**DRAFT 2/24/2016**

**Draft Report Regarding** **Actuarials and Data Collection by the Sex Offender Registry Board (SORB)**

Actuarials

Actuarial measures are generally considered by the scientific community to be superior to clinical judgement and to be the current “best-practice” method for predicting recidivism rates in groups of offenders, and, by extrapolation, risk of reoffense of individuals. However, the ability of actuarial measures to accurately predict true reoffending has important limitations that cannot be ignored in relation to the SORB’s legislatively mandated mission:

1. The Static-99R, other actuarial risk instruments, and research on sexual recidivism only capture how many offenders were “detected” (i.e., arrested, charged or convicted) of reoffense. It is not known how many offenders actually reoffend without being identified or how many are deterred from reoffending by sanctions such as registration and notification. The research underlying these actuarial risk instruments also only studies offenders at group levels. In other words, how many in a group with similar characteristics are likely to reoffend, not the risk of a particular person.
2. Actuarial measures address only relative risk to reoffend. SORB is statutorily required to determine an offender’s risk of reoffense and the degree of dangerousness posed to the public in order to decide the most appropriate classification level of availability of information for public safety. “Dangerousness” is viewed as the harm that may befall a potential victim in the event of a reoffense. The research community discusses dangerousness as the equivalent of risk and does not have to consider public availability of information in recidivism studies. As researchers Hanson and Bussiere (1998) noted, “Low rates of recidivism can, nevertheless, be worrisome given the serious effects of sexual victimization.”
3. Actuarial measures are mechanized, quantified instruments that are most commonly utilized to guide treatment planning and management strategies, neither of which are part of SORB’s mission. The SORB classification process was designed to be a qualitative, quasi-legal analysis of an individual sex offender’s history and personal circumstances. The two processes, quantified actuarial risk assessment (the scientific method) and qualitative analysis (the legal method), are different constructs that do not always align precisely or produce the same result. There are instances where actuarial risk instruments are utilized in legal proceedings, but they are but one element of the overall qualitative analysis or decision-making.
4. The best actuarial instruments currently available have only moderate (not high) predictive validity. SORB’s underlying concern with this statistical translation using known actuarial instruments is that the presence of “false negatives” (i.e., those offenders who are identified as low risk to reoffend and do reoffend) are more acceptable in the scientific field of statistical recidivism research, but less acceptable for public safety purposes.
5. The SORB is obligated to classify several types of offenders for whom no validated actuarial measures of sexual recidivism exist (e.g., juveniles, females, child pornography offenders, sex traffickers, and the developmentally disabled). The SORB often has to classify offenders who have resided in the community for decades. Actuarial tools such as the Static-99R are most accurate at the time of the offender’s release from incarceration and are less valid after significant time in the community.
6. Actuarial measures often do not reflect changes in recidivism risk over time as they tend to measure static historical facts. The Commission decided that it was beyond its expertise and resources to make specific recommendations about how to transition to a method that combines static and dynamic risk strategies into an optimal, empirically based solution. However, the SORB is often obligated, upon request of the offender or the Board, to review and re-evaluate an offender years after the initial classification was determined.

The SORB’s current regulatory classification process is not an actuarial measure (it is most similar to “structured clinical judgment” scales used in current clinical and research practice), but it does address the above issues not considered by current actuarial scales. Furthermore, the Supreme Judicial Court recently affirmed the validity of the SORB’s basic methodology, as it has done in a number of prior decisions; and the Court also amended the required level of proof to the more stringent clear and convincing standard.

Data Collection

As the SORB’s classification schema has changed, effective January 29, 2016, with the update of the risk factors and the change in standard of proof, collecting data on persons classified under the old schema would not provide any useful information regarding current practices. It would take several years for there to be sufficient numbers of offenders classified under the current system before any type of research could be conducted.

SORB has never before conducted a recidivism study. SORB is not opposed to consideration of engaging in such a study, but could only do so with the provision of substantial additional resources. In the future, it may be useful to examine the known recidivism rates and types of new sex crimes committed by persons classified by the SORB. However, for the reasons stated above and in the recommendation below, such a study would have severe limitations on a useful or informative evaluation of SORB’s classification system.

Recommendation

1. Once a sufficient amount of time has gone by to gather meaningful information, the SORB is willing to engage in its own self-analysis and collection of data. While such an analysis may shed light on the SORB classification as related to risk of reoffense, important points will need to remain at the forefront of any data collection:
   1. Measuring known recidivism rates will not address the potential severity of harm in the event of a reoffense or the qualitative decision made by a hearing examiner as to the necessity for community access to information.
   2. Measuring recidivism rates are not the same as true reoffense rates. Depending on how a data collection study defines and measures recidivism (e.g., by rearrest, by reconviction, by self-report, by credible allegation, by probation/parole violation, etc.), how long the follow-up period is (e.g., five years, ten years, 20 + years), and the risk level of the sample followed, will provide different estimates of risk. Offenders who have reoffended after 20 or more years and/or who have been reoffending without having been charged or reconvicted often appeared before the SORB. These offenders clearly present a long-term risk to public safety.
   3. Many sexual assaults are not reported or prosecuted and records of investigations of sexual offenses which do not result in criminal charges are typically unavailable. While it cannot be determined exactly how many offenders reoffend without disclosure by a victim or detection there is reason to believe the number is substantial. Furthermore, many sex offenses are resolved with guilty pleas to non-sex offense crimes and would be absent from a criminal record or unidentifiable as a sexually motivated offense. The criminal offense data necessary to assess recidivism would need to be obtained from the trial courts. In addition, data regarding uncharged conduct documented by police departments and other agencies would ideally need to be obtained as well.