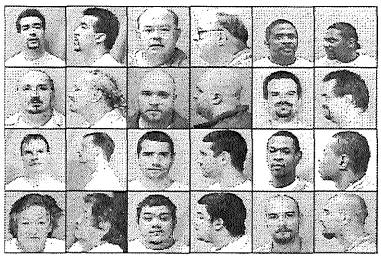
OLA Office of the Legislative Auditor
State of Minnesota



Community Supervision of Sex Offenders

January 25, 2005

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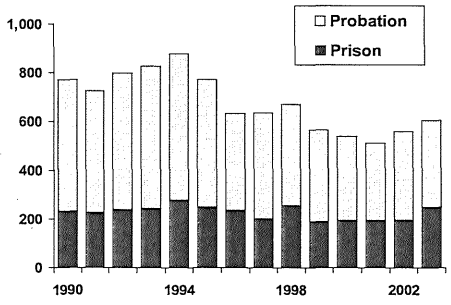
OLA Issues We Addressed

- Nature and frequency of supervision
- Policy coordination
- Assessment of need for treatment
- Availability of treatment
- Transitional housing
- Protection of potential victims

2

OLA Felony Sex Offense Sentences



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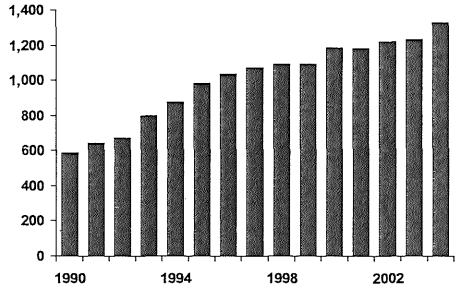
OLA Sex Offenders in Minnesota Prisons



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OLA Length of Community Correctional Supervision

- Increasing periods of supervision following prison, due to
  - ➢ Longer prison sentences (thus, longer periods of "supervised release")
  - ➢ "Conditional release" (since 1998)
- Average length of probation sentences for sex offenders have remained fairly constant (about 13 years)

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OLA Supervising Agencies

- Adult felons: 16 local corrections agencies plus the Department of Corrections
- Juveniles: 41 local corrections agencies plus the Department of Corrections
- No statewide administrative policies on sex offender supervision

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OLA "Predatory Offender" Registration

- 1991 law
- Statewide registry of offender information
- Verification letters sent to offenders annually
- Required to register for at least 10 years from date of conviction or release from prison

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OLA Community Notification

- 1996 law
- Pertains to predatory offenders released from prison
- Classified as Levels I, II, or III (based on risk to reoffend), with corresponding notification provisions in law
- Notification requirements continue for as long as a person is required to register as a predatory offender

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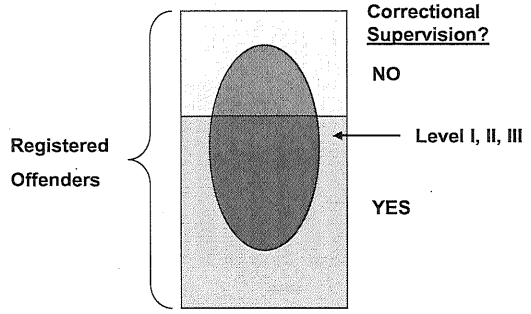
OLA Registration, Correctional Supervision, and Notification



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OLA Correctional Supervision of Sex Offenders

Type of Supervising Agent	Percentage of Sex Offenders
Intensive Supervised Release Agents	7%
Specialized Sex Offender Agents	65
Regular Agents	28

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OLA Caseloads of Specialized Sex Offender Agents

- Starting in 1999, state funding for "enhanced" supervision (including caseload reduction)
- Goal: Average caseloads of 35 to 40 offenders
- Average caseload of specialized agents was 45 offenders in 2004

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OLA Intensive Supervised Release

- Need for intensive supervision determined on case-by-case basis
- Not available in all counties, and assignment to ISR is sometimes capped to limit caseloads
- Typically lasts for a year, but agencies would prefer longer duration for some sex offenders
- Surveillance of offenders on ISR is generally consistent with state policies

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Median Agent-Offender Contacts With Sex Offenders Annually

Supervision Level	Home visits	Other visits
ISR	70	35
"Enhanced"/"High"	3	16
"Medium"	0	10
"Low"	0	4
Administrative	0	0

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General Observations Regarding Agent-Offender Contacts

- After Intensive Supervised Release, frequency of contact often declines significantly
- Agencies have varying standards regarding offender contacts, and standards are not always met
- Home visits can play a critical role in sex offender supervision, but they are too infrequent

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Most Corrections Directors...

Prefer more:

- Unannounced home visits
- Surveillance checks on offenders
- Reviews of offender computer use
- Polygraphs of offenders

Prefer no change in:

- Visits to treatment or offender workplaces
- Random drug and alcohol tests
- Pre-arranged visits to offenders' homes
- Use of electronic monitoring

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Policy Coordination

- Multiple agencies supervise offenders, and there are few statewide policies
- Need more communication and information-sharing
- *Recommendation: Develop state supervision policies in various areas (DOC or a sex offender policy board)*
- *Recommendation: Conduct external reviews of supervision practices*

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Determining Offenders' Treatment Needs

- Some mandatory post-conviction assessments have been delayed

  Recommendation: Law should clarify that assessments should be completed prior to sentencing
- Courts have not referred all repeat sex offenders for state-required assessments at St. Peter facility

  Recommendation: Courts should be reminded of statutory requirement

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Determining Offenders' Treatment Needs (continued)

- Community agencies do not routinely receive prison records (treatment, medical, mental health) of offenders they supervise after release

  Recommendation: State law should require DOC to provide relevant prison records to agencies that assume supervision responsibilities

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OLA Determining Offenders' Treatment Needs (continued)

- Sentences and prison release plans do not always specify individual offenders' treatment needs

  Recommendation: State rules should define components of outpatient sex offender "treatment"

  Recommendation: Courts (for probationers) and DOC (for supervised releasees) should specify offenders' need for "treatment," not just the need for programming in general

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OLA Availability of Sex Offender Treatment

- *In prison*: The number of inmates completing treatment is modest, and the length of the program often exceeds offenders' time in prison
- *In the community*: Agencies are dissatisfied with availability of treatment, particularly for offenders on supervised release

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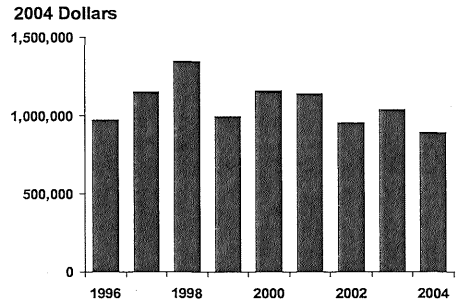
OLA State Sex Offender Treatment Spending



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OLA Other Treatment Recommendations

- Additional funding, particularly to fulfill state's obligation for offenders on supervised release
- Funding should "follow the offenders"
- Clarify statutory requirement for DOC to collect information on treatment participation and outcomes

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OLA Transitional Housing

- DOC and local corrections agencies share responsibility for helping offenders find suitable housing after prison
- Most halfway house beds have been occupied by sex offenders
- Community corrections agencies said that halfway house beds have been insufficient to meet their needs

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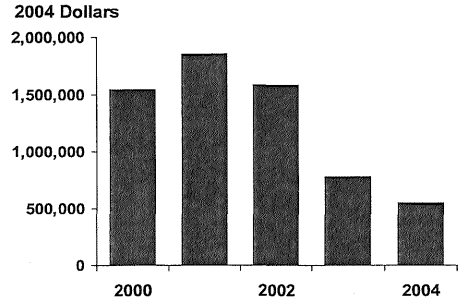
OLA State Halfway House Spending



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Additional Protections for Potential Sex Offense Victims

- Most victims are under age 18
- Corrections agencies often determine when sex offenders may live in households with children

  Recommendation: Law should require notification of child protection agencies before sex offenders are authorized to live with children

  Recommendation: Corrections agents should be "mandated reporters" of possible maltreatment

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Additional Protections for Potential Sex Offense Victims

- Some sex offenders live in care facilities; supervising agents do not always know this

  Recommendation: Offenders should be required to disclose additional information to agents and care facilities

  Recommendation: Corrections and law enforcement agents should be required to inform care facilities if they know that a predatory offender is living at a facility

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Priorities for Additional Funding

- State-required assessments
- Treatment and transitional housing for sex offenders on supervised release
- Expansion of "intensive" and "enhanced" supervision

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Overall

- Supervision practices need more state-level coordination
- Important tools such as home visits and polygraphs should be used more often
- Treatment should be better funded, regulated, and evaluated
- Making appropriate housing arrangements is a key part of sex offender supervision

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The *Community Supervision of Sex Offenders* report is available at:

www.auditor.leg.state.mn.us

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State of Minnesota

Minnesota Department of Corrections

January 12, 2005

Honorable James R. Nobles
Legislative Auditor
Room 140
658 Cedar Street
Saint Paul, MN 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to review the Legislative Auditor's final draft of the program evaluation on *Community Supervision of Sex Offenders.*

In our judgment, the Report represents a valuable compilation of data and information on a subject of critical importance. Moreover, the Report is organized and presented in such a way as to introduce new readers to a very complicated set of policy questions. As both a "survey" of the current challenges, and as a "road-map" to future reform, the Report is a very useful document.

For the purpose of the Department of Corrections' response to this Report, just a few points deserve special emphasis.

As a survey of our current challenges:

- The Report correctly notes that "sex offenders," as a group, include an incredibly broad set of pathologies and criminal offense histories. (*See,* Report at 25 to 30)

- The Report also makes clear that not all sex offenders represent the same level or type of risk to the larger community, and not all sex offenders present the very same level of risk throughout their supervision. (*See,* Report at 44 to 51)

- The Report confirms that despite rising caseloads, Minnesota's Corrections agencies at the state and county level supervise very difficult populations of dangerous offenders with energy and seriousness. (*See,* Report at 31 to 54)

- The Report verifies that effective assessments are critical if the resources that are available are to be applied proportionally to meet the risks presented by individual offenders. (*See,* Report at 61 to 65)

As a road map for future reforms:

- The Report correctly states that developing a single and uniform set of standards for supervision, treatment, assessment and performance should be a priority for our state. (*See,* Report at 51 to 60)

- The Report accurately outlines the need to develop technical and professional standards, to perform an ongoing review of Minnesota's supervision practices, and to conduct an independent comparison of our state's performance with those of other states. (*See,* Report at 90 to 93).

- The Report corroborates our view that the pace of improvements and innovation in sex offender supervision practice is bounded only by the availability of resources. (*See,* Report at 100 to 103). The Department of Corrections has already undertaken a number of pioneering improvements to sex offender supervision practice, and is eager to do even more, if additional resources are available.

In summary, the Department of Corrections shares your commitment to excellence in the supervision of sex offenders, and regards this Report as a vital tool for educating others on these important issues.

We look forward to working with your office, the Minnesota Legislature and other stakeholders in developing a set of sex offender supervision practices that will lead the nation in their efficacy and value.

Very truly yours,

Joan Fabian

Joan Fabian
Commissioner of Corrections

OLA

OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Community Supervision of Sex Offenders

JANUARY 2005 **Report No. 05-03**

PROGRAM EVALUATION DIVISION
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A list of recent evaluations is on the last page of this report. A more complete list is available at OLA's website (www.auditor.leg.state.mn.us), as are copies of evaluation reports.

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The photographs on the *Community Supervision of Sex Offenders* report cover appeared in 2004 on the Minnesota Department of Corrections' public web site regarding Level III sex offenders (http://www.corr.state.mn.us/level3/level3.asp.).

OLA
OFFICE OF THE LEGISLATIVE AUDITOR
State of Minnesota • James Nobles, Legislative Auditor

January 2005

Members
Legislative Audit Commission

How to handle sex offenders is one of the state's most challenging public safety issues. While stricter sentences will keep some offenders in prison longer, a significant number of sex offenders will continue to live in Minnesota communities. For citizens to be safe, the state must have a strong and effective approach to monitoring these sex offenders.

Our evaluation found strengths in Minnesota's current approach, particularly the increased use of agents that specialize in monitoring sex offenders. On the other hand, the state needs to invest more in treatment and appropriate housing for sex offenders. There is also a need for closer supervision of some sex offenders and greater coordination among the various agencies that monitor offenders in communities. We recommend the development of statewide policies and "best practices," several changes in state laws, and additional funding for certain activities.

This report was researched and written by Joel Alter (project manager) and Valerie Bombach. We received the full cooperation of the Minnesota Department of Corrections, county corrections agencies, and the Bureau of Criminal Apprehension as we conducted the evaluation and prepared this report.

Sincerely,

/s/ James Nobles

James Nobles
Legislative Auditor

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Summary

To improve community supervision of sex offenders, Minnesota needs better policy coordination, additional funding, and closer monitoring of offenders.

Major Findings

- Minnesota has a complex, multi-agency structure for community supervision of sex offenders, with many variations among agencies' supervision practices and limited state-level coordination (p. 11).
- Specialized sex offender agents supervise a majority of adult offenders, and this recent development is a strength of Minnesota's approach. However, caseloads of specialized agents are somewhat larger than originally intended (pp. 34, 37).
- The Intensive Supervised Release program provides close surveillance of certain sex offenders recently released from prison. But most sex offenders under correctional supervision receive much more limited scrutiny, typically with infrequent home visits (pp. 42, 45).
- Community-based sex offender treatment programs are inadequately funded, regulated, and evaluated. Also, local corrections officials think that more sex offenders should participate in prison-based treatment programs prior to their release (pp. 71-81).
- State budget constraints have limited the use of halfway houses for released prisoners, even though community corrections directors think that improved transitional housing after prison should be a central part of the state's efforts to protect the public from sex offenders (p. 95).
- In some parts of Minnesota, state-required sex offender assessments have not been conducted prior to sentencing (p. 63). Also, courts have referred few repeat sex offenders to the state security hospital for state-required assessments (p. 65).

Key Recommendations

The Legislature should:

- Require the development of more consistent statewide policies for sex offender supervision (p. 91);
- Authorize external review of supervision practices (p. 93);
- Consider additional funding for community-based assessment, treatment, housing, and supervision of sex offenders (p. 102);
- Require statewide rules for sex offender treatment programs and polygraph administration (pp. 54, 74);
- Require sex offenders to disclose certain temporary changes in their living arrangements (p. 107);
- Require corrections agencies to inform child protection agencies before authorizing sex offenders to live with children (p. 105); and
- Require the Department of Corrections to collect additional information on sex offender treatment participation and outcomes (p. 88).

Report Summary

In June 2004, about 7,000 adults living in Minnesota communities were registered with the Bureau of Criminal Apprehension as "predatory offenders" due to crimes (mainly sex offenses) committed as adults.[1] About 4,500 adults were under the supervision of state or county corrections agents for a sex offense. This included persons on "supervised release" from prison, as well as persons sentenced to probation.

Since 1996, Minnesota state law has required "community notification" regarding sex offenders released from prison. The law requires widespread notification for "Level III" offenders—those deemed most likely to reoffend—and these offenders comprise about 2 percent of the registered adult sex offenders living in Minnesota communities. The law requires lesser notification for Level I and II offenders, who comprise another 25 percent of the registered adult offenders. However, most sex offenders in Minnesota communities have been sentenced to probation, not prison—and, thus, they are not subject to community notification requirements under existing law.

Except for the limited number of offenders on "intensive" supervision, home visits are a relatively infrequent part of sex offender supervision.

Offender Supervision Practices Should Be Enhanced, Coordinated

Minnesota has implemented stricter prison sentences for sex offenders in recent years. Nevertheless, community supervision of non-incarcerated offenders is still an important part of the state's efforts to protect the public. Seventeen state and county agencies supervise adult, felony-level sex offenders in Minnesota, and 42 agencies supervise juvenile sex offenders. Few statewide policies address the nature of the supervision, and agencies have adopted a variety of policies and practices.

Nationally, there is a general consensus that it is a "best practice" for corrections agencies to have agents with specialized training in sex offender supervision and for these agents to have caseloads that consist largely of sex offenders. We estimated that, as of June 2004, 65 percent of Minnesota's adult, felony-level sex offenders under correctional supervision were assigned to such "specialized" sex offender agents. Another 7 percent were assigned to Intensive Supervised Release agents, who supervise certain high-risk offenders recently released from prison, and 28 percent were assigned to regular, non-specialized corrections agents.

Offenders assigned to Intensive Supervised Release tend to have frequent contacts with their agents. In a sample of cases we reviewed, Intensive Supervised Release agents annually conducted a median of 70 home visits and 35 other face-to-face meetings per sex offender. However, state Intensive Supervised Release funding has not been sufficient to cover all offenders needing this type of close scrutiny in all parts of the state. Offenders who comply with supervision requirements typically remain on Intensive Supervised Release for a year after their release from prison, and then they are reassigned to less intensive supervision.[2]

Sex offenders who *are not* on Intensive Supervised Release have much less frequent meetings with their agents, particularly home visits. For example, our case reviews indicated that the median number of home visits for these offenders ranged from 0 to 3 visits annually, depending on their supervision level. Supervising agencies each set

1 Of the more than 15,000 persons in BCA's statewide registry, our estimate excluded those who were deceased, living out of state, deported, incarcerated, or living in a state security hospital, as well as those whose registration occurred as a result of juvenile offenses and those whose period of registration has expired.

2 Offenders who do not comply with supervision requirements can be kept on intensive supervision longer than one year or returned to prison.

their own standards for the minimum number of agent-offender contacts, but many offenders were not seen as often as the standards required. While it makes sense for agencies to vary their supervision practices depending on the risks posed by individual offenders, we think there is a general need for more home visits of sex offenders—to help detect deception, hold offenders accountable, and monitor changes in offenders' behaviors. Likewise, in a statewide survey, most directors of community-based corrections agencies said they would like to see additional unannounced home visits, agent surveillance activities, polygraphs, and monitoring of offenders' computer use.

Local corrections officials expressed concerns about the availability of community-based treatment for sex offenders in parts of Minnesota.

There are no national standards for the optimum caseload size of agents who supervise sex offenders, but the Legislature has provided funding in recent years to reduce the caseloads of specialized agents. On average, specialized sex offender agents supervised 45 offenders in June 2004, which was somewhat above the targets of 35 to 40 suggested by the Legislature and Minnesota Department of Corrections (DOC).

The Legislature should require development of statewide sex offender supervision policies by DOC or, alternatively, a state sex offender policy board (such as the one recommended by the Governor's recent sex offender commission). A working group of state and local corrections officials should advise DOC or the board on these policies. Examples of possible statewide policies include minimum levels of agent contact with offenders under supervision, or model language regarding the restrictions and supervision requirements that could be placed on sex offenders in court sentences. In addition, we think that the supervision practices of individual agencies need periodic scrutiny, and we recommend that the Legislature require DOC (or a sex offender policy board) to establish a process for independent reviews by state and/or local staff.

More Offenders Need Treatment in Prison and Community Programs

Directors of community-based corrections agencies expressed frustration that more sex offenders do not complete or participate in treatment while in prison.[3] These agencies assume responsibility (and potentially costs) for untreated offenders after their release. We recommend that DOC report to the 2006 Legislature on options for increasing the participation of sex offenders in prison-based treatment, including possible funding needs and options for treating sex offenders who enter prison with short periods of time remaining on their sentences.

There are also significant weaknesses in community-based sex offender treatment. According to state law, DOC must provide for sex offender programming or aftercare when it is required by DOC at the time of an offender's release from prison. But DOC usually does not specify in detail the types of community-based "programming" that offenders must complete. In addition, there are no state rules that define or regulate outpatient sex offender "treatment." Directors of agencies that supervise the large majority of Minnesota's sex offenders released from prison rated the availability of community-based treatment for these offenders as "poor" or "fair." Adjusted for inflation, state spending for community-based sex offender treatment in fiscal year 2004 was at its lowest point in recent years.

The Legislature and DOC should ensure that there is sufficient funding for community-based treatment, particularly for offenders released from prison. This may require additional money, different

3 In 2003, 14 inmates completed sex offender treatment in prison. Another 55 participated in treatment until their prison sentence ended, including many who entered the program with less time to serve on their sentence than the length of the full prison treatment program.

administrative methods of allocating funding, or both. DOC should also collect comprehensive data on offenders who enter community-based sex offender treatment programs, and it should periodically track post-treatment offender outcomes.

In addition, there are weaknesses in assessment practices for sex offenders who are not sentenced to prison. State law requires these convicted sex offenders to undergo specialized assessments, partly to determine their treatment needs. DOC provided partial state reimbursement of such assessments until 2003. Since the discontinuation of these reimbursements, however, some assessments have not been completed until well after offenders have been sentenced—potentially delaying treatment and hindering correctional supervision. Also, courts have not referred many repeat sex offenders for assessment to the Minnesota state security hospital, contrary to state law.

Housing and Funding Issues Need Legislative Attention

State halfway house spending declined sharply in the past two years, limiting the housing options for sex offenders leaving prison.

State and local corrections agencies share responsibility for helping offenders find suitable housing after their release from prison. State-funded halfway houses help ex-prisoners find permanent work and housing over a two-month period, and sex offenders have occupied most of the beds in these facilities. But state spending for halfway house placements in fiscal year 2004 was about one-third the spending level of two years earlier. In a survey we conducted, 70 percent of community corrections directors said that finding suitable housing for sex offenders released from prison was "very difficult" in the past two years, and none said there were sufficient halfway house placements to meet their agencies' needs. Most directors said that increasing the availability of temporary housing for ex-prisoners was a top priority for improving the public's safety from sex offenders in the community.

Sex offenders under the correctional supervision of one agency sometimes seek housing arrangements in other jurisdictions. Because the "receiving" jurisdiction might eventually assume responsibility for supervising an offender who moves to that jurisdiction, we think it should be consulted about such moves. State law should require the supervising agency to notify the "receiving" agency of a pending move and initiate a transfer request.

In addition, the Legislature should amend state laws to provide more protection for potential victims of sex offenders. The law should require that corrections agencies inform child protection agencies before authorizing sex offenders to live in a household with children. Also, sex offenders should be required to disclose to their agents any temporary residences in care facilities, such as hospitals or nursing homes, and such facilities should receive notifications prior to admission decisions, when possible.

Our report offers no recommendations regarding the "right" level of funding for various activities related to sex offender supervision. However, we think there are strong arguments for increased state investment in activities that are state-mandated, such as pre-sentence sex offender assessments and treatment for released prisoners. In addition, we think that public safety might be enhanced by improving temporary housing options for released prisoners and ensuring more intensive monitoring—including home visits—for sex offenders under correctional supervision. It may be reasonable for offenders to bear a portion of assessment, supervision, treatment, and housing costs, to the extent that this does not delay needed services.

Introduction

Minnesotans are concerned about—and often fearful of—sex offenders who live in their communities. In response to heightened concerns, there have been many changes in state laws during the past two decades. For example, the Legislature has set stricter criminal sentences for convicted sex offenders, initiated a statewide registry of information about known sex offenders, and established public notification procedures regarding sex offenders released from prison.

Minnesota relies considerably on the Minnesota Department of Corrections and various county corrections agencies to supervise convicted sex offenders, but there has been limited legislative review of the extent and nature of this supervision. Thus, in April 2004, the Legislative Audit Commission directed our office to assess community-based supervision by corrections agencies, in addition to looking at related issues such as treatment and transitional housing. Our evaluation addressed the following questions:

- **How many sex offenders live in Minnesota communities? To what extent are these offenders subject to supervision by community-based corrections agencies?**

- **Is there adequate supervision of sex offenders who are under correctional supervision in Minnesota communities? Is there sufficient statewide coordination of sex offender supervision practices?**

- **Is there a sufficient amount of community-based treatment available for sex offenders? Does the Minnesota Department of Corrections conduct enough oversight and evaluation of sex offender treatment programs?**

- **Has there been adequate transitional housing for sex offenders released from prison?**

To help us examine the nature and extent of supervision, we reviewed a random sample of nearly 300 cases involving individual adult sex offenders who were under the supervision of six corrections agencies in June 2004.[1] These agencies accounted for about 80 percent of the adult sex offenders under community supervision. We examined offenders' court-assigned or Department of Corrections-assigned "conditions of supervision," the number and types of agent-offender contacts, and records of treatment, polygraphs, and drug/alcohol tests. We talked with more than 50 probation officers about individual cases, plus we interviewed many corrections agency supervisors about more general issues.

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1 The six supervising agencies were Hennepin, Ramsey, Dakota, and Dodge-Fillmore-Olmsted Community Corrections, Arrowhead Regional Community Corrections, and the Minnesota Department of Corrections.

We also collected information through several surveys. First, we surveyed directors of Community Corrections Act (CCA) agencies and Department of Corrections (DOC) field offices to determine which of their individual staff were supervising sex offenders. Second, we surveyed halfway house directors to obtain information regarding offenders on supervised release who lived at these facilities during calendar year 2003. Third, we surveyed CCA and DOC agency directors about the nature of their agencies' sex offender supervision activities and their perceptions about supervision, treatment, and other services. In each of these surveys, we obtained responses from 100 percent of the directors.[2] An appendix to this report provides additional details on our case reviews and surveys.

For our statewide analyses of the number of sex offenders in the community, we relied primarily on two sources of data. First, to identify offenders who were under community correctional supervision for a sex offense in June 2004, we obtained data from the Minnesota Department of Corrections' Statewide Supervision System. This information system has data on all offenders under supervision in Minnesota's 87 counties. Second, we obtained information from the Minnesota Bureau of Criminal Apprehension on offenders who were registered as predatory offenders in June 2004.

In addition, we obtained criminal sentencing data from the Minnesota Sentencing Guidelines Commission, and we obtained statewide data from the Minnesota Department of Corrections regarding expenditures, grants, and offenders released from prison. We also reviewed previous research on sex offender assessment, supervision, treatment, and recidivism.

Chapter 1 provides a context for the rest of the report—discussing sex offender laws and sentencing practices, Minnesota's community corrections structure, estimates of Minnesota's number of sex offenders, and information on offender characteristics and recidivism. Chapter 2 discusses how sex offenders are supervised by community corrections agencies in Minnesota. Chapter 3 examines the extent to which sex offender treatment programs meet the needs of offenders on probation or supervised release. Chapter 4 discusses other issues, including transitional housing, statewide policy coordination, and state funding.

It is worth noting several issues that were outside the scope of our study. We did not evaluate sex offender sentencing policies, although we comment in Chapter 2 on the requirements of supervision that are contained in sentencing orders and prison release plans. We did not evaluate individual sex offender treatment programs, but Chapter 3 examines treatment-related issues from a statewide perspective. We also did not evaluate the content or quality of prison-based sex offender treatment, but we examined the availability of this treatment. We did not examine the process by which DOC assesses inmates' recidivism risks prior to their release from prison, although we examined issues pertaining to the sex offender assessments conducted by community-based corrections agencies (or their contractors). We did not evaluate how well Minnesota's laws regarding

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2 We surveyed directors of 12 DOC agencies (from 11 district offices and the Intensive Supervised Release unit) and 15 CCA agencies. (We solicited information from one additional CCA agency—representing Rock and Nobles counties—but this agency has an agreement with DOC to supervise adult, felony-level sex offenders. Thus, the director of this agency deferred to DOC for our August 2004 questionnaire regarding agency practices.) We also surveyed the directors of all four halfway houses that had contracts with DOC during 2003.

predatory offender registration and community notification are working, but Chapter 1 briefly describes these laws. In addition, we did not evaluate the process by which offenders are referred for civil commitment. Most of our research focused on adult sex offenders' supervision and treatment, although we also solicited suggestions from corrections officials regarding juvenile offenders. Finally, Chapter 1 discusses previous research on sex offender recidivism, but we did not conduct new research on sex offender recidivism for this study.

1 Background

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.

There 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.[1] 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."[2]

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 *Minn. Stat.* (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 *Minn. Stat.* (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 *Minn. Stat.* (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 *Minn. Stat.* (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 *Minn. Stat.* (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.

1 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.

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

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.[3] 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.[4] 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.[5] 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.

The courts may sentence convicted offenders to prison or probation.

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.[6] 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.[7] Minnesota's probation rate per 100,000 residents was the fourth

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

4 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.

5 *Minn. Stat.* (2004), §§609.342, 609.343.

6 *Minn. Stat*. (2004), §609.135.

7 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.[8]

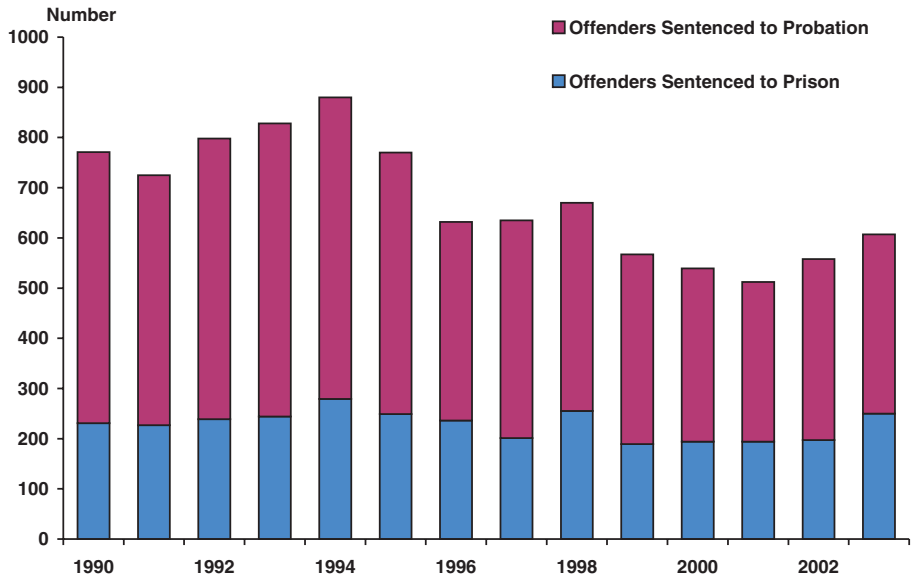
Figure 1.1 shows Minnesota sentencing practices for persons convicted of felony-level sex offenses. As the figure shows,

- **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

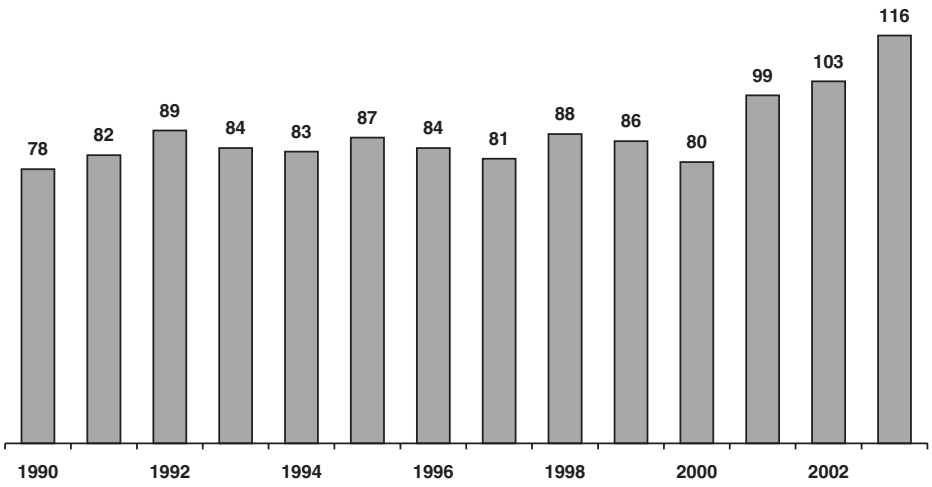
8 Paige M. Harrison and Allen Beck, *Prisoners in 2002* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, July 2003), 1. This report was based on December 2002 data, and the rates were computed per 100,000 residents (not just adults). Minnesota was tied with Maine for the lowest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

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

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.[11] The Legislature also required longer sentences for certain repeat or "patterned" sex offenders.[12]

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

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

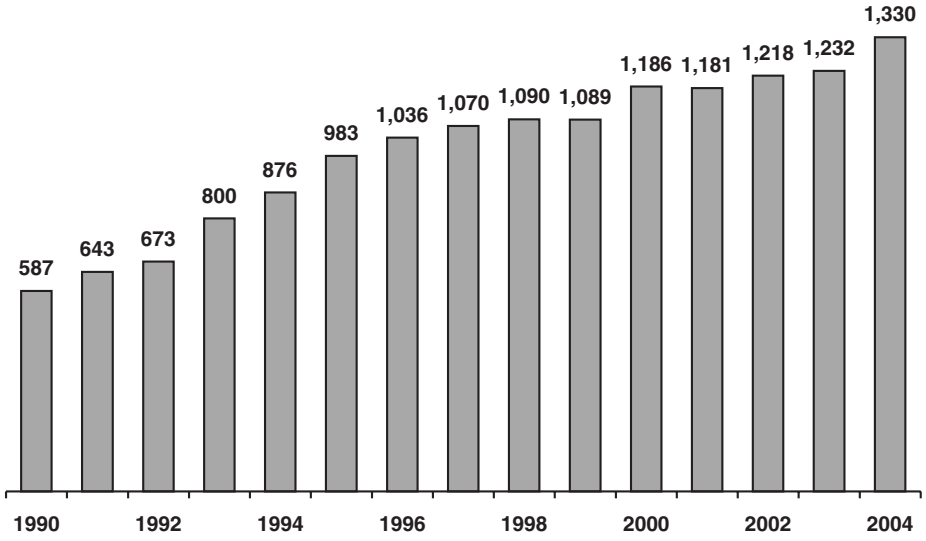
10 Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Criminal Sexual Conduct (CSC) Offenses, Offenders Sentenced in 2003* (St. Paul, October 2004), 6.

11 *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.

12 *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."

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

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



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.[13] 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.[14] 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.**

13 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.

14 *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.[15] 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.[16] Compared with other states, Minnesota's community-based corrections system is also unusual it 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

15 *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).

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

probation services."[17] In two-thirds of states, a state-level executive or judicial agency is the exclusive provider of adult probation services.[18] 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[a]
Community Corrections Act (CCA)	County corrections agencies	66%	16 agencies[b]	31 counties: 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[c]	56 counties: 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, Mahnomen, 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

[a]DOC provides Intensive Supervised Released 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.

[b]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.

[c]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.

17 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.

18 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.

offenders are supervised by county agents in Community Corrections Act (CCA) agencies, and the remainder are supervised by Minnesota Department of Corrections agents.[19]

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

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.[20] 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 misdemeanant 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.[21] 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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19 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."

20 *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.

21 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[b]	31 counties: 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	27 counties: Becker, Beltrami, Benton, Clay, Clearwater, Cottonwood, Douglas, Faribault, Hubbard, Kittson, Lake of the Woods, LeSueur, Lincoln, Lyon, McLeod, Mahnomen, Marshall, Martin, Murray, Pennington, Pipestone, Redwood, Renville, Roseau, Sibley, Watonwan, Winona
County Probation Officers (CPO)	District courts (with or without county board approval)[a]	30%	25 agencies	29 counties: 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

[a]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."

[b]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."[22] 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."[23] 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.[24]

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

22 *Minn. Stat.* (2004), §244.19, subd. 2.

23 *Minn. Stat.* (2004), §244.24.

24 *Minn. Stat.* (2004), §244.13, subd. 2.

example, the law prescribes procedures for sex offenders to register with the state,[25] and for notifying communities about offenders released from prison;[26] 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)[27] and submit DNA samples.[28] However,

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

No single agency oversees probation in Minnesota, and corrections agencies have considerable latitude to determine how they will supervise 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.[29] 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.[30] 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.[31] 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

25 *Minn. Stat. (*2004), §243.166.

26 *Minn. Stat. (*2004), §244.052.

27 *Minn. Stat. (*2004), §609.3452.

28 *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.

29 *Minn. Stat. (*2004), §241.67, subd. 6.

30 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.

31 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

A statewide registry contains information on persons defined as "predatory offenders."

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).[32] 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.[33] 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.[34]

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.[35] 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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32 *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.

33 *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.

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

35 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.[36]

We examined the number of adults who presently live in Minnesota communities and are registered as predatory offenders with BCA.[37] Our estimate excluded offenders who were juveniles at the time of their initial registration or at the time they committed their offense.[38] 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.[39] 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.**

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.[40] 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.[41] We obtained statewide data from the Minnesota Department of Corrections regarding adults who were on probation or supervised release for a sex offense.[42] We found that:

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

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36 For example, DOC Policy 201.020 requires quarterly home visits for this purpose—for those offenders under the department's supervision.

37 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.

38 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.

39 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.

40 *Minn. Stat*. (2004), §243.166, subd. 6(d).

41 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.

42 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

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

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."[43]

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.[44] 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.[45]

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."[46]

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.[47] The Minnesota Department of Corrections also posts information about Level III offenders on its public website.

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

44 *Minn. Stat*. (2004), §244.052, subd. 3.

45 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.

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

47 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:	The local law enforcement agency: MUST disclose information to:
Level I	• Other law enforcement agencies • Witnesses to or victims of the offense	• Victims of the offense who have specifically requested disclosure • Adult members of the offender's immediate household
Level II	• Other law enforcement agencies • Witnesses to or victims of the offense • 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[a] • Individuals that law enforcement believes are likely to be victimized by the offender, based on the offender's previous patterns and victim preferences	• Victims of the offense who have specifically requested disclosure • Adult members of the offender's immediate household
Level III		• Witnesses to and victims of the offense • Adult members of the offender's immediate household • Other law enforcement agencies • 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 • Individuals that law enforcement believes are likely to be victimized by the offender, based on the offender's previous patterns and victim preferences • Other members of the community whom the offender is likely to encounter[a]

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.

[a]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

	Registered Offenders				
Residence Type	Level III	Level II	Level I	Unassigned[c]	Total
Community Residence[a]	112	470	1,321	5,153	7,056
Incarcerated[b]	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.

[a]Includes offenders reporting a residence type of "Residence," "Homeless," or "Residential Facility" (such as a halfway house).

[b]Includes offenders in prisons, jails, or security hospitals.

[c]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.

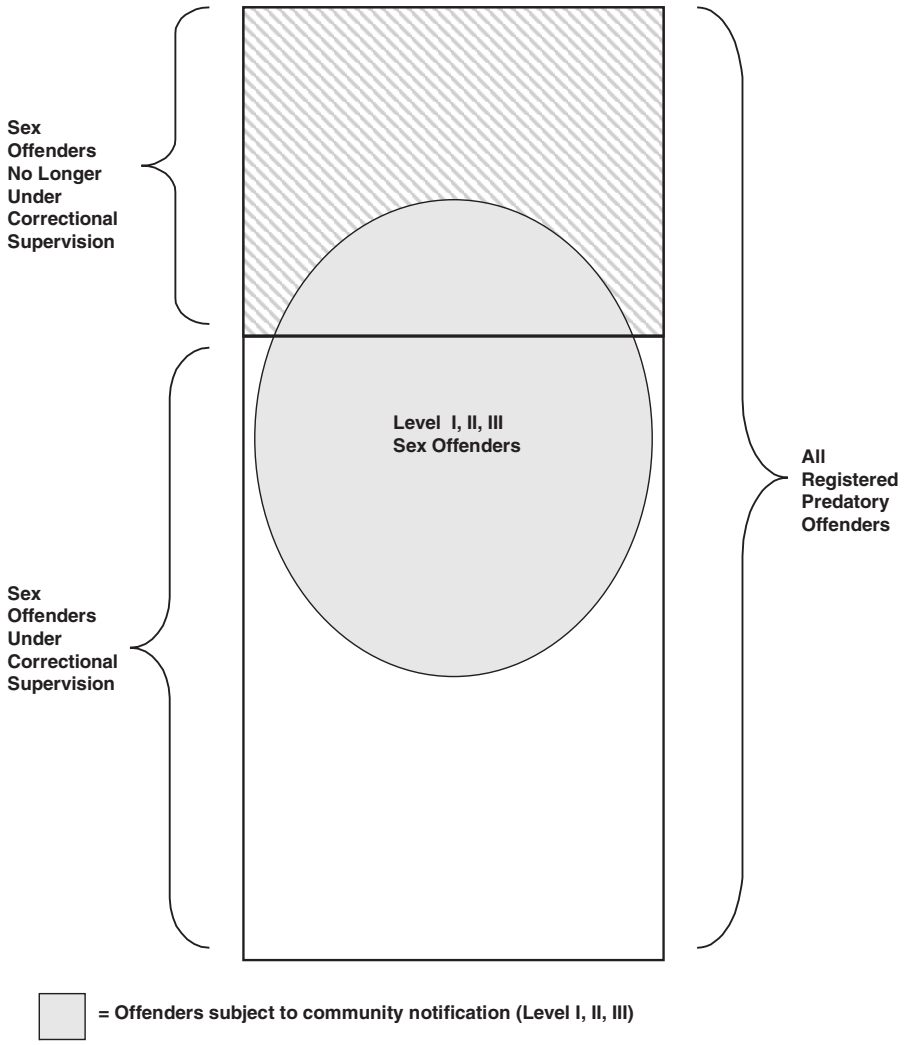
Again, state law requires community notification only for offenders categorized as Level I, II, or III at the time they were released from prison. State law does not require community notification for the remaining 73 percent of registered adult sex offenders. This group includes (1) sex offenders who 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).[48] A smaller group of sex offenders are under correctional

48 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.[49]

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	43	33
	100%	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.[50] But the law typically requires registration to occur for a limited time period, not for an offender's entire life.[51] 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

49 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.

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

51 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.[52]

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… ."[53]

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

Ninety-eight percent of sex offenders are males.

- **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).[54] 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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52 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.

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

54 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

Region/County/City	Registered Adult Sex Offenders Per 1,000 Population
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.[55]

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

55 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.[56] State law says that corrections agencies, "to the greatest extent feasible, shall mitigate the concentration of level III offenders…."[57] 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."[58]

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

56 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.

57 *Minn. Stat.* (2004), §244.052, subd. 4a.

58 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

Age at Time of Offense	Number of Sentenced Offenders	Percent of Sentenced Offenders
<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+	16	2.6
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.[59] Nearly 20 percent of sex offenders under community-based correctional supervision in Minnesota are juveniles.[60]

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.[61] 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.[62]

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59 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.

60 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.

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

62 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*

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.[63] 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.[64]

Victim's Relationship With the Offender

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

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.[65]

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.[66] 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).

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

64 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.

65 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."

66 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.[67]

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.[68] 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.[69]

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.**

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."[70]

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

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67 Heil and others, "Crossover Sexual Offenses," 232.

68 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.

69 *Ibid.,* 15.

70 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.[71] 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.[72]

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.[73] 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.[74] 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.[75]

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.[76] 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.[77] The department has not reported on statewide sex offender recidivism rates since this 1999 study.[78]

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

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

73 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.

74 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.

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

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

77 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.

78 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.[79] In addition, during sex offender treatment and polygraph examinations, offenders sometimes admit to previously undetected offenses they committed while under correctional supervision.[80]

79 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.

80 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.

2 Supervision Practices

SUMMARY

Corrections agencies provide various levels of supervision to sex offenders, depending on the offenders' risks and compliance with agency expectations. Some sex offenders receive "intensive supervision" after their release from prison, which involves close surveillance and frequent contacts for a limited period. Most sex offenders under correctional supervision receive far more limited contacts, often less than the standards set by the supervising agencies. For example, periodic home visits should be an important part of sex offender management—even for offenders who appear to be compliant—but some offenders under correctional supervision rarely if ever receive such visits. Most adult sex offenders under community correctional supervision are assigned to specialized sex offender agents, consistent with a widely accepted "best practice." However, the caseloads of these agents are typically higher than the original goal of 35 to 40 offenders. To strengthen the scrutiny of sex offenders on probation or supervised release, a majority of community-based corrections directors would prefer to see their agencies conduct more polygraphs, unannounced home visits, and investigations of offenders' Internet use. Sex offender supervision practices vary considerably around Minnesota, reflecting the lack of statewide policies.

In recent years, federal agencies and respected researchers have proposed models of "best practice" for managing sex offenders in the community. These models favor the use of supervision-related strategies for sex offenders that are different from those that have traditionally been used with other types of offenders. Such strategies include: specialized sex offender supervision staff; a combination of treatment (to help offenders control their own behaviors) and surveillance (to monitor offenders' behaviors); frequent visits to offenders' homes and workplaces; ongoing contacts with offenders' friends, family members, and associates; periodic polygraphs to detect possible deception; information-sharing among professionals in corrections, law enforcement, treatment, social services, and other agencies; adoption of consistent supervision policies at the state and local levels; and designation of "special conditions" of supervision that are

specially tailored for individual offenders to protect the safety of potential victims.[1]

We examined key practices used by corrections agencies to supervise sex offenders, including some of the practices cited above. This chapter examines the following supervision-related questions:

- **To what extent are "specialized" staff or "intensive supervision" staff used to supervise sex offenders?**
- **Do agents adequately supervise sex offenders? How often do agents meet with offenders, and do the agents have reasonable caseloads?**
- **What changes in supervision practices would state and local corrections officials would like to see?**
- **Is there a need for more consistency in correctional supervision practices?**

Community supervision of sex offenders is a challenging responsibility for corrections agencies.

This chapter identifies various areas where sex offender supervision appears to be weak or inconsistent. However, during our case reviews and interviews, we gained an appreciation for the difficult jobs of agents who supervise sex offenders. Agents cannot control all of the activities and behaviors of the offenders they supervise, yet they are expected to hold them accountable. Agents sometimes cover large geographical areas, and their caseloads often include persons with complicated criminal and personal histories. In addition to monitoring offenders, agents are expected to maintain regular contact with treatment providers, law enforcement, victims, and many others. Below, we cite a portion of a letter we found in an offender's case file, demonstrating the gratitude of a treatment provider for the efforts of a probation agent. We, too, saw many instances in which agents were conscientious and dedicated in their efforts to protect public safety:

> "[Offender] has made a tremendous amount of progress given the issues he brings into treatment. Your work with him appears to go above and beyond what is expected. His success is directly correlated with your effort. Initially he was very scared of you and over the time you have invested in talking to him, he has come to not only trust you, but [he] identifies you as a key support person in his life. Your willingness to work to gain his trust, provide him with flexible yet consistent boundaries, and help him negotiate and problem-solve the situations that arise in his life is admirable. Thanks for going the extra mile with [offender]. We believe you have been instrumental in his success thus far."

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1 For example, see Kim English, Suzanne Pullen, and Linda Jones, *Managing Adult Sex Offenders in the Community: A Containment Approach,* NIJ Research in Brief (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, January 1997); Lane Council of Governments, *Managing Sex Offenders in the Community: A National Overview* (Eugene, OR, 2003). There is limited empirical evidence regarding the effectiveness of sex offender management "best practices," but these practices have been widely embraced by corrections professionals.

SUPERVISION OF SEX OFFENDERS BY "SPECIALIZED" CORRECTIONS STAFF

In Minnesota, three types of corrections agents supervise sex offenders:

- **"Intensive Supervised Release" (ISR) agents.** These agents have statutory limits on the size of their caseloads so they can closely monitor certain high-risk offenders released from prison. ISR agents supervise sex offenders but also many other higher-risk offenders; thus, ISR agents usually do not have "specialized" sex offender caseloads.[2]

- **Specialized sex offender agents.** These agents specialize in supervision of sex offenders who are not assigned to ISR. They have caseloads that consist largely (or exclusively) of sex offenders on probation or supervised release.[3]

- **Regular agents.** These agents typically supervise a variety of types of offenders on probation or supervised release, not just sex offenders. Thus, these agents do not have specialized sex offender caseloads.

Using agents with specialized expertise in the supervision of sex offenders is a "best practice."

Nationally, there is a general consensus that it is a "best practice" for corrections agencies to use sex offender agents with (1) specialized training in sex offender supervision, and (2) caseloads that consist largely of sex offenders.[4] Corrections officials generally believe that specialized sex offender agents can better understand the daily lives and habits of sex offenders, some of whom seem compliant but are, in fact, deceptive and risky. Through specialization, agents can gain expertise in sex offender management practices and work collaboratively with treatment providers, law enforcement agencies, victims, and others.

The 1999 Minnesota Legislature authorized a pilot project in specialized sex offender supervision, appropriating $150,000 per year to Dodge-Fillmore-Olmsted Community Corrections.[5] In 2000, the Legislature appropriated funding for a statewide program of "enhanced supervision of adult felony sex offenders," including specialized services and smaller caseloads.[6] Statewide funding for this program peaked at $5.39 million in fiscal year 2003, dropping to $4.97 million in fiscal years 2004 and 2005.

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2 Statewide, as of mid-2004, there were about 50 full-time-equivalent ISR agents (or agents who provided what their agencies defined as "intensive" supervision).

3 Statewide, as of mid-2004, there were about 80 full-time-equivalent agents who specialized in sex offender supervision.

4 For example, see U.S. Department of Justice, Center for Sex Offender Management, *Community Supervision of the Sex Offender: An Overview of Current and Promising Practices* (Washington, D.C., January 2000).

5 *Laws of Minnesota* (1999), ch. 216, art. 1, sec. 13, subd. 4.

6 *Laws of Minnesota* (2000), ch. 311, art. 1, sec. 2. Of the 2001 appropriation for enhanced sex offender supervision, the Legislature set aside $150,000 annually for a continuation of the Dodge-Fillmore-Olmsted project, in addition to Dodge-Fillmore-Olmsted Community Corrections' portion of the statewide appropriation.

We surveyed directors of community-based corrections agencies to determine which of their staff supervise adult felons on probation or supervised release.[7] We found that:

- **All of Minnesota's state and local corrections agencies that supervise adult felons employ at least one specialized sex offender agent or contract with another agency for specialized supervision.**

According to our survey, all 11 DOC district offices and 14 of 16 Community Corrections Act agencies employ agents who specialize in supervising adult sex offenders.[8] The two Community Corrections Act agencies that do not employ their own specialized sex offender agents have agreements with DOC for specialized sex offender supervision.

In some agencies, all sex offenders who are not on Intensive Supervised Release are assigned to specialized sex offender agents. For example, Ramsey County does not assign sex offenders to its regular corrections agents. All Ramsey County sex offenders (except those on ISR) are assigned to agents who work in a separate organizational unit devoted entirely to supervising sex offenders. Hennepin County also has a separate unit of agents who supervise sex offenders but, unlike Ramsey County, Hennepin has assigned many of its sex offenders on supervised release to regular agents. Also, until December 2004, Hennepin's regular agents supervised many cases where the sex offense was committed in another county. Statewide, we estimated that:

All Minnesota corrections agencies have at least one specialized agent to supervise adult, felony-level sex offenders, but few have specialized agents for juveniles.

- **About 65 percent of Minnesota's adult sex offenders under correctional supervision in June 2004 were supervised by specialized sex offender agents.**

In addition, we estimated that 7 percent of adult sex offenders were on the caseloads of Intensive Supervised Release agents, and 28 percent were supervised by regular agents.

The Legislature has not appropriated state funding for specialized supervision of juvenile sex offenders, in contrast to the funding for specialized supervision of adult offenders. Of the 27 Community Corrections Act agencies and Department of Corrections district offices we surveyed in August 2004, we determined that 5 had an agent whose caseload consisted mainly of juvenile sex offenders.[9] Some other agencies told us that, while they do not have enough juvenile sex offenders to justify having an agent who works exclusively with this population, they tend to assign juvenile sex offenders to certain agents who have expertise in this field.[10]

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7 Office of the Legislative Auditor, survey of directors of the Minnesota Department of Corrections district offices and Community Corrections Act agencies (*N*=28), June 2004.

8 We did not count the Department of Corrections Intensive Supervised Release office in this analysis—because it only supervises offenders who have been assigned to ISR.

9 These agencies were Hennepin, Anoka, Dakota, Dodge-Fillmore-Olmsted, and Arrowhead Regional Community Corrections.

10 We only surveyed the agencies that supervise adult felons—that is, the CCA agencies and DOC district offices. We did not survey directors in the 29 counties where juvenile probation is provided by "county probation officers" of the courts.

Specialized Training

State law requires special training for all agents who supervise sex offenders.

Minnesota law says that corrections agents may not supervise adult or juvenile sex offenders unless they have completed sex offender supervision training provided by the Minnesota Department of Corrections.[11] Thus, while not all sex offenders are supervised by agents with specialized caseloads, the law requires all sex offenders to be supervised by agents who have received some specialized sex offender supervision training. As noted in Chapter 1, this is one of few requirements in Minnesota law regarding sex offender supervision by corrections agents.

Each corrections agency is responsible for ensuring that its agents have appropriate training. State law does not require centralized monitoring of the agencies' compliance with the statutory training requirement. In fact, the Department of Corrections does not have complete records indicating which Minnesota corrections agents have taken the DOC training course. The course was started in 1990, but DOC has a complete roster of course participants only since September 1998, plus it has information on its own employees who took the course before that time.

In late 2004, we examined the extent to which existing ISR and specialized sex offender agents have completed the DOC training.[12] In cases where DOC records did not indicate that an agent had completed the training, we asked the agent's supervisor for information about whether the agent had completed the training. We found that:

- **Most—though not all—ISR and specialized sex offender agents in Minnesota have completed the Department of Corrections' basic sex offender supervision course. However, some completed the course many years ago, and it is up to individual agencies to find "advanced" training.**

Of the 133 agents for whom we sought training information, we found that 123 had completed DOC's course.[13] But many of the current agents who have fulfilled this training requirement took the class many years ago. Among the current ISR and specialized sex offender agents who have completed the class, the median year of completion was 1997, and 23 percent took the course in 1991 or earlier.

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11 *Minn. Stat.* (2004), §241.67, subd. 6. The Commissioner of Corrections may waive this requirement if the agent has completed equivalent training as part of a postsecondary education curriculum.

12 In August 2004, we requested information from agencies regarding ISR and specialized sex offender agents for whom DOC records did not indicate that the DOC training course was completed; we received responses from agencies between August and December 2004. We did *not* examine whether "regular" agents who supervise sex offenders have completed the training, although these agents are required to do so by state law.

13 These numbers exclude five agents for whom we received conflicting information about whether they completed the course, plus three agents who were reported to have taken the course prior to 1990. In some cases where we learned that agents had not taken the required training course, their supervisors assured us that the staff would enroll in the next available DOC course in sex offender supervision training.

We recognize that the quality of Minnesota's sex offender agents relies on far more than the contents of a single in-service training class. For example, agents have opportunities to enroll in specialized training beyond what is offered by DOC. However, corrections agencies have expressed concerns about the limited amount of training offered by DOC. In 2000, a study group of Minnesota corrections officials said that DOC's sex offender supervision training course was targeted toward newly-hired, inexperienced probation officers.[14] The group recommended that DOC collaborate with other criminal justice agencies to develop advanced training in sex offender supervision. In August 2004, we surveyed corrections directors regarding their satisfaction with the training opportunities DOC has provided to agents who supervise sex offenders. Among the directors of Community Corrections Act agencies and DOC district offices, 33 percent said that DOC has provided sufficient training, 44 percent said that it has not, and 22 percent offered no opinion.[15] DOC officials told us that sex offender agents need advanced training, but they said it is available from other corrections organizations in Minnesota and elsewhere. In addition, DOC noted that agencies that receive Community Corrections Act grants from the state are required to spend 2 percent of these grants on training.

Caseload size

Corrections experts who favor specialized supervision of sex offenders have also advocated for limits on the number of cases assigned to sex offender agents. In general, they believe that sex offenders require closer supervision than the average criminal offender.[16]

The Legislature has appropriated funding to reduce the caseloads of agents who supervise sex offenders.

However, corrections officials in the U.S. have not determined an optimal caseload—or workload—for agents who supervise sex offenders.[17] The American Probation and Parole Association acknowledges the need for national standards, but it says: "There is little that is done in all (or even most) probation and parole agencies with enough consistency of practice to support national workload standards."[18]

Minnesota does not have a statewide policy regarding what constitutes an appropriate caseload for a sex offender agent, but there is some basis for suggesting that caseloads of 35 to 40 may be a reasonable goal. When the 1999 Legislature approved funding for a pilot project in specialized sex offender

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14 Sex Offender Supervision Study Group, *Sex Offender Supervision: 2000 Report to the Legislature* (St. Paul: Minnesota Department of Corrections, January 2000), 13-14.

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

16 For example, U.S. Department of Justice, Center for Sex Offender Management, *An Overview of Sex Offender Management* (Washington, D.C., July 2002), 6, characterizes specialized sex offender supervision as often having "small caseloads so that agents working with sex offenders can engage in intensive casework in the field."

17 While a "caseload" is the number of cases supervised by a single agent, a "workload" measure would incorporate an indication of the amount of time required by individual cases. For example, an agent who supervises 50 low-risk offenders probably has a less demanding workload than an agent who supervises 50 high-risk offenders.

18 American Association of Probation and Parole, *Caseload Standards* (undated); http://www.appa-net.org/about%20appa/caseloadstandards.htm, accessed November 12, 2004.

supervision, it established a goal for this project of reducing caseloads to an average of 35 offenders per specialized sex offender agent.[19] The 2000 Legislature authorized statewide funding for "enhanced supervision" of adult felony sex offenders and stated a goal of reducing caseloads, but it did not specify a particular benchmark.[20] The Minnesota Department of Corrections' policy for its own agents states:

> "While the optimum caseload size [for enhanced sex offender supervision] has yet to be determined, it is expected that caseloads will not exceed 40 offenders, and depending on the geographic location as well as other supervision factors the actual caseload size may be closer to 25 to 30 offenders."[21]

We examined the number of cases supervised by agents throughout Minnesota who have specialized sex offender caseloads. We found that:

- **Statewide, the majority of specialized sex offender agents had caseloads greater than the original goal of 35 to 40 offenders.**

The number of offenders supervised by many agents exceeds state targets for caseload size.

In June 2004, the average caseload was 45, and half of all specialized agents had caseloads of 44 offenders or greater. Thus, many specialized sex offender agents had caseloads that were larger than the DOC and legislative targets.[22] On the positive side, specialized sex offender agents generally have lower caseloads than regular probation offenders who supervise a variety of types of offenders. For example, Hennepin County's specialized sex offender agents supervised an average of about 46 cases each in June 2004. In contrast, we found that a sample of regular agents in Hennepin County had a median of 84 offenders each (most were not sex offenders).[23] In addition, 56 percent of the directors of community-based corrections agencies we surveyed statewide said that their sex offender caseloads are smaller today than they were five years ago (before the Legislature approved funding for enhanced sex offender supervision), while 26 percent said that their caseloads grew during this period.[24]

We also examined the caseloads of ISR agents, who often supervise sex offenders just released from prison. State law specifies that ISR caseloads "shall not exceed the ratio of 30 offenders to 2 intensive supervision agents,[25] which is equivalent to an average of 15 offenders per agent. These maximum caseloads are low because

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19 *Laws of Minnesota* (1999), ch. 216, art. 1, sec. 13, subd. 4.

20 *Laws of Minnesota* (2000), ch. 311, art. 1, sec. 2.

21 Minnesota Department of Corrections, *Procedures for the Enhanced Supervision of Sex Offenders in the Community* (St. Paul, December 2003).

22 We examined all types of cases on specialized agents' caseloads, including sex offenders as well as other types of offenders.

23 Hennepin staff advised us that this estimate seemed reasonable, noting that their own estimates of average caseloads for the county's regular agents have been in the range of 75 to 90.

24 Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004 (*N*=27). Fifteen percent of directors said that their caseloads today are about the same size as caseloads five years ago.

25 *Minn. Stat.* (2004), §244.13, subd. 2. Presumably, the law stated a limit of 30 offenders per 2 agents (rather than 15 offenders per agent) because ISR agents often supervise offenders in teams.

ISR agents are supposed to have very frequent contact with the offenders they supervise. We found that:

- **Statewide, ISR agents who supervised sex offenders had an average of 16.6 cases each—slightly higher than the statutory maximum, but well below the average caseload of non-ISR agents.[26]**

As we discuss in the next section, however, agencies sometimes keep ISR caseloads at or near the statutory maximum through case management practices—for example, by transferring offenders from ISR before they have completed all of the program phases, or by not referring offenders to ISR who may need this intensive level of supervision.

SUPERVISION OF SEX OFFENDERS BY INTENSIVE SUPERVISED RELEASE (ISR) AGENTS

In June 2004, about 7 percent of sex offenders supervised by community corrections agencies were on "intensive supervised release."

Intensive Supervised Release (ISR) is a state program that provides close scrutiny of offenders recently released from prison. After 12 months of ISR, offenders who have complied with ISR requirements usually move to less intensive supervision. In June 2004, only about 300 sex offenders (or 7 percent of sex offenders under community correctional supervision) were on ISR, but this program is an important part of Minnesota's strategy for supervising sex offenders in the community. DOC provides intensive supervision in many parts of Minnesota with its own ISR agents. In addition, DOC contracts with several Community Corrections Act agencies to provide ISR.[27]

For most offenders released from prison, the Minnesota Department of Corrections determines which offenders should be designated for intensive supervision in the community. State laws do not specify which offenders should receive ISR, and DOC makes judgments about ISR on a case-by-case basis, without specific eligibility requirements.[28] In cases where Community Corrections Act agencies provide ISR services, DOC has allowed these agencies to make some judgments about ISR assignments so that their caseloads do not

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26 The median ISR caseload was 16 offenders (including both sex offenders and other offenders).

27 DOC contracts with Anoka, Dakota, Hennepin, and Ramsey counties, plus with Arrowhead Regional Corrections (serving five counties).

28 Jeffrey L. Peterson, Executive Officer of Hearings and Release Unit, DOC, memorandum to Joel Alter, Office of the Legislative Auditor, "Criteria for Consideration/Assignment of Intensive Supervised Release," May 24, 2004. The memorandum says the following factors (not in order of priority) are considered in ISR decisions: the offender's criminal history, correctional supervision history, chemical dependency history, sex offender treatment history, mental health history/diagnosis, institutional discipline history, risk scores on actuarial instruments, and end-of-confinement review committee risk level; severity of the current offense; and whether DOC has designated the offender as a "public risk monitoring" case. Fifty-eight percent of community-based corrections agency directors told us in our August 2004 survey that DOC has clear criteria for determining which offenders will be released to ISR, while 31 percent of directors said that it does not. We excluded Hennepin County's response because Hennepin uses its own criteria to determine ISR placements. Twelve percent of directors did not offer an opinion or said that the question was not applicable.

exceed the limits set in state law. In general, we found that higher-risk sex offenders have been more likely to be placed on ISR than lower-risk sex offenders. We examined DOC data on prisoners released between January 2000 and June 2004. Excluding offenders who were discharged from all correctional supervision at the time they left prison, we found that 84 percent of Level III offenders released from prison were assigned to ISR, compared with 67 percent of Level II offenders and 35 percent of Level I offenders; the remaining offenders were assigned to supervised release without provisions for intensive supervision.[29]

DOC officials told us that, since March 2004, they have observed a policy of assigning to ISR caseloads all Level III offenders who have time remaining on their sentence at the time of release from prison. However,

- **In some parts of Minnesota, state-funded ISR services are not available for Level I and Level II offenders who need intensive supervision following release from prison.**

State funding for intensive supervision is not available in all parts of Minnesota.

First, 23 counties are not regularly served by the ISR program because program funding has not been sufficient to serve all areas of the state.[30] These counties accounted for 3 percent of the sex offenders released from prison to Minnesota communities between 2000 and 2004. Counties without access to ISR have usually absorbed sex offenders released from prison into the caseloads of their non-ISR corrections agents, who typically handle larger caseloads and have fewer contacts with offenders than ISR agents. DOC sometimes provides ISR services to individual offenders in the 23 counties without ISR agents, but we found that relatively low percentages of the sex offenders released from prison to these counties have been assigned to intensive supervision since 2000. For these counties, the share of offenders assigned to ISR was 25 percent for Level III offenders (as compared with 84 percent for Level III offenders in the state overall), 12 percent for Level II offenders, and 3 percent for Level I offenders.[31]

Second, three other counties (Dodge, Fillmore, and Olmsted) assumed responsibility in 2003 for sex offenders on supervised release who would otherwise have been supervised by the Department of Corrections' ISR agents. Staff in Dodge-Fillmore-Olmsted Community Corrections proposed to take over supervision of these offenders with their own staff, and DOC agreed. Dodge-Fillmore-Olmsted Community Corrections does not receive state ISR funding for this supervision.[32]

Third, due to resource limitations, corrections agencies provide intensive supervision to only a portion of the offenders on supervised release who need this level of services. This problem has been particularly noteworthy in Hennepin County, but other agencies have experienced this problem to a more limited

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29 In total, 49 percent of released offenders were assigned to ISR at the time of release.

30 According to DOC, the counties without ISR are: Rock, Nobles, Murray, Pipestone, Lyon, Lincoln, Yellow Medicine, Lac Qui Parle, Chippewa, Swift, Big Stone, Stevens, Traverse, Grant, Pope, Todd, Wadena, Kittson, Roseau, Lake of the Woods, Koochiching, Lake, and Cook.

31 As noted above, DOC implemented a policy in March 2004 to assign all Level III offenders to ISR. Thus, DOC staff now provide ISR supervision to Level III offenders released to counties that have no other provisions for ISR services.

32 DOC still supervises Level III offenders on supervised release in these counties.

extent.[33] A 2000 study on sex offender supervision reported that Hennepin was able to place on ISR only 20 percent of its offenders on supervised release who were designated by DOC as "public risk monitoring" cases, including many sex offenders.[34] When DOC designates inmates as "public risk monitoring" cases, they are considered for special conditions of supervised release that will provide more surveillance, control, or programming.[35] After the 2000 report, Hennepin County received an increase in ISR funding, but county and state officials told us that Hennepin provides ISR for only about 50 percent of its "public risk monitoring" cases today.[36] The Department of Corrections' supervisor of ISR services told us that nearly 100 percent of "public risk monitoring" cases have been placed on ISR in other Minnesota counties that have ISR agents.

Due to resource limitations, some agencies restrict the assignment of offenders to intensive supervision.

Similarly, the Minnesota Department of Corrections' ISR unit also sometimes receives referrals of more cases for ISR services than it can handle within the ISR caseload limits that are set in statute. In response, DOC has occasionally transferred offenders from intensive supervision to non-ISR supervision before the offenders have successfully completed all phases of the ISR program. DOC staff estimated that there were 74 cases in a recent 12-month period where offenders received "early transfers" from ISR to a less intensive type of supervision.

In a statewide survey, we asked the directors of community-based corrections agencies for their perspectives about the adequacy of ISR services. Directors of agencies that supervise a majority of the sex offenders in Minnesota told us that the number of their offenders on supervised release who were on ISR during the past two years was "less than the number of offenders who needed this level of supervision."[37] In addition, our survey indicated that:

- **Most community-based corrections directors favored assigning some sex offenders to ISR for longer than two consecutive years.**

State law authorizes the Commissioner of Corrections to place sex offenders on ISR for up to their full period of supervised release or conditional release, but offenders typically do not remain on ISR for more than 12 consecutive months.[38]

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33 For example, in late 2004, Ramsey County officials told us that they did not have enough room on their ISR caseloads for all of the offenders released to the county with ISR designations. They said this was the first time in recent experience that this has happened.

34 Sex Offender Supervision Study Group, *Sex Offender Supervision: 2000 Report to the Legislature,* 3.

35 Minnesota Department of Corrections Policy 203.020.

36 According to DOC, Hennepin's ISR grant increased from $718,000 in fiscal year 2001 to $1.3 million in fiscal years 2002 and 2003, before dropping to $1.2 million in fiscal year 2004.

37 Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004 (*N*=27). Thirty-three percent of directors reported a shortage of ISR services, while 7 percent reported a surplus and 44 percent said the number of ISR slots was "about the same" as the number needed. However, the directors who reported shortages accounted for nearly two-thirds of supervised releasees, as of June 2004.

38 Offenders can be kept on ISR for longer than 12 months if they are not meeting agency expectations, or they may be returned to prison.

Eighty-one percent of directors think it would be "good practice" for at least some sex offenders to remain on ISR for more than 24 consecutive months.[39]

Also, our survey indicated split opinions about the need for ISR agents with specialized caseloads. Specifically, 52 percent of the directors favored designating some ISR agents to exclusively supervise sex offenders, and 37 percent opposed this.[40] Individual ISR agents now supervise a mix of offenders, including both sex offenders and other types of offenders. Directors in some rural areas did not think it would be cost-effective for certain ISR agents to supervise only sex offenders, while some other directors said that specialized ISR agents might have a better understanding of the sex offenders they were supervising.

We examined the nature of the supervision provided to a sample of sex offenders on ISR. DOC has prescribed four phases for each offender's ISR program, moving from more intensive supervision to less intensive supervision—as shown in Table 2.1.[41] We reviewed case files in selected agencies for a random sample of 34 sex offenders who had been on ISR. For each ISR case we reviewed, we examined the amount of agent-offender "contact" over a three- to six-month period, and we converted these contact levels to monthly and annualized averages.[42] As one researcher has stated:

> "Supervision services are built on the framework that "contacts," or the relationship between the offender and the supervision agent, are the cornerstone to managing and/or changing offender behavior…. Contacts provide the means to monitor the performance of offenders and to provide direction to the offender." [43]

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39 In our August 2004 survey, 52 percent of directors said that "a majority" of sex offenders on ISR should remain on ISR for more than 12 consecutive months, and another 37 percent said that "some" sex offenders should do so. In addition, 7 percent said that "a majority" of sex offenders on ISR should remain on ISR for more than 24 consecutive months, while 74 percent said that "some" should do so. Finally, 4 percent said that "a majority" of sex offenders on ISR should remain on ISR for at least 60 consecutive months, while 41 percent said that "some" should do so.

40 Office of the Legislative Auditor survey of directors of community-based corrections agencies, August 2004 (*N*=27). In addition, 11 percent responded "don't know."

41 Some DOC officials told us that these elements of the ISR program are prescribed by *Minn. Stat*. (2004), §244.15, but we think this interpretation of the law is debatable. *Minn. Stat*. (2004), §244.15 specifies detailed requirements for "intensive community supervision," including agent-offender contact standards and requirements for random drug testing. But "intensive community supervision" is a now-defunct program, and this term is distinguished in *Minn. Stat*. (2004), §§244.12-244.13 from "intensive supervised release." DOC has clear statutory authority to develop administrative policies for the ISR program, such as those outlined in Table 2.1. In our view, it may be useful for the Legislature to clarify the statutory requirements regarding ISR, if only to affirm the requirements that DOC has implemented administratively.

42 We examined six months of ISR contacts, where possible. For purposes of counting agent contacts with offenders, we excluded cases where we could not review at least three months. We did not systematically document differences in the contact levels during different phases of ISR because (1) we often reviewed case records for each offender during more than one ISR phase, and (2) case records often did not clearly indicate the dates when offenders changed from one phase to another. Our sample of ISR cases was randomly drawn, but the samples for this and other supervision categories of sex offenders were not large enough to ensure that they were representative of cases in these categories statewide.

43 Faye S. Taxman, "Supervision: Exploring the Dimensions of Effectiveness," *Federal Probation* (September 2002), 15.

Table 2.1: Minnesota Department of Corrections Policies Regarding Components of Intensive Supervised Release (ISR)

	ISR Program Phases			
	Phase I[a]	Phase II[b]	Phase III[c]	Phase IV[d]
Required Minimum Contacts	4 face-to-face contacts per week (including 2 at home)	2 face-to-face contacts per week (including 1 at home)	1 face-to-face contact per week (including 2 at home per month)	2 face-to-face contacts per month
Living Arrangements	Subject to strict house arrest	Subject to modified house arrest	Subject to daily curfew	Subject to daily curfew
Alcohol and Drug Testing	Once a week	Twice a month	At times determined by agent	At times determined by agent
Work-Related Requirements	During all ISR phases, offender must spend at least 40 hours per week doing approved work (including community service) in constructive activity designed to obtain employment, or attending treatment or education as directed by the Commissioner of Corrections.			
Electronic Surveillance	Optional during all phases, as recommended by agent or supervisor with approval from DOC Office of Adult Release.			

[a]Lasts four months or half of the time remaining until expiration of sentence, whichever is less.

[b]Lasts four months or one-third of the time remaining until expiration of sentence, whichever is less.

[c]Lasts two months or one-third of the time remaining until expiration of sentence, whichever is less.

[d]Lasts two months or until expiration of sentence.

SOURCE: Minnesota Department of Corrections, Policy 106.112, plus supplemental information provided to the Office of the Legislative Auditor by DOC staff.

Consistent with state policy, sex offenders assigned to intensive supervision receive close scrutiny from corrections agents.

We found that:

- **Sex offenders on intensive supervised release from prison have frequent face-to-face contacts with their supervising agents and receive frequent drug/alcohol tests—generally consistent with state ISR policies.**

Our case reviews indicated that sex offenders on ISR received a median of 70 home visits from corrections agents per year. In addition, offenders on ISR received a median of 35 other face-to-face contacts with agents per year and 44 drug or alcohol tests per year.[44]

Some of the visits by ISR agents were very perfunctory. For example, when an ISR agent checked on offenders under his supervision at a homeless shelter, the case records included notes such as: "Offender sleeping in his bunk. I did not wake him," and "I waved as I drove by [the] parking lot." Also, many visits were

44 Our definition of "home visits" included agent visits to halfway houses and residential facilities, in addition to visits to private homes. Many of the ISR home visits were made for the purpose of administering a drug or alcohol test. In cases where offenders were assigned to halfway houses at the beginning of supervised release, ISR agents typically conducted fewer visits than DOC's general ISR standards called for—because the offenders were under ongoing supervision by halfway house staff. Also, some corrections agencies did not have case records of drug/alcohol tests conducted while offenders were at halfway houses. Thus, in some of the cases we reviewed, our estimates understated the total number of contacts and tests.

done solely for the purpose of administering a drug or alcohol test. In general, ISR agents' contacts appeared to focus on "surveillance," such as the following case we reviewed in which an agent checked on an offender's whereabouts:

> *According to ISR agent records, a sex offender phoned the agent one evening to say that he was going to leave his house for a trip to the gas station. The agent went to the offender's house 30 minutes later, and the offender had not returned. The agent waited at the house until the offender returned, and a subsequent breathalyzer test indicated that the offender had consumed alcohol. The offender was taken into custody.*

The impact of intensive supervision programs is unclear.

Corrections officials generally support the idea of holding sex offenders accountable through close surveillance, and intensive supervision also responds to the public's fear about the risks posed by sex offenders in the community. But it is worth noting that:

- **It is unclear in national research whether increased levels of offender surveillance improve public safety.**

Most studies of intensive supervision programs have found no significant differences between the recidivism rates of offenders in these programs and offenders in comparison groups.[45] In other words, increasing the amount of offender scrutiny by corrections agents does not necessarily result in fewer crimes by these offenders. Some researchers think that the results have been more positive in cases where intensive supervision has been combined with therapeutic interventions (such as treatment), but this research has not been rigorously examined.[46]

Minnesota law requires DOC to "develop a system for gathering and analyzing information concerning the value and effectiveness" of the ISR program.[47] But DOC has not evaluated the effectiveness of ISR in the past decade, and the impact of this program on Minnesota's sex offenders is unclear.[48]

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45 For example, see: Betsy Fulton, Edward J. Latessa, Amy Stichman, and Lawrence F. Travis, "The State of ISP: Research and Policy Implications," *Federal Probation* (December 1997): 65-75; Joan Peterselia, "A Decade of Experimenting with Intermediate Sanctions: What Have We Learned?" *Perspectives on Crime and Justice: 1997-1998 Lecture Series* (Washington, D.C.: National Institute of Justice, November 1998): 79-105; Taxman, "Supervision: Exploring the Dimensions of Effectiveness:" 14-27. Such analyses have not focused exclusively on sex offenders.

46 Lawrence W. Sherman, Denise Gottfredson, Doris MacKenzie, John Eck, Peter Reuter, and Shawn Bushway, *Preventing Crime: What Works, What Doesn't, What's Promising* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, February 1997): 9-24.

47 *Minn. Stat.* (2004), §244.13, subd. 3.

48 A 1995 Rand Corporation study found that the rearrest rates of offenders in Minnesota's intensive supervision program did not differ significantly from the rates of similar offenders who were randomly assigned to other types of supervision. See Elizabeth Piper Deschenes, Susan Turner, and Joan Peterselia, *Intensive Community Supervision in Minnesota: A Dual Experiment in Prison Diversion and Enhanced Supervised Release* (Santa Monica, CA: Rand, May 1995).

ONGOING SUPERVISION OF SEX OFFENDERS

At any given time, the large majority of Minnesota's sex offenders under correctional supervision in the community are not receiving the "intensive" supervision described in the previous section.[49] The ISR program is available only for certain offenders on supervised release, not for offenders on probation. Also, ISR is typically limited to the first year following release from prison.[50] Following ISR, the responsibility for supervision transfers to specialized sex offender agents (with primarily sex offenders on their caseloads) or regular agents (with a variety of types of offenders on their caseloads) for the remainder of the sentence. This section discusses "ongoing" supervision of sex offenders—that is, non-ISR supervision provided to offenders on probation and supervised release.

Each corrections agency designates its own supervision categories and sets its own standards.

It is challenging to compare the types of supervision that non-ISR offenders receive from various community-based corrections agencies. First, agencies use different terms to describe the supervision levels to which they assign offenders. For example, we observed that non-ISR offenders assigned to their supervising agency's highest level of supervision might be in "high," "maximum," "surveillance," "enhanced, Phase I," or "intensive" supervision, or they may have no designation at all—depending on the agency.[51] More important,

- **There are no statewide standards regarding the expected number and type of contacts that non-ISR agents should have with sex offenders under their supervision.**

Each corrections agency sets its own sex offender supervision standards, and there were differences among agencies we reviewed in their expected levels of agent-offender contacts in the various supervision categories. Individual agencies' policies typically specify the minimum number of "face-to-face" contacts that agents should have with offenders over a given time period. Some agencies' policies supplement these broad standards with more specific ones—for example, identifying minimum expectations regarding the number of agent visits "out of the office" or at offender's homes.

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49 Even the majority of Level III offenders under correctional supervision in the community are not on ISR. As of June 2004, 56 percent of Minnesota's Level III offenders in the community were supervised by specialized sex offender agents and 43 percent were supervised by ISR agents. Level III offenders were less likely to be on ISR caseloads in Hennepin County (where the largest share of them were located) than in other parts of Minnesota.

50 ISR can be extended beyond 12 consecutive months if offenders are not complying with their conditions of release. Also, some individual offenders have been placed on ISR more than once, following revocations of their supervised release.

51 Offenders on probation in the sex offender unit of the largest county corrections agency (Hennepin County) are not, in practice, assigned to different supervision categories, except for offenders who have completed their conditions of probation and are assigned to the lowest level of supervision. Hennepin agents have considerable discretion regarding the frequency of contacts with sex offenders on probation, in contrast to other agencies we reviewed that have contact standards that are linked to supervision categories. Supervisors in this agency know the number of probation cases assigned to each agent, but they do not have meaningful measures of the supervision levels of offenders on an agent's caseload.

Corrections agencies try to manage the risks of the sex offenders they supervise. Some offenders are considered more risky than others, and most agencies have policies that call for more contact with higher risk offenders or offenders who have not yet fulfilled key requirements of their supervision. Over time, agencies may increase or reduce the amount of supervision that an offender receives, depending on the offender's compliance with expectations. Table 2.2 shows an example of one agency's standards for the levels of supervision by specialized sex offender agents.

Table 2.2: Example of One Agency's Policies for Ongoing Supervision by Specialized Sex Offender Agents: Minnesota Department of Corrections

	Minnesota Department of Corrections' Program Phases for "Enhanced" Sex Offender Supervision		
	Phase I	Phase II	Phase III
Required Minimum Agent Contacts with Offender	1 face-to-face contact per week (including 2 home visits per month)	2 face-to-face contacts per month (including 1 home visit per month)	1 face-to-face contact per month (including 1 home visit every 3 months)
Offenders Continue at This Supervision Level Until They:	Successfully participate in treatment and make progress toward completion of the treatment plan.	Complete their primary treatment program.	Complete their treatment aftercare program. (Offenders may not exit Phase III if they have had a major violation within the previous 6 months.)

NOTE: Most of the sex offenders receiving "enhanced" supervision from DOC agents are in Phases I or II.

SOURCE: Minnesota Department of Corrections, *Procedures for the Enhanced Supervision of Sex Offenders in the Community* (St. Paul, December 2003).

There is often a large drop-off in agent-offender contacts after an offender completes intensive supervision.

We reviewed case records to determine the actual amount of contact agents had with individual offenders. We found that:

- **Specialized sex offender agents and regular corrections agents usually had far fewer face-to-face contacts (particularly home visits) with the sex offenders they supervised than did ISR agents.**

For example, we examined cases in which sex offenders were assigned to "high" or "enhanced" levels of supervision (but were not on ISR). These offenders received a median of 3 home visits per year from their agents, compared with a median of 70 home visits annually for offenders on ISR. Similarly, agents supervising "high" or "enhanced" cases had a median of 16 other types of meetings annually with offenders (for example, at treatment sessions, the offender's place of employment, or the agent's office). By comparison, ISR agents had a median of 35 such contacts annually per offender. Offenders on "high" or "enhanced" levels of supervision were given a median of 1 test for drugs or alcohol per year, compared with a median of 44 tests per year for

offenders on ISR.[52] In many cases, offenders who completed ISR and were then assigned to other agents had a large drop-off in the number of their contacts with agents. Below, we summarize two such examples from the case records we reviewed:

> *A Level III offender was released from prison in 2002. During 10 months of Intensive Supervised Release, the ISR agents conducted 73 home visits and 11 office visits, and they administered 34 drug or alcohol tests. The offender was subsequently assigned to a specialized sex offender agent, and the offender had 2 home visits, 22 office visits, and 1 drug/alcohol test during 11 months of supervision.*

> *A Level III offender received 84 home visits during a 12-month period on ISR, plus the agents visited the offender's workplace 13 times. The offender received at least 60 drug or alcohol tests, mostly during the home visits. But, in 12 months following ISR, the offender received only three home visits and four drug or alcohol tests. Because the offender was working full-time, the agent made most of his contacts at the offender's workplace (44 visits), but the agent told us that he would like to have done more home visits.*

Agencies do not always meet their own standards for offender supervision.

While a reduction in contacts following completion of ISR would be expected, the cases above show that the drop-off in contacts was sometimes dramatic, particularly for home visits and drug or alcohol tests. We think it is reasonable to question whether high-risk offenders who have just completed ISR should receive such a small number of home visits.

In the samples of cases we reviewed, there appeared to be some differences among corrections agencies in the frequency of their contacts with offenders. For example, the Minnesota Department of Corrections' specialized sex offender agents tended to conduct more home visits and more face-to-face visits than Hennepin County's specialized sex offender agents.[53] Even so, however, DOC's contact levels were often below the department's own standards for agent-offender contact levels. For example, the median number of home visits per year in the DOC "enhanced" supervision cases we examined was 6; however, most of the offenders we reviewed were at supervision levels for which DOC policies required 12 or 24 home visits per year (see Table 2.2).[54]

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52 Based on offenders whose conditions of supervision included provisions for drug or alcohol tests.

53 For 60 DOC cases we reviewed that were assigned to specialized agents, the median number of home visits annually was 6, and the median number of other face-to-face contacts was 16. For 25 Hennepin County cases we reviewed (not including those assigned to "administrative" supervision or to non-specialized corrections agents), the median number of home visits annually was 0, and the median number of other face-to-face contacts was 11.

54 Because the typical number of home visits we observed was not large, we have highlighted cases that exemplify this. But, on the other hand, we also observed cases where non-ISR agents made significant efforts to monitor the actions of offenders. For example, in one case, an agent conducted 22 home visits and attended 23 other meetings with an offender over the course of a 12-month period of "enhanced" supervision. During this time, the agent pursued several tips that the offender was having contact with children, and twice the agent confirmed that the offender had violated his probation restrictions regarding contact with minors.

While there were often limited agent contacts with offenders assigned to "high" and "enhanced" levels of supervision, other levels of sex offender supervision had fewer still. In the agencies we reviewed, sex offenders in our sample who were assigned to "medium" supervision and those assigned by Hennepin County to non-specialized agents had a median of zero home visits per year and ten other meetings per year. As we discuss later, offenders assigned to "low" or "minimum" levels of supervision had even fewer home visits and other meetings with their supervising agents. Table 2.3 summarizes the frequency of agent-offender contacts in the cases we reviewed.

Table 2.3: Agent Contacts With Sex Offenders, by Supervision Level

	Median Number of Agent Face-to-Face Contacts With Offenders Per Year[a]	
Supervision Level	Home Visits	"Other" Visits
Intensive Supervised Release (N=34)	70	35
Enhanced or High (non-ISR) Supervision[b] (N=129)	3	16
Medium or Regular Supervision[c] (N=58)	0	10
Low Supervision[d] (N=41)	0	4
Administrative[e] (N=14)	0	0

NOTE: "Home" visits include visits to private residences, halfway houses, and residential treatment facilities. Some home visits were done for the primary purpose of administering drug tests and we included these in the totals. "Other" visits include contacts at the agent's office, offender's treatment or workplace, or other venue.

[a]We reviewed contacts for each offender over a recent 3- to 12- month period. Because we reviewed offenders for unequal time periods, we converted the observed contacts for each offender to a 12-month-equivalent.

[b]"Enhanced" supervision includes all cases supervised by DOC's and Hennepin County's specialized sex offender agents. "High" supervision includes cases designated for "high" or "maximum" supervision by any of the agencies whose cases we reviewed.

[c]"Medium" supervision includes cases designated for this level of supervision by any of the agencies whose cases we reviewed. "Regular" supervision includes cases that were not assigned by Hennepin County to ISR or specialized sex offender agents.

[d]"Low" supervision includes cases designated for this level of supervision by any of the agencies whose cases we reviewed.

[e]"Administrative" cases are Hennepin County cases assigned to "Sex Offender Special Services, " for offenders that had, for the most part, complied fully with their supervision conditions.

SOURCE: Office of the Legislative Auditor analysis of case records from Hennepin, Ramsey, and Dakota county corrections agencies; Dodge-Fillmore-Olmsted Community Corrections; Arrowhead Regional Corrections; and DOC district offices.

Home visits should be an important part of sex offender supervision.

Home visits—whether pre-arranged or unannounced—should be an important part of sex offender supervision. First, home visits help agents monitor offenders' compliance with certain conditions of supervision, such as restrictions on contact with minors, possession of alcohol or pornography, and Internet access. Second, home visits may provide agents with more direct insight into offenders' frame of mind and living conditions, perhaps penetrating the secrecy that can allow sex offenders to perpetrate their crimes. Third, home visits allow agents to verify that the offender is living at the address where he or she is registered with the state. While meetings with offenders at the agent's office or the offender's treatment

sessions can be invaluable parts of sex offender supervision, they are not a substitute for periodic home visits.

Some offenders supervised by corrections agencies receive few or no home visits.

In our reviews of individual offenders' case records from selected agencies, we examined agent-offender contacts over periods of time ranging from 3 to 12 months. In all of the ISR cases we reviewed, agents conducted at least one home visit. In contrast, only two-thirds of the offenders on "high" or "enhanced" supervision had at least one home visit, and just over one-third of the offenders on lower supervision levels had a home visit.[55] Below, we briefly summarize some of the cases we reviewed in which individual offenders received minimal or no home visits:

An offender was designated by his supervising agency for a "high" level of supervision, for which the agency's standards required weekly meetings in the agent's office plus home visits every six weeks. During a recent 12-month period, case records indicated that the offender made 39 office visits (mostly for group meetings), but he received no home visits. The offender has received only three home visits since August 2001, when his case notes started.

A Level II offender was released from prison in 2002; his supervised release had been revoked in 2000 for contact with minors. Over a 12-month period, case records indicated that he received only one home visit, in addition to seeing his supervising agent four times at the office and twice at sex offender treatment.

An offender was released from prison in 2000, following conviction for second-degree criminal sexual conduct. According to case records, his subsequent meetings with his supervising agent consisted of 34 office visits until his supervised release expired in 2004. There were no home visits.

An offender was placed on probation in 1999. Based on a review of case notes since June 2000, the offender has had only one home visit. Yet, during this time, the probation officer's case notes indicated some concerns about the offender's relationships with relatives who were living in his home.

Over a period of more than two years, a probation officer visited an offender's treatment group 56 times, according to case records. But, during this time, there were no home visits, two office visits, and four visits to the offender's place of employment.

An offender convicted of first-degree criminal sexual conduct completed his sex offender treatment in 1999. Case records indicated that he received only one home visit since April 1999.

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55 As offenders move to less intensive levels of supervision, they usually have more freedom to set their own schedules, without informing their agents. Thus, non-ISR agents sometimes do not find offenders at home when they stop for unannounced visits, which could contribute to their lower number of home visits per year. While we saw some cases with many unsuccessful agent attempts to meet with offenders at home, the median annual number of these unsuccessful attempts was zero for offenders in each supervision category we reviewed.

In these cases, corrections agents apparently did not periodically verify that the offenders lived at the residences where they were registered with the Bureau of Criminal Apprehension. There are no statewide requirements regarding verification by corrections agencies of registered addresses, and we noted variation in agency policies and practices. [56]

Agencies have varying standards for offenders assigned to low levels of supervision.

In addition, we examined selected agencies' supervision policies and practices for offenders at the lowest levels of supervision. We observed that community-based corrections agencies had varying policies for such offenders. For example, Dodge-Fillmore-Olmsted Community Corrections' standard for "minimum" supervision requires one office visit by the offender each month, plus a home visit by the agent every three months. Some agencies require quarterly group meetings for offenders on "low" supervision. On the other hand, Hennepin County Community Corrections relies largely on periodic mail surveys to monitor sex offenders assigned to that agency's lowest level of supervision.[57] In addition, courts in some parts of Minnesota have occasionally assigned sex offenders to "unsupervised" probation—requiring no ongoing contact with a probation agent. Actual supervision practices varied among the agencies and individual cases we reviewed, but we found that:

- **Some sex offenders assigned to low levels of supervision had little ongoing contact of any sort with agents.**

Earlier, Table 2.3 showed that the median number of annual home visits for offenders on "medium" or "low" levels of supervision was zero. In the case records we reviewed, we saw the following examples of minimal amounts of agent-offender contact:

> *An offender was sentenced to 25 years probation for second-degree criminal sexual conduct in 1994. In 1996, he completed sex offender treatment, plus community service work required by his sentence. During a recent 12-month period, case records indicated that the offender's only contact with the supervising agent consisted of two "check-in" phone calls by the offender. There is no indication in case records that the agent made any effort to have face-to-face contacts with the offender.*
>
> *An offender was placed on 25 years probation in 1992 for repeatedly victimizing his stepson over a two-year period. According to case records, there have been no face-to-face contacts with this offender since at least 2001.*

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56 The Minnesota Department of Corrections has a policy that its supervising agents must personally visit a registered sex offender's residence four times a year to verify that the offender is occupying the dwelling (DOC Policy 201.020). In our August 2004 survey of community-based corrections directors, 82 percent said that their agents conduct quarterly home visits for verification purposes, 7 percent said they conduct annual home visits, and 11 percent specified other policies. However, our case reviews suggest that agencies often fall short of the verification practices indicated by the directors' survey responses.

57 Hennepin's standards also call for these offenders to have two face-to-face contacts with agents per year, but county officials said that this standard is often not met—which was confirmed in our review of case files.

An offender was sentenced to 20 years probation for second-degree criminal sexual conduct in 1992. In 1996, the court changed the sentence to unsupervised probation for the remainder of the sentence. Case files contained no documentation of contact between the offender and his probation agency since that time.

A Level III offender was released from prison in 2001 and assigned to ISR until the expiration of his prison sentence in 2002. The offender remained under supervision after this time, as part of a separate 15-year probation sentence. The offender's supervision level was reduced to "administrative" supervision by November 2003. Case records show that his recent supervision has consisted mainly of sporadic phone contacts with the agent and completion of a periodic questionnaire from the supervising agency.[58]

A recent national overview of sex offender management practices by the U.S. Center for Sex Offender Management commented on the importance of ongoing agent contacts with offenders, even at low levels of supervision:

> "Throughout the course of the offender's supervision, supervising agents must, at a minimum, be able to: check an offender's residence and place of employment; maintain contact with the offender's therapist, employers, family members, friends, and other community members, including victims; establish and maintain contact with an offender's associates …; and continue to monitor the offender's adherence to the conditions of supervision—which likely will include ensuring that the offender has no access to potential victims, is not in possession of pornography or using the Internet, drugs, or alcohol, and that he is employed and living at an approved residence. *The level of supervision should never be so low as to exclude routine field visits to monitor an offender's behavior in the community.*"[59] (Emphasis added)

There should be a statewide standard for minimum levels of agent-offender contact.

We recognize that corrections agencies do not have the resources to provide high levels of supervision to all offenders on their caseloads. Agents make judgments about which offenders need lesser levels of supervision—based on offenders' compliance with conditions of supervision, whether they have completed treatment, and other factors. Also, some agencies have particular challenges, such as large geographic areas to cover. Still, we think that there may be reason to aim for greater consistency among agencies, particularly to ensure that (1) offenders at the lowest levels of supervision receive a reasonable level of monitoring by corrections staff, and (2) agents conduct periodic home visits. Chapter 4 provides additional discussion about which organization should be authorized to adopt statewide standards. It could be a state sex offender policy board (which presently

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58 This offender's risk rating, for community notification purposes, was changed from Level III to Level II during 2004. During the 18 months that the offender was classified as Level III but was not on ISR, he had one home visit.

59 U.S. Department of Justice, Center for Sex Offender Management, *Community Supervision of Sex Offenders: An Overview of Current and Promising Practices* (Washington, D.C., January 2000); http://www.csom.org/pubs/supervision2.html, accessed April 28, 2004.

does not exist); alternatively, it could be the Minnesota Department of Corrections.

RECOMMENDATIONS

With input from a working group of state and local corrections officials, the Minnesota Department of Corrections or a state sex offender policy board should adopt statewide standards regarding the minimum frequency of in-person contacts between sex offenders and their agents. It should also adopt standards regarding the frequency of home visits.

Many corrections directors see a need for more face-to-face contact with offenders.

We surveyed directors of community-based corrections agencies to better understand their perceptions about the adequacy of sex offender supervision. Forty-eight percent of respondents said that juvenile sex offenders need more face-to-face contact with probation agents.[60] A majority of the directors favored more face-to-face contact with adult offenders, although they had differing opinions about which types of adult offenders needed greater attention.[61] Most directors did not see a need for increases in the number of agents' visits to treatment sessions and *pre-arranged* home visits, nor did most favor increased use of electronic monitoring. However, as shown in Table 2.4,

- **Most Minnesota corrections directors favored increases in agent surveillance activities, monitoring of offender computer use, polygraphs, and unannounced visits to sex offenders' homes.**

As we have discussed already, agent surveillance activities and unannounced home visits can help hold offenders accountable and detect possible deception. In our statewide survey, one director of a community-based corrections agency offered the following comment about why agents do not do more of these activities:

> "Agents are bogged down with paperwork and "policy" requirements and have caseloads too large to allow much face-to-face contact in the office, much less home and work visits. Our [enhanced sex offender supervision] agent spends about 15 percent of his time in direct contact with offenders, which is way too little. Our large geography certainly plays a part in this. Driving 80 miles one way to make an unannounced home visit, only to find the offender not home, requires a great

60 Office of the Legislative Auditor, survey of directors of community-based corrections agencies, August 2004 (*N*=21). In computing this percentage, we excluded six agencies who responded "don't know or not applicable"—indicating that the respondents were not familiar with probation for juvenile sex offenders or their agency does not provide it.

61 Forty-two percent of directors said that adult felons on probation needed more contact, and 38 percent said that Level III and Level II offenders on supervised release needed more contact. Twenty-three percent favored more face-to-face contact for Level I offenders, and 33 percent favored more contact for adult misdemeanant offenders. *N*=27 for questions regarding contacts with Level I, II, and III offenders; *N*=26 for questions regarding adult probationers and adult misdemeanant offenders.

Table 2.4: Community-Based Corrections Directors' Perceptions About Changes Needed in Supervision Practices

Practice	Percent of Community Corrections Directors Favoring Changes: Need More	No Change Needed	Need Fewer	Don't Know or Not Applicable
Agent reviews of offenders' computer and Internet usage	78%	19%	4%	0%
Agent surveillance checks on the whereabouts of offenders	70	30	0	0
Polygraphs administered by a correctional agency as part of supervision	70	15	0	15
Unannounced agent visits to offenders' homes	67	33	0	0
Polygraphs administered as part of treatment	63	37	0	0
Offenders monitored electronically with devices other than GPS	37	56	0	7
Attraction tests (e.g., Abel Screen, phallometric tests) administered as part of treatment[a]	37	37	0	26
Offenders monitored with global positioning system (GPS) devices	37	22	11	30
Visits by agents to offenders' workplaces	33	59	7	0
Pre-arranged agent visits to offenders' homes	30	52	11	7
Random drug or alcohol tests	22	78	0	0
Visits by agents to offenders' treatment sessions	11	89	0	0

[a]Attraction tests help to determine persons' sexual preferences, such as attraction to young children.

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

Most corrections officials favor more polygraphs, unannounced home visits, and checks on offender computer use.

> deal of time. Mandating assistance from law enforcement to aid with "surveillance" duties would help."[62]

Likewise, most directors told us that agents should monitor offender computer use to help ensure that offenders comply with restrictions regarding Internet use and access to online pornography, but this has proven to be challenging.[63] First, few agents have the training or expertise necessary to investigate offenders' computers and identify pornography. Some agencies have acquired software that scans computers for images, but most are just learning how to use it.[64] Second, some sex offenders avoid detection by using other people's computers, terminating

62 Response to OLA survey of directors of community-based corrections agencies, August 2004.

63 *Minn. Stat*. (2004), §243.055 authorizes the Commissioner of Corrections to restrict computer use and online access by offenders who are on supervised release or probationers under DOC supervision.

64 Dodge-Fillmore-Olmsted Community Corrections requires sex offenders to pay for the software (and its installation) on their own computers.

Internet service after short subscription periods, or finding ways to hide inappropriate materials on their home computers. In our case reviews, we saw a few instances where corrections agents successfully detected computer violations, but we saw other instances where there did not appear to be regular monitoring of compliance with computer restrictions.[65]

Polygraphs can be a useful part of a comprehensive sex offender management strategy.

Periodic polygraphs of sex offenders under correctional supervision are widely viewed within the corrections field as an important part of a comprehensive sex offender management strategy.[66] These examinations help corrections and treatment staff detect deception, and they also encourage offenders to be truthful prior to the examinations. In addition, agencies use polygraphs to help determine offenders' risks and develop treatment plans.[67] Polygraph tests are a requirement of some but not all court sentencing orders for convicted sex offenders. Also, since October 2004, Department of Corrections policy has directed the department's staff to consider including a polygraph requirement in the special conditions of all sex offenders released from prison.[68] There are no comprehensive statewide data on polygraph use for sex offenders, and we saw varying levels of documentation regarding polygraphs in offender records.[69] However, our statewide survey indicated that a majority of directors of community-based corrections agencies favored expanded use of polygraphs by treatment providers as well as by their own agencies.

Even polygraph advocates note that many variables can affect the accuracy of polygraph examinations, including the testing procedure, scoring system, and clarity of the questions.[70] DOC has standards regarding administration of polygraphs, but these standards apply only to cases involving offenders under the department's jurisdiction. There are no statewide standards regarding administration of polygraphs to offenders on probation.[71] In addition, there are no

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65 We reviewed case records involving a Level II sex offender who appeared to be in compliance with the conditions of his prison release. The agent reviewed the offender's computer during a home visit in mid-2003 to check for child pornography but found none. Shortly thereafter, the offender advised the agent that he had gotten rid of his Internet access. In early 2004, however, the agency learned that the offender had been arrested for possessing and transmitting child pornography over the Internet. A search of the offender's computer by law enforcement officials revealed more than 500 images, some of which were collected during the period when the offender claimed to have no Internet access.

66 Kim English, Linda Jones, Diane Pasini-Hill, Diane Patrick, and Sydney Colley-Towell, *The Value of Polygraph Testing in Sex Offender Management: Research Report to the National Institute of Justice* (Denver, CO: Colorado Department of Public Safety, December 2000), 7-8.

67 In addition, we saw instances in which polygraphs confirmed offenders' accounts of their past behavior—in one case, resulting in a court modification of the original sentencing conditions.

68 DOC Policy 106.112. The policy lists a variety of special conditions that should be considered for sex offenders, and one of these requires (in part) that the offender "must submit to polygraph as directed by agent." On a case-by-case basis, DOC staff determine whether to require the conditions specified in this policy.

69 In our August 2004 survey, 48 percent of directors of community-based corrections agencies estimated that their offenders had more polygraphs in fiscal year 2004 than in fiscal year 2002, 11 percent said that their offenders had fewer, and 37 percent said that the number remained about the same (N=27).

70 Kim English, Linda Jones, Diane Pasini-Hill, Diane Patrick, and Sydney Colley-Towell, *The Value of Polygraph Testing in Sex Offender Management: Research Report to the National Institute of Justice* (Denver, CO: Colorado Department of Public Safety, December 2000), 21-22. The report says that 96 to 98 percent of exams correctly identified deception in field studies.

71 According to our August 2004 survey of directors of community-based corrections agencies, Hennepin County Community Corrections is the only agency with a polygraph examiner on staff. In

There are no statewide standards governing the administration of polygraphs to sex offenders on probation.

statewide standards for polygraphs done by sex offender treatment providers. Given corrections officials' increased interest in polygraphs and the costs of administering them (typically several hundred dollars per examination), it makes sense to have statewide standards regarding the qualifications of polygraph examiners and procedures for polygraph administration.

RECOMMENDATION

The Legislature should require the development of statewide standards regarding the administration of polygraphs (1) by, or on behalf of, agencies that supervise sex offenders on probation, and (2) by sex offender treatment programs.

Authority to develop standards for probation-related polygraphs could be given to the Department of Corrections, the State Court Administrator's Office, or an independent sex offender policy board. In Chapter 3, we recommend that DOC develop state rules governing sex offender outpatient treatment programs, and perhaps such rules could incorporate policies regarding the administration of polygraphs during treatment.

VARIATION IN SUPERVISION-RELATED PRACTICES

In Chapter 1, we noted that there are few state laws or administrative rules that govern sex offender supervision statewide. Thus, it is not surprising that we found many variations in supervision practices among state and local corrections agencies, as shown in Table 2.5. Supervising agents often have considerable latitude regarding how to handle individual cases. For example, many agents have discretion about when to move offenders to less intensive (or more intensive) levels of supervision, or when an offender's noncompliance is serious enough for the agent to seek a revocation of probation or supervised release. In Chapter 4, we recommend statewide efforts to develop more consistent policies and practices in areas such as those in Table 2.5. We also recommend implementing a statewide process for periodic external review of agencies' sex offender cases.

In the sections below, we discuss two specific areas in which practices vary. First, we highlight variation in the "special conditions" that are imposed on offenders at the time of sentencing to probation or supervised release from prison. The adequacy of an offender's supervision depends partly on whether appropriate restrictions are placed on the offender at the time that supervision starts. Second, we highlight variation in case documentation because we had a unique opportunity in this study to examine case records that are typically not viewed by persons outside the criminal justice system.

addition, 12 of the 27 agencies (44 percent) that serve felony-level sex offenders said they contracted with a polygraph examiner (other than a treatment provider) in the past year to conduct sex offender polygraphs.

There are many areas of variation in agency supervision practices.

Table 2.5: Key Variations in Agency Practices Related to Sex Offender Supervision

Community-based corrections agencies vary in:

- The assessment instruments used to determine offenders' risks and needs before they are sentenced (see Chapter 3);
- The supervision categories to which offenders are assigned, as well as the way offenders are assigned to these categories;
- Standards for the expected number and types of agent-offender contacts;
- The use of supervision tools, such as polygraphs, electronic monitoring, drug and alcohol tests, and attraction tests;[a]
- The use of case plans to clarify the offender's responsibilities while under community supervision;
- The "special conditions" of sentencing or supervised release that impose requirements or restrictions on offenders during their periods of supervision;
- Agents' practices for documenting their contacts with offenders;
- Agency practices for reviewing the activities of their supervising agents;[b]
- Correctional agencies' relationships with law enforcement, victims' advocacy organizations, treatment providers, the courts, and other agencies;
- Agency protocols for protecting children or vulnerable adults who may be accessible to sex offenders;
- Practices for verifying the addresses of registered offenders who are under correctional supervision;
- Practices regarding when to reduce an offender's level of supervision or seek court approval for an early discharge from a probation sentence;[c]
- Practices regarding offender co-pays for treatment, polygraphs, assessments, and supervision.

[a]Attraction tests measure persons' sexual preferences—for example, whether they are attracted to children.

[b]For example, Minnesota Department of Corrections Policy 203.016 says that supervisors must review six cases from each full-time agent's caseload every six months. This policy only applies to DOC agents.

[c]The courts have the final say in whether to discharge offenders from probation sentences. Some judges have refused to consider early discharges, while other judges consider such discharges under certain conditions.

SOURCE: Office of the Legislative Auditor, based on interviews, August 2004 survey of community-based corrections agency directors, and reviews of six agencies' case records.

"Special Conditions" of Probation or Supervised Release

Corrections experts generally recommend that sex offenders have "special conditions" of supervision that address their specialized risks and needs. In Minnesota, offenders on *probation* are subject to conditions set by the courts at the time of sentencing. State law specifies that, with some exceptions, sex offenders sentenced to probation must be ordered by the court to serve some jail time, complete a "treatment program" (the nature of this program is not

specified), and have no unsupervised contact with the victim of the offense.[72] In addition, corrections agencies typically recommend other special conditions of probation for the court to consider including in its sentencing order. However, there are no statewide standards or guidelines regarding the types of conditions that should be set for sex offenders on probation.

Offenders under correctional supervision are subject to certain restrictions and requirements.

Offenders on *supervised release* are subject to special conditions of community supervision set by the Minnesota Department of Corrections just prior to release from prison. DOC has adopted guidelines for its staff to use when setting supervision conditions for offenders released from prison.[73] Table 2.6 lists "special conditions" that DOC guidelines suggest may be appropriate for sex offenders, depending on the circumstances of the case.[74]

We found that:

- **Some offenders' "special conditions" of supervision did not explicitly authorize agents to conduct certain activities that are a reasonable part of sex offender surveillance.**

In some sentencing orders we reviewed, the special conditions of supervision specifically authorized polygraph tests, random drug or alcohol tests, computer searches, or other interventions. In other instances where such conditions seemed appropriate given the circumstances of the case, however, the sentencing conditions did not include these specific authorizations, perhaps because of inadvertent omissions or because the court assumed that such interventions were within the general authority of the supervising agents. But staff in one county corrections agency told us that this agency's legal authority to require certain conditions, such as polygraphs, was challenged in cases where the court did not explicitly authorize them, and the agency had to curtail its use of polygraphs for a while. Consequently, this agency now tries to ensure that criminal sentences contain language that specifically authorizes polygraphs.

RECOMMENDATION

With input from court officials and state and local corrections officials, the Minnesota Department of Corrections or a state sex offender policy board should develop a model set of "special conditions" of supervision that can be used by corrections agencies and courts throughout Minnesota.

There should be more consistency in the use of these restrictions and requirements.

Again, Chapter 4 provides additional discussion about which organization should be authorized to adopt statewide supervision standards. We recognize that no single set of supervision conditions can apply to all sex offenders and all circumstances. Still, we think that it would be useful for court and corrections officials statewide to reach agreement on language for a model set of supervision conditions, which could be amended as needed to fit individual cases. There may

72 *Minn. Stat.* (2004), §§609.342, subd. 3, 609.343, subd. 3, 609.344, subd. 3, and 609.345, subd. 3. These are the statutes governing first- through fourth-degree criminal sexual conduct.

73 DOC Policy 106.112.

74 In addition, some conditions are commonly used for all types of offenders—for example, "remain law abiding" or "follow the rules and regulations of probation."

Table 2.6: Examples of the Minnesota Department of Corrections' "Special Conditions" For Sex Offenders on Supervised Release

According to DOC policy, special conditions for sex offenders may include the following:

- 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.
- Must not purchase, possess, or allow in his/her residence sexually explicit materials, nor enter an establishment that has sexual entertainment as its primary business as determined by the agent/designee.
- Must not live in an apartment building or other residential building where children are present, without documented approval of the agent/designee.
- Must not be employed as a [occupation] without approval of the agent/designee.
- Must not be within [a specifically defined radius] of [elementary schools, high schools, parks, playgroups, parking ramps, etc.] without documented approval of the agent/designee.
- Must not own or operate a computer that has any form of modem that allows for Internet capabilities, or access the Internet through any technology or third party, or call "900" numbers or other sex lines without documented approval of the agent/designee.
- No direct or indirect contact with minors without prior documented approval of the agent/designee.
- Must submit to polygraph as directed by agent.
- Must not obtain prescription for drugs designed to improve sexual function without prior notice to agent.

NOTE: DOC's policy also identifies conditions that are "frequently used" for offenders identified as "public risk monitoring" cases. Among these conditions are: "Must not purchase or operate a motor vehicle without prior documented approval of the agent/designee" and "No direct or indirect contact with vulnerable adults without prior documented approval of the agent/designee."

SOURCE: Minnesota Department of Corrections Policy 106.112.

be some conditions that would be appropriate to include in all cases involving sex offenders, such as authorization for polygraphs at the discretion of supervising agents or treatment staff. There may be other conditions that should be applied to offenders only if warranted by the offender's previous crimes or behaviors, such as restrictions on alcohol use or Internet access. Perhaps the Department of Corrections' supervised release policies (see Table 2.6) could be used as a starting point for such discussions. Under our recommendation, the courts would retain authority to set supervision conditions for probation cases, and DOC would retain authority to do so for supervised release cases, but model language on "special conditions" might help to ensure more consistency in supervision practices for sex offenders.

Sentences vary in the restrictions they place on offenders who have victimized minors.

Also, while state law usually requires probation sentences to restrict sex offenders' contacts with their previous victims, we think it would be useful for corrections and court officials throughout the state to reach agreement on circumstances where broader restrictions are appropriate—specifically, contacts with minors and vulnerable adults. In our review of offenders' case records, we found that the special conditions specified by the courts or DOC occasionally did not significantly limit offenders' contacts with vulnerable populations. In the following examples, we highlight information from two probation cases in which the special conditions appeared to be inadequate:

> *An offender sexually assaulted his disabled 14-year-old cousin, resulting in a conviction for first-degree criminal sexual conduct. The court's conditions of supervision did not restrict contact with the victim or with minors, and no such conditions were added at the time that this case later transferred to another Minnesota corrections agency.*[75]

> *An offender was convicted of third-degree criminal sexual conduct against a 14-year-old girl. The sentence prohibited contact with the victim but not with other minors. Later, due to concerns about the offender's relationship with minors at his residence, the offender's probation officer directed the offender to move and threatened to seek a court order if the offender did not comply.*

When developing model language for restrictions on sex offenders' contacts with vulnerable persons, officials should consider the wording of these restrictions and how they should be implemented. For example, if offenders are allowed to have "supervised" contacts with minors, it may be helpful to have agreement on what this means. Some corrections agencies now require special training for persons before they are authorized to supervise offender contacts with minors.

Case Documentation

There are several reasons for corrections agents to properly document their supervision activities. First, a corrections agent handles many cases at a time, and careful record-keeping can help an agent recall key events that have occurred over an offender's multi-year period of supervision. Second, responsibility for an offender's supervision often changes over time, with assignment of cases to different staff within the same agency, or transfers of cases from one corrections agency to another. Keeping good records helps to ensure that agents who assume responsibility for existing cases will understand the actions of their predecessors. Third, good documentation helps agents build a foundation for later decisions. For example, if a corrections agency wants to ask a judge to revoke the probation of an offender, it will need to document instances in which the offender did not comply with the court's conditions of supervision. Fourth, agents must be accountable for their actions, so their records may be reviewed by their supervisors, by attorneys involved in court actions, or by others.

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75 Although sentencing conditions did not address this issue, the supervising agent in the county to which the offender transferred ordered the offender not to have contact with minors.

In our review of nearly 300 case files in 6 agencies, we observed that:

- **There is inconsistency in the quality of case records kept by corrections agents.**

We found that some agents' records provided considerable insight into offenders' progress in treatment, thoughts and behaviors, and compliance with conditions of supervision. Also, records thoroughly documented agent contacts with employers, relatives, treatment providers, law enforcement, and others. In contrast, some records were terse, narrow in their focus, or (in a few cases) non-existent. Below, we provide examples of problems we saw in our reviews of case records:

> *Over a six-month period, an agent had 70 face-to-face contacts with a Level III offender, according to case records. However, this agent's case notes typically had minimal information about the nature of these contacts, using a median of seven words per meeting to describe what transpired.*

> *Over a 12-month period, an agent's case notes referenced 18 "field visits"—that is, meetings with the offender away from the office. But the records did not indicate whether these visits were at the offender's home or workplace, a treatment session, or some other location. The agent used boilerplate language to describe each meeting, and key events (such as the completion of aftercare services) were not recorded.*

It is important for case records to document agent actions and offender behaviors in sufficient detail.

> *An agent recorded few records of her ongoing contacts with offenders in the statewide information system that is used for this purpose.*[76] *The agent told us that her large workload did not allow her to keep up with case documentation.*

In addition, some agents regularly recorded in their case notes the dates of their contacts with offenders but provided little or no information on the substance of these contacts. For example, some case notes for meetings only said "Attended sex offender treatment group," "Nothing new," or "I conducted a home visit today," and some case records included dates of offender contacts but no notes at all regarding the content of individual meetings.

We recognize that agents' case notes may never fully capture the content of their contacts with offenders, and some meetings with offenders will be brief. But case notes are the only records of the supervision provided to potentially risky offenders in the community. Supervisors—and potentially others—should be able to review up-to-date case records to assess the work of their agents. Again, as we discuss further in Chapter 4, we think that there should be statewide guidelines regarding agent record-keeping and other key aspects of offender supervision:

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76 The Court Services Tracking System, which is used by agents in 86 of Minnesota's 87 counties.

RECOMMENDATION

With input from state and local corrections officials, the Minnesota Department of Corrections or a state sex offender policy board should adopt statewide policies regarding agents' ongoing documentation of supervision activities.

We also recommend in Chapter 4 that external reviewers should periodically examine agencies' case records.

3 Offender Assessment and Treatment

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.

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."[1]

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1 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.[2] However, we did not evaluate the risk assessments that are conducted for community notification purposes prior to release of sex offenders from prison.[3]

SEX OFFENDER ASSESSMENT

Compliance with State Requirements for Post-Conviction Assessments

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."[4] 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.[5] These assessments must be

2 *Minn. Stat.* (2004), §609.3452.

3 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.

4 *Minn. Stat.* (2004), §609.3452, subd. 1.

5 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."[6]

The law requires the court to order a sex offender assessment "when a person is convicted of a sex offense."[7] 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."[8]

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.**

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.[9] 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.[10] 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.

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

7 *Ibid.*

8 *Ibid*., subd. 3. Also, subd. 1a addresses assessments of *repeat* sex offenders and says that courts shall consider such assessments "when sentencing the offender."

9 Some local agencies have paid for assessments partly with general state grants, such as grants for "enhanced sex offender supervision."

10 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."[11]

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.

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.

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… ."[12] 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:

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

12 *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.**

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.[13] 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.[14] 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.

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.

13 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.

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

Assessment Tools

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.[15] 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.[16]

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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15 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.

16 *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)[a]	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

[a]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.[17] 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

17 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,[18] and a few agencies do not regularly re-assess sex offenders.[19]

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.[20]

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.[21] 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.**[22]

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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18 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.

19 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.

20 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).

21 *Minn. Stat.* (2004), §244.24.

22 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.

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.

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.[23] 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.**

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

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.[24]

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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23 Minnesota Department of Corrections Policy 203.013.

24 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.

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.

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.

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.

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."[25] According to state law, the Commissioner of Corrections shall:

25 *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.[26]

However,

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

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

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."[27] 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.[28] 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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26 *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.

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

28 *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.[29] 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.[30] 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.

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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29 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.

30 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.[31] 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… ."[32] 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.[33] 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.[34]

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

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).[35] 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."[36] 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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31 *Minn. Stat.* (2004), §609.3452, subd. 3.

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

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

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

35 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.

36 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.*

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.[37]

RECOMMENDATION

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

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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37 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.

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.

Availability of Sex Offender Treatment in Prison

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.[38] 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."[39] 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.**

38 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.

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

In our survey, 81 percent of the directors rated the availability of sex offender treatment in prison as "fair" or "poor."[40] In addition, 67 percent of the directors rated the availability of chemical dependency treatment in prison as "fair" or "poor."[41]

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

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).[42] 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

Category of Offenders	Number Who Left Program in 2003	Average Months in Program
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	4	7
TOTAL	138	15

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.

40 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.

41 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."

42 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.[43] 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.[44] 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.[45] 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.[46] 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.

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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43 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.

44 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.

45 *Minn. Stat.* (2004), §244.05, subd. 1b.

46 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.

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.

Availability of Community-Based Sex Offender Treatment

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."[47] 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:

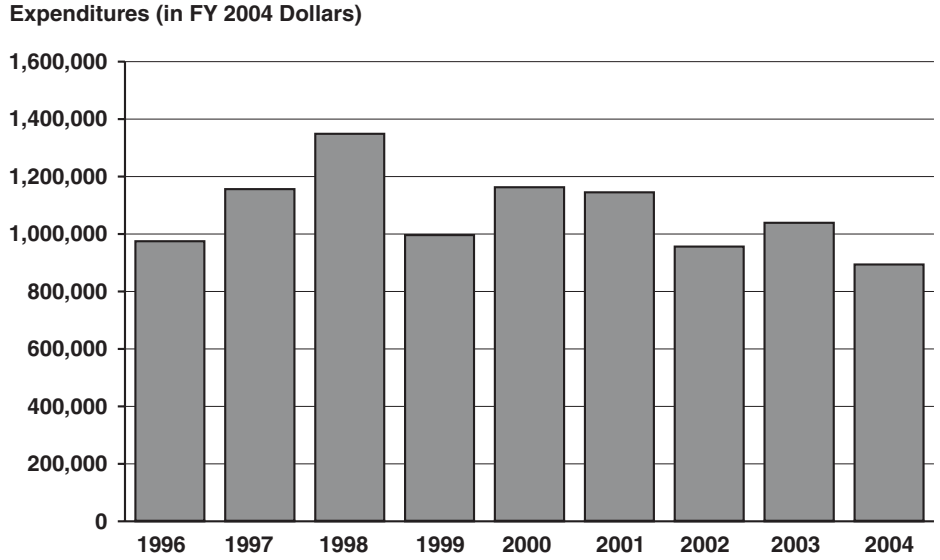
- **Adjusted for inflation, state spending for community-based sex offender treatment has declined in recent years.**

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.[48] 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

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

48 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)



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.

Spending for community-based sex offender treatment has declined.

community, although DOC's historical data on offenders under community-based supervision are not definitive.[49]

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.**

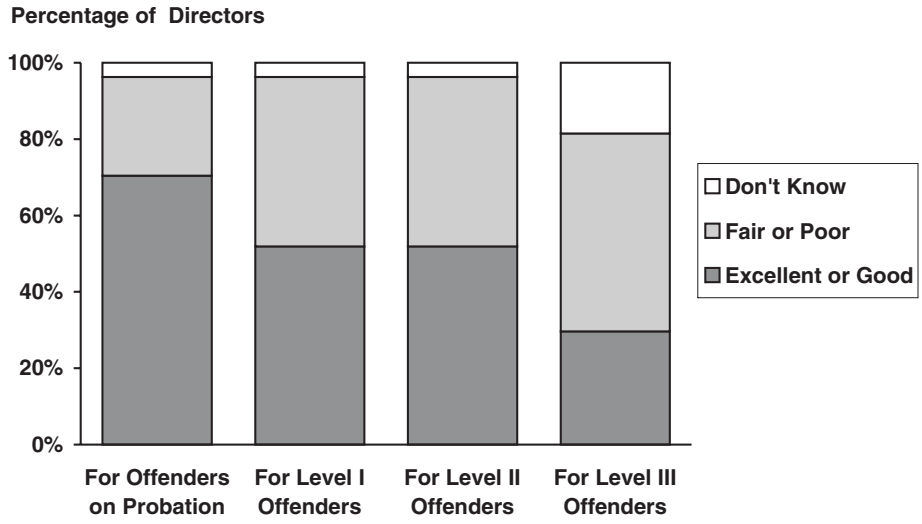
49 The Minnesota Department of Corrections annually estimates the number of sex offenders on probation in Minnesota, and estimates for the most recent two years were somewhat higher than estimates from five or six years earlier. But department staff caution that their methods for making these estimates 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.

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."[50]

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

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).

50 *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."

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.

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

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.[51] 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.[52] 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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51 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.

52 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."[53] 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."[54]

- 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.[55] 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.

53 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.

54 Forty-one percent of directors rated the availability of chemical dependency treatment for sex offenders on *probation* as "fair" or "poor."

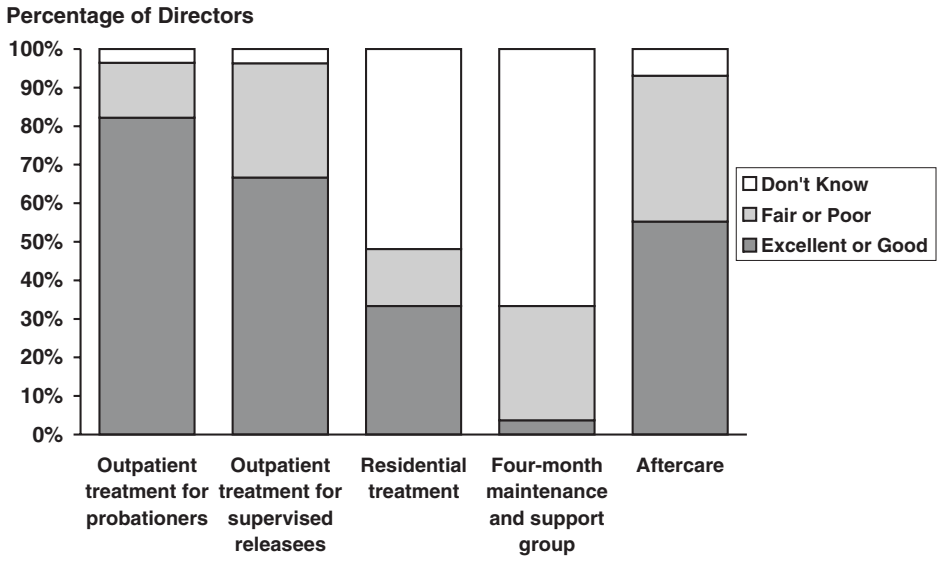
55 In this case, the Minnesota Department of Corrections shared the inpatient treatment costs with a county and the offender's parents. State law says that the department shall provide for "residential" sex offender programming when required as a condition of supervised release.

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.[56] 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).

56 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.[57] In addition, directors we surveyed offered the following comments about outpatient programs:

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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57 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.

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

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."[58] 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.[59] 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.

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

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

approach to sex offender management…"[60] 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."[61]

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."[62]

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).[63] 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."[64] 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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60 U.S. Department of Justice, Center for Sex Offender Management, *An Overview of Sex Offender Management* (Washington, D.C., July 2002), 6.

61 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.

62 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.

63 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.

64 *Ibid.*, 170.

> "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."[65]

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."[66] Likewise, the national Center for Sex Offender Management has observed that "there is a paucity of evaluative research regarding [sex offender] treatment outcomes."[67] 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.

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

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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65 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.

66 Hanson and others, "First Report of the Collaborative Outcome Data Project," 186.

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

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.

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

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.[68] 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.

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.

68 *Minn. Stat.* (2004), §241.67, subd. 8.

4 Other Issues

SUMMARY

Minnesota needs a more coordinated statewide strategy for supervising sex offenders. This should include improved communication among state and local corrections agencies, more consensus about "best practices," and periodic external reviews of agency practices. The Legislature should direct the Minnesota Department of Corrections or, alternatively, a state sex offender policy board, to establish statewide policies and guidelines, with advice from a working group of state and local officials. If the Legislature considers additional spending for community-based sex offender services, priority should be given to increased support for (1) state-required sex offender assessments, (2) treatment and transitional housing for sex offenders released from prison, and (3) the state's programs for "intensive" and "enhanced" offender supervision. Also, we recommend changes in state law so that (1) child protection agencies are informed before sex offenders under correctional supervision are authorized to live in households with children, and (2) care facility staff are informed of instances in which sex offenders are living at or seeking admission to their facilities.

In the preceding chapters, we discussed key findings and recommendations regarding sex offender supervision and treatment. This chapter discusses several related issues, and it addresses the following questions:

- **Is there sufficient statewide coordination and oversight of correctional agencies' supervision of sex offenders in the community?**
- **Has there been sufficient transitional housing—such as halfway houses—for sex offenders released from prison?**
- **What aspects of community-based sex offender supervision and treatment should receive the highest priority for any additional state spending in this area?**
- **Have sufficient steps been taken to protect the safety of children and vulnerable adults who live with sex offenders?**

POLICY COORDINATION AND OVERSIGHT

In Chapter 1, we noted that Minnesota's community corrections system has multiple state and local agencies, with no single agency responsible for policy coordination. This fragmented administration does not necessarily mean that the system must be ineffective or inefficient. In fact, the Legislature adopted the Community Corrections Act to "more effectively [protect] society and to promote efficiency and economy in the delivery of correctional services."[1] Sometimes a decentralized approach can produce creative, innovative ways to achieve state goals. It can also give individual agencies flexibility to tailor services to their resources.

Minnesota's diffuse structure for community corrections presents important challenges.

But Minnesota's diffuse structure for community corrections presents important challenges. Without special efforts to coordinate policies and practices, there can be inconsistencies, miscommunication, and "turf battles" among the various state and local agencies that supervise offenders. Administrative fragmentation can also create discontinuities in treatment and supervision for offenders who move within the state. In addition, without effective inter-agency communication, good practices used by individual agencies might not be shared and adopted on a broader basis. Given the risks posed by sex offenders, uncoordinated sex offender management practices could jeopardize public safety.

Minnesota's structure for community corrections is unusual compared with other states, but we offer no recommendations for fundamental changes in this organization. The structure is in place for a wide range of offenders, not just sex offenders, and we did not comprehensively evaluate its merits. Within the existing structure, however, we think that Minnesota needs a more coordinated, statewide strategy for supervising sex offenders. The U.S. Department of Justice has expressed support for "statewide policy teams" that can establish consistent sex offender supervision policies and procedures for all jurisdictions within a state.[2] In Minnesota, the absence of statewide standards or "best practices" has resulted in the kinds of supervision-related variations we discussed in Table 2.5.

Several states have statewide sex offender management boards to help ensure that policies are administered consistently across agencies.[3] In Minnesota, the 2000 Legislature mandated that an inter-agency working group develop a plan for a statewide sex offender policy and management oversight board. The group concluded that there was a need to improve inter-agency communication, coordination, and collaboration, but it said that such a board would "add an

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1 *Minn. Stat.* (2004), §401.01, subd. 1.

2 U.S. Department of Justice, Center for Sex Offender Management, *The Collaborative Approach to Sex Offender Management* (Washington, D.C., October 2000), 6.

3 Minnesota Department of Corrections, *Sex Offender Policy and Management Board Study* (St. Paul, December 2000), 4, reported that states with inter-agency boards or meetings included Iowa, Illinois, Colorado, Pennsylvania, Tennessee, and Wisconsin.

unnecessary layer of bureaucracy to the existing system."[4] The group recommended that the departments of Corrections and Human Services prepare biennial reports about "all aspects of the sex offender management system," including sentencing, supervision, treatment, registration, community notification, risk assessment, and fiscal impacts. However, these departments did not subsequently produce these reports.[5]

In our view, there is a need for:

- More opportunities for state and local corrections agencies to exchange information about sex offender management,
- More consensus among agencies regarding "best practices" (as reflected in statewide policies, where appropriate), and
- Periodic external review of agency practices.

The Legislature should require the development of statewide standards for sex offender supervision.

Table 4.1 lists several approaches by which the Legislature could pursue a more coordinated statewide strategy. The table also identifies some pros and cons of these various approaches. In general, we prefer a process involving an ongoing working group of state and local officials, advising either the Minnesota Department of Corrections (Option 3) or a sex offender policy board that does not presently exist but was recommended by the Governor's recent Commission on Sex Offender Policy (Option 4).

RECOMMENDATION

The Legislature should direct the Minnesota Department of Corrections or, alternatively, a state sex offender policy board, to develop state standards and guidelines regarding sex offender management, with input from a working group of state and local corrections officials.

A working group could recommend policies or "best practices" regarding offender assessment, classification of offenders for supervision purposes, "special conditions" of supervision, agent-offender contact standards, case documentation by agents, the role of polygraph examinations, inter-agency collaboration, and other practices. We suggest that the working group consider the standards developed in other states—such as Colorado—as a point of departure.[6] Although the working group's immediate task should be to develop statewide policies,

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4 DOC, *Sex Offender Policy and Management Board Study*, 7. This group concluded that there was room for improvement in inter-agency information sharing, although there have been some useful informal exchanges of information regarding sex offender supervision practices. For example, since 1995, Minnesota corrections and treatment staff working with sex offenders have met quarterly to discuss topics of interest.

5 The chair of the work group told us that the Minnesota Legislature showed little interest in the work group's report, and the departments decided not to prepare the biennial reports without direction to do so from the Legislature.

6 For example, see Colorado Sex Offender Management Board, *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (Denver, CO: Colorado Department of Public Safety, June 2004); http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/ADULTSDJUNE2004.pdf.

Table 4.1: Possible Strategies for Developing More Coordinated Sex Offender Supervision Policies

Possible Strategies	Comments
Option 1: Adopt laws: The Legislature could adopt certain policies or practices into state law.	**Pro:** Could take effect faster than adoption of state rules. **Con:** May be impractical and unnecessary to address the details of offender supervision in state law. Statutory provisions would be more appropriate for large policy issues.
Option 2: Adopt rules: The Legislature could authorize DOC to promulgate state administrative rules on certain policies or practices.	**Pro:** Would provide a formal, structured process for getting input from agencies and the public. **Con:** Time-consuming. May be an inflexible approach for adopting policies that will need ongoing revision. Possible statutory constraints.[a]
Option 3: Authorize DOC (with input from others) to do ongoing policy development: The Legislature could give DOC statutory authority to establish statewide supervision policies/best practices, based on advice from a sex offender supervision working group of state and local officials.	**Pro:** Would bolster the authority of Minnesota's lead corrections agency in a fragmented community corrections system. Ongoing inter-agency discussions may be more valuable and flexible than a one-time rule-making effort. **Con:** Some people may question whether DOC can provide objective leadership while it is also a key service provider in community corrections.
Option 4: Establish Sex Offender Policy Board (with input from others) to do ongoing policy development: The Legislature could assign duties for developing policies/best practices to an independent board, with assistance from a sex offender supervision working group of state and local officials.	**Pro:** Such a board may be viewed as more independent than DOC. Unlike DOC, this board would focus solely on sex offender policy issues. **Con:** The board does not exist yet, so its composition, procedures, responsibilities, priorities, and staffing are unclear. Creation of a new board could diffuse authority for corrections policy.

[a] *Minn. Stat.* (2004), §14.03, subd. 1 says that the state Administrative Procedures Act does not apply to agencies directly in the judicial branch, and some Minnesota probation officers are judicial branch employees. In addition, *Minn. Stat.* (2004), §14.03, subd. 3 exempts from the Administrative Procedures Act those rules developed by the Commissioner of Corrections regarding placement and supervision of offenders on supervised release.

SOURCE: Minnesota Office of the Legislative Auditor.

standards, and guidelines in key areas, it would be helpful for the group to play a continuing role in facilitating discussions about agency practices and recent research.

In late 2004, the Governor's Commission on Sex Offender Policy proposed the creation of a sex offender policy board to oversee the management of sex offenders in the community.[7] Even if such a board is given the lead role in statewide coordination of sex offender policies, we think that it would have to rely considerably on the expertise of staff within state and local corrections agencies that supervise sex offenders. Meanwhile, it is difficult to know what could be expected from a board that does not exist today. Until such a board is created, it is hard to predict the quality of its members, the adequacy of its staff, or the types of issues besides community-based supervision that might occupy its attention.

7 The commission also proposed creating a board that would determine when sex offenders would be released from prison. The report of the commission is scheduled for release in early 2005.

Alternatively, an existing agency—the Minnesota Department of Corrections—could be authorized to adopt statewide policies and best practices, with input from a working group of state and local officials. DOC is the state's lead agency on corrections issues, and it could provide staff expertise in a variety of topical areas. On the other hand, county corrections agencies may question whether an agency that provides supervision in many parts of the state could oversee the policy development process in an even-handed way.

In addition, we think there is a need for ongoing external review of sex offender supervision practices. Decisions regarding supervision of sex offenders have high stakes and are sometimes subject to limited scrutiny. In our view, it is appropriate for agents to have considerable discretion, as long as their actions are periodically examined by their own supervisors and outside reviewers. We think it would be valuable for all corrections agencies to follow standards regarding *internal* review of agents' work by their own supervisors. However, we think that the Legislature should also authorize *external* reviews of agencies' sex offender supervision practices:

RECOMMENDATION

The Legislature should require the Minnesota Department of Corrections (or, alternatively, a state sex offender policy board) to establish a process for periodic external reviews of sex offender supervision practices.

External reviews of corrections agencies' sex offender supervision practices would enhance accountability and provide useful feedback to agents.

External reviews could focus on agency policies for offender supervision, how individual offenders were actually supervised, or both. Such reviews would enhance accountability for sex offender supervision, provide feedback to agents, and perhaps identify issues needing a more coordinated statewide approach. Ideally, DOC or a state sex offender policy board would adopt selected statewide policies before the external reviews begin. We envision that external reviews would, in part, examine compliance with statewide policies. But we also think that such reviews could examine any practices that appear to enhance or endanger public safety, even in areas where statewide standards have not yet been adopted.

A model for such reviews might be the Minnesota Department of Human Services' (DHS) reviews of local child protection agency practices. Like sex offender supervision, child protection involves potentially high-risk decisions, typically made with little public scrutiny. The department initiated its child protection reviews several years ago with existing funds, and department staff now review each county's operations every four years. Each review involves an agency self-assessment, interviews with agency staff, and case reviews. DHS officials told us that the reviews have identified important deficiencies in county practices, and they said that counties generally view the reviews as fair.

External reviews of sex offender supervision practices could be conducted by (1) DOC central office staff, or (2) field staff from state and county corrections agencies. To ensure more independent reviews, we think it would be preferable to have the activities of DOC field offices reviewed by staff from county agencies.

TRANSITIONAL HOUSING FOR SEX OFFENDERS RELEASED FROM PRISON

State and local corrections officials share responsibility for planning inmates' housing and supervision arrangements after prison.

As a prison inmate nears his date for supervised release, the Minnesota Department of Corrections initiates a process to plan for his transition into the community. At least 120 days prior to the scheduled release, a case manager at a DOC prison is supposed to send a "pre-release report"—including a "primary release plan" and an "alternative release plan"—to the corrections supervisor in the "county of the releasee's intended residence."[8] To determine which agency will monitor the offender while on supervised release, DOC uses the criteria in Table 4.2. The community-based corrections agency to which an offender will be released may reject DOC's proposed release plan, but it must provide DOC with written reasons for the rejection.

Table 4.2: Criteria for Determining the County That Will Supervise a Released Prisoner

The criteria below must be addressed in sequence until one of the criteria have been met:

1. The offender has a confirmed residence in a county and confirmed employment.
2. The offender has a confirmed residence in a county.
3. The offender has a significant historical involvement in a county prior to conviction for his current offense—as indicated by residence, employment, education, family ties, systems of support, or other long-term community involvement.
4. If the offender meets none of the above criteria, release planning will be the responsibility of the community-based corrections agency responsible for adult felons in the county where the offender's current commitment to prison occurred.

NOTE: This policy applies to offenders who will be on supervised release or conditional release after leaving prison.

SOURCE: Minnesota Department of Corrections, Policy 203.010 (Case Management Process).

About 60 days prior to the offender's release, there is supposed to be a meeting of persons designated by the prison warden to finalize details regarding the offender's release and subsequent supervision.[9] However, DOC and community corrections staff told us that release plans are sometimes not finalized until well after this time, particularly in the case of sex offenders. For example, it may be unclear which agency will assume responsibility for an offender's supervision, perhaps reflecting unresolved questions about the offender's post-release housing and employment arrangements. Some landlords are reluctant to rent to felons, and some families are reluctant to house relatives who have committed sex offenses. Also, the timeliness of the release planning process can be affected by

8 Minnesota Department of Corrections Policy 203.010. The policy says that DOC shall follow this schedule "if time permits." The pre-release report is also supposed to discuss the offender's adjustment during incarceration, recommended conditions of release, whether the offender is classified as a "public risk monitoring" case, DNA analysis, sex offender risk assessment and assignment to a risk level, predatory offender registration, and transportation at the time of release.

9 *Ibid*. The offender may waive his appearance at this "re-entry review" meeting.

the offender's cooperation and the amount of initiative taken by state and local corrections agencies.[10]

If arrangements for a satisfactory private residence cannot be made prior to release from prison, DOC may consider placing an offender in a "halfway house" at the time of release. Halfway houses are residential facilities in the community that have on-site staff. Such residences provide more staff supervision than community corrections agencies could give to offenders who are living on their own. In addition, halfway houses provide assistance to offenders while they make other arrangements for housing and employment in the community. For the most part, DOC limits halfway house placements to (1) Level II and III sex offenders who have no satisfactory private residence, and (2) other offenders who are considered to be high risks to reoffend but who have no private residence or have failed previous releases to private residences.[11] We found that:

- **Halfway houses are an important resource for helping sex offenders make the transition from prison to the community, but this housing option has been seriously limited by state funding constraints.**

In 2003, sex offenders occupied a large share of the beds at Minnesota's four halfway houses.

During 2004, DOC had contracts with four halfway houses to serve offenders released from prison. DOC does not maintain information on the types of offenders at these facilities, so we surveyed the halfway house directors in June 2004. We obtained information on the total number of offenders on supervised release at these facilities during 2003, as well as the number of sex offenders on supervised release. Offenders on supervised release occupied an average of 32 beds at Minnesota halfway houses on a given day in 2003. We determined that sex offenders occupied most of these beds, accounting for 74 percent of the offenders on supervised release and 80 percent of the "offender-days" at these facilities.[12] According to our survey, Level III offenders (who are considered the most likely sex offenders to reoffend) comprised 33 percent of the sex offenders at halfway houses during 2003, while Level II offenders comprised 41 percent and Level I offenders comprised 26 percent.

Halfway house staff help offenders find permanent housing and employment, so they prefer to work with offenders who intend to live in the general areas where the halfway houses are located. But Minnesota's four halfway houses are located in just three cities (Minneapolis, St. Paul, and Duluth), so this limits the number of counties for which the halfway houses are viable options for transitional housing. Sex offenders who lived at halfway houses in 2003 were scheduled to reside in just 16 of Minnesota's 87 counties following their halfway house stays.[13] The 3 counties in which the halfway houses are located were the counties of

10 Inmates who do not cooperate with efforts to find a place of residence or employment face a possible extension of their incarceration period.

11 Minnesota Department of Correction Policy 106.112. DOC can also consider halfway house placements for offenders paroled from life sentences, but these cases are rare. Level I sex offenders (and inmates who are not sex offenders) may be considered for halfway house placements if they are designated by DOC as "public risk monitoring" cases, as defined by DOC Policy 203.020. Many, but not all, Level I sex offenders are designated as public risk monitoring cases.

12 Our estimate of sex offenders as a percentage of offenders on supervised release is based on the number of offenders who exited halfway houses during 2003. "Offender-days" is the sum of the number of days spent by individual offenders at halfway houses during 2003.

13 Halfway house directors provided us with information on the counties to which their 2003 residents were released.

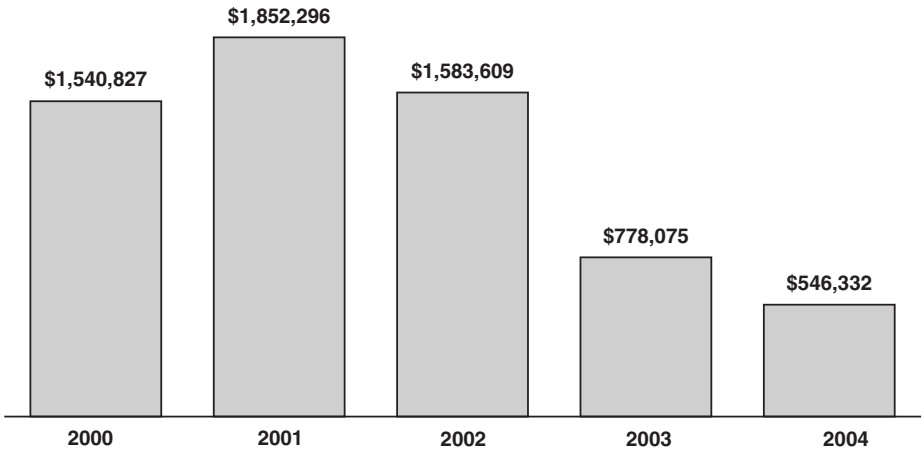
supervision for 84 percent of the sex offenders who lived at halfway houses in 2003, and the other 13 counties accounted for the remaining 16 percent of offenders.

In addition, state budget constraints significantly limited the availability of halfway house beds during the past two years. Figure 4.1 shows halfway house expenditures for fiscal years 2000-04, adjusted for inflation. Expenditures in fiscal year 2004 were about one-third the level of expenditures just two years earlier. According to DOC, the reduced spending levels in the past two years occurred because the department did not supplement legislative appropriations for halfway house placements with discretionary funds the department had previously used for this purpose. As a result of these funding constraints, DOC officials said they have referred fewer offenders to halfway houses, and the length of most halfway house stays has been capped at two months.[14] We found that:

- **Directors of community corrections agencies expressed widespread frustration about the lack of transitional housing options for sex offenders who are starting "supervised release" following their prison sentence.**

State spending for halfway house placements declined significantly in the past two years.

Figure 4.1: Minnesota Department of Corrections Halfway House Expenditures, FY 2000-04 (in 2004 Dollars)



NOTE: Annual expenditures unadjusted for inflation were as follows: $1,361,055 (2000); $1,704,044 (2001); $1,488,354 (2002); $756,882 (2003); and $546,332 (2004).

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

14 In 2003, sex offenders spent an average of 48 days in halfway houses for each sex offender who left the facilities. Of the sex offenders who left the facilities, 59 percent "graduated" from the full program, and the remainder absconded, transferred, or were terminated prior to completion. Offenders who do not successfully complete their halfway house placements face possible revocation of their supervised release.

Directors of community-based corrections agencies think there are not enough halfway house beds available for sex offenders.

In our statewide survey, 70 percent of directors said that finding suitable housing for sex offenders released from prison was "very difficult" in the past two years; 26 percent said that it was "somewhat difficult," and none said it has "not been a significant problem." Regarding the availability of halfway house beds, none of the directors reported that the number of placements of sex offenders at halfway houses in the past two years was sufficient to meet their agency's needs.[15]

Directors of community-based corrections agencies also expressed concern to us about DOC's release planning process. In our statewide survey, 44 percent of the directors said that DOC has not taken sufficient steps to ensure that sex offenders are released from prison to housing arrangements that do not put minors or vulnerable adults at risk.[16] Directors cited instances in which offenders have been released from prison to homeless shelters, cheap motels, and relatives' homes that they considered unsatisfactory. One director we surveyed suggested that offenders scheduled for supervised release should remain in prison for all or part of their remaining sentence if they do not cooperate with efforts to find post-prison housing arrangements.[17]

In some cases, the corrections agency in an offender's county of residence has referred the offender to live in temporary housing in another county, due to the lack of options in the county of residence.[18] For example, in the following case, an offender was released from prison to Dakota County without arrangements for an appropriate residence in Dakota County, so the Dakota agent directed the offender to live in Ramsey County. According to the agent's notes,

> "Alternative release plans have been investigated and rejected. Offender has no viable housing options other than homeless shelter. … As it appears DOC is unwilling to fund transitional housing for offender, he is being directed to reside at Union Gospel Mission, St. Paul, until alternative housing is approved by this agent."[19]

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15 Office of the Legislative Auditor, survey of directors of DOC district offices and Community Corrections Act agencies, August 2004 (*N*=27). Eighty-nine percent of the directors said the number of halfway house placements was short of the number they needed; 11 percent responded "don't know" or "not applicable."

16 OLA survey of directors of community-based corrections agencies, August 2004. The survey included the following statement: "Based on my agency's [or district office's] experience, the Minnesota Department of Corrections has taken sufficient steps to ensure that sex offenders are released from prison to housing arrangements that do not put minors or vulnerable adults at risk." Thirty-seven percent of responding directors agreed with the statement, 44 percent disagreed, and 19 percent responded "neither agree nor disagree" or "not applicable."

17 The director said that this option would be less expensive than the costs incurred by corrections staff trying to find suitable living arrangements on their own, then writing violation reports when housing is not found, attending violation hearings, and transporting the offender back to prison.

18 DOC policy authorizes offenders who are released to the "county of commitment" to live outside of this county. Policy 203.010 states: "If no practical residential placement option can be made in the county where the offender was convicted, the local corrections agency for adult felons in the county of commitment will arrange for housing and supervision. This housing and supervision can occur within any county where it can be established and where the offender can most effectively be provided appropriate correctional programming."

19 Dakota County agent comments from DOC "Agent Assignment Request." The offender's prison release plan authorized placement to emergency housing.

The Department of Corrections set aside some additional funds for transitional housing in fiscal year 2005.

In a 2003 report to the Legislature, DOC recommended additional state funding to help address transitional housing for sex offenders released from prison.[20] DOC recommended increased funding for halfway houses, "three-quarter way" houses,[21] emergency housing, and leases of scattered-site housing, and it recommended evaluating the possibility of offender housing at regional corrections centers. Through internal reallocations, DOC set aside additional funding in fiscal year 2005 to pay for transitional housing. The "new" funding included: (1) $72,000 to lease housing in outstate Minnesota for selected offenders on intensive supervised release; (2) $36,000 for emergency housing (short-term rent payments for offenders released from prison without suitable housing arrangements); (3) $100,000 for additional halfway house placements; (4) $276,000 for pilot housing projects in the Twin Cities metropolitan area and Duluth (the vendor will lease scattered site housing for selected offenders, typically for 60 to 120 days). This funding will provide DOC and community agencies with options they did not have in fiscal year 2004. However, DOC's total Fiscal Year 2005 increase to fund new housing options ($500,000) does not fully offset the $1.3 million annual reduction in halfway house spending that occurred between fiscal years 2001 and 2004. In addition, it is too soon to evaluate how DOC's leases of scattered-site housing will be accepted in the communities where the homes are located.[22]

Later in this chapter, we discuss areas related to sex offender supervision that may need additional state funding. We note that, in our statewide survey, community corrections directors (as a group) ranked an expansion of transitional housing options for sex offenders at the top of their list of strategies that would improve public safety, even above options such as expanded sex offender treatment, expanded intensive supervised release services, and reduced caseloads for sex offender agents. Also, DOC officials said that the department has facilitated many committees and work groups in recent years that have recommended increased funding for transitional housing, but they said that the Legislature has not acted on these recommendations.

In addition to seeking additional funding for transitional housing, we think that DOC's central office should work with prison and community corrections officials on possible improvements in the process for planning the release of sex offenders from prison.[23] We recognize that successful placement of inmates in the community depends on the joint efforts of many individuals in the DOC central office, in prisons, and in community-based correctional agencies, and it also depends on cooperation from offenders. DOC has policies governing the prison release process, but perhaps there are opportunities to improve their implementation for sex offenders, whose placement in the community often poses important challenges. For example, some supervisors of DOC field offices and county corrections offices expressed a desire for more timely notifications

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20 Minnesota Department of Corrections, *Level Three Sex Offenders, Residential Placement Issues: 2003 Report to the Legislature* (St. Paul, January 2003).

21 "Three-quarter way" houses are community residences that are monitored by off-site rather than on-site staff.

22 Some corrections officials told us that local elected officials have been reluctant to propose politically unpopular housing options for sex offenders, and this is one reason they have looked for housing assistance from the Legislature and DOC.

23 DOC should consider including representatives of DOC field offices, county corrections agencies, the hearings and release unit in DOC's central office, and DOC institution staff.

regarding pending releases, more information regarding released offenders' medical and treatment history (see discussion in Chapter 3), and better communication with prison staff.

RECOMMENDATION

The Minnesota Department of Corrections (or, alternatively, a state sex offender policy board) should establish a task force of DOC and local officials to identify improvements in the department's prison "release planning" practices for sex offenders.

State law does not require inter-county notification and consultation when a sex offender on supervised release in one county moves to another county.

We also heard concerns that some local corrections agencies have referred the offenders they supervise to look for *permanent* housing in other counties, particularly in Hennepin and Ramsey. The "receiving" counties told us they would prefer to be consulted about these residential arrangements because (1) some of the offenders have taken up residence at places that the receiving counties told us they would not authorize for the offenders they supervise (such as residences in close proximity to children or vulnerable adults), and (2) typically, correctional supervision for released prisoners who move to a new county eventually transfers to the new county of residence. However, there are no statutory provisions that require inter-county notification and consultation in such cases.

This issue could be addressed in several ways. First, DOC has proposed amending its intra-state transfer policy to require the "receiving" agency to grant approval for offender moves in certain circumstances.[24] However, DOC does not have authority to set such a statewide policy on its own and, as of late 2004, it was still working to get agreement from all 87 counties on a policy. Second, DOC has authority to set statewide policy for the Intensive Supervised Release program, and it could adopt intra-state transfer provisions that pertain just to participants in this program.[25] Third, the Legislature could adopt statutory language that addresses this issue. In our view, statutory provisions would be more enforceable than a policy based solely on intra-agency agreement, and such provisions could address a broader group of offenders than just those on Intensive Supervised Release. To help ensure that there is intra-agency consultation when potentially risky offenders are planning to move, we recommend:

RECOMMENDATION

In cases where offenders classified by the Minnesota Department of Corrections as "public risk monitoring" cases seek housing arrangements in a location under the jurisdiction of another corrections agency, state law should require that the supervising agency notify the "receiving" agency and initiate a supervision transfer request.

24 Minnesota Department of Correction's policy would apply to offenders on supervised release classified by DOC as "public risk monitoring" (PRM) cases. Most, but not all, sex offenders released from prison are PRM cases.

25 Offenders under Intensive Supervised Release are a subset of the broader category of "public risk monitoring" cases.

STATE FUNDING FOR SEX OFFENDER SUPERVISION AND SERVICES

This report has identified various weaknesses in Minnesota's approach to supervising sex offenders in the community. In particular, some offenders receive less supervision and treatment than they need, according to our reviews of actual practices and the perceptions of many corrections staff. Also, there is a need for more interagency communication regarding "best practices" in sex offender supervision and, where possible, the development of more consistent policies across the state.

There are strong arguments for increased state investment in sex offender assessment, supervision, treatment, and housing.

We think there are strong arguments for increased state investment in sex offender assessment, supervision, treatment, and transitional housing. However, we offer no recommendation regarding the "right" level of funding for these activities, for several reasons. First, although there is agreement in the corrections field about some of the general elements of good sex offender supervision (such as the use of specialized sex offender agents and periodic polygraphs), there is limited evidence on the appropriate *amount* of supervision elements (such as the optimal caseload size, number of agent-offender contacts, or frequency of polygraphs). There is much to be learned about which specific interventions are likely to have the most impact, and the U.S. Department of Justice notes that "there has been little research on the effectiveness of community supervision programs (exclusively) in reducing reoffense behavior in sex offenders."[26]

Second, even if new funding will be required to improve supervision of sex offenders, many corrections officials believe that it is important for individual offenders to bear a share of their supervision and treatment costs.[27] For example, Dodge-Fillmore-Olmsted Community Corrections reduced its annual spending for sex offender treatment from $90,000 to $10,000 over a recent four-year period. It did this not to reduce the amount of treatment for offenders but because it preferred to have the offenders pay a larger share of the treatment costs. Likewise, Dakota County told us that its offenders pay 60 to 70 percent of treatment costs. On the other hand, some offenders are indigent, and the public could be placed at risk if assessments, treatment, or polygraphs are deferred until the offenders can afford to pay for them.[28] Overall, legislative decisions about the appropriate amount of state funding for sex offender supervision and treatment require judgments about offenders' obligations to share in the cost.

Third, the state's biennial budget process provides an opportunity for policy makers to make judgments about what the state can afford in a time of budget constraints and what services it needs to enhance. During this process, proposals

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26 U.S. Department of Justice, Center for Sex Offender Management, *Recidivism of Sex Offenders* (Washington, D.C., May 2001), 14-15. Also, Faye S. Taxman, "Supervision: Exploring the Dimensions of Effectiveness," *Federal Probation* (September 2002), 14-27, notes that there has been little rigorous assessment of various elements of corrections supervision.

27 Some corrections officials favor having offenders pay a portion of costs as a matter of fairness, and they told us that most sex offenders can do so without undue hardship. Others told us that offenders "buy in" to their treatment programs more when they bear a portion of the costs.

28 Even if state funds paid for treatment up-front—so that offenders could start treatment as soon as possible—the state could seek subsequent repayment of a portion of these costs once the offenders' financial situation improved.

to enhance community-based supervision and treatment of sex offenders will compete with proposals in other areas of state spending.

In August 2004, we surveyed directors of Community Corrections Act agencies and DOC district offices regarding seven possible strategies for improving the supervision of sex offenders in the community. The stated preferences of corrections directors provide policy makers with useful guidance regarding activities that may require additional investment. As shown in Table 4.3, the survey indicated that expansion of transitional housing options for sex offenders was the leading choice of the directors. For example, more directors chose this strategy over others as the "most important" means of improving public safety. Besides expanded transitional housing, corrections directors gave high priority to several strategies that we discussed in previous chapters, including increases in sex offender treatment (Chapter 3), reduced caseloads for specialized sex offender agents (Chapter 2), expansion of Intensive Supervised Release services (Chapter 2), and additional polygraph tests for sex offenders (Chapter 2). Meanwhile, directors gave significantly lower rankings to two of the strategies listed in Table 4.3. Directors expressed little enthusiasm for expanded use of electronic monitoring for sex offenders—for example, through ankle bracelets or global positioning system devices.[29] In addition, "attraction testing" is a type of assessment to determine persons' sexual preferences—for example, to determine

Corrections officials generally favor more transitional housing for sex offenders as a strategy to improve public safety.

Table 4.3: Community Corrections Directors' Opinions Regarding Possible Strategies for Improving Public Safety

Possible community-based strategies for reducing sex offenders' risk to public safety	Number of directors who: Ranked this strategy as the most important	Number of directors who: Ranked this strategy among the top 3 choices	Weighted score[a]
More transitional housing (following prison)	11	23	160
More high-quality sex offender treatment	6	19	138
Lower caseloads for specialized sex offender agents	5	15	128
More Intensive Supervised Release (ISR) services	2	11	113
More polygraphs	3	9	108
More electronic surveillance	0	3	62
More attraction testing	0	1	47

[a]Strategies identified as "most important" counted as 7 points, "2nd most important" counted as 6 points, etc.

SOURCE: Office of the Legislative Auditor survey of directors of DOC district offices and CCA agencies, August 2004. N=27.

29 Elsewhere on our August 2004 survey, 30 percent of directors said there is a need for "somewhat more" use of global positioning system devices to monitor sex offenders, and another 7 percent said there is a need for "much more" use of these devices. In addition, 37 percent of directors said there is a need for "somewhat more" use of other electronic monitoring devices, while none said there is a need for "much more."

sexual attraction to young children.[30] While many corrections professionals think that attraction testing can be a useful element of a comprehensive approach to sex offender assessment and treatment, most of Minnesota's corrections directors ranked such testing—by itself—as a low priority for improving public safety.

In addition, the Legislature should consider state mandates as it evaluates the need for additional funding. Activities that corrections agencies are mandated by state law to conduct may be better candidates for state funding than other activities. For example, courts are required to order assessments for convicted sex offenders, but the Minnesota Department of Corrections eliminated state funding for this activity in 2003. Also, state law says that the Commissioner of Corrections "shall provide for residential and outpatient sex offender programming and aftercare when required" for offenders on supervised release and conditional release, but Chapter 3 noted that state treatment funding has been very limited for such offenders.[31]

While we offer no recommendations on specific spending levels, we think that there are several areas that justify close legislative review for possible state spending increases.

RECOMMENDATION

The Legislature should consider additional state spending for: (1) reimbursement of pre-sentence sex offender assessment costs, (2) treatment of sex offenders on supervised release, (3) transitional housing for sex offenders released from prison, (4) expansion of the state's "enhanced sex offender supervision grants"—for example, to reduce the caseloads of specialized agents or to increase the number of polygraphs conducted, and (5) expansion of Intensive Supervised Release to areas poorly served by this program.

The Department of Corrections should consider changing the way it allocates sex offender treatment funds.

This list of candidates for additional funding may not be exhaustive. Still, the activities cited above are either state-mandated or were listed as higher priorities by community corrections directors.

Regarding treatment funding for sex offenders on supervised release and probation, DOC should consider changes in the approach that it presently uses to allocate these funds. DOC allocates most state funding for sex offender treatment in the form of grants to individual treatment providers that have submitted proposals for funding. In the past, DOC has dispersed this funding broadly to help ensure the availability of treatment services in most parts of the state. This approach has been consistent with a statutory directive that DOC work toward development of "treatment programs in several geographical areas in the state."[32] However, this approach has not allocated funding in a way that accurately reflects the distribution of offenders around the state. Thus, for example, the

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30 In response to another question on our August 2004 survey, 22 percent of directors said that there is a need for "somewhat more" attraction testing as part of sex offender treatment, and another 15 percent said there is a need for "much more" attraction testing.

31 *Minn. Stat. (*2004), §241.67, subd. 3.

32 *Minn. Stat. (*2004), §241.67, subd. 8.

community-based corrections agencies that serve most of Minnesota's offenders on supervised release have been particularly dissatisfied with the availability of treatment funding for these offenders. This suggests that DOC should consider allocating a significant portion of treatment funds by having "funding follow offenders"—that is, so that agencies receive treatment funding in closer proportion to the number of sex offenders they serve.[33]

RECOMMENDATION

The Minnesota Department of Corrections should allocate at least some portion of sex offender treatment funding in proportion to the location of sex offenders throughout the state.

ADDITIONAL PROTECTION FOR POTENTIAL VICTIMS

The primary goal of community correctional supervision is public safety. Through supervision and treatment, corrections officials hope to reduce the likelihood that known offenders will commit new offenses. But, in our file reviews and interviews with corrections officials, we identified some public safety issues that need legislative attention.

Children Living with Sex Offenders

Many sex offenders are prohibited from having contact with children.

In 84 percent of Minnesota's 2003 criminal sexual conduct sentences, the victim was under age 18. Typically, in such cases, the courts or Minnesota Department of Corrections prohibit the offender from contacting the victim. Often, they also prohibit the offender from having any contact with minors, unless authorized by the supervising agent. In such cases, offenders who are parents may not be allowed to live with or visit their children under age 18. In addition, offenders may be prohibited from living with or visiting persons who have children.

Corrections agents have considerable discretion regarding offender supervision. Among agents' more important decisions are those involving the modification of a "no contact with minors" condition of supervision. Agents sometimes ease such restrictions after an offender has completed sex offender treatment. Or, agents may judge that an offender whose prior victim was an eight-year-old girl is not likely to be a threat to the 16-year-old son of the offender's girlfriend.

Some agencies take special steps to prevent such cases from resulting in new victims. For example, several agencies told us that they authorize offenders to have "supervised contact" with minors only after ensuring that the person who will supervise the contact has received special training. Also, corrections agents may seek advice from their supervisors or the offender's treatment staff before authorizing an offender to have contact with minors.

33 At a minimum, funding should be more in proportion to the locations of offenders on *supervised release*—given the seriousness of their offenses and DOC's statutory obligation to provide post-prison programs for these offenders.

Still, there appears to be a need for further precautions to safeguard potential victims. State law requires the Minnesota Department of Human Services to create a state "child mortality review panel" to examine deaths and near deaths of children.[34] Recently, this panel raised questions about the actions (or inactions) of some corrections agents. According to a department official:

> "In reviewing cases during 2003, the panel discussed several deaths of children in which the role of the probation officer was critical. Probation officers did not appear to recognize the potential danger of a sex offender living with children nor the need to report the situation to the child protection agency. The offender was able to continue to expose children to abuse."[35]

The panel made several recommendations to address these concerns. The panel observed, as we did during our interviews with corrections officials, that:

- **Corrections agencies do not always consult with child protection agencies before they authorize sex offenders to have ongoing contact with minors.**

Corrections agency decisions that allow sex offenders to live with children should be made with particular care.

According to state law, a child who "resides with or would reside with a perpetrator of domestic child abuse or child abuse" is classified as a "child in need of protection or services."[36] We think that notification of child protection agencies in such cases is consistent with state policy "to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse."[37] Notification does not guarantee that individual child protection agencies will always review each case and discuss it with the corrections agency. Some child protection agencies may place a higher priority on investigating actual allegations of abuse than on reviewing cases in which children are "at risk." But we think it is reasonable to seek an added measure of protection for potential child victims. The developers of the nationally-recognized sex offender "containment model" suggest the following:

> "The well-being of the victim—and the potential for other children and adults to become victimized—should be the fundamental criterion applied by all agencies to family unification decisions. The rigorous use of clear protocols for family reunification—protocols that fully explore the offender's risk to other children in the household—may be the most important way the criminal justice system can intervene to protect children from sexual assaults by known sex offenders."[38]

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34 *Minn. Stat*. (2004), §256.01, subd. 12.

35 Erin Sullivan Sutton, Director, Child Safety and Permanency Division, Minnesota Department of Human Services, letter to Joan Fabian, Commissioner, Minnesota Department of Corrections, August 27, 2004.

36 *Minn. Stat.* (2004), §260C.007, subd. 6.

37 *Minn. Stat.* (2004), §626.556, subd. 1.

38 Kim English, Suzanne Pullen, and Linda Jones, *Managing Adult Sex Offenders in the Community: A Containment Approach*, NIJ Research Brief (Washington, D.C., U.S. Department of Justice, National Institute of Justice, January 1997), 8.

Corrections staff who have worked with an offender for a long period may lose their objectivity or be deceived by the offender, and it may be useful to seek the perspective of another agency.[39]

RECOMMENDATIONS

Child protection agencies should be notified about situations that may place children at risk of sexual abuse.

The Legislature should amend state law so that an agency supervising a sex offender is required to notify the local child protection agency prior to authorizing the offender to live in a household with children.

The Legislature should require the Department of Corrections to develop a standard statewide protocol that specifies the information that should be shared by corrections agencies for this purpose—for example, indicating the offender's prior offense(s), treatment history, and compliance with the conditions of supervision, as well as the corrections agency's rationale for the new living arrangements.

The state child mortality review panel recommended changes in Minnesota's statutes beyond what we recommend above. The panel recommended amending *Minn. Stat.* (2004), §609.378 so that sex offenders would be considered guilty of child endangerment if they lived with, cared for, or remained in the presence of minor children without written documentation (such as an opinion from a treatment provider) that this was appropriate. Likewise, the panel recommended amending the law so that parents, caretakers, or guardians who knowingly allowed children to live with convicted sex offenders (without authorization) could be charged with child endangerment. Such proposals for statutory changes appear to be based on the presumption that all sex offenders pose a potential threat to children—even in cases where an offender's prior crimes were not against children, and even if the offender has no restrictions on contacts with minors. In contrast, some corrections officials believe that there is no basis for restricting sex offenders' contacts with children if their past offenses have not involved children. We offer no recommendations on the panel's suggestions, but we think they deserve the Legislature's consideration.

State law does not specify that probation officers are "mandated reporters" of child maltreatment.

Finally, the Department of Human Services staff person for the child mortality review panel told us that the panel favors having the Legislature specify, in law, that probation officers are "mandated reporters" of child maltreatment. Minnesota law identifies categories of persons—such as law enforcement officials—who are required to report maltreatment of children, but the law does not specifically mention probation officers.[40] Minnesota Department of Corrections officials told us that, although their probation officers are not required by law to report instances of potential maltreatment, these officers have a professional duty to do so. We see no harm in designating probation officers in statute as mandated

39 In some cases, corrections agencies may need to more aggressively enforce the offender's special conditions of supervision. We reviewed a case where an offender allowed a woman and her children to move into his house despite supervision conditions that prohibited "unsupervised contact" with minors. Although the probation officer learned of the living arrangement from a concerned third party and not from the offender, the agent did not cite the offender for a violation. Rather, the agent relied on child protection staff to advise the woman and her children to move from the house.

40 *Minn. Stat.* (2004), §626.556, subd. 3.

reporters of child maltreatment. If anything, such a change may clarify the obligations of probation officers in any agencies where this has been unclear.

RECOMMENDATION

The Legislature should amend Minn. Stat. (2004), §626.556 to designate correctional supervision staff as mandatory reporters of child maltreatment.

Sex Offenders in Care Facilities

Sex offenders may also pose special threats to public safety when they reside in care facilities, such as nursing homes or hospitals. During 2004, there were legislative hearings regarding several sex offenders who resided at a Minneapolis nursing home. The Minnesota Attorney General filed suit against the nursing home, claiming that its failure to take adequate precautions led to sexual and physical assaults against some residents.

Probation officers do not always know when offenders under their supervision are admitted to care facilities.

Our study did not specifically focus on sex offenders living in care facilities, but we encountered some such instances among the individual cases we reviewed at random. The following two examples, summarized from case records and interviews, show that corrections agencies do not always know when offenders under their supervision are admitted to care facilities:

> *An elderly Level II sex offender on supervised release fell and was injured. He was treated at a hospital, which discharged the offender to a nursing home. Nursing home staff did not initially know that the person was a sex offender whose conditions of supervision prohibited any contact with vulnerable adults. The supervising corrections agency's most recent contact with the offender was 11 weeks prior to the nursing home admission, and the agency was not informed of the offender's accident and new living arrangements until after the offender had been at the nursing home for a week.*[41] *The corrections agent then notified nursing home staff that the resident was a sex offender. One week later, nursing home staff contacted the corrections agency because the offender had tried to "seduce another resident into going somewhere secluded." When confronted by nursing home staff, the offender decided to have himself discharged from the facility. Nursing home staff said they did not receive a copy of the offender's conditions of supervision from the corrections agency until after the offender left the facility.*

> *A sex offender on supervised release was in a hospital for more than two weeks, and his supervising agent only learned of this the following month. The hospitalization occurred during a period when there were 8 months between agent-offender phone contacts and 18 months between face-to-face contacts.*

Corrections agents cannot effectively supervise an offender if they do not know immediately about changes in the offender's living arrangements. Minnesota's

41 A friend of the offender contacted the supervising agency.

predatory offender registration law requires offenders to provide written notice to the assigned corrections agent or law enforcement at least five days before an offender starts to live at a new primary address.[42] However, in the cases above, the offenders' primary address did not change; rather, the offenders lived temporarily at other residences to receive care. We recommend that registered predatory offenders should be required to disclose, as soon as possible, any pending or recent admissions to care facilities. If possible, they should also disclose their status as registered predatory offenders to care facilities prior to admission.[43] If such provisions are adopted, registered offenders should be carefully informed about their self-reporting obligations.

State law should require sex offenders to disclose pending or recent admissions to care facilities.

RECOMMENDATIONS

The Legislature should amend Minn. Stat. (2004), §243.166 to require registered predatory offenders to disclose, as soon as possible, their pending or recent admission to a care facility to (1) their assigned corrections agent, or (2) a law enforcement agency, if the offender is no longer supervised by a corrections agent. The offenders should also be required to disclose their predatory offender status to the care facilities prior to admission, if possible.

State law does not require corrections agents or law enforcement to provide community notification regarding sex offenders on probation. For Level I offenders, the law requires notification of the offender's "immediate household," but there is no specific requirement for notification of other residents in a care facility. For Level II offenders, the law authorizes notification of "agencies and groups that the offender is likely to encounter," including those "that primarily serve individuals likely to be victimized by the offender." For Level III offenders, the law authorizes broad community notification.[44] According to the Minnesota Office of the Attorney General, "consumer laws require a nursing home to notify consumers (residents, applicants, and their families) if predatory offenders are placed in the home. … This notification, however, comes from the nursing home."[45] We think that corrections agents or law enforcement officials should immediately inform a care facility's administration when they learn that a predatory offender resides at the facility. This would allow the administrator to take any precautions that may be appropriate to protect other residents.

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42 *Minn. Stat*. (2004), §243.166, subd. 3(b).

43 There may be cases where an offender is mentally or physically incapable of contacting his corrections agent or a law enforcement official, due to the injury or illness that led to admission to the facility. For such circumstances, the law should provide exemptions to the reporting requirement.

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

45 Kristine L. Eiden, Chief Deputy Attorney General, letter to Dan McElroy, Chief of Staff, Office of the Governor, Peter Orput, Director of Policy and Legal Services, Minnesota Department of Corrections, and Mary McComb, Litigation Manager, Minnesota Department of Corrections, June 25, 2004.

RECOMMENDATION

Minn. Stat. (2004), §244.052 should be amended to require corrections or law enforcement agents to inform a care facility administrator if they have information that a registered predatory offender is living at the facility.

Finally, some corrections officials expressed a desire for additional options for housing and monitoring developmentally disabled sex offenders. To receive the services they need, these offenders are sometimes placed in environments that allow regular contact with other vulnerable adults. We reviewed a case in which a low-functioning offender convicted of second-degree criminal sexual conduct was released from a secure state hospital to a community-based facility that specialized in services to vulnerable adults. The offender's release was revoked for sexually abusing a vulnerable woman enrolled in the facility's programs. The offender's probation agent told us that this offender needed 24-hour supervision if he was to live in the community at all, but few options for these types of offenders are available in the community.

Summary of Recommendations

- The Legislature should direct the Minnesota Department of Corrections (DOC) or, alternatively, a state sex offender policy board, to develop state standards and guidelines regarding sex offender management, with input from a working group of state and local corrections officials (p. 91)

  Within the report, we specifically recommend that DOC or a state sex offender policy board:

  - Adopt statewide standards regarding the minimum frequency of in-person contacts between sex offenders and their agents, including the frequency of home visits (p. 51);

  - Develop a model set of "special conditions" of supervision that can be used by corrections agencies and courts throughout Minnesota (p. 56);

  - Adopt statewide policies regarding agencies' ongoing documentation of supervision activities (p. 60);

  - Provide community-based corrections agencies with guidance regarding sex offender assessment practices (p. 69);

  - 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 (p. 75); and

  - Establish a task force of DOC and local officials to identify improvements in the department's prison "release planning" practices for sex offenders (p. 99).

- The Legislature should require DOC (or, alternatively, a state sex offender policy board) to establish a process for periodic external review of sex offender supervision practices (p. 93).

- The Legislature should require the development of statewide standards regarding the administration of polygraphs (1) by, or on behalf of, agencies that supervise sex offenders on probation, and (2) by sex offender treatment programs (p. 54).

- The Legislature should amend *Minn. Stat.* (2004), §609.3452, subd. 1, to explicitly require that mandatory sex offender assessments be completed prior to sentencing (p. 64).

- 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 (p. 65).

- 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 ((p. 65).

- 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 (p. 70).

- The Legislature should require DOC to promulgate state rules that specify basic program elements for community-based sex offender treatment programs (p. 74).

- For sex offenders released from prison, DOC 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 (p. 75).

- 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 (p. 78).

- If the Legislature adopts indeterminate sentencing for sex offenders, the body authorized to release sex offenders from prison should explicitly consider compliance with treatment directives as a factor in prison release decisions (p. 78).

- The Legislature and DOC should take steps to ensure that sex offender treatment funding is more available for offenders on supervised release, consistent with DOC's statutory obligation to provide appropriate services for this offender population (p. 82).

- 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 (p. 88).

- In cases where offenders classified by DOC as "public risk monitoring" cases seek housing arrangements in a location under the jurisdiction of another corrections agency, state law should require that the supervising agency notify the "receiving" agency and initiate a supervision transfer request (p. 99).

- The Legislature should consider additional state funding for: (1) reimbursement of pre-sentence sex offender assessment costs, (2) treatment of sex offenders on supervised release, (3) transitional housing for sex offenders released from prison, (4) expansion of the state's "enhanced sex offender supervision grants," and (5) expansion of Intensive Supervised Release to areas poorly served by this program (p. 102).

- DOC should allocate at least some portion of sex offender treatment funding in proportion to the location of sex offenders throughout the state (p. 103).

- The Legislature should amend state law so that an agency supervising a sex offender is required to notify the local child protection agency prior to authorizing the offender to live in a household with children. The Legislature should require DOC to develop a standard statewide protocol that specifies the information that should be shared by corrections agencies for this purpose (p. 105).

- The Legislature should amend *Minn. Stat.* (2004), §626.556 to designate correctional supervision staff as mandatory reporters of child maltreatment (p. 106).

- The Legislature should amend *Minn. Stat.* (2004), §243.166 to require registered predatory offenders to disclose, as soon as possible, their pending or recent admission to a care facility to (1) their assigned corrections agent, or (2) a law enforcement agency, if the offender is no longer supervised by a corrections agent. The offenders should also be required to disclose their predatory offender status to the care facilities prior to admission, if possible (p. 107).

- *Minn. Stat.* (2004), §244.052 should be amended to require corrections or law enforcement agents to inform a care facility administrator if they have information that a registered predatory offender is living at the facility (p. 108).

Additional Notes on Research Methods

APPENDIX

The introduction of this report provided a brief overview of our research methods. This appendix provides some additional details regarding our reviews of individual case records and several surveys we conducted.

REVIEWS OF CASE RECORDS FOR A SAMPLE OF INDIVIDUAL OFFENDERS

To help us examine the nature and extent of supervision, we reviewed a random sample of cases involving individual adult sex offenders who were under the supervision of six corrections agencies as of June 2004. The six supervising agencies were Hennepin, Ramsey, and Dakota counties, Dodge-Fillmore-Olmsted Community Corrections, Arrowhead Regional Community Corrections, and the Minnesota Department of Corrections (DOC). These agencies accounted for about 80 percent of the adult sex offenders under community correctional supervision in Minnesota in June 2004.

We initially selected a random sample of about 350 cases that was representative, in aggregate, of all sex offender cases supervised by these agencies. We subsequently found that some of these "open" cases had little or no recent supervision activity to examine—for example, in cases where the offender had absconded, was awaiting release from prison, had transferred to the supervision of another jurisdiction, was deported, or had been civilly committed. However, in nearly 300 cases, we examined the conditions of supervision, the number and types of agent-offender contacts, and records of treatment, polygraphs, and drug/alcohol tests.

Offenders under correctional supervision are subject to "special conditions" of supervision imposed by courts (for offenders sentenced to probation) or DOC (for offenders on supervised release following a prison sentence). To review these special conditions, we examined prison release plans, court sentencing orders, or summaries of the special conditions recorded by corrections agencies on their electronic case management systems. For each offender whose case we reviewed, we examined chronological notes recorded by the supervising agents. These notes provided information on individual contacts that agents had with offenders, treatment providers, and others (such as family members or victims). They also contained information on treatment, drug/alcohol tests, polygraphs, and violations, although the consistency of this documentation varied. In selected cases, we examined the supervising agencies' paper records on offenders or spoke with the supervising agents. For offenders who received sex offender treatment from a state-funded program, we examined information on treatment and polygraphs from the department's sex offender treatment database.

Where possible, we analyzed information on agent-offender contacts for periods ranging from 3 to 12 months, usually during the offender's most recent period of supervision since the beginning of 2003. We collected information on agent-offender contacts for up to 6 months in the case of persons under "Intensive Supervised Release" and up to 12 months in other cases. To adjust for the varying lengths of time that we reviewed agent-offender contacts for individual cases, we computed the average number of monthly and yearly contacts for each offender.

SURVEYS

In June 2004, we surveyed directors of Community Corrections Act (CCA) agencies and DOC field offices to determine which of their individual staff were supervising sex offenders. We also asked the directors to indicate whether these staff were Intensive Supervised Release agents, specialized sex offender agents, or regular agents. We sent surveys to directors of 11 DOC district offices, DOC's Intensive Supervised Release unit, and 16 CCA agencies. All 28 directors responded to our survey.

In June 2004, we surveyed the directors of halfway houses with whom DOC contracted for services during calendar year 2003. The survey asked for summary-level information regarding the offenders on supervised release who lived at these facilities during calendar year 2003. For sex offenders at these facilities, we requested information regarding the counties to which they were discharged, their prison release risk ratings (Levels I, II, or III), and the circumstances under which they left the halfway house program. We sent surveys to four agency directors, and we received responses from all of them.

In August 2004, we surveyed the directors of CCA agencies and DOC district offices about the nature of their agencies' sex offender supervision activities and their perceptions about supervision, treatment, and other services. We sent surveys to directors of 11 DOC district offices, DOC's Intensive Supervised Release unit, and 16 CCA agencies. All of these agencies responded to our survey, although one CCA agency—representing Rock and Nobles counties—told us that it contracts with DOC for supervision of adult, felony-level sex offenders. Thus, the director of this agency deferred to DOC for this survey.

State of Minnesota
Minnesota Department of Corrections

January 12, 2005

Honorable James R. Nobles
Legislative Auditor
Room 140
658 Cedar Street
Saint Paul, MN 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to review the Legislative Auditor's final draft of the program evaluation on *Community Supervision of Sex Offenders*.

In our judgment, the Report represents a valuable compilation of data and information on a subject of critical importance. Moreover, the Report is organized and presented in such a way as to introduce new readers to a very complicated set of policy questions. As both a "survey" of the current challenges, and as a "road-map" to future reform, the Report is a very useful document.

For the purpose of the Department of Corrections' response to this Report, just a few points deserve special emphasis.

As a survey of our current challenges:

- The Report correctly notes that "sex offenders," as a group, include an incredibly broad set of pathologies and criminal offense histories. (*See,* Report at 25 to 30)

- The Report also makes clear that not all sex offenders represent the same level or type of risk to the larger community, and not all sex offenders present the very same level of risk throughout their supervision. (*See,* Report at 44 to 51)

- The Report confirms that despite rising caseloads, Minnesota's Corrections agencies at the state and county level supervise very difficult populations of dangerous offenders with energy and seriousness. (*See,* Report at 31 to 54)

- The Report verifies that effective assessments are critical if the resources that are available are to be applied proportionally to meet the risks presented by individual offenders. (*See,* Report at 61 to 65)

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As a road map for future reforms:

- The Report correctly states that developing a single and uniform set of standards for supervision, treatment, assessment and performance should be a priority for our state. (*See,* Report at 51 to 60)

- The Report accurately outlines the need to develop technical and professional standards, to perform an ongoing review of Minnesota's supervision practices, and to conduct an independent comparison of our state's performance with those of other states. (*See,* Report at 90 to 93).

- The Report corroborates our view that the pace of improvements and innovation in sex offender supervision practice is bounded only by the availability of resources. (*See,* Report at 100 to 103). The Department of Corrections has already undertaken a number of pioneering improvements to sex offender supervision practice, and is eager to do even more, if additional resources are available.

In summary, the Department of Corrections shares your commitment to excellence in the supervision of sex offenders, and regards this Report as a vital tool for educating others on these important issues.

We look forward to working with your office, the Minnesota Legislature and other stakeholders in developing a set of sex offender supervision practices that will lead the nation in their efficacy and value.

Very truly yours,

Joan Fabian
Commissioner of Corrections

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