for assessments. Many have to “save up” to pay for them, and often times it may take many months, which is of great concern.”

The deferral of assessments until after sentencing is a potentially important problem. Assessments not only help courts determine offenders’ treatment needs, but they can also inform judges and corrections staff about offenders’ sexual and criminal histories. Preferably, courts should have this information before they determine the sentences and supervision conditions of convicted offenders, and probation agencies should have this information before they start their supervision.

<sup>6</sup> Minnesota Department of Corrections, *Procedures for the Enhanced Supervision of Sex Offenders in the Community* (St. Paul, December 2003), 2.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, subd. 3. Also, subd. 1a addresses assessments of *repeat* sex offenders and says that courts shall consider such assessments “when sentencing the offender.”

<sup>9</sup> Some local agencies have paid for assessments partly with general state grants, such as grants for “enhanced sex offender supervision.”

<sup>10</sup> Office of the Legislative Auditor survey of directors of Minnesota Department of Corrections district offices and Community Corrections Act agencies, August 2004 (*N*=27).

Some community-based corrections agencies have continued their previous levels of pre-sentence assessments for sex offenders by paying for the assessments with local funds. In some cases, however, the agencies have reduced other expenditures to help pay the cost of sex offender assessments, as indicated in the following statements from two CCA agency directors in response to our August 2004 survey:

“The loss of [state assessment] funding resulted in our having to take dollars out of sex offender treatment. ... We also needed to eliminate a therapist who co-facilitated case management groups. ... If we still don’t have enough money for assessments, we will need to limit the number of assessments at the end of the year.”

“Prior to the elimination of state reimbursement for assessments, our agency was able to access local levy funds to complete assessments on misdemeanor sex offenders who appeared to have serious high-risk issues, especially on cases which were pled down from felonies or repeat misdemeanor offenders. With the loss of reimbursement for felony offender assessments, we now will not be able to do that as often.”<sup>11</sup>

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**State-mandated assessments should be completed prior to sentencing.**

In Chapter 4, we suggest that the Legislature and Minnesota Department of Corrections consider restoring state funds to pay for state-mandated sex offender assessment. However, we also think the Legislature should clarify in statute that sex offender assessments are supposed to occur before sentencing.

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#### RECOMMENDATION

*The Legislature should amend Minn. Stat. (2004), §609.3452, subd. 1, to explicitly require that mandatory sex offender assessments be completed prior to sentencing.*

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State law also has special provisions regarding assessment of *repeat* sex offenders—to help determine the need for community-based treatment or for civil commitment. Since 2001, the law has required courts to order an assessment at the Minnesota state security hospital for anyone convicted of a felony-level sex offense who was previously convicted of a sex offense of any sort. The court must consider the assessment “when sentencing the offender and, if applicable, when making the preliminary determination regarding the appropriateness of a civil commitment petition... ”<sup>12</sup> We asked the Minnesota Department of Human Services (which manages the security hospital) for information on the number of repeat sex offenders assessed at the hospital since 2001. To help us determine the typical number of persons annually convicted of repeat sex offenses, we examined data from the Minnesota Sentencing Guidelines Commission on the number of such cases in 2001 and 2002. We found that:

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<sup>11</sup> Responses to the Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004.

<sup>12</sup> *Minn. Stat.* (2004), §609.3452, subd. 1a.

- **Contrary to state law, some of the state’s repeat sex offenders have not been referred to the state security hospital for assessment, potentially limiting the information that courts have for sentencing decisions or referrals for civil commitment.**

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**State law has special requirements for assessments of repeat sex offenders, but many of these assessments have not been done.**

Over a three-year period, the security hospital assessed 22 repeat offenders, or an average of 7.3 offenders per year.<sup>13</sup> There are various ways to estimate the number of repeat offenders who should be subject to the statutorily-required assessments at the security hospital; the law does not precisely specify which offenders should be considered “repeat” offenders. Using the most restrictive definition of repeat offenders, we estimated that about 30 repeat sex offenders annually should have been assessed at the security hospital.<sup>14</sup> However, this estimate did not include cases where a repeat offender’s earlier felony-level conviction for a sex offense occurred after the date of the felony-level sex offense for which the offender was most recently sentenced. Including these cases would have increased the annual number of repeat sex offenders to 49. In addition, the Sentencing Guidelines Commission does not have data on misdemeanor sex offenses, but the annual number of repeat sex offenders would increase still further if we included the number of felony-level sex offenders who had prior convictions for misdemeanor-level sex offenses. Since 2001, offenders from only 11 counties have been referred to the security hospital for assessment as repeat sex offenders.

We do not know for sure why more repeat offenders have not been referred to the security hospital for assessment. Some corrections staff told us that they were not aware of this statutory provision. Others told us that cost may be an issue, noting that the costs for an assessment by the security hospital are usually higher than the cost of an assessment by the community-based corrections agency. However, we think that steps should be taken to ensure compliance with the law and, if appropriate, to authorize circumstances in which waivers of the law should be granted.

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## RECOMMENDATIONS

*The State Court Administrator’s Office should remind court officials throughout the state about the statutory requirement to refer repeat sex offenders to the state hospital for assessment.*

*The Legislature should clarify whether the Minnesota Department of Human Services has authority to waive assessments of repeat sex offenders in certain circumstances. If so, the department should adopt policies that specify circumstances in which waivers may be appropriate.*

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<sup>13</sup> The director of the security hospital’s sex offender program provided assessment training to Hennepin County staff in 2002 and subsequently waived the requirement for Hennepin’s repeat offenders to be assessed by security hospital staff. The 22 assessments conducted by the hospital do not include 2 that were done by the hospital for Hennepin County in 2002; Hennepin has conducted its own assessments of repeat offenders since that time.

<sup>14</sup> This is based on the Minnesota Sentencing Guidelines Commission data for 2001 and 2002; it excludes repeat offenders from Hennepin County.

## Assessment Tools

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**Assessments can help court and corrections officials determine offenders' supervision and treatment needs.**

The assessments discussed in the previous section are often referred to as “psychosexual assessments.” Ordered by the courts, these post-conviction assessments may indicate whether offenders should be placed in sex offender treatment, chemical dependency treatment, mental health services, or other services. They may also provide the court or supervising agency with information about the offender’s characteristics and history that will be pertinent during the course of supervision. In addition, corrections agencies typically supplement these independent assessments with their own post-conviction assessments of offenders’ risks and needs. This may help agencies make initial assignments of offenders to high, medium, or low levels of supervision, and subsequent assessments may help agencies decide whether to change an offender’s level of supervision.

Until recently, most sex offender assessments in the United States relied solely on clinical judgment to evaluate offender risks.<sup>15</sup> In the past 10 to 15 years, however, agencies have increasingly used “actuarial” assessment tools, based on factors shown in previous research to be associated with recidivism risks. Studies have shown that actuarial assessments predict sexual recidivism more accurately than unstructured clinical assessments.<sup>16</sup>

In a statewide survey, we asked the directors of Minnesota’s community-based corrections agencies to identify the assessment instruments that are used in the majority of their pre-sentence assessments of adult, felony-level sex offenders. Table 3.1 lists the most commonly used assessment instruments, with some used for court-ordered assessments and some used for assessments initiated by the corrections agency. Typically, more than one instrument is used for post-conviction assessments of sex offenders. We found that:

- **Most of Minnesota’s community-based corrections agencies initially assess sex offenders using an instrument specifically designed for sex offenders, but agencies typically conduct subsequent assessments of the offenders using more general risk instruments.**

Table 3.1 shows that agencies used a variety of tools for their initial assessments of sex offenders. The two most common instruments were ones that were not specifically designed for sex offenders. The Minnesota Multiphasic Personality Inventory (MMPI) is a general psychological assessment instrument. The Levels of Services Inventory-Revised (LSI-R) estimates offenders’ general risk of committing any new crime rather than their specific risk of committing a new sexual offense. The MMPI is typically administered by a psychologist, while the LSI-R is usually administered by a probation officer.

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<sup>15</sup> R. Karl Hanson and Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (Ottawa: Public Safety and Emergency Preparedness Canada, 2004), 1-2. According to the authors, experts relied on “unguided clinical judgment”—that is their experience and understanding of a particular case—to make predictions about future behavior.

<sup>16</sup> *Ibid.*, 2-3, 11-14.

**Table 3.1: Instruments Most Often Used in Pre-Sentence Assessments of Minnesota Sex Offenders**

	Percentage of Community Corrections Directors Who Said They Use the Instrument In a Majority of Pre-Sentence Assessments (N=25) <sup>a</sup>	Was the Instrument Designed Specifically for Assessing Sex Offenders?
Minnesota Multiphasic Personality Inventory (MMPI)	88%	No
Levels of Service Inventory-Revised (LSI-R)	80	No
Static-99	76	Yes
Multiphasic Sex Inventory	64	Yes
Millon Clinical Multiaxial Inventory	28	No
Minnesota Sex Offender Screening Tool-Revised (MnSOST-R)	28	Yes
Beck Depression Inventory	24	No
Identification of Triggers Test	24	Yes
Hare Psychopathy Checklist	20	No
Rapid Risk Assessment for Sex Offender Recidivism (RRASOR)	16	Yes

<sup>a</sup>Excludes one agency that has an arrangement with the Minnesota Department of Corrections for pre-sentence assessments and one Minnesota Department of Corrections office that only handles supervised release cases.

SOURCE: Office of the Legislative Auditor survey of directors of Minnesota Department of Corrections district offices and Community Corrections Act agencies, August 2004.

**Sex offenders are assessed with a variety of instruments.**

About three-fourths of community-based corrections agencies said that they typically use a tool called the “Static-99” during initial assessments. This instrument is designed to measure the long-term risk of sex offenders, based on factors that will likely remain the same over time.<sup>17</sup> Of the 25 community corrections agencies that conduct pre-sentence assessments, all but one told us that they initially assess the majority of their sex offenders with an instrument specifically designed for sex offenders.

In contrast, few directors said that they use instruments specifically designed for sex offenders when they periodically *re-assess* offenders’ risks, subsequent to the initial assessment. Rather, agencies often use assessments such as the LSI-R that

<sup>17</sup> In our survey, we also asked directors whether the primary factor in their assignment of sex offenders to levels of supervision is risk assessment scores, the clinical judgments of psychologists, the judgments of corrections officials, or some other factor. The majority of respondents declined to choose one factor as more important than the others.

estimate offenders' *general* recidivism risks,<sup>18</sup> and a few agencies do not regularly re-assess sex offenders.<sup>19</sup>

Corrections researchers concede that there is more to learn about which specific assessment instruments are the best risk predictors of sex offender recidivism. A recent analysis found that there were no significant differences in the predictive accuracy of the various assessment instruments designed specifically for sex offenders. The analysis also identified additional factors that could be assessed to make the instruments more predictive of recidivism.<sup>20</sup>

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**Many agencies said they would like more help identifying "best practices" regarding sex offender assessments.**

State law does not specifically require the Minnesota Department of Corrections to provide guidance to agencies regarding the sex offender assessments they conduct or arrange for. But the law requires DOC to help agencies find training and technical assistance to implement valid offender "classification systems" (not just for sex offenders), and agencies often use risk assessments and psychological assessments to help them classify sex offenders into supervision categories.<sup>21</sup> Many agency heads told us that they would like to have more help identifying "best practices" in assessment. In our statewide survey of DOC district office directors and Community Corrections Act directors, we found that:

- **Sixty-three percent of agency directors said that DOC has not provided sufficient guidance to agencies regarding how to assess sex offenders.**<sup>22</sup>

In Chapter 4, we suggest that sex offender assessment is one of many areas in which state and local officials could identify "best practices." We think it would be reasonable for DOC to provide support and leadership for these efforts, even if it is not specifically required by statute to do so. Alternatively, guidance could be provided by a state sex offender policy board, as discussed in Chapter 4. We do not necessarily think that all corrections agencies should use identical assessment instruments, although there may be advantages to having more consistency. At a minimum, however, community-based corrections agencies should have more information about the possible uses and limitations of existing instruments used for sex offender assessments.

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<sup>18</sup> Several agencies that use the LSI-R for reassessments expressed concern to us that this instrument understates the risk levels of sex offenders. Thus, they said they often "override" the LSI-R risk rating and do not necessarily downgrade sex offenders' supervision levels if they are rated as low risks on the LSI-R.

<sup>19</sup> Eighty-five percent of community corrections directors said that their staff "always," "almost always," or "often" use risk assessment instruments to periodically *re-assess* offenders following the initial assessment. The directors said that these reassessments are typically done every 6 or 12 months.

<sup>20</sup> Hanson and Morton-Bourgon, *Predictors of Sexual Recidivism*. This analysis also found that the predictive accuracy of assessments of general criminal recidivism were about as good as the accuracy of the assessments specifically designed for sex offenders. The authors said: "Further research is required to determine whether the specific sexual offender risk scales provide useful information that is not already captured in the general criminal risk scales" (p. 18).

<sup>21</sup> *Minn. Stat.* (2004), §244.24.

<sup>22</sup> Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004 ( $N=27$ ). Sixty-three percent of directors "disagreed" or "strongly disagreed" with the following statement: "Based on my agency's [or district office's] experience, the Minnesota Department of Corrections has provided sufficient guidance to agencies regarding sex offender assessment." Eleven percent agreed with the statement, and 26 percent neither agreed nor disagreed.

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### RECOMMENDATION

*The Minnesota Department of Corrections (or a state sex offender policy board) should provide community-based corrections agencies with guidance regarding sex offender assessment practices.*

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## Information on Released Prisoners

As noted earlier in this chapter, convicted sex offenders are required by Minnesota law to undergo an assessment of the need for treatment if they do *not* have a presumptive prison sentence under the Minnesota sentencing guidelines. For sex offenders sentenced to prison, DOC policy says that these offenders must be directed to “complete the treatment recommendations of a Department of Corrections or Department of Human Services treatment professional” during their prison stay.<sup>23</sup> State law does not explicitly require an independent professional assessment of the need for treatment when imprisoned sex offenders are released back to the community. Still, there are various prison records that may help community-based corrections staff make judgments about the types of community-based treatment or supervision these offenders need. For example, it might be helpful for community-based corrections staff to see prison records regarding the offenders’ previous sex offender treatment, chemical dependency treatment, psychological assessments, and medical treatments (such as drug prescriptions). However,

- **Some community-based corrections agencies expressed concern that they have received inadequate prison records from DOC regarding the medical, mental health, and treatment history of offenders they must supervise.**

Staff in DOC field offices as well as county corrections agencies told us that they have not always received sufficient information about offenders prior to the start of community supervision. A DOC official told us that medical and mental health information is not part of the “base file” that DOC routinely forwards to corrections agencies that will be supervising offenders released from prison, although this information is sometimes provided upon request. In addition, this official said that even if county corrections agencies request such information, DOC cannot provide it to them unless the offender authorizes the release of this information.<sup>24</sup>

We did not determine exactly how widespread these problems are, although they were mentioned to us by several agencies. But, in our view, it is reasonable for community-based corrections agencies to routinely receive prison records that could help these agencies make supervision or treatment decisions regarding offenders on supervised release.

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**Local corrections agencies should routinely receive prison records to help them make treatment or supervision decisions.**

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<sup>23</sup> Minnesota Department of Corrections Policy 203.013.

<sup>24</sup> This official said that the Minnesota Department of Corrections central office is not required to obtain additional authorization from offenders to release such information to the department’s field offices who request it.

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### RECOMMENDATION

*For sex offenders released from prison, the Legislature should amend state law to require that DOC provide the supervising corrections agency with prison records of the offender's psychological assessments, medical and mental health status, and treatment.*

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## SEX OFFENDER TREATMENT

Community-based corrections agencies often refer sex offenders to treatment programs that are specifically designed and staffed to serve this population. Table 3.2 shows key ways that specialized sex offender treatment differs from traditional mental health counseling or psychotherapy.

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### Table 3.2: Differences Between Sex Offender Treatment and Traditional Mental Health Counseling

Unlike traditional mental health counseling or psychotherapy, sex offender treatment:

- Is primarily focused on the protection of victims and the community.
- Involves sharing of information from treatment sessions with supervision agents, polygraph examiners, and others as necessary.
- Directs considerable attention toward making offenders understand the harm they have caused their victims.
- Focuses on revealing, examining, and challenging the thinking errors that contribute to offending patterns.
- Relies on offender participation in professionally-facilitated groups, where offenders can challenge each others' denials, distortions, and manipulations.

SOURCE: U.S. Department of Justice, Center for Sex Offender Management, *An Overview of Sex Offender Management* (Washington, D.C., July 2002), 6.

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**The Department of Corrections administers Minnesota's community-based treatment system.**

## Statewide Oversight of Sex Offender Treatment

State law gives the Minnesota Department of Corrections responsibility for overseeing community-based sex offender treatment programs. The law says: "A sex offender treatment system is established under the administration of the commissioner of corrections to provide and finance a range of sex offender treatment programs for eligible adults and juveniles."<sup>25</sup> According to state law, the Commissioner of Corrections shall:

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<sup>25</sup> *Minn. Stat.* (2004), §241.67, subd. 1. According to the law, eligible offenders include (1) adults and juveniles committed to the Commissioner of Corrections, (2) adult offenders for whom treatment is required by the court as a condition of probation, and (3) juvenile offenders who have been found delinquent or received a stay of adjudication, for whom the court has ordered treatment.

- Provide for residential and outpatient sex offender programming and aftercare for offenders on conditional or supervised release.
- Deny state funding to any county or private sex offender treatment program that (1) fails to provide the commissioner with requested information on program effectiveness, or (2) appears to be an ineffective program.
- Develop a long-term project to: (1) provide follow-up information on each sex offender for three years following the offender's completion of or termination from treatment, (2) provide geographically-dispersed treatment programs, (3) provide the necessary data to form the basis for a fiscally sound plan for a coordinated statewide system of effective sex offender treatment, and (4) provide opportunities for establishment of model programs suited to particular regions of the state.<sup>26</sup>

However,

- **The Minnesota Department of Corrections conducts little statewide oversight of community-based sex offender treatment programs.**

First, DOC suspended its efforts to evaluate sex offender treatment programs in 2000. In the mid-1990s, DOC assigned several research analysts and a supervisor to collect information on sex offenders in the community, including their characteristics, participation in treatment, and rates of new offenses or probation violations. This research culminated in a useful report in 1999 that examined data on adult sex offenders sentenced to probation in 1987, 1989, and 1992. That report said that DOC's future research would focus on "what components of sex offender treatment are particularly effective at reducing sex offender recidivism."<sup>27</sup> But DOC subsequently discontinued its evaluation project—partly, staff told us, because of the increasing workload within the department to implement the state's sex offender community notification law (which passed in 1996). DOC officials told us that, in their view, they had already fulfilled the statutory requirement for a long-term project to evaluate community-based sex offender programs.

Second, DOC does not collect comprehensive, statewide data on the participation of individual offenders in sex offender treatment programs. The law requires sex offender treatment programs that receive state funding or serve probationers to provide information to DOC, if requested by the commissioner.<sup>28</sup> However, in recent years, DOC has only collected sex offender treatment information from programs that receive DOC funding. Some corrections agencies use county funds

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**State officials have not evaluated sex offender treatment programs in the past several years.**

<sup>26</sup> *Ibid.*, subd. 3, 7, and 8. In addition, the law requires the commissioner to establish a task force of corrections, court services, and other officials to provide advice on the department's evaluation of community-based programs for sex offenders.

<sup>27</sup> Minnesota Department of Corrections, *Community-Based Sex Offender Program Evaluation Project: 1999 Report to the Legislature* (St. Paul, October 1999-revised January 2000), 45.

<sup>28</sup> *Minn. Stat.* (2004), §241.67, subd. 7 and 9.

to contract with programs to serve substantial numbers of sex offenders, and DOC does not have treatment information on these cases.<sup>29</sup> Also, DOC's sex offender treatment database has information on participants in the sex offender treatment program at DOC's Lino Lakes prison, but it does not have information on participants at the DOC Moose Lake prison's sex offender treatment program.<sup>30</sup> Some state and local officials told us that a comprehensive database on participation in sex offender treatment would be useful—for example, to help determine the treatment history of an individual offender, or to analyze statewide trends in the use of treatment.

Third, DOC has significantly reduced its oversight of sex offender treatment grants. Until 2003, DOC had a staff person whose primary responsibility was monitoring the grants and reviewing the services of the treatment providers. DOC eliminated this position in 2003, as part of the agency's response to state budget reductions. DOC officials told us that the department still provides fiscal oversight of the treatment grants, but it no longer does detailed program reviews. In addition, DOC has not systematically assessed whether its sex offender treatment grants have adequately addressed the needs of offenders released from prison. The law directs DOC to provide for sex offender programming and aftercare when required for offenders on supervised release or conditional release. But, as we discuss later in this chapter, there are many instances where such programming is unavailable.

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**Under current law, most sex offender treatment programs are not subject to state certification.**

Fourth, state law does not require regulation of most community-based treatment programs for adult sex offenders. The law requires DOC to adopt rules for the certification of (1) sex offender treatment programs in state and local correctional facilities, and (2) other state-operated sex offender treatment programs. Presently, there are eight juvenile programs and three adult programs certified by DOC under this law. However, the treatment programs that are *not* certified by these rules provide nearly all of the sex offender treatment to adults under correctional supervision in Minnesota communities.

Later in this chapter, we recommend additional state oversight of sex offender treatment programs through (1) establishment of state rules governing program requirements, and (2) collection of additional information by DOC on treatment participation and outcomes.

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<sup>29</sup> Some corrections and treatment officials expressed concern to us that they cannot extract summary information from the Minnesota Department of Corrections database regarding the individual placements for which they submit data to the department. Also, one treatment provider told us in late 2004 that it had not yet submitted updated placement information for 2003 and 2004, so there may be questions about the accuracy of some information in the database.

<sup>30</sup> The Moose Lake facility provides sex offender treatment for incarcerated offenders who are considered likely candidates for referral for civil commitment as sexually dangerous persons or sexual psychopathic personalities. Minnesota Department of Corrections staff told us they did not know why the department's sex offender treatment database does not contain information on placements at this facility. *Minn. Stat.* (2004), §241.67, subd. 2, specifically requires the Minnesota Department of Corrections commissioner to collect data from state-certified sex offender treatment programs for evaluation purposes, and the Moose Lake program is one of only three certified programs for adults in the state.

## Definition of “Treatment”

State law says that sentences for adult sex offenders must require participation in sex offender treatment, if (1) the court-ordered assessment indicates that the offender needs and is amenable to treatment, and (2) the offender is not sentenced to prison.<sup>31</sup> Likewise, the law says that juvenile sex offenders must be ordered to undergo treatment if the state-required assessment “indicates that the child is in need of and amenable to sex offender treatment...”.<sup>32</sup> However,

- **State law and administrative rules do not specify the program elements that comprise outpatient sex offender “treatment.”**

In fact, the law does not distinguish sex offender treatment from “sex offender programming” and “sex offender programs,” both of which the law also requires the Commissioner of Corrections to provide.<sup>33</sup> Also, as noted earlier, there are no state rules governing outpatient sex offender treatment programs, although state rules prescribe standards for various other types of treatment (such as chemical dependency treatment, mental health treatment, and sex offender treatment programs in state-operated facilities). In 1992, the Legislature required the development of standards “for the certification of community-based adult and juvenile sex offender treatment programs not operated in state or local correctional facilities,” but it repealed this requirement the following year.<sup>34</sup>

We reviewed the conditions of supervision for nearly 300 sex offenders on probation and supervised release. In about 90 percent of these cases, we determined that the court’s sentencing order or DOC’s prison release plan included a condition of supervision that required offenders to participate in some sort of community-based sex offender program (or gave the corrections agent discretion to order participation).<sup>35</sup> But the conditions of supervision set by the Minnesota Department of Corrections and the courts often do not specifically indicate the type of sex offender “program” in which offenders must participate. For example, the following condition of supervision is standard language in prison release plans developed by DOC: “Must successfully complete sex offender programming (includes but is not limited to outpatient sex offender treatment, sex offender supervision support groups, sex offender treatment aftercare groups, and sex offender psycho-educational programming) as arranged by the agent/designee.”<sup>36</sup> Such an order can be relatively easy for supervising agencies to comply with because virtually any type of “program” for sex offenders meets this standard. But, as indicated in the following example

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**Prisoners' release plans usually do not specify whether the offenders will need "treatment" in the community, rather than other, less intensive programs.**

<sup>31</sup> *Minn. Stat.* (2004), §609.3452, subd. 3.

<sup>32</sup> *Minn. Stat.* (2004), §260B.198, subd. 1(k).

<sup>33</sup> *Minn. Stat.* (2004), §241.67, subd. 3, 7, and 8; *Minn. Stat.* (2004), §242.195, subd. 1.

<sup>34</sup> *Laws of Minnesota* (1992), ch. 571, art. 8, sec. 2; *Minn. Laws* (1993), ch. 326, art. 8, sec. 6.

<sup>35</sup> There were additional cases where the court ordered the offender to follow the recommendations of an upcoming sex offender assessment, but we did not have records that indicated what these recommendations were.

<sup>36</sup> Minnesota Department of Corrections Policy 106.112.

summarizing case records we reviewed for one offender, programs that comply with an offender's "special conditions" of release from prison might not provide the intensive services the offender needs:

*A high-risk (Level III) offender was released from prison to community supervision in 2002. The conditions in his prison release plan included completion of sex offender "programming." He completed a 16-week, once-a-week support group for sex offenders on supervised release, and he has participated in weekly sex offender group sessions facilitated by the supervising agency's corrections staff. However, corrections staff did not consider such programs to be sex offender "treatment," and they questioned whether the programs were sufficient to minimize the risks posed by this offender and other higher-risk offenders.*

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**State rules should define what constitutes "treatment" for sex offenders in community programs.**

At the beginning of our study, legislators expressed an interest in knowing what portion of sex offenders have completed community-based sex offender treatment, as directed by their conditions of supervision. However, without a basis for distinguishing what constitutes true "treatment" from other types of programming for sex offenders, there is no way to provide a meaningful answer. We think that the Legislature should once again mandate the development of statewide sex offender treatment standards in community-based programs. As we note later in this chapter, corrections agency officials have concerns about the quality and content of some outpatient sex offender treatment programs. We think that state rules should distinguish treatment from the less intensive services with which it is sometimes confused. In addition, state rules should specify basic expectations of treatment programs in areas such as staff qualifications, case planning, use of polygraphs, and progress reports prepared for supervising agencies. A 1999 DOC report on community-based programs for sex offenders recommended that the Legislature consider mandating development of statewide outpatient treatment standards, and the recent Governor's Commission on Sex Offender Policy recommended statewide standards for sex offender treatment programs.<sup>37</sup>

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**RECOMMENDATION**

*The Legislature should require DOC to promulgate state rules that specify basic program elements for community-based sex offender treatment programs.*

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Also, we think that court orders and prison release plans should specify clearly whether an offender needs sex offender treatment, as distinguished from other types of programming for sex offenders. Presumably, "treatment" programs that are certified under state rules will be expected to meet more rigorous standards than other types of programs for sex offenders that are less intensive.

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<sup>37</sup> Minnesota Department of Corrections, *Community-Based Sex Offender Program Evaluation Project: 1999 Report to the Legislature* (St. Paul, October 1999, revised January 2000), 45. The report of the Governor's Commission is scheduled for release in early 2005.

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## RECOMMENDATIONS

*For sex offenders released from prison, the Minnesota Department of Corrections should clearly specify in its prison release plans whether the offenders are directed to complete sex offender treatment programs—as distinct from other categories of post-release programs or services.*

*For sex offenders sentenced to probation, the Department of Corrections (or a state sex offender policy board, as discussed in Chapter 4) should adopt a policy favoring the use of sentencing conditions that clearly specify whether the offenders are directed to complete sex offender treatment programs—as distinct from other categories of community-based programs or services.*

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## Availability of Sex Offender Treatment in Prison

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**The Department of Corrections has offered sex offender treatment in prison since 1978.**

For sex offenders sentenced to prison, the Minnesota Department of Corrections has an opportunity to engage offenders in treatment programs before they are released back to the community. Since 1978, DOC has provided prison-based sex offender treatment programs. When an offender enters prison, DOC staff determine whether to direct the offender to these programs. Inmates have the right to refuse treatment (but face possible penalties for doing so), and DOC staff can deny program admission to offenders who are considered inappropriate for sex offender treatment.

In January 2004, there were more than 1,300 sex offenders in Minnesota prisons. DOC's main sex offender treatment program has the capacity to serve 208 inmates at the Lino Lakes correctional facility.<sup>38</sup> In addition, DOC collaborates with the Minnesota Department of Human Services at the Moose Lake state prison to treat inmates who are considered most likely to be referred for civil commitment as “sexually dangerous persons” or “sexual psychopathic personalities.”<sup>39</sup> This program has a capacity of 50 inmates.

We did not assess the content or quality of prison-based sex offender treatment programs. However, we asked the directors of Community Corrections Act agencies and DOC district offices to rate the availability of sex offender treatment in Minnesota prisons, based on the cases in which they have assumed supervision responsibility for sex offenders released from prison. We found that:

- **There is widespread dissatisfaction among directors of community-based corrections agencies with the availability of prison-based sex offender treatment.**

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<sup>38</sup> According to Minnesota Department of Corrections staff, about 190 to 200 inmates are in the treatment program at a given time, and they reside in shared living units within the prison. The remaining beds in the program are assigned to offenders awaiting admission to the program's assessment phase.

<sup>39</sup> These terms are defined in *Minn. Stat.* (2004), §253B.02, subd. 18b and 18c.

**Many inmates do not have enough time to complete the existing prison-based treatment program before their sentences end.**

In our survey, 81 percent of the directors rated the availability of sex offender treatment in prison as “fair” or “poor.”<sup>40</sup> In addition, 67 percent of the directors rated the availability of chemical dependency treatment in prison as “fair” or “poor.”<sup>41</sup>

We obtained data from DOC regarding offenders who left the Lino Lakes sex offender treatment program during 2003. As shown in Table 3.3, only 14 inmates completed the treatment program in 2003, following an average of 30 months in the program. These 14 completers represented 2 percent of the total number of sex offenders admitted to DOC prisons in 2003 (or 6 percent excluding probation violators entering with less than a year to serve and supervised release violators).<sup>42</sup> In addition, another 55 inmates did not complete the program but participated in the program until their release from prison, averaging about 20 months in the program. DOC officials think that it is a positive outcome when

**Table 3.3: Offenders Who Left Sex Offender Treatment at Minnesota Correctional Facility-Lino Lakes in 2003**

<u>Category of Offenders</u>	<u>Number Who Left Program in 2003</u>	<u>Average Months in Program</u>
Completed the sex offender program (with chemical dependency treatment)	5	37
Completed the sex offender program (without chemical dependency treatment)	9	26
Participated in but did not complete the sex offender program (with chemical dependency treatment)	23	23
Participated in but did not complete the sex offender program (without chemical dependency treatment)	32	17
Were terminated or withdrew from the sex offender program	65	9
Were administratively transferred from the sex offender program	<u>4</u>	<u>7</u>
<b>TOTAL</b>	<b>138</b>	<b>15</b>

NOTE: The offenders whose treatment ended in terminations, withdrawals, or administrative transfers were not counted among those who participated in the programs but did not complete them.

SOURCE: Minnesota Department of Corrections.

<sup>40</sup> Office of the Legislative Auditor survey of directors of the Minnesota Department of Corrections district offices and Community Corrections Act agencies, August 2004 (N=27). No directors rated the availability of prison-based sex offender treatment as “excellent,” while 7 percent rated it as “good” and 11 percent responded “don’t know or not applicable.” On another survey question, 74 percent of the directors said they “disagree” or “strongly disagree” that the Minnesota Department of Corrections has offered sufficient sex offender treatment in prison for offenders who have not yet returned to the community.

<sup>41</sup> No directors rated the availability of prison-based chemical dependency treatment as “excellent,” while 22 rated it as “good” and 11 percent responded “don’t know or not applicable.”

<sup>42</sup> A large majority of supervised release violators enter prison for less than a year.

offenders participate in treatment until their sentences end, even if these offenders do not complete the program.<sup>43</sup> They noted that many sex offenders enter prison without enough “time to serve” on their sentences to complete the entire treatment program. For example, of the 55 offenders who stayed in the program until their 2003 release (but did not complete the program), 46 had less than 24 months to serve at the time they entered the program.<sup>44</sup> Altogether, the total number of inmates who completed the program in 2003 or participated in the program until their sentence ended represented about 10 percent of the total number of sex offenders admitted to Minnesota prisons in 2003 (or 28 percent excluding probation violators with less than a year to serve and supervised release violators).

Some inmates are directed to participate in prison treatment programs but refuse to do so. Minnesota law gives the Commissioner of Corrections discretion to determine a “disciplinary confinement period” for rule violations or refusal to participate in prison rehabilitative programs.<sup>45</sup> DOC policy prescribes an additional 360 to 540 days of confinement for offenders who refuse to participate as directed in a prison sex offender program.<sup>46</sup> DOC officials expressed concern to us, however, that extending the period of incarceration might not be an effective way to motivate inmates to participate in treatment. They also said that the department does not have enough treatment beds to serve all of the more motivated inmates, much less those who are not motivated to change their behaviors.

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**Releasing untreated sex offenders from prison can jeopardize public safety and shift cost burdens to community agencies.**

We think that the Legislature and DOC should consider ways to ensure that more sex offenders participate in treatment while in prison. We recognize that there are various challenges to increasing participation levels, including funding constraints, the short incarceration periods of some inmates, and the refusal of some inmates to follow DOC’s treatment directives. However, prison-based treatment is important because releasing untreated sex offenders from prison can jeopardize public safety and shift cost burdens to the agencies that assume responsibility for their supervision in the community. Even if inmates will need to continue treatment following their release to the community, we think it makes sense to engage them in treatment while still in prison.

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<sup>43</sup> According to the department, the number of offenders leaving the treatment program due to program completion or finishing their sentence has consistently been about 50 percent of the number of offenders admitted to the program.

<sup>44</sup> Offenders with short remaining periods of imprisonment have received lower priority for referral to treatment because they may not have time to complete the programs they enter. In 2003, offenders with at least 9 months to serve in prison were considered for admission to the treatment program; in 2004, this was increased to 13 months. According to the Minnesota Department of Corrections, of all persons entering a Minnesota prison for a sex offense in 2003 (for a new commitment or a probation violation), 32 percent had less than 18 months to serve in prison at the time they entered.

<sup>45</sup> *Minn. Stat.* (2004), §244.05, subd. 1b.

<sup>46</sup> Minnesota Department of Corrections, *Offender Discipline Regulations* (St. Paul, 2001), rule 510. The department could not provide us with summary data indicating how many offenders have been subject to such penalties.

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## RECOMMENDATIONS

*DOC should report to the 2006 Legislature on various options for increasing the number of inmates participating in sex offender treatment programs in Minnesota prisons. The report should (1) examine the adequacy of program funding, (2) present options for treating inmates who have limited periods of time remaining in their prison sentences, and (3) discuss the merits and limitations of imposing “extended incarceration” on sex offenders who refuse to participate in treatment in prison.*

*If the Legislature adopts indeterminate sentencing for sex offenders, as it considered during the 2004 legislative session, the body authorized to release sex offenders from prison should explicitly consider compliance with treatment directives as a factor in prison release decisions.*

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## Availability of Community-Based Sex Offender Treatment

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**The Department of Corrections administers state grants to community-based treatment programs.**

The 1989 Legislature appropriated funding for pilot programs in community-based sex offender treatment, and the first grants for these programs were awarded in fiscal year 1991. Since that time, DOC has administered grants to sex offender treatment programs throughout the state.

In a 2000 report to the Legislature on sex offender supervision, a study group of criminal justice officials said that “DOC has received consistent, forceful feedback from both treatment providers and [probation officers] throughout the state that [treatment] funding needs to be increased dramatically.”<sup>47</sup> The report recommended a tripling of state funding to improve the availability of treatment and encourage all providers to incorporate polygraphs into their treatment programs. Based on treatment expenditure data we obtained data from DOC, we found that:

- **Adjusted for inflation, state spending for community-based sex offender treatment has declined in recent years.**

Figure 3.1 shows the annual amount of DOC’s grants for sex offender treatment and “transitional programming,” in 2004 dollars. The total includes treatment funding for offenders on probation as well as those on supervised release from prison.<sup>48</sup> Adjusted for inflation, sex offender treatment spending in fiscal year 2004 was at its lowest point during the period shown. Spending reductions do not appear to be justified by changes in the population of sex offenders in the

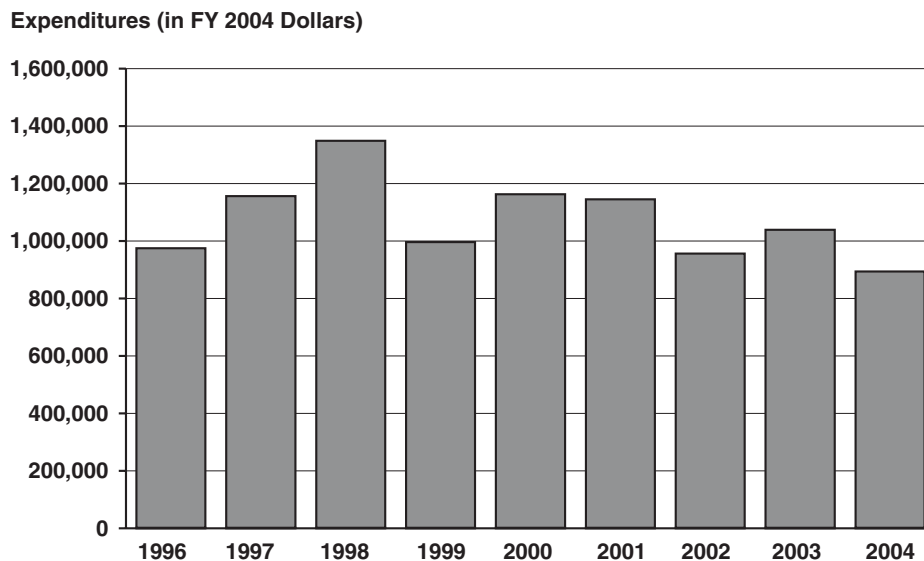
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<sup>47</sup> Sex Offender Supervision Study Group, *Sex Offender Supervision: 2000 Report to the Legislature* (St. Paul, January 2000), 16.

<sup>48</sup> Prior to fiscal year 2002, the Minnesota Department of Corrections administered separate sex offender treatment accounts for offenders on probation and offenders on supervised release.

**Figure 3.1: Total State Spending for Community-Based Sex Offender Treatment, FY 1996-2004 (in 2004 Dollars)**

Spending for community-based sex offender treatment has declined.



NOTE: The Minnesota Department of Corrections said that several research positions were funded from a treatment-related account from fiscal years 1996 to 1999. The department estimated that the budget for these positions was \$240,000 in fiscal year 2000; we subtracted this budget amount, adjusted for inflation, from the fiscal year 1996-99 spending data. Annual expenditures in the chart, unadjusted for inflation, are as follows: \$774,257 (1996); \$939,263 (1997); \$1,114,214 (1998); \$840,804 (1999); \$1,025,266 (2000); \$1,051,187 (2001); \$896,664 (2002); \$1,008,937 (2003); \$892,181 (2004).

SOURCE: Office of the Legislative Auditor analysis of Minnesota Department of Corrections data. Adjusted for inflation using U.S. Bureau of Economic Analysis price indices for state and local government consumption expenditures.

community, although DOC’s historical data on offenders under community-based supervision are not definitive.<sup>49</sup>

To help us assess the availability of community-based sex offender treatment, we reviewed offender case records, interviewed state and local corrections officials, and conducted a statewide survey of the directors of community-based corrections agencies. We found that:

- **Corrections agencies that supervise the majority of Minnesota’s sex offenders expressed serious concerns about the availability of community-based treatment resources, especially for offenders on supervised release.**

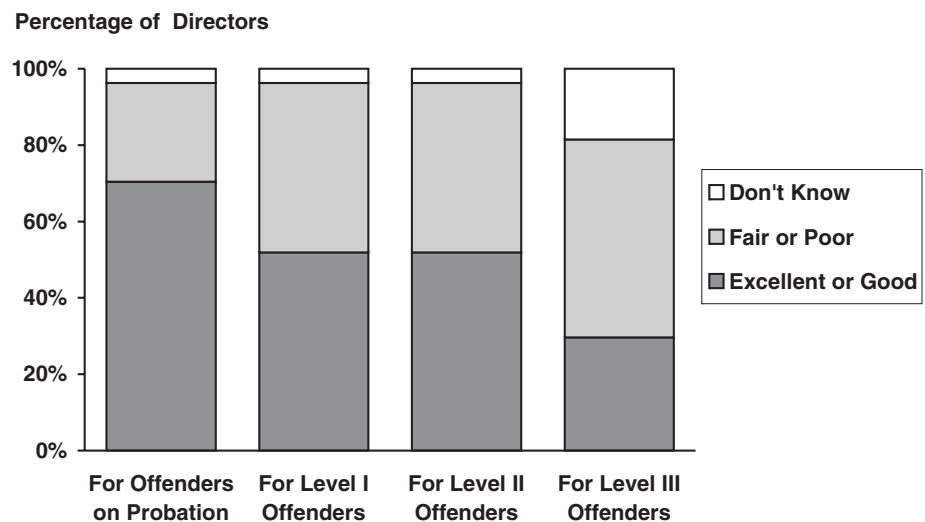
<sup>49</sup> The Minnesota Department of Corrections annually estimates the number of sex offenders on probation in Minnesota, and estimates for the most recent two years were somewhat higher than estimates from five or six years earlier. But department staff caution that their methods for making these estimates have changed somewhat over time, making such comparisons tenuous. Also, the department does not have annual data on the number of sex offenders on supervised release over time, although it is doubtful that this number has declined, given the recent increases in the department’s population of sex offenders in prison.

**Local agencies that supervise most of the sex offenders released from prison expressed concern about treatment availability for these offenders.**

Sex offenders on supervised release merit particular attention because, unlike sex offenders on probation, their actions have been judged serious enough to warrant time in prison. In addition, state law says that DOC “shall provide for residential and outpatient sex offender programming and aftercare when required for conditional release... or as a condition of supervised release.”<sup>50</sup>

As shown in Figure 3.2, directors of community-based corrections agencies generally said that sex offender treatment was less available for offenders released from prison than for offenders on probation. At first glance, the survey results suggest very mixed opinions about the availability of sex offender treatment for offenders on supervised release. For example, in the case of Level II offenders, 52 percent of the directors rated the availability of treatment as “excellent” or “good,” compared with 44 percent of directors who rated it as “fair” or “poor.” However, the agencies that rated the availability of sex offender treatment for Level II offenders as “fair” or “poor” accounted for three-fourths of Minnesota’s sex offenders on supervised release in June 2004. For each of the categories of offenders on supervised release shown in Figure 3.2, the agencies that rated treatment availability as “fair” or “poor” accounted for a large majority of the sex offenders under supervision.

**Figure 3.2: Corrections Director Ratings of Sex Offender Treatment Availability**



SOURCE: Office of the Legislative Auditor survey of directors of Minnesota Department of Corrections district offices and Community Corrections Act agencies, August 2004 (N=27).

<sup>50</sup> *Minn. Stat.* (2004), §241.67, subd. 3. This law also states that the Minnesota Department of Corrections is expected to provide sex offender treatment to eligible offenders “within the limits of available funding” (subd. 1). In addition, *Minn. Stat.* (2004), §609.109, subd. 7(c) says that the Commissioner of Corrections shall pay the cost of treatment of sex offenders released on “conditional release.”

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**Some state treatment funding has been set aside for Level III offenders in the Twin Cities area.**

The concerns about the availability of funding for offenders on supervised release partly reflect the fact that little state treatment money is earmarked to “follow these offenders.” Most of the state’s budget of nearly \$1 million for treatment of sex offenders on supervised release and probation is allocated through DOC grants to individual providers, not necessarily in proportion to the location of the state’s sex offenders. In contrast, DOC administers one small account—about \$40,000 in fiscal year 2005—from which treatment funding “follows the offender.” This “post-release” account is reserved for sex offender treatment for offenders on supervised release, and DOC retains authority to determine which individual offenders will be funded from this account.

Offenders funded from the post-release treatment account have entered a Twin Cities outpatient treatment program operated by Alpha Human Services. Since the post-release account was started in 2001, 50 of the 51 persons funded through this account have been from Hennepin or Ramsey counties. However, the number of Hennepin and Ramsey offenders who participated in this program was about 5 percent of the sex offenders released from prison to these counties since 2001.<sup>51</sup> In addition, the post-release account has provided limited funding for Level I and II offenders. Of the 25 offenders who started the post-release treatment program between January 2003 and August 2004, 21 (or 84 percent) were Level III offenders and 4 (16 percent) were Level II offenders.<sup>52</sup> Hennepin and Ramsey officials told us that the state post-release account is the only public source of corrections funding their counties use to pay for the treatment of sex offenders on supervised release. Consequently, they said,

- **Offenders on supervised release who need intensive treatment are often referred to less intensive “support groups.”**

Alternatively, offenders in Hennepin and Ramsey counties may be admitted to sex offender treatment programs if they (or their insurance) pay the cost of treatment. But, in our review of individual case files, we saw many instances in which treatment was (1) delayed because offenders did not have enough money to start a program, or (2) suspended because offenders fell behind on their payments.

We think that the treatment needs of sex offenders released from prison deserve special attention. Typically, these offenders were sent to prison because of very serious offenses, and most are released to the community without having completed a sex offender treatment program in prison. Chapter 4 discusses funding issues in more detail, but possible solutions include legislative appropriation of additional funding or changes in the method of allocating existing state funding for sex offender treatment.

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<sup>51</sup> Our estimate was based on an unduplicated count of the sex offenders released from prison to Hennepin and Ramsey counties from January 2001 through June 2004.

<sup>52</sup> In contrast, Level III offenders accounted for 10 or 26 offenders (38 percent) admitted to the program in 2001 and 2002.

**The Legislature and Department of Corrections should take more steps to ensure that offenders on supervised release receive treatment.**

### RECOMMENDATION

*The Legislature and Minnesota Department of Corrections should take steps to ensure that sex offender treatment funding is more available for offenders on supervised release, consistent with the department's statutory obligation to provide appropriate services for this offender population (Minn. Stat. (2004) §241.67, subd. 3).*

In addition to problems with the availability of community-based outpatient sex offender treatment for adult offenders, corrections officials we surveyed also expressed concerns about the availability of some other categories of treatment services. Specifically:

- In our statewide survey, 50 percent of the community-based corrections directors rated the availability of sex offender treatment for juvenile offenders as “fair” or “poor.”<sup>53</sup> Several directors commented that they did not have treatment providers for juveniles within a reasonable driving distance.
- Many directors expressed concerns about the availability of chemical dependency treatment for sex offenders in prison and in the community. For example, 67 percent of directors rated the availability of chemical dependency treatment for sex offenders in prison as “fair” or “poor.” In addition, 44 percent of the directors rated the availability of chemical dependency treatment for sex offenders on supervised release as “fair” or “poor.”<sup>54</sup>
- Some directors expressed a desire for more funding for community-based inpatient sex offender treatment, which is much more expensive than outpatient treatment. According to DOC officials, there was only one instance in the past ten years where the department paid for *inpatient* sex offender treatment for an offender on supervised release.<sup>55</sup> DOC officials noted that the department cannot legally place an offender directly into a community-based residential treatment program upon initial release from prison because this would be considered an extension of incarceration.

<sup>53</sup> We computed this percentage without considering the responses of five directors who offered no opinion on the availability of treatment for juvenile sex offenders—either because their agency does not provide these services or they did not know whether these services were available.

<sup>54</sup> Forty-one percent of directors rated the availability of chemical dependency treatment for sex offenders on *probation* as “fair” or “poor.”

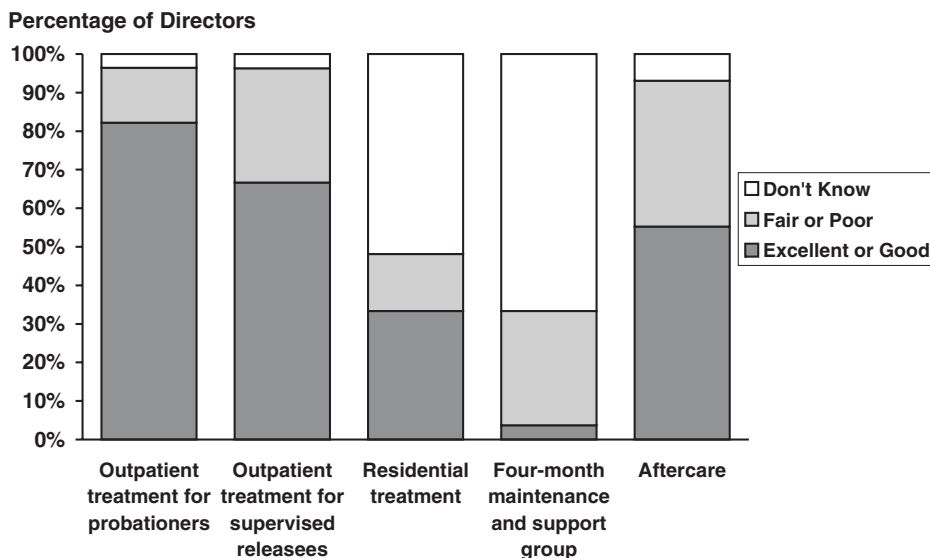
<sup>55</sup> In this case, the Minnesota Department of Corrections shared the inpatient treatment costs with a county and the offender's parents. State law says that the department shall provide for “residential” sex offender programming when required as a condition of supervised release.

## Perceptions About the Quality of Community-Based Sex Offender Treatment

Minnesota law directs DOC to monitor community-based programs for sex offenders. For example, the law requires the department to deny state funding to ineffective programs and programs that do not provide sufficient information on their effectiveness.<sup>56</sup> But, as we noted earlier in this chapter, the department no longer monitors sex offender programs as closely as it once did.

We asked community-based corrections directors to rate the overall quality of the programs that serve their agencies' sex offenders. As shown in Figure 3.3, most directors gave "excellent" or "good" ratings to Minnesota's outpatient treatment and aftercare programs. A majority of directors offered no opinion on Minnesota's only community-based *inpatient* sex offender treatment program (probably because inpatient treatment is used infrequently), but directors with an opinion about this program were mostly positive. Also, most of the community-based corrections directors offered no opinion on Alpha Human Services' four-month, once-a-week maintenance and support program for offenders on supervised release, presumably because they have not used the program. However, the directors who offered an opinion of this program largely gave it low ratings.

**Figure 3.3: Corrections Directors Ratings of Sex Offender Program Quality**



SOURCE: Office of the Legislative Auditor survey of directors of DOC district offices and Community Corrections Act agencies, August 2004 (N=27).

<sup>56</sup> Minn. Stat. (2004), §241.67, subd. 7.

While directors of community-based corrections agencies typically gave positive overall ratings to outpatient treatment programs, they also noted problems and concerns with individual treatment providers. For example, 78 percent of the directors said there are outpatient programs that they prefer *not* to use, based on experience with prior placements in these programs.<sup>57</sup> In addition, directors we surveyed offered the following comments about outpatient programs:

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**Most corrections officials gave positive ratings to outpatient treatment programs, but they also noted improvements they would like to see.**

“Some programs do not provide research-based practices. [For example]: No group treatment, no polygraphs, no relapse prevention plans, poor evaluation, no discussion of [sex offending] triggers and cycles, etc.”

“The one program subsidized by the state for Level III offenders is insufficient. It only lasts 12 months (instead of the typical 30 months) and involves only weekly group sessions (rather than weekly group and twice-monthly individual sessions and various family/partner sessions), with no polygraph or attraction testing. ... [In general, outpatient programs’] provider qualifications should include social work or psychology licensure with specialization/certification in sex offender-specific treatment plus clinical supervision. Programs should have two such therapists in group sessions.”

“Sex offender treatment providers should be members of [the Association for the Treatment of Sexual Abusers, or ATSA] and use approaches/philosophies endorsed by ATSA standards. ... Some areas of concern [include] lack of intensity in therapy/accountability for certain behaviors, lack of adequate reoffense prevention planning prior to discharge, credentials of staff, some programs [are] not using cognitive-behavioral approaches or group models, some lack adequate collateral contacts/community support system components, some therapists don’t collaborate with [corrections] agents on treatment issues.”

“I would like there to be a list of DOC-approved outpatient programs, and I feel that the use of polygraph testing should be mandatory. I have had a couple of offenders that attempted to leave our treatment program to go to a program that does not use polygraphs, nor is it co-facilitated by a probation agent. I did not allow them to leave our program, as I did not feel their choice for treatment would do an adequate job of holding them accountable.”

“It would be best if [chemical dependency] treatment and sex offender treatment could work together instead of totally separate.”

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<sup>57</sup> Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004.

“Transportation is a big issue in our area and there are no funds to aid with this. Polygraph testing cannot be done as often as sometimes necessary, also due to costs.”

“Length of treatment various from three months to two years.”

“[Treatment providers] often have “generic” psychologists doing sex offender evaluations with little or no knowledge of sex offender issues.”

Earlier in this chapter, we recommended that the Minnesota Department of Corrections promulgate state rules that establish standards for community-based sex offender treatment programs. Setting such standards would reduce inconsistencies among programs, and it would provide DOC with a stronger basis for reviewing program quality.

Some aspects of sex offender treatment remain a topic of considerable debate, and we recognize that development of state rules for community-based treatment would not resolve all of these differences of opinion. For example, there is disagreement about the proper relationship between corrections agencies and sex offender treatment providers. Some corrections officials believe that direct participation by probation agents in the treatment process is an important way to uncover sex offenders’ efforts at deception. In a description of its own practices, the Minnesota Department of Corrections says that “a majority of [our correctional] supervision is done through the treatment group process where the agent co-facilitates with the treatment provider.”<sup>58</sup> In our statewide survey of directors of community-based corrections agencies, 78 percent of the directors reported that their agents “always,” “nearly always,” or “often” participate in their sex offenders’ treatment sessions.<sup>59</sup> But the community corrections agencies whose staff do not participate directly in treatment (Hennepin, Ramsey, Anoka, Washington, and Dakota counties, plus the five-county Arrowhead Region) supervise just over half of Minnesota’s felony-level sex offenders in the community. Officials in these agencies said the obligation of corrections agents to enforce offenders’ conditions of supervision sometimes conflicts with the efforts in treatment to get offenders to fully disclose their past behaviors. In addition, some corrections officials think that it is preferable to have independent observations of sex offenders by treatment providers and corrections staff, rather than having them participate in the same meetings.

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**Corrections officials are split in their views about whether probation officers should participate directly in sex offender treatment.**

## Treatment Outcomes

Our interviews with corrections officials and reviews of “best practices” literature indicate that there is widespread support for sex offender treatment as a part of a comprehensive strategy to manage sex offenders in the community. For example, according to the U.S. Department of Justice’s Center for Sex Offender Management: “Specialized treatment is a critical component of any jurisdiction’s

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<sup>58</sup> Minnesota Department of Corrections, *Procedures for the Enhanced Supervision of Sex Offenders in the Community* (St. Paul, December 2003), 2.

<sup>59</sup> Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004.

approach to sex offender management...<sup>60</sup> Also, the developers of the highly-regarded “containment model” for managing sex offenders in the community have suggested that “only through adequate treatment can sex offenders learn how to control their deviant arousal and behavior.”<sup>61</sup>

Some research evidence suggests that sex offenders who have completed sex offender treatment have lower recidivism rates than sex offenders who have not. For example, a document describing the Minnesota Department of Corrections’ prison-based sex offender treatment programs notes that:

“During a nine-year tracking period, 14 percent of the offenders who completed sex offender treatment in prison were rearrested for a new sex offense. This compares with a rate of 21 percent for offenders who never entered treatment and 30 percent for offenders who entered but did not complete treatment.”<sup>62</sup>

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**There is wide support for treatment as part of a sex offender management strategy, even though research on outcomes has been inconclusive.**

Also, a recent analysis of 43 studies from several countries found that the average sex offense recidivism rate was lower for treated offenders (12.3 percent) than for comparison groups of untreated offenders (16.8 percent).<sup>63</sup> But, in our view, such findings should be interpreted with caution, not as definitive evidence that sex offender treatment “works.” We found that:

- **Research regarding the effectiveness of sex offender treatment in reducing recidivism has been inconclusive.**

The authors of the international analysis cited above noted that “researchers and policy-makers have yet to agree on whether treatment effectively reduces sexual recidivism.”<sup>64</sup> In part, this is because it is difficult for researchers to ensure that the groups of “treated” and “untreated” offenders under study are truly comparable. For example, perhaps the inmates who completed Minnesota prisons’ sex offender programs had lower recidivism rates because they were more inclined to change their behaviors (even without treatment) than the offenders who chose not to participate. Few academic studies have used the strongest research method for evaluating sex offender treatment—namely, random assignment of offenders to groups receiving (or not receiving) treatment. For example, researchers who critiqued the 43-study analysis cited above said the following:

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<sup>60</sup> U.S. Department of Justice, Center for Sex Offender Management, *An Overview of Sex Offender Management* (Washington, D.C., July 2002), 6.

<sup>61</sup> Kim English, Suzanne Pullen, Linda Jones, and Barbara Krauth, “A Model Process: A Containment Approach,” *Managing Adult Sex Offenders on Probation and Parole: A Containment Approach* (Lexington, KY: American Probation and Parole Association, January 1996): 2-33.

<sup>62</sup> Minnesota Department of Corrections, *Programs for Sex Offenders* (St. Paul, July 2003), 1; <http://www.doc.state.mn.us/publications/pdf/Sex%20Offender%20Programs.pdf>, accessed October 29, 2004.

<sup>63</sup> R. Karl Hanson, Arthur Gordon, Andrew J.R. Harris, Janice K. Marques, William Murphy, Vernon L. Quinsey, and Michael C. Seto, “First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders,” *Sexual Abuse: A Journal of Research and Treatment*, 14, n. 2 (April 2002): 169-194. The median follow-up period was 46 months for the treatment and comparison groups.

<sup>64</sup> *Ibid.*, 170.

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**Treatment programs provide additional scrutiny of offenders' attitudes and behaviors.**

“Whereas the random assignment studies [that were reviewed in the 43-study analysis] yielded results that provided no evidence of treatment effectiveness, Hanson et al. reviewed approximately a dozen others (called “incidental assignment” studies) which yielded substantial positive results for treatment. Upon close inspection, we conclude that such designs involve noncomparable groups and are too weak to be used to draw inferences about treatment effectiveness. In almost every case, the evidence was contaminated by the fact that comparison groups included higher-risk offenders who would have refused or quit treatment had it been offered to them. We conclude that the effectiveness of psychological treatment for sex offenders remains to be demonstrated.”<sup>65</sup>

Even the authors of the 43-study analysis cited above concluded: “We believe that the balance of available evidence suggests that current treatments reduce recidivism, but that firm conclusions await more and better research.”<sup>66</sup> Likewise, the national Center for Sex Offender Management has observed that “there is a paucity of evaluative research regarding [sex offender] treatment outcomes.”<sup>67</sup> Furthermore, if rigorous research eventually demonstrates that certain sex offender treatment programs reduce recidivism, it is important to consider that treatment programs in Minnesota and elsewhere have many differences—in their components and their staffing, and the skill with which they are implemented.

Although the research evidence about program effectiveness is inconclusive, we think that it is reasonable for Minnesota policy makers and corrections officials to continue to use community-based sex offender treatment as a part of a broader strategy for managing sex offenders. At a minimum, treatment programs can supplement the efforts of correctional agencies by increasing the number of staff who are monitoring offenders’ attitudes and behaviors.

But we also think that DOC should review treatment programs more closely than it now does. Earlier, we recommended that the Legislature require DOC to develop and enforce administrative rules for outpatient treatment programs. This would allow DOC to “certify” certain programs as meeting operating requirements set forth in the rules. In addition, we think that DOC should require all certified treatment programs (not just those receiving state funding) to provide the department with basic information on individual offenders participating in these programs, such as dates of program entry and exit, whether the program was successfully completed, and when polygraphs were administered. DOC now collects such information, but only for programs that receive state funding. Expanding the existing treatment database to include all programs would allow users of the database to get a more complete, accurate picture of treatment participation.

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<sup>65</sup> Marnie E. Rice and Grant T. Harris, “The Size and Sign of Treatment Effects in Sex Offender Therapy,” *Annals of the New York Academy of Sciences*, 989 (2003): 428-440.

<sup>66</sup> Hanson and others, “First Report of the Collaborative Outcome Data Project,” 186.

<sup>67</sup> U.S. Department of Justice, Center for Sex Offender Management, *Recidivism of Sex Offenders* (Washington, D.C., May 2001), 13.

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**The Department of Corrections should collect more data on sex offender treatment participation and outcomes.**

This treatment database would be especially useful if corrections agencies could query it to help determine the treatment history of the offenders assigned to their supervision. Corrections officials told us that treatment providers vary considerably in the amount of documentation they provide to the supervising agencies, and some providers do not retain participant records for long periods. While corrections agencies would prefer to get detailed documentation regarding offenders' treatment history—such as case plans, progress reports, and discharge summaries—a DOC treatment database with basic information on offenders' prior placements could provide a helpful starting point for agencies. Development of such a “searchable” database would require consideration by state officials of some technical and data practices issues that we did not examine.

Finally, we think it would be useful for DOC to periodically track outcomes for offenders who have completed or been terminated from treatment. Such outcomes might include new arrests, convictions, or violations of supervision conditions. The law already requires DOC to collect follow-up information for three years after treatment, but the department believes that this statutory requirement for a “long-term [evaluation] project” only required a temporary effort that was completed several years ago.<sup>68</sup> In our view, the need for follow-up information on offender treatment is as important today as ever. We think that the Legislature should eliminate the statutory reference to an evaluation “project” and require DOC to conduct periodic follow-up studies of sex offenders who have been in treatment programs.

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**RECOMMENDATIONS**

*The Legislature should amend Minn. Stat. (2004), §241.67 to require the Commissioner of Corrections to collect information from all sex offender treatment programs on individual offenders, for purposes of tracking offender outcomes and helping corrections agencies identify offender treatment histories. The Legislature should require DOC to periodically examine outcomes for sex offenders who have participated in these programs. The department should consider options for making information on individual treatment placements available to community-based corrections agencies.*

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<sup>68</sup> Minn. Stat. (2004), §241.67, subd. 8.