

**RISK OF VIOLENT AND SEXUAL RECIDIVISM: A COMPARISON OF DANGEROUS
OFFENDERS AND REPETITIVE SEXUAL OFFENDERS.**

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**THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY**

in the Department

of

Psychology

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Simon Fraser University

Summer 2005

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ABSTRACT

Eighty-two Court-designated Dangerous Offenders (DOs) were compared to a matched group of 82 repeat sexual offenders (Matched Sexual Offenders: MSOs) on various demographic, developmental, and offence-related factors as well as their risk for violent and sexual recidivism. There were few pre-index offence demographic and developmental differences between the two groups or differences in psychopathology in adulthood. The DOs and MSOs had similar numbers of sexual assault victims but the DOs who assaulted adult victims committed more severe offences. They were more likely to abduct or kidnap strangers and caused more moderate to severe injuries. These significant differences only pertained to a minority of the DOs. There were no significant differences in the offence features of the DOs and MSOs who sexually assaulted children. Scores for the DOs were significantly higher on the PCL-R, VRAG, SORAG, Static-99, and SVR-20 indicating that the DOs, as a group, have a greater probability of violent and sexual recidivism than the MSOs. Varying with the measures and follow-up periods, the difference between the DOs and MSOs in their actual risk probabilities were 4-17% for any violent recidivism and 13-16% for sexual recidivism. Among the subtypes of sexual offenders, the largest differences in the total scores of the various measures was between the mixed sexual offenders in the DO and MSO groups. Results are discussed in terms of legislative implications and the evaluation of risk in sexual offenders.

ACKNOWLEDGMENTS

I would like to thank my senior supervisor Dr. Robert Ley for his support and guidance during my graduate studies, and throughout the development and completion of this research. I would also like to thank the members of my committee, Dr. Ray Koopman and Dr. Doug Boer for their support and suggestions and Dr. Michael Coles who served as an earlier committee member and advisor. The internal and external examiners for my dissertation, Dr. Kevin Douglas and Dr. Stephen Wong, posed very thoughtful questions and made valued suggestions which are also very appreciated. I also extend my gratitude to the staff of the Correctional Service of Canada who made this research possible. Finally, I would like to thank my family and friends.

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INTRODUCTION

Dangerous Offender Legislation

In Canada, Dangerous Offender (DO) legislation introduced in 1977 repealed provisions for Habitual Criminals (1947), Criminal Sexual Psychopaths (1948) and the Dangerous Sexual Offender (DSO) legislation (1958) which had replaced the 1948 provisions.¹ Under Part XXIV (formerly Part XXI) of the *Canadian Criminal Code*, the 1977 amendments continue to offer the protection of society by allowing for the indeterminate sentencing of certain violent and sexual offenders.

Twenty years later, Parliament strengthened and expanded the latitude of protection in Part XXIV by amending some of the procedures governing the DO legislation and by creating a new category, the Long-Term Offender (LTO) (see Appendix A). Bill C-55, which came into force on August 1, 1997, also eliminated the option of determinate sentences for designated DOs, set parole reviews after the first seven years of detainment rather than three years after sentencing, extended the application period for DO hearings from prior to sentencing to six months after conviction, and modified the mandatory psychiatric testimony requirement for these hearings. The definitional criteria for DOs remain unchanged by the 1997 legislative amendments.²

¹ The DO proceedings are governed by criminal provisions in Canada – not civil law as they are in some jurisdictions of the United States – where criminal proceedings were judged to be unconstitutional (see generally, American Psychiatric Association, 1999; Heilbrum, Ogloff, & Picarello, 1999; Janus, 2000).

² Some may regard this as one of the most disappointing aspects of Bill C-55 as Parliament has virtually ignored all of the legal commentary on the previous legislation (e.g., Grant, 1985; Price & Gold, 1976; Robertson & Dickens, 1988; Webster, Dickens, & Addario, 1985), research attempting to evaluate the application of the legislation (e.g., Jakimiec, Popporino, Addario, & Webster, 1986; Pos, Coles, Grant, & Schellenberg, 1987), as well as the difficulties the Courts faced in interpreting or applying the substantive criteria (see Coles & Grant, 1991; Grant, 1985; 1991; Rogers & Lynett, 1991 for reviews).

The Designation and Sentencing of Dangerous Offenders

There is a two threshold test for dangerousness, defined by legislative criteria, which must be met for an offender to be sentenced as a DO. An offender must first be convicted of a “serious personal injury offence”, as specified in section 752 of the *Criminal Code*. Section 752 includes two categories of offences:

- (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder involving
 - (i) the use or attempted use of violence against another person, or
 - (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person, and for which the offender may be sentenced to imprisonment for ten years or more, or
- (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Essentially these offences include violent or potentially violent offences (apart from murder) that have possible sentences of ten years or more, and certain sexual offences. After being convicted of a serious personal injury offence, the Attorney General of a province on the recommendation of Crown has the discretion to make an application for a subsequent sentencing hearing to determine if an offender is a DO.

The Crown must further establish, beyond a reasonable doubt (*R. v. Jackson*, 1981), that an offender has certain characteristics as the purpose of these hearings is to determine whether the offender fits the *Criminal Code*'s “operational definition” of Dangerous Offender and to impose the appropriate sentence (Coles & Grant, 1999). Depending on the crime(s) committed, the Crown would attempt to establish one of two parts in section 753 of the *Criminal Code*, either of which would be sufficient for a finding of dangerousness:

- (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
 - (i) a pattern of repetitive behaviour by the offender, of which the offence

for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour,

(ii) a pattern of persistent aggressive behaviour, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or

(b) that the offence for which the offender had been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood to his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.³

Until recently, if the Crown established any one of these four disjunctive definitions, the Court *must* have found that the offender was a DO (*R. v. Moore*, 1985). Prior to the 1997 amendments, the Courts may have imposed either an indeterminate or determinate sentence.⁴

The indeterminate sentence, which is now the only possible sentence for designated DOs, has been referred to as “the most awesome sanction or punishment presently provided for in our criminal law” (*R. v. Wooldridge*, 1991). The *Supreme Court of Canada* has indicated that public protection, rather than rehabilitation, was the primary concern of the DO legislation and the justification for indeterminate sentences (e.g., *R. v. Dwyer*, 1977; *R. v. Jones*, 1994). The purpose of indeterminate sentences has also not been considered punitive but to ensure time for

³ The definition and interpretation of the elements of section 753 including “severe psychological damage,” “indifference,” “brutality,” and “evil to other persons through a failure in future to control his sexual impulses” have been difficult (see Coles & Grant, 1991; Grant, 1985; Rogers & Lynett, 1991). Others have simply indicated that the legislative changes passed in 1977 broaden the definition of dangerousness (Greenland, 1985), possibly enough to always secure a finding of dangerousness (Webster, Dickens, & Addario, 1985), with few changes, procedurally or substantively (Schiffer, 1978).

⁴ An offender would have been sentenced under regular sentencing provisions if an offender was not designated as a DO. Currently, section 753 (5) provides that a LTO order or another sentence may be imposed if the Court determines that an offender is not a DO.

the effective treatment of the offender (e.g., *R. v. Noyes*, 1986). As such, Part XXIV has enabled preventive detention while offering coercive treatment (see Coles & Grant, 1991; for an extensive discussion).

In 2003, the *Supreme Court of Canada* in ruling on a number of similar appeals in *R. v. Johnson* reaffirmed the protective intent of the legislation. The significance of this decision was in that although the statutory criteria for a DO may be met, the Courts prior to imposing a sentence must consider whether the protection of society could be accomplished through the less restrictive LTO designation. Part of their rationale rested on the sentencing principles set out in sections 718 to 718.2 of the *Criminal Code* which include the principle of proportionality but more importantly, the principle of restraint. A judge must consider the possibility that a less restrictive sanction would attain the same sentencing objective as sought by a more severe sanction (*R. v. Johnson*, 2003). Accordingly, indeterminate sentences are justified only insofar as they serve the objective of protecting society where the possibility of eventual control and management of risk in the community was not at an acceptable level.⁵

The Discretionary Application of the DO Legislation

Since its proclamation, there have been several criticisms of the DO legislation. In essence, these critiques have been concerned with the potential for misuse, and thus unfairness, in the application of the legislation and have come from legislative committees (*Law Reform Commission of Canada*, 1975; *Canadian Sentencing Commission*, 1987), legal commentaries (e.g., Grant, 1985; Robertson & Dickens, 1988), and various constitutional or legal challenges (see in particular, Supreme Court decisions including: *Lyons v. The Queen*, 1987; *R. v. Currie*,

⁵ The *Supreme Court* also indicated that it was not clear that every person designated as a dangerous offender under the former legislation would necessarily be declared dangerous under the new provisions in light of the availability of the new LTO designation (*R. v. Johnson*, 2003).

1997; *R. v. Johnson*, 2003; *R. v. Jones*, 1994). These concerns have also served as the impetus for various investigations (e.g., Jakimiec, Popporino, Addario, & Webster, 1986; Koopman, 1985; Pos, Coles, Grant, & Schellenberg, 1987).

Prior to enactment of the DO legislation, the *Law Reform Commission of Canada* (1975) had recommended that the DSO provisions be eliminated and indicated that the sentencing of serious offences, including sexual offences, be dealt with under regular sentencing provisions. Such sentences could have been imposed on the basis of current and previous convictions without the mandatory requirement of psychiatric testimony or the expense of an additional hearing. Part of the intent in adopting the DO provisions was to broaden the scope of the prior DSO legislation but most DOs (80-90%) have and continue to be, designated after committing sexual offences (e.g., Bonta, Harris, Zinger, & Carriere, 1996; Public Safety and Emergency Preparedness Canada, December, 2004). The *Canadian Sentencing Commission* (1987) also recommended that the DO provisions be repealed as the nature of indeterminate sentences, and the primary focus on the offender rather than the offence, violated basic principles of criminal law (see also, Grant, 1985; Robertson & Dickens, 1988). As an alternative, the Commission recommended the imposition of an "extended sentence" only for the most heinous of crimes.⁶ The infrequency of DO applications along with, other albeit, determinate sentencing options also suggested that special provisions for DOs were perhaps unnecessary (Webster, Dickens, & Addario, 1985). In imposing only determinate sentences, a "just desert" model or the "justice

⁶ Parliament however had not conferred on judges the power to impose (lengthy determinate) sentences as "protective" sentences, even when evidence including psychiatric opinion has documented the propensity to commit violent sexual assaults or the potential for murder (as was the case in *R. v. Henderson*, 1990). This position shifted in the *Supreme Court's* decision in (*R. v. M. (C.A.)*, 1996). In that case, the *Supreme Court* overturned the *British Columbia's Court of Appeal's* reduction of a sentence from 25 years to 18 – the *Court of Appeal* was assuming a sentencing cap of 20 years – for an offender who physically and sexually assaulted his children quite severely. The *Supreme Court* also held that the Crown had no obligation to proceed with a DO application.

approach” (Petrunik, 2002) would focus on the severity of offences and the culpability of the offender without having to predict behaviour after an offender has served his or her sentence (Monahan, 1984).

It is for Crown to decide when to invoke the DO legislation and this prosecutorial discretion and the threat of a DO application also raises serious ethical concerns (Webster, Dickens, & Addario, 1985). For years after the legislation was in use, no guidelines offering directives or ensuring consistency across provinces on appropriate applications were in place (Pos et al., 1987). Some provinces now have, or were in the process of developing procedural and policy guidelines to assist Crown Counsel in deciding when a DO application was warranted (Bonta et al., 1996). That said, together British Columbia and Ontario at any given time have designated approximately seventy per cent of the DOs in Canada (as was also the case with the former DSO legislation). Arbitrary decisions, or *discretion*, at various stages of the Part XXIV process have however withstood challenges under the *Canadian Charter of Rights and Freedoms*.

Statistics on regional differences were submitted as evidence in *Lyons v. The Queen* (1987) as the Court considered the arbitrariness of prosecutorial discretion as a constitutional challenge to Part XXIV. The *Supreme Court of Canada* was of the opinion that prosecutorial discretion does not constitute unconstitutional arbitrariness whereas the absence of such discretion could (more recently reaffirmed in *R. v. M.(C.A.)*, 1996). In another case, the *Supreme Court of Canada* again dealt with the issue of arbitrariness by stating that:

“...once an individual has committed an [serious personal injury] offence, he or she has made it possible for the Crown to invoke the *Criminal Code*’s dangerous offender application process. If that process is evoked, it is incumbent upon the trial judge to evaluate the offender’s potential for danger to the public and this may or may not depend upon the specific nature and objective gravity of the predicate offence” (*R. v. Currie*, 1997).

The Courts have dealt with similar challenges through other arguments. For example, section 718.2 (b), part of the *Purpose and Principles of Sentencing* of the *Criminal Code*,

essentially ensures consistency in stating that “a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances”. The *B.C. Court of Appeal*, in dismissing the applicability of section 718.2 (b), stated that “the trial judge should not be influenced by concerns about consistency in the treatment of other hypothetical offenders”, and the “decision to bring a dangerous offender application is a decision of the Crown, not the sentencing judge” (*R. v. Dow*, 1999). Any judicial discretion lies only in relation to the statutory criteria in section 753 in determining whether an offender satisfies the criteria and poses the “likelihood” of risk or probability of future harm and in deciding what sentence needs to be imposed (*R. v. Johnson*, 2003). These decisions should at least consider “treatment prospects”, “the relative degree of seriousness of the criminal conduct and the offender’s moral blameworthiness”, and “the offender himself or herself” (*R. v. N. (L.)*, 1999). That many, or other, offenders would qualify as DOs under the statutory criteria has also been considered a moot argument, and in fact, serves as the justification for the need for some discretion in capturing the small group of offenders that Parliament intended (see generally, *Lyons v. The Queen*, 1987).

Expert Assessments

The legislation, prior to Bill C-55 was unusual in that it required the testimony of opposing psychiatrists.⁷ While Parliament may have recognized the overlap between the legislation and the field of psychiatry, others have indicated that the mandatory psychiatric testimony in Part XXIV reflected a “fundamental mistrust”, and appeared to question the

⁷ Section 755 of the *Criminal Code*, now repealed, specified that the testimony of at least two psychiatrists – one nominated by the defense and one by the prosecution – must be heard in DO hearings. This section also required that the Court hear all other relevant evidence including the opinions of psychologists and criminologists.

objectivity and impartiality of psychiatric opinion as no other form of hearing required adversarially appointed experts (Rogers & Mitchell, 1991). The adversarial nature of Part XXIV did encourage experts offering opinion evidence to become advocates (Coles & Grant, 1990; Pos et al., 1987), where one side was prompted to present evidence of risk and the other mitigating factors (Webster, Harris, Rice, Cormier, & Quinsey, 1994). This same concern, namely opposing experts, has also been raised in the scoring of the Psychopathy Checklist-Revised (PCL-R) which is often used in assessment for risk of violence (Hare, 1998; Zinger & Forth, 1998).⁸

The Courts in response to the role of psychiatrists and the controversy surrounding the issue of dangerousness have held that expert testimony is only one facet of the evidence the Court must consider in reaching its decision (e.g., *Carleton v. R.*, 1981), and have regarded psychiatric testimony as they would that of any experts offering opinions which may diverge in emphasizing their assistance in reaching more informed decisions (see generally, *Lyons v. The Queen*, 1987). The pre-1997 legal requirement that both sides nominate psychiatrists was also said to preserve the principles of fundamental justice in ensuring that both the rights of society and of the offender were represented (*R. v. Langevin*, 1984). The Courts' position on the *role* of psychiatric evidence should not be taken as underscoring the possible significance of that expert evidence. For example, the *Supreme Court of Canada* indicated that the pattern of, in this case, criminal sexual behaviour and the psychiatric evidence were sufficient proof, and that a finding of dangerousness is a finding of fact frequently based on the competing credibility of experts (*R. v. Currie*, 1997). The *Supreme Court* also indicated that in deciding whether to designate an

⁸ The PCL-R has also been ranked highest among 37 recidivism predictors by Crown attorneys who have prosecuted DOs (Zinger & Bonta, 1996), served as the foundation for expert testimony in DO hearings (e.g. *R. v. McMath*, 1995; *R. v. Neve*, 1994), and used to support the likelihood of violence and the justification of indeterminate sentences (for review, see Zinger & Forth, 1998). Some Courts have been willing to compare the offender's characteristics to a list of risk factors presented by experts in order to determine the likelihood of violence (*R. v. R.E.G.*, 1996) where in other instances, judges and attorneys have scored, or inappropriately used, the PCL-R in various hearings including DO cases (Hare, 1998).

offender as a DO, a judge is required to consider the facts of the index offence, the offenders' criminal record, and expert testimony.

In 1997, Bill C-55 modified the legislation by requiring an assessment report by experts be filed with the Court and made available to the Crown and the defence (section 752.1). The assessor is now an *amicus curiae* – a friend of the Court in a role that is less adversarial than previously (Coles & Grant, 1999; Eaves et al., 2000) and serves an educative function much like a probation officer presenting a pre-sentence report (*R. v. Connaghan*, 1998). At the same time, the Courts can not refuse to hear the opinions of other qualified experts which may be sought when the Crown, but more likely when the defence, is dissatisfied with a report (Coles & Grant, 1999). The elimination of the *Criminal Code's* requirement of opposing psychiatric testimony in Part XXIV hearings, while commendable, has not altered the potentially adversarial nature of the process.

In DO hearings, psychiatric and psychological testimony has addressed at least four distinct areas including the dangerousness of the offender according to the legal criteria, the character and treatability of the offender, the risk of violence posed by the offender, and the availability of treatment alternatives.⁹ With the creation of the LTO designation and shifts in the philosophy and approaches to risk assessment, the risk management and possibility of eventual community control of offenders will also need to be evaluated. Deciding between DO and LTO designations requires a “risk analysis” where the Court must be satisfied beyond a reasonable doubt that, in the case of a LTO, “there is a substantial risk that the offender will reoffend” and a finding of a “reasonable possibility of eventual control of risk in the community” (*R. v. Blair*, 2002; see also, Eaves et al., 2000; *R. v. Johnson*, 2003). In their analyses of the earlier DO

⁹ Of course, and even though experts may be encouraged to do so, testimony should not address the “ultimate issue” but opinions on “dynamic or interpsychic patterns” may serve to establish the behavioural patterns referred to by the statutory criteria (Coles & Grant, 1999).

regime, both Coles and Grant (1991) and Rogers and Lynett (1991) argued that mental health experts had a lack of input in the sentencing of DOs (i.e., the possibility of "cure") and thereby assist the Court in deciding on the most appropriate sentence. To some extent with the legislative changes, this responsibility may have shifted to mental health experts who have now developed some "expertise" in the evaluation of risk for recidivism. Many have already contended that judicial decisions are not only consistent with, but may have also relied on the opinions of mental health experts (e.g., Morse, 2004; Robertson & Dickens, 1988; Webster, Dickens, & Addario, 1985).

The Determination of Risk in Dangerous Offender Proceedings

The primary issue before the Court in DO hearings is the evaluation of risk, not the prediction of behaviour. While this distinction may be subtle or contentious, it is a distinction that has been made by the Courts to emphasize the difference between a likelihood and a certainty. The standard for the determination of dangerousness was set out in *Carleton v. R.* (1981) when the Court interpreted the meaning of "likelihood" for proof of dangerousness "from the conduct of the offender up to the time of the hearing" negating the need for an actual prediction of dangerousness. The *Supreme Court of Canada* in *Lyons v. The Queen* (1987) reaffirmed that "inherent in the notion of dangerousness is the risk, not the certainty, of harm"; and this determination flows from the actual commission of a specific crime, the requisite elements of which have been proven to exist beyond a reasonable doubt. In essence, the position of the Courts has been that determining risk is possible without a precise prediction of future behaviour where indeterminate sentences would not only alleviate the Courts of that burden, but tailor sentences to the offenders' risk in the future (see *Carlton v. R.*, 1981; *R. v. Jones*, 1994; *R. v. Dow*, 2002; for the Courts' rationale). At the same time, lower Courts have been cautioned

against, or criticized for, not making proper decisions by deflecting their judicial responsibilities onto the Parole Board.

There is also the formidable task – often confused in case law – of separating the degree of risk required to meet the legal standard, the risk posed by an offender, and the confidence which can be attached to that assessment (see Coles & Grant, 1999; Eaves et al., 2000; for a consideration of the relevant case law; see also Janus & Meehl, 1997). In this regard, Coles and Grant (1999) review the limitations of relying on actuarial or objective data – as well as relying solely on clinical experience – and argue that psychometric assessment of risk supplement psychiatric assessments – but should never replace them (see also, Webster, Hucker & Bloom, 2002).

The probability or categorical range and numerical estimates of risk required to meet the legal standard of proof in DO designations ranged quite despairingly in Eaves et al.,’s review of various Court decisions (2000). They suggested that although “the Courts may set the threshold of risk at no lower than high risk”, in time, a different standard may be accepted (Eaves et al., 2000; p. 25). A more recent decision addressed this issue. In 2002, the *Nova Scotia Court of Appeal* defined the statutory reference of “likelihood” as requiring the risk of reoffending to be in the “high range” or more than 50 per cent in DO cases (*R. v. H. (J.T.)*). It was indicated that risk in such cases would be managed through indefinite incarceration whereas less drastic measures such as a LTO designations were appropriate when risk was 50 per cent or less. The Court emphasized the importance of actuarial measures in making this determination and stated that “the results of actuarial testing offer the best prospect of predicting the future behaviour of sexual or other violent offenders” and their findings “should be followed unless there are clear reasons for doing otherwise” (*R. v. H. (J.T.)*, 2003; c.f. Hart, 2003). The merit or namely, the admissibility or scope of expert evidence based on actuarial measures may at some point need to be considered by the *Supreme Court of Canada*. Such challenges have been successful in some

jurisdictions of the United States in *Sexually Violent Predator* (SVP) hearings resulting in the exclusion of expert opinion based on the potential for prejudice, the false impression of reliability and accuracy, the lack of general professional acceptance, and the lack of probative value of actuarial instruments (see Hart, 2003; Hart, Laws & Kropp, 2003 for reviews).

Statistical Profile of Dangerous Offenders (1978-2002)

As of March 1, 2002 (i.e., the end of data collection in the present study), there were 281 active DOs on record with the Correctional Service of Canada (CSC).¹⁰ Twelve (4%) were being supervised in the community and 269 (96%) were incarcerated (2% of 13533 incarcerated federal inmates). Of these incarcerated inmates, 23% (3068) were identified as sexual offenders based on their most recent conviction (consistent with the 1991 national sex offender census (~24%), Motiuk & Belcourt, 1996). Most of the DOs (71.5%) were incarcerated or supervised in the Pacific Region (B.C.) (91 DOs) and the Ontario Region (110 DOs).

Other sources indicated that there were 363 DOs in Canada (345 or 95% with indeterminate sentences).¹¹ Of 363 DOs, 303 (83%) were still incarcerated, 13 (4%) were being supervised, 17 (5%) completed their sentence or were otherwise classified (e.g., new sentence, successful appeal), 1 had been deported, and 29 (8%) are deceased (all had indeterminate sentences). As of June 30, 2002¹² (Solicitor General of Canada, 2002), there were a total of 365 designated DOs in Canada with B.C. and Ontario as the *designating* province for 254 (69%) of

¹⁰ Statistics generated by the CSC's RADAR offender identification system, March 1, 2002. RADAR does not maintain records on offenders who are deceased nor differentiate between DOs with determinate or indeterminate sentences.

¹¹ Information received from regional headquarters of the CSC's Pacific Region, April 26, 2002.

¹² Recent statistics (Public Safety and Emergency Preparedness Canada, December, 2004) indicate that there have been 410 DO and 273 LTO designations as of September 26, 2004. An earlier media article, based on CSC information, reported that only 26 (6%) of 405 DOs have been released on community supervision (Canadian Press, Number of dangerous offenders in Canada growing, May 16, 2004).

the DOs. Approximately 83% of the DOs had at least one current conviction for a sexual offence. These frequencies have remained fairly consistent since the inception of the legislation. There was an increase in the use of the DO legislation as at the end of the last calendar year (2001), 118 (33%) of 355 DOs had been designated in the preceding four years (1998-2001). In the first ten years of the legislation (1978-1988) there were 78 (22%) and 159 (45%) in next ten years (1988-1997).

Research on Dangerous Offenders

Since its enactment, the DO legislation has been criticized for the discretion in its application, as was the case for the preceding Habitual Offender and DSO statutes (e.g. Price & Gold, 1976; Robertson & Dickens, 1988; Webster & Menzies, 1987). Most of the early research on DOs sought to establish the arbitrariness in the application of the DO legislation by attempting either to detail and evaluate Part XXIV as a legal process (e.g., Jakimiec et al., 1986; MacKay, 1983; Webster, Dickens, & Addario, 1985), and/or by describing the characteristics of offenders designated to be DOs (Berzins, 1983; Koopman, 1985). In general, these studies concluded by questioning the intent, application, and necessity of the legislation (e.g., Berzins, 1983; Koopman, 1985; Webster, Dickens & Addario, 1985) and by suggesting that administrative ideology was instrumental in the application of Part XXIV rather than only the personality or the risk of the offenders (e.g., Webster, Dickens, & Addario, 1985). The results from the early research were also taken as evidence that the protection of society for which the legislation was premised was more "symbolic" than real, as the DOs did not appear to be more dangerous than other offenders (Rogers & Mitchell, 1991). Methodological limitations however, particularly the lack of systematic comparisons with other offenders, have certainly limited many of these conclusions (for reviews see Pos et al., 1987; Zanatta, 1996).

In 1996, the findings of two studies attempting to evaluate the application of the legislation were completed (Bonta et al., 1996; Zanatta, 1996). Many of the results of the two studies were similar and have provided data on the characteristics of DOs.

Zanatta (1996) compared 45 DOs from the Pacific Region (B.C.) to a randomly selected group of 45 nondesignated offenders who had committed a “serious personal injury offence” on various developmental, offence, and risk related factors. It was hypothesized that the DOs, by virtue of their designation and the intent of the legislation, would be at a greater risk for violent recidivism as assessed on the PCL-R (Hare, 1991), and the Violence Risk Appraisal Guide (VRAG) (Webster et al., 1994) – which at that time, were the most validated instruments for assessing risk of recidivism. The offence characteristics and the risk for violent recidivism of the two groups are presented in Table 1.

The DOs and the serious personal injury offenders (SPIOs) in Zanatta (1996) were compared on the number of charges and convictions they had as a “rough gauge” of the extent and severity of their offence histories; although in DO hearings the Court would not be restricted to only evidence which had resulted in criminal charges. Official criminal (F.P.S.) records are also a biased estimate of the number of prior offences committed by an offender particularly when the amount of time the offenders were incarcerated is not accounted for.

Zanatta (1996) found that as groups, there were no differences between the DOs and the SPIOs in the total number of violent offences (including juvenile sexual offences) they had committed (see Table 1). Because significantly more DOs committed sexual index offences and the SPIOs committed significantly more robbery-related index offences, results that indicated that the groups had histories of different types of violent offences were not surprising.

The DOs had significantly more violent *index* offence charges and convictions and nearly all (95.5%) of these were related to sexual assaults (see Table 1). The severity of these index offences is perhaps reflected more precisely in the comparison of only the sexual offenders

Table 1.

Offence Characteristics and Risk of Violent Recidivism of Dangerous Offenders and Serious Personal Injury Offenders (Zanatta, 1996).

	DOs (N = 45)	SPIOs (N = 45)	p
Offence History			
Age when first charged [<u>M</u> (SD)]	19.11 (9.49)	17.54 (6.02)	ns
Age at Index Offence [<u>M</u> (SD)]	32.24 (9.48)	32.20 (7.75)	ns
Conditional Release after Prior Sexual Assaults [n (%)]	17 (71)	4 (15)	-
Index Offence			
Sexual Offence [n (%)]	40 (89)	20 (44)	.001
Robbery Related Offence [n (%)]	1 (2)	16 (36)	.001
Number of Violent Charges/Convictions ¹	266	135	.001
related to Sexual Assaults (%)	254 (95.5)	63 (47)	-
Index Sexual Offenders			
Number of Sexual Charges/Convictions [<u>M</u> (SD)] ¹	6.35 (5.89)	3.15 (3.28)	.004
Number of Sexual Assault Victims [<u>M</u> (SD)] ¹	4.00 (4.66)	1.60 (2.04)	.004
Number of charges/convictions for past and index offences			
Violent Offences (including juvenile sex offences) [<u>M</u> (n)] ¹	11.36 (45)	10.51 (45)	ns
Juvenile and Adult Sexual Offences [<u>M</u> (n)] ¹	8.93 (45)	2.93 (45)	.001
Non Violent Offences [<u>M</u> (n)] ²	5.53 (45)	20.93 (45)	.001
Sexual Offenders only			
Past sexual offences [<u>M</u> (n)] ¹	4.23 (35)	5.31 (13)	ns
Past and Index sexual offences [<u>M</u> (n)] ¹	9.14 (44)	5.74 (23)	.01
Risk of Violent Recidivism¹			
Psychopathy Checklist-Revised (PCL-R)			
Mean PCL-R scores (SD)	27.38 (5.41)	28.40 (4.62)	ns
Mean PCL-R Factor 1 scores (SD)	10.75 (3.02)	10.72 (3.02)	ns
Mean PCL-R Factor 2 scores (SD)	12.76 (3.57)	13.47 (2.87)	ns
PCL-R classified psychopaths [n (%)]	13 (29)	19 (42)	ns
Mean Violence Risk Appraisal Guide (SD)	13.60 (9.53)	15.80 (7.54)	ns

Note.¹ One-tailed tests² Two-tailed tests

in the two groups on the number of victims related to their index sexual assaults. The DOs had more than twice the number of sexual assault victims (4.00 versus 1.60) related to these offences than the control group and this difference was significant. By contrast, of the offenders in the two groups who had committed *prior* sexual offences, there were no differences in the number of past charges and convictions that they had for prior sexual offences. The difference in the index offences of the sexual offenders may reflect in part on the different patterns of sexual offending or types of sexual offenders that are targeted or designated as DOs, at least in comparison to the control offenders in Zanatta (1996). While 50% of the 40 DOs whose index convictions were for sexual offences involved only one victim or a number of victims during one assault, others had numerous victims during a spree (days to months) of sexual offences, or a number of victims over many years of (officially) undetected assaults or continuous abuse. Only two of the 20 SPIOs who were convicted of index sexual offences committed sexual assaults during a spree of sexual offences, or as a pattern of continuous assaults with more than one victim (Zanatta, 1996).

In Zanatta (1996), the PCL-R and the VRAG were used to assess risk of violent recidivism. At that time, the PCL-R had correlated with both general recidivism (Hart, Kropp, & Hare, 1988; Serin, Peters, & Barbaree, 1990) and violent re-offending (e.g., Harris, Rice, & Cormier, 1991; Serin, 1996), while the VRAG discriminated between violent recidivists and nonrecidivists (Harris, Rice, & Quinsey, 1993; Rice & Harris, 1995a). There were no significant differences between the DOs and the SPIOs on either the PCL-R or the VRAG indicating that both groups had the same probability of recidivating. One-tailed univariate tests were nonsignificant for the PCL-R Total Scores, the PCL-R Factors, and for the VRAG (see Table 1). The PCL-R distributions for the two groups were very similar but quite high as 78% of the DOs and 80% of the SPIOs had PCL-R scores of 25 or more.

Using the recommended PCL-R cutoff of 30 and above (Hare, 1991), there was no significant difference between the groups in the prevalence of psychopathy. Thirteen (29%) of

the DOs and 19 (42%) of the SPIOs would have been classified as psychopathic. Although these rates are considerably higher than the base rate of 15-25% reported by Hare (1991) to be normally found in forensic populations, the distribution of PCL-R scores and the prevalence of psychopathy vary with the type and severity of offenders in various samples. The offenders in Zanatta (1996) could be considered to be a "serious" or violent sample of offenders as all of the offenders committed at least one sexual or violent index offence that had a possible sentence of ten years (definition of "serious personal injury" offence), and most (78%) were also convicted of prior violent offence(s).

Comparing only offenders who had charges or convictions for sexual offence(s), the prevalence of PCL-R assessed psychopathy for 44 DOs was 30%, and 39% for 23 sexual offenders in the control group. The lower rate of PCL-R classified psychopaths in the DO group may be partially accounted for by the prevalence of different types of sexual offenders in the two groups. Specifically, the DOs had more child molesters (n=8) than the SPIOs (n=2). Typically, in comparison to other types of sexual offenders (e.g., rapists), child molesters and fixated pedophiles in particular would not be expected to (and have not) score(d) as high on psychopathy (see Hart & Hare, 1997; Hare, 1999; for reviews of the prevalence of psychopathy among different types of sexual offenders). By contrast, the highest prevalence of PCL-R assessed psychopathy in the two groups was for 10 of the 22 (46%) SPIOs who had never committed a sexual offence. The index offences of these offenders included various types of robberies (e.g., armed robbery, robbery with violence), or nonsexual assaults on other males or females. All of these offenders also had histories of other violent offences as well as nonviolent and property related crimes.

Several aspects of psychological functioning previously identified in research (notably, Berzins, 1983; Koopman, 1985) as important or prominent among DOs were also examined by Zanatta (1996). As can be seen in Table 2, the DOs were more likely to have reported being

Table 2.

Characteristics of Dangerous Offenders and Serious Personal Injury Offenders (Zanatta, 1996).

	DOs (N = 45)	SPIOs (N = 45)	p
Personal-Demographics (at index offence)			
IQ ¹ [<u>M</u> (n)]	98.8 (34)	100.8 (22)	ns
Mean Age [<u>M</u> (n)]	32.24 (45)	32.20 (45)	ns
Years of Education [<u>M</u> (SD)]	8.34 (44)	8.56 (45)	ns
Caucasian [n (%)]	38 (84)	33 (73)	ns
Unemployed [n (%)]	32 (71)	33 (73)	ns
Married/Common-law [n (%)]	7 (15.5)	16 (35.5)	.02
Developmental-Psychological			
Physical Abuse [n (%)]	24 (53)	28 (62)	ns
Sexual Abuse [n (%)]	27 (60)	12 (27)	.005
Emotional Abuse or Neglect [n (%)]	31 (69)	23 (51)	ns
Violent Family Background [n (%)]	26 (59)	19 (43)	ns
Parental Drug or Alcohol Abuse [n (%)]	31 (70)	26 (59)	ns
Parental Criminality/Maladjustment [n (%)]	14 (32)	7 (16)	ns
Age left/removed from home [<u>M</u> (n)]	15.76 (38)	15.14 (43)	ns
Mental Health Evaluations			
Learning Disability/ Retardation [n (%)]	9 (20)	4 (9)	ns
Childhood Psychiatric Diagnosis/Hospitalization [n (%)]	11 (24)	4 (9)	ns
Adulthood Hospitalization/Fitness Evaluations [n (%)]	10 (22)	4 (9)	ns
Adult Alcohol Abuse [n (%)]	32 (71)	32 (71)	ns
Adult Drug Abuse [n (%)]	15 (33)	24 (53)	.05
Index Offence Intoxication [n (%)]	22 (50)	22 (49)	ns

¹ IQ scores were available for 40 DOs and 34 SPIOs but only the offenders who had raw scores on file are reported here. The other offenders had only their percentiles and/or IQ ranges documented in their files.

sexually abused as children, but did not differ from the comparison group in other forms of developmental abuse (e.g., physical or emotional abuse, violence in the home), childhood or adulthood psychiatric history, or in their intellectual functioning and/or educational impairment (e.g., learning disabilities, retardation). Although the significantly higher reported incidents of sexual abuse in the DOs was consistent with the research on the developmental abuse of various types of offenders (e.g., Dutton & Hart, 1992; Romano & De Luca, 1996); there may be perceived advantages to reporting abuse particularly for sexual offenders and interviewers may devote greater attention to sexual matters with sexual offenders in comparison to other offenders. Zanatta (1996) also reported that alcohol or drug intoxication was not a factor in the commission of index offences as the majority of offenders in both of the groups were sober. There was also no difference between the two groups in the prevalence of alcohol abuse and/or alcoholism although the control offenders were more likely to have been abusing or addicted to drugs.

In another study, *The Crown Files Research Project: A Study of Dangerous Offenders* (Bonta et al., 1996; see also Bonta & Motiuk, 1996; Bonta et al., 1998) compared 32 DOs from British Columbia and 32 DOs from Ontario, with 34 Detention Failures (DFs) from Ontario (offenders detained to Warrant Expiry Date (WED) because they were identified as potentially violent who did re-offend violently after being released). The DFs were selected as a comparison group as an "established" group of high risk offenders which Bonta et al. (1996) suggest, in retrospect, "could have been designated DOs". The purpose of the study, through the review of both correctional (CSC) files and files from Crown offices, was to comprehensively describe the characteristics of the DOs and their offences, to examine any differences between the DOs from the two provinces, and to evaluate the DO designation process by comparing the DOs with the DF group to determine whether the offenders who have been designated as dangerous are actually high risk violent offenders.

The DOs and the DF group did not differ significantly on any personal-demographic characteristics at the time of their index offences (e.g., IQ, grade completed, marital status, employment status), apart from the DOs being older ($M = 34.4$ vs. $M = 26.7$) and predominantly Caucasian (95% vs. 68%) (see Table 3).

The *Crown Files Research Project* examined several aspects of the offenders' index offences and found that the index offences committed by the DOs were significantly more likely to involve some form of brutality than those of the DF group (70% vs. 48%) (Bonta et al., 1996). However, examining only the offences which had some evidence of brutality, the DFs were more likely to have used excessive physical violence, but this difference was not significant and may have been skewed by the number of pedophiles among the DOs as the pedophiles often used nonphysical methods of coercion (Bonta et al., 1996). Of the offences involving brutality, only 20% of the DOs compared to 35.5% of the DFs used excessive physical violence. There was also no difference between the groups in their use of weapons, or for (any) victim injury, although the majority of the DOs and DFs injured their victims (62% and 68% respectively), and used weapons in the commission of their index offences (50% and 65% respectively). The DOs and the DFs were also compared on the seriousness of their criminal histories based on the Cormier-Lang Criminal History Scale (Webster et al., 1994), the age when they were first arrested, and the percentage of offenders who had juvenile records, had been previously incarcerated, had failed on probation or parole, had a prior assault, and had prior "violent sex" (how violent sex was determined was not specified). The groups differed significantly only on their history of failure while on conditional release. Bonta et al. (1996) suggested that it was "not surprising" that the DFs were significantly more likely to have previously failed on probation or parole than the DOs (97% vs. 73%).

There were almost five times the number of DOs (59) that committed sexual index offences compared to the DFs (12), and this difference was significant. Of these offenders, the

Table 3.

Characteristics of Dangerous Offenders and Detention Failures (Bonta et al., 1996).

	DOs (N = 64)	DFs (N = 34)	p
Personal-Demographics (at index offence)			
IQ [<u>M</u> (n)]	94.9 (56)	88.2 (25)	ns
Mean Age [<u>M</u> (n)]	34.4 (56)	26.7 (32)	.001
Grade Completed [<u>M</u> (n)]	8.5 (62)	8.0 (33)	ns
Single [% (n)]	48.4 (62)	64.7 (34)	ns
Caucasian [% (n)]	95.2 (63)	64.7 (34)	.001
Unemployed [% (n)]	63.3 (49)	72.4 (29)	ns
Index Offence			
Sexual Offence [% (n)]	92.2 (64)	35.3 (34)	.001
Any brutality [% (n)]	69.6 (56)	48.4 (31)	.05
Excessive violence [% (n)]	19.6 (56)	35.5 (31)	ns
Any victim injury [% (n)] ¹	62.3 (61)	67.6 (34)	ns
Weapon used [% (n)]	50.0 (60)	64.7 (34)	ns
Victim drugged/intoxicated [% (n)]	12.3 (57)	29.0 (31)	.05
Under influence [% (n)]	46.3 (41)	76.7 (30)	.01
Sex Offenders (index offence)			
Number of Victims [<u>M</u> (n)]	3.2 (58)	1.5 (12)	.01
Female Victim [% (n)]	86.2 (58)	91.7 (12)	ns
Victims under age 16 [% (n)]	58.8 (51)	41.7 (12)	ns
Victims under age 13 [% (n)]	43.1 (51)	25.0 (12)	ns
Sexual History			
Forced sexual activity prior to age 16 [% (n)]	96.6 (59)	100 (12)	--
Adult female victims (<u>M</u>)	2.8	1.2	.05
Female child victims (<u>M</u>)	2.6	0.9	.01
Admitted sexual offences (<u>M</u>)	27.2	0.82	.01
Criminal History			
Cormier-Lang Criminal History score [<u>M</u> (n)]	86.3 (64)	81.2 (34)	ns
Age at first arrest [<u>M</u> (n)]	16.3 (52)	15.6 (27)	ns
Juvenile record [% (n)]	75.0 (56)	70.0 (30)	ns
Prior incarceration [% (n)]	88.5 (61)	96.4 (28)	ns
Probation/parole failure [% (n)]	73.0 (63)	97.1 (34)	.01
Prior assault [% (n)]	45.9 (61)	53.6 (28)	ns
Prior violent sex [% (n)]	39.3 (61)	25.0 (28)	ns
Clinical-Personality			
File Psychiatric Diagnosis of APD (%)	72.9	73.1	ns
DSM-IV Diagnosis of APD (%)	54	64.7	ns
Mean PCL-R scores	27.6	27.0	ns
PCL-R classified psychopaths [n (%)]	19 (39.6)	11 (32.4)	ns
Diagnosis of schizophrenic disorder (%)	8.5	26.9	.05
Statistical Information on Recidivism (SIR)	-5.3	-1.6	ns

Note. (n) refers to the numbers of offenders on which a variable could be coded.

¹ based on a 6 point rating scale from no injury to death.

DOs had more than twice the number of index victims than the DF group (\underline{M} of 3.2 vs. \underline{M} of 1.5), and this difference was also significant. However, the index sexual offences of the two groups did not differ in the percentage of female victims, or the percentage of victims under the age 16, or under the age of 13 (Bonta et al., 1996). Examining their sexual histories, Bonta et al. (1996) found no differences between the groups as nearly all (97%) of the 59 DOs and all 12 of DFs who were convicted of sexual index offences had evidence on file of forcible sexual activity (as perpetrators) prior to the age of 16 years. However, the DOs reported a significantly greater number – although the range was quite dramatic (0-201: \underline{M} = 27.2) – of undetected sexual offences compared to the index sexual offenders in the DF group (\underline{M} = .82) (Bonta et al., 1996). In their sexual histories, the DOs also had significantly more female (both adult, and child) victims than the sexual offenders in the DF group, but Bonta et al. (1996) noted that having more victims may have been a function of age as the DOs were older.

The DOs and the DFs were also compared on the prevalence of psychopathy based on the PCL-R (using a cut-off score of 30 and above), on any diagnosis of Antisocial Personality Disorder (APD) in the offenders' files, and on the prevalence of APD coded from file information based on DSM-IV criteria (APA, 1994). There were no significant differences between the DOs and the DFs in a PCL-R assessment of psychopathy, or in either of the methods used to assess the prevalence of APD (Bonta et al., 1996). By contrast, the DFs were significantly more likely to have been diagnosed with a schizophrenic disorder than the DOs (27% vs. 8.5%), and this was the only clinical-personality difference between the two groups (Bonta et al., 1996). Bonta et al., (1998) subsequently reported that despite the greater prevalence of severe mental disorder in the DF group; the DOs had significantly more extensive histories of mental health treatment, and had significantly more negative or poor treatment evaluations. Also, as children, the DOs showed significantly more evidence of sexual victimization and parental neglect (Bonta et al., 1998).

In conclusion, Bonta et al. (1996) suggested that in practice the (then) current DO legislation was applied to the same type of offenders targeted by the previous DSO legislation, and that the DOs, although more likely to have committed a sexual offence than the DFs, are a high risk, violent group of offenders as they had similar characteristics as the DFs.

Given the probable overlap of some of the DOs in the two studies, it may not be surprising that the characteristics of the DOs in the *Crown Files Research Project* are similar to the DOs in Zanatta (1996). Comparing the *Crown Files Research Project* findings to the Zanatta (1996), the DOs were male, Caucasian (95% vs. 84%), scored in the average IQ range (\underline{M} = 94.9 vs. \underline{M} = 98.8), had grade eight education (8.5 vs. 8.3), and were approximately 33 years old (34.4 vs. 32.2) and unemployed (63% vs. 71%) at the time of their index offence (see Table 4). The only notable personal-demographic difference was that more DOs in Zanatta (1996) were single at the time of their index offences than the DOs in Bonta et al., (1996) (64% vs. 48%).

Approximately 90% of the DOs in both of the studies committed sexual offences which led to their designation. Compared to the DFs, the DOs in Bonta et al., (1996), had an average of 3.2 and 1.5 index victims respectively, whereas in Zanatta (1996), the DOs had an average of four index victims compared to 1.6 in the comparison group (SPIOs). These differences were significant in both studies.

There are some differences between the *Crown Files Research Project* and Zanatta (1996). Bonta et al. (1996) indicated that over one-half of the 64 DOs were convicted pedophiles (the criterion for pedophilia was not specified), whereas only eight (18%) DOs in Zanatta (1996) had only child victims (e.g., female victims under 14 and/or male victims under 16). Bonta et al., (1996) reported that the majority of DOs (61%) did not have an official history of prior violent sex. In Zanatta (1996), 78% of the DOs had past charges or convictions for juvenile and/or adult sexual offences (51% had charges or convictions for past violent nonsexual offences compared to 46% of the DOs in Bonta et al. who had a prior assault). Bonta et al. (1996) also reported that

Table 4.

Comparisons between Bonta et al., (1996) and Zanatta (1996).

	Bonta et al., 1996		Zanatta, 1996	
	DOs (N = 64)	DFs (N = 34)	DOs (N = 45)	SPIOs (N = 45)
Personal-Demographic				
Caucasian (%)	95 *	65	84	73
IQ scores	94.9	88.2	98.8	100.8
Years of education	8.5	8.0	8.3	8.5
Index age	34.4 *	26.7	32.2	32.2
Unemployed (%)	63	72	71	73
Single (%)	48	65	64	42
Index Offences				
Sexual offence conviction (%)	92 *	35	89 *	44
Number of victims	3.2 *	1.5	4.0 *	1.6
Offence History				
Cormier-Lang Criminal History scale	86.3	81.2	1.29	2.27 *
Failure on prior conditional release (%)	73	97 *	77	98 *
Intoxication (index offence) (%)	46	77 *	50	49
Psychopathy Checklist (PCL-R)				
PCL-R scores	27.6	27.0	27.4	28.4
PCL-R classified psychopaths (%)	40 (19)	32 (11)	29 (13)	42 (19)
Risk of Recidivism				
Statistical Information on Recidivism (SIR)	-5.3	-1.6		
Violence Risk Appraisal Guide (VRAG) ¹	12.9	16.9	13.6	15.8

Note. * indicates that comparison between the two groups within the respective studies were statistically different.

¹ VRAG scores for the DOs and DFs for the Bonta et al., (1996) sample were subsequently reported in Bonta, Zinger, Harris and Carrière (1998).

there were no statistically significant differences between the DOs and the DFs in the seriousness of their criminal histories based on the Cormier-Lang Criminal History Scale (Webster et al., 1994). In Zanatta (1996), the SPIOs had significantly higher scores on VRAG item 7 (Non Violent Offence History), which is based on the Cormier-Lang Criminal History Scale (Webster et al., 1994). As previously noted, Bonta et al., (1996) suggested that it was “not surprising” that the DF group was significantly more likely to have failed on a prior conditional release than the DOs. In Zanatta (1996), the SPIOs were also significantly more likely to have previously failed on probation and/or parole as reflected in PCL-R item 19 (Revocation of Conditional Release) and VRAG item 6 (Failure on Prior Conditional Release). Based on item 19 of the PCL-R, 98% of the SPIOs and 77% of the DOs in the Zanatta (1996) previously violated conditions of probation or parole. These figures are very similar to the 97% of the DFs and 73% of the DOs violating conditional release reported by Bonta et al., (1996).

The mean PCL-R Total Score of 27.6 for the DOs (n=48) in the *Crown Files Research Project* was very similar to mean PCL-R Total Score of 27.38 for the DOs (n=45) in Zanatta (1996). The mean PCL-R Total Score for the DFs was only marginally lower at 27.0 (Bonta et al., 1996) whereas in Zanatta (1996), the SPIOs’ mean PCL-R Total Score of 28.40 was only marginally higher. Notably, all four groups had virtually identical PCL-R Total Scores.¹³ Forty per cent of the DOs in the *Crown Files Research Project* met Hare’s (1991) PCL-R diagnostic cut-off for psychopathy whereas in Zanatta (1996), 13 of the 45 (29%) DOs or 13 of the 42 (31%) of the DOs with indeterminate sentences would be classified as psychopathic. Comparing the four groups (across the two studies), the highest rate of PCL-R assessed psychopathy (42%) was the SPIOs in Zanatta (1996) (32% of the DFs in the Bonta et al., study would be classified as psychopathic). Although these psychopathy rates of approximately 30-40% are considerably

¹³ Unfortunately, Bonta et al., (1996) did not report PCL-R Factor Scores precluding such comparisons between the studies.

higher than the base rates reported for Hare's (1991) validation samples of offenders (15-25%), they may be more representative for offenders that commit violent or serious personal injury offences.

Bonta et al., (1996) also recorded the Nuffield (1982) Statistical Information on Recidivism (SIR) scale, which is available in the files of all non-Aboriginal male federal inmates, and found no difference in the mean scores of the DOs and the DFs. The DOs were distributed across the SIR prognostic risk levels but Bonta et al., (1996) indicated that the SIR may not be particularly suitable for use with sexual offenders and currently it is being improved for such application (c.f., Bonta et al., 1998). The DOs, as well as the control offenders, in Zanatta (1996) were also distributed across the Webster et al., (1994) prognostic risk levels for the VRAG. Similar findings were subsequently reported by Bonta et al., (1998) for the VRAG scores of the DOs and the DFs from the *Crown Files Research Project* with means for the groups being almost identical to those reported by Zanatta (1996) (see Table 4). This indicates that not all DOs are high risk offenders as measured by these risk instruments, and as groups, they do not differ from other groups of violent offenders. Although both Bonta et al., (1996) and Zanatta (1996) had nonsexual offenders in their samples, there is the concern that neither the VRAG nor the SIR were designed to be used with sexual offenders (Bonta et al., 1998).

Finally, in comparison to the DOs, the use or abuse of alcohol and drugs was more of a factor for the DFs in Bonta et al., (1996), and the SPIOs in Zanatta (1996). The DF group was significantly more likely to have been under the influence of alcohol or other drugs, and to have had victims who were intoxicated and/or drugged during the commission of their index offences (Bonta et al., 1996). Although the majority of the SPIOs in Zanatta (1996) were not intoxicated during the commission of their index offences, they were more likely to have abused or been addicted to drugs. Approximately 50% of the DOs in both of the studies were not intoxicated or under the influence at the time of their index offences.

In summarizing the two studies, Zanatta (1996) and Bonta et al. (1996) found similar results for different comparison groups leading to discrepant conclusions. The Bonta et al. (1996) study examined the similarities between DOs and an "established" group of high risk offenders, whereas Zanatta (1996) examined the differences between DOs and a randomly selected group of incarcerated federal offenders who had also committed at least one serious personal injury index offence. The findings of these studies are consistent in that, apart from the type of offences committed and the number of victims in their index offences, there were few differences between the DOs and either of the comparison groups on the variables that were examined. Bonta et al. (1996), as did Koopman (1985), attempted to evaluate the DO legislation by comparing DOs with a "select" group of offenders. In comparing these groups, Koopman (1985) claimed that there were no differences (not any "more dangerous") and concluded that, because they were similar, the legislation does not provide more protection for society and should be abolished, whereas Bonta et al. (1996) found very few differences and concluded that, because they were similar, DOs are a high risk group of offenders. By contrast, the results from Zanatta (1996) indicated that DOs were similar to a randomly selected group of SPIOs, and the groups did not differ in their probability of violent recidivism. Zanatta's (1996) results also called into question the need for distinct legislative provisions for DOs and the necessity of imposing indeterminate sentences.

Research Comparing Dangerous Offenders (DOs) and Long-Term Offenders (LTOs)

In 2002, the Correctional Service of Canada (CSC) in conjunction with the Department of Justice sought to evaluate the impact of Bill C-55 by comparing the profiles of DOs and LTOs, and the profiles of DOs designated prior to the 1997 legislative changes with DOs designated under the new provisions. The results of their evaluation are reported in an unpublished report comparing the frequencies of various characteristics for 94 LTOs and 179

DOs – 110 DOs designated after the enactment of the current legislation and 69 pre-1997 DOs (Trevethan, Crutcher, & Moore, 2002).¹⁴

The DOs and LTOs were compared on a number of demographic characteristics, but differed significantly only on educational background and employment status. More DOs than LTOs (59% vs. 47%) had grade nine or less and more DOs (76%) than LTOs (61%) were unemployed when arrested. There was however no differences in the average sentencing age of the DOs ($M = 41$) and the LTOs ($M = 40$), and approximately 50% of the offenders in both groups were single. Seventeen per cent of the general inmate population are Aboriginal where 23% of the DOs and 17% of the LTOs in this sample were Aboriginal (Trevethan, Crutcher, & Moore, 2002). The average aggregate sentence length for the LTOs was 1,747 days (4.78 years) more than the average of 4.1 years for all inmates (excluding life sentences) admitted to the federal system and the majority of the supervision orders (62%) for the LTOs were for the maximum of ten years (range 4-10 years, $M = 8.4$ years). For 33% of the DOs and 43% of the LTOs, their index convictions and subsequent designation represented their first federal sentence

As documented in earlier research studies (e.g., Jakimiec et al., 1986), geographic differences in the designation of DOs have persisted. Given the general inmate population for federal offenders (sentences of two or more years), the Quebec and Prairie regions are incarcerating smaller proportions of DOs whereas the Ontario and Pacific (B.C.) regions continue to have higher rates of DO designations than would be expected (Trevethan, Crutcher, & Moore, 2002). By contrast, the distribution of LTOs was found to be comparable to that of the regional distribution for the general inmate population for federal offenders.

¹⁴ The results of Trevethan, Crutcher and Moore (2002) were available after the collection and coding of the data for the current study and were not instrumental in the design or analyses of the current study.

Consistent with frequencies for the general inmate population (39%), the largest proportions of DOs (43%) and LTOs (45%) had between two and four index offence convictions (Trevethan, Crutcher, & Moore, 2002). Although 93% of the DOs and 98% of the LTOs had prior convictions as adults, a significantly larger proportion (45%) of DOs had fifteen or more prior convictions whereas the largest proportion of LTOs (28%) had between five and nine prior convictions. There was also a significant difference between the groups on their initial and current security levels with more DOs than LTOs being maximum security – although the majority of DOs and LTOs were medium security.

Most of the offence related comparisons between the DOs and LTOs reported in Trevethan, Crutcher and Moore (2002) are presented in Table 5. Consistent with prior research (e.g., Bonta et al., 1996; Zanatta, 1996), most of the DOs had index sexual offences (85%) as well as prior sexual offences (80%). By comparison, the prevalence of sexual offences was higher for the index offences (91%) and prior offences (83%) of the LTOs. The only significant difference between the DOs and LTOs in their index and prior violent non-sexual convictions was for kidnapping/forcible confinement. Although a minority of offenders, more DOs than LTOs had index (27% vs. 13%) and prior (28% vs. 11%) convictions for kidnapping/forcible confinement.

The sexual offences of the offenders were tabulated into the different types of sexual offences (incest, pedophilia, sexual assault, other) and only index convictions related to pedophilia significantly differentiated the groups with the 54% of the LTOs compared to 41% of the DOs having pedophilic related index convictions. Any sexual offender may have been convicted of different types of sexual offences and the frequency of pedophilic offences does not include only offenders who only committed sexual offences against children (i.e., there was no distinction between rapists or child molesters, see Table 5). At least 77% of the DOs and LTOs had index and prior convictions for sexual assault.

Table 5.

Offence Characteristics of Dangerous Offenders and Long-Term Offenders (Trevethan, Crutcher, & Moore, 2002).

	Index Offences			Prior Offences		
	DOs [% (n)]	LTOs [% (n)]	p	DOs [% (n)]	LTOs [% (n)]	p
Sexual Offences	85 (174)	91 (92)	ns	80 (174)	83 (92)	ns
Incest	14 (174)	10 (92)	ns	16 (174)	17 (92)	ns
Paedophilia	41 (173)	54 (92)	.05	45 (172)	57 (92)	ns
Sexual Assault	84 (174)	85 (92)	ns	83 (174)	77 (92)	ns
Other Sexual Offences	17 (174)	16 (92)	ns	28 (174)	24 (92)	ns
Other Violent Offences						
Homicide	3 (174)	1 (92)	ns	2 (174)	0 (92)	ns
Attempted Murder	3 (174)	0 (92)	ns	3 (174)	0 (92)	ns
Forcible Confinement	27 (174)	13 (92)	.01	28 (174)	11 (92)	.01
Arson	2 (174)	2 (92)	ns	5 (174)	10 (92)	ns
Use of Prohibited Weapon	9 (174)	3 (92)	ns	24 (174)	15 (92)	ns
Discharge Weapon	0	0	ns	5 (173)	5 (91)	ns
15 or more convictions	5 (174)	4 (93)	ns	45 (174)	26 (93)	.01
Victims						
1 Victim	62 (173)	57 (92)	ns	23 (172)	34 (91)	.05
2 Victims	19 (172)	21 (92)	ns	24 (172)	30 (91)	ns
3 or more Victims	31 (173)	35 (92)	ns	80 (172)	75 (91)	ns
Child Victim	49 (174)	61 (92)	ns	52 (171)	68 (91)	.01
Elderly Victim	8 (173)	3 (92)	ns	6 (172)	2 (91)	ns
Handicapped Victim	4 (173)	1 (92)	ns	3 (173)	2 (91)	ns
Victim was Stranger	47 (169)	36 (83)	ns	58 (167)	57 (79)	ns
Victim was Known	62 (170)	70 (84)	ns	74 (170)	87 (82)	.05
Weapons Used	40 (172)	16 (92)	.001	48 (172)	24 (89)	.001
Threat of Violence	74 (172)	49 (91)	.001	75 (170)	56 (89)	.01
Use of Power	75 (173)	65 (92)	ns	72 (172)	75 (91)	ns
Injuries						
Injury – Death	3 (172)	1 (92)	ns	3 (172)	0 (91)	ns
Serious Injury	29 (172)	8 (91)	.001	31 (172)	14 (91)	.01
Minor Injury	63 (172)	36 (91)	.001	68 (172)	47 (91)	.001
Serious Psychological Harm	88 (170)	89 (91)	ns	85 (169)	84 (91)	ns
Moderate Psychological Harm	66 (170)	58 (91)	ns	76 (170)	63 (91)	.05
Mild Psychological Harm	68 (170)	55 (91)	.05	73 (170)	64 (91)	ns

Note: Figures include percentages and the number of offenders on which the characteristics was coded.

With the exception of the variable 15 or more convictions, Trevethan, Crutcher and Moore (2002) coded all of the characteristics as separate dichotomous (yes/no) variables which are not mutually exclusive. Consequently, the same offenders would appear across the same type of characteristics and percentages within a characteristic (e.g., number of victims) would not necessarily total 100%.

The number of, gender, age range, and type of victim was also tabulated (Trevethan, Crutcher, & Moore 2002). The majority of the DOs (62%) and LTOs (57%) had only one index victim and significantly more LTOs (34%) than DOs (23%) had only one prior victim. Approximately one-third of the DOs (31%) and LTOs (35%) had three or more current victims and 80% of the DOs and 75% of the LTOs had three or more prior victims. The number of DOs and LTOs (if any) that did not have any prior sexual offence victims but were designated for a spree of index sexual offences or for historical offences was not reported. More LTOs (61%) than DOs (49%) had some index victims who were children (under age 12) while significantly more LTOs than DOs had child victims in some of their prior offences (68% vs. 52%). In comparison to LTOs, the DOs were significantly more likely to have offended against female youth (aged 12-17) and female adults. Most of the DOs (61%) were convicted of offences against adult females whereas the largest proportion of LTOs (44%) sexually assaulted female children. Very few DOs and LTOs (1-8%) assaulted elderly (65 and over) or handicapped victims (1-4%). Most of the LTOs (70%) and DOs (62%) knew some of their index and previous victims (87% and 74%) while 47% of the DOs and 36% of LTOs had some index victims that were strangers (58% and 57% for prior victims).

Trevethan, Crutcher and Moore (2002) also coded the use of power, threats, weapons as well as physical and psychological harm. The DOs were significantly more likely than the LTOs to have used a weapon and threats of violence in both their index and prior offences (see Table 5.). The prevalence of weapons used for the DOs – 40% for index offences and 48% for prior offences – as well as threats of violence – 74% for index offences and 75% for prior offences – are higher than the prevalence of weapon use (27%) and threats of violence (52%) for the general inmate population (Correctional Service of Canada, 2002 as cited in Trevethan, Crutcher & Moore 2002). Approximately the same number of DOs and LTOs (65-75%) used power/authority in the commission of both their index and prior offences whereas the prevalence for the general

inmate population was only 30%. A minority of the DOs seriously injured – defined as wounding, disfiguring and maiming – some of their victims in their index offences (29%) and prior offences (31%). These frequencies were significantly higher than those for the index offences (8%) and prior offences (13%) of the LTOs and higher than the rate of 22% for the general inmate population (Correctional Service of Canada, 2002 as cited in Trevethan, Crutcher & Moore 2002). The same pattern of results emerged for minor injuries which were defined as hitting, slapping, and striking.

Psychological harm was referred to as “clinically ... the level of ability in which a victim is able to maintain their role in society (e.g., problems with work, school, family and friends)” where “the level of impairment in these abilities would essentially allow a practitioner to determine whether the victim is mildly, moderately or severely psychologically affected by the crime” (Trevethan, Crutcher & Moore, 2002, p. 24). Essentially, there were no differences between the DOs and LTOs in the psychological harm reported to have resulted from their offences and in particular for serious psychological harm (see Table 5). It is not specified on what documentation (police reports, victim statements, expert opinion, offence specifics) or time period (offence, court, follow-up evidence) that Trevethan, Crutcher and Moore (2002) used to code psychological harm.¹⁵ The question of psychological harm is also complicated by psychological difficulties resulting from sexual crimes which may not surface for years and/or psychological harm which may not necessarily interfere with everyday functioning (see Melton, Petrila, Poythress, & Slobogin, 1997; for a review of the difficulties facing experts testifying on issues regarding sexual abuse).

¹⁵ The National Parole Board (NPB) Policy Manual does contain general guidelines (1998, Chapter 6, Appendix I) for the determination of psychological harm. The guidelines are not standardized and do not contain explicit decision rules and emphasis the value of subjective judgment.

Trevethan, Crutcher and Moore (2002) do not report how or which measures (or the actuarial scores) that they used in the classification of offenders on their risk to re-offend. At one point, they note that the statistically significant difference between the DOs and the LTOs (98% and 90% respectively as high risk) as having successfully addressed the intent of the legislation. While statistically significant, the actual difference in their frequencies is arguably rather small with almost all of the offenders (95%) in the study classified as high risk.

Trevethan, Crutcher and Moore (2002) also compared 110 DOs designated after the 1997 legislative changes (1997-08-01 to 2001-06-30) with a group designated prior to the changes – all 69 DOs designated between 1994-01-01 and 1997-07-31. The "pre-DO" and "post-DO" groups were examined on the same characteristics as those for the DOs and LTOs (see Table 6).

Of the 69 in the pre-DO group, 39% were sentenced in the Ontario Region, 28% in the Prairie Region, and 19% in the Pacific Region. Following the legislative changes, the proportion of DOs sentenced in the Ontario, Prairie, and Pacific Regions were 34%, 12%, and 34% respectively. The provinces of Ontario and B.C. still accounting for nearly 70% of the sentenced DOs (see Zanatta, 1996 for a review of earlier statistical distributions).

There were no significant differences between the pre-DOs and the post-DOs on race, age at sentence, marital status, level of education, and employment status. As can be seen in Table 6, there were also few differences between the pre-DO and post-DO groups on the sexual and violent offences that they committed. Significantly more offenders in the post-DO group (53%) than in the pre-DO group (34%) had 15 or more prior convictions while a greater proportion of the post-DO group (70%) than the pre-DO group (50%) had one index offence victim. It is difficult to draw any conclusions from this data. What would have been more informative is a comparison between the groups (and the LTOs) on their total number of sexual (and/or violent) offence victims. The two groups also targeted similar types of victims, inflicted similar physical injuries, and not differ significantly in their use of threats, power, or weapons

Table 6.

Offence Characteristics of Dangerous Offenders Designated Before and After Bill C-55.

(Trevethan, Crutcher, & Moore, 2002).

	Index Offences			Prior Offences		
	pre-DO [% (n)]	post-DO [% (n)]	p	pre-DO [% (n)]	post-DO [% (n)]	p
Sexual Offences	81 (68)	88 (106)	ns	76 (68)	82 (106)	ns
Incest	19 (68)	11 (106)	ns	9 (68)	21 (106)	.05
Paedophilia	43 (68)	40 (105)	ns	46 (67)	45 (105)	ns
Sexual Assault	82 (68)	85 (106)	ns	82 (68)	83 (106)	ns
Other Sexual Offences	16 (68)	18 (106)	ns	25 (68)	30 (106)	ns
Other Violent Offences						
Homicide	4 (68)	2 (106)	ns	3 (68)	1 (106)	ns
Attempted Murder	6 (68)	2 (106)	ns	4 (68)	2 (106)	ns
Forcible Confinement	26 (68)	27 (106)	ns	28 (68)	27 (106)	ns
Arson	4 (68)	0 (106)	.05	6 (68)	4 (106)	ns
Use of Prohibited Weapon	12 (68)	7 (106)	ns	26 (68)	22 (106)	ns
Discharge Weapon	0	0	ns	3 (68)	5 (106)	ns
15 or more convictions	6 (68)	5 (106)	ns	34 (68)	53 (105)	.01
Victims						
1 Victim	50 (68)	70 (105)	.01	12 (68)	30 (104)	.01
2 Victims	25 (68)	15 (104)	ns	13 (68)	31 (104)	.01
3 or more Victims	31 (68)	30 (105)	ns	79 (68)	81 (104)	ns
Child Victim	51 (68)	48 (106)	ns	54 (67)	51 (104)	ns
Elderly Victim	6 (68)	9 (105)	ns	6 (67)	7 (105)	ns
Handicapped Victim	3 (68)	5 (105)	ns	4 (68)	3 (105)	ns
Victim was Stranger	54 (67)	43 (102)	ns	62 (68)	56 (99)	ns
Victim was Known	54 (67)	68 (103)	ns	71 (68)	76 (102)	ns
Weapons Used	46 (68)	37 (104)	ns	53 (68)	45 (104)	ns
Threat of Violence	81 (68)	69 (104)	ns	72 (68)	76 (102)	ns
Use of Power	76 (68)	73 (105)	ns	71 (68)	73 (104)	ns
Injuries						
Injury – Death	4 (68)	2 (104)	ns	4 (68)	2 (104)	ns
Serious Injury	26 (68)	31 (104)	ns	28 (68)	34 (104)	ns
Minor Injury	59 (68)	66 (104)	ns	63 (68)	71 (104)	ns
Serious Psychological Harm	81 (67)	92 (103)	.05	79 (67)	89 (102)	ns
Moderate Psychological Harm	61 (67)	69 (103)	ns	72 (67)	79 (103)	ns
Mild Psychological Harm	64 (67)	70 (103)	ns	67 (67)	77 (103)	ns

Note: Figures include percentages and the number of offenders on which the characteristics was coded.

With the exception of the variable 15 or more convictions, Trevethan, Crutcher and Moore (2002) coded all of the characteristics as separate dichotomous (yes/no) variables which are not mutually exclusive. Consequently, the same offenders would appear across the same type of characteristics and percentages within a characteristic (e.g., number of victims) would not necessarily total 100%.

(Trevethan, Crutcher & Moore, 2002). Notably, significantly most post-DOs than pre-DOs inflicted serious psychological harm in their index offences (92% vs. 81%) (Trevethan, Crutcher & Moore, 2002; p. 27). Yet, as can be seen in Table 5, virtually the same proportion of DOs and LTOs caused serious psychological harm in their index offences (88% vs. 89%). Again, the significance of the statistically significant difference is not apparent nor are any possible explanations offered.

Trevethan, Crutcher and Moore (2002) have provided some initial description data on DOs and LTOs and some results indicating differences between the two groups. However, the number of group contrasts reported without any corrections to the error rates indicate that some results may have occurred by chance alone. Nonetheless in concluding, Trevethan, Crutcher and Moore (2002) suggest that some of the findings support that the legislation is being used as intended – to target the most serious offenders – as the DOs were more likely to offend against adult female strangers, and cause greater harm. Overall, the DOs appeared to be more serious offenders than the LTOs as they caused more injury, both physically and psychologically, to their victims and were more likely to use a weapon or threaten violence. Yet, only a minority of DOs used weapons in their index offences (40%) and in prior offences (48%), and caused serious injury (as opposed to minor injury) in their index offences (29%) and in their prior offences (31%). Virtually all DO's (98%) and LTO's (90%) were also classified at a high risk to re-offend and it was concluded that this statistically significant difference between the DOs and LTOs addressed the distinction between these groups, and captured the intent of the legislation as approximately 60% of the general inmate population are considered high risk (Correctional Service Canada, 2000b as cited in Trevethan, Crutcher & Moore 2002). Trevethan, Crutcher and Moore (2002) suggest that these differences are to be expected as the “purpose of the legislation is to differentiate between those offenders who are at greater risk of recidivism from those who are less likely” to reoffend.

Hypothesis

Enacted in 1977, Part XXIV of the *Criminal Code* has since contained provisions for designating certain offenders convicted of violent offences as DOs. Prior to the 1997 amendments, Part XXIV had been used rather sparsely being purportedly reserved for the worst offenders and the worst offences (e.g., *R. v. Danchella*, 1990; *R. v. G.G.G.*, 1990). It has since been used more frequently with 194 of 401 (48%) of the DOs designated between 1997 and 2003.

Prior research has attempted to evaluate the application of Part XXIV by comparing DOs with “detention failures” (Bonta et al., 1996) and with a randomly selected group of “serious personal injury” offenders (Zanatta, 1996). By comparison, the DOs were primarily repeat sexual offenders who assaulted more than twice the number of victims in their index offences (Bonta et al., 1996; Zanatta, 1996). Most of the offenders in the comparison groups were not sexual offenders and apart from differences in their crimes; the DOs and the control groups were marked more by similarities, than differences. More importantly, there were no differences between the four groups on PCL-R or on the VRAG both of which had empirical support for their ability to predict violent recidivism. Together, these studies suggested that the application of Part XXIV is arbitrary or not towards the selection of the most high-risk violent offenders, as many other offenders who have not been designated as dangerous would not only meet the DO criteria but also are high-risk offenders or as likely as the DOs to reoffend. The risk of violent recidivism of an offender is an explicit component of the legislation and *always* taken into account in DO hearings as essential in the justification of a DO designation and the imposition of indeterminate sentences.

Part XXIV has been used primarily for the sentencing of sexual offenders but there have not been any empirical investigations comparing DOs with other sexual offenders. Results from Bonta et al., (1996) and Zanatta (1996) have again, both indicated that such comparisons are

required for a more thorough evaluation of the application of the legislation. The purpose of this research is to compare DOs with other sexual offenders and will address two primary questions. First, do DOs differ from a matched group of sexual offenders on risk assessment instruments? Second, are there specific characteristics of the sexual offences committed by the DOs which distinguish their offences from the offences committed by other repeat sexual offenders?

Based on the literature reviewed, this research has the following hypothesis:

The *protection of society* in the prosecution of the most dangerous offenders¹⁶ is the intent of the DO legislation where the purpose of imposing one of the most severe sanctions in Canadian law, the indeterminate sentence, has been re-affirmed by the *Supreme Court of Canada* as not for punishment, but for “the prevention of future violence”. Research has indicated that compared to other violent and/or high risk offenders, designated DOs do not differ in their probability of violent recidivism, but were predominately repetitive sexual offenders. Accordingly, it is hypothesized that DOs are at a greater risk of violent and sexual recidivism as reflected in higher scores on psychometric risk assessment instruments compared to a group of repetitive sexual offenders who have not been designated as DOs.

¹⁶ The *British Columbia Court of Appeal* has indicated that Part XXIV applications should be reserved for the “worst” offenders and the “worst” offences (*R. v. Danchella*, 1990; *R. v. G.G.G.*, 1990).

METHOD

Subjects

The research group in this study were 82 offenders designated as DOs under Part XXIV of the *Criminal Code* of Canada between 1978 and 2002 (29% of the 281 active DOs still under the jurisdiction of the CSC as of March 1st 2002). To be included in the research group, the DO must have been convicted of at least one sexual offence and sentenced to an indeterminate term. Three DOs were convicted of non-sexual violent index offences but had past sexual offence convictions, and three other DOs – also with past sexual offences – were also convicted of non-sexual violent index offences in thwarted abduction attempts of female victims. One half (41) of the DOs were participants in prior research (Zanatta, 1996)¹⁷ and data from those participants were recoded and re-scored for the current study. Data for all 82 DOs and the control group were collected and coded from the offender's CSC institutional files.

The comparison group consisted of 82 incarcerated repetitive sexual offenders from the Pacific Region of the CSC. Three conditions had to have met to be included in the comparison group as a Matched Sexual Offender (MSO). These matching criteria were derived from general characterizations of DOs that committed sexual offences (Zanatta, 1996) and are not matched in a case by case manner. First, each offender must have been convicted of at least one sexually-related serious personal injury index offence (as defined by sec. 752 of the *Criminal Code*) and not been designated as either a DSO, DO or LTO.¹⁸ Second, each MSO must have been convicted of at least two sexual and/or sexually motivated offences against at least two victims

¹⁷ In Zanatta (1996), there were 45 DOs and four were not used in the current study – three that had received determinate sentences and one that had no convictions for, or evidence of any sexual offences.

¹⁸ At the time of data collection, there were only 17 LTOs in B.C. – too few to be considered as a separate comparison group for this research.

where at least one victim was not immediately related to the offender. Most DOs are repetitive sexual offenders but exclusively intra-familial sexual offenders are rarely targeted for designation as a DO. Finally, the DO and the MSO groups would consist of the same number of rapists, child molesters, and mixed sexual offenders. The offender types were based on classifications used in other research (Rice, Harris & Quinsey, 1990; Quinsey, Rice & Harris, 1995) and in the prior research (Zanatta, 1996). Offenders were classified as "rapists" if they sexually assaulted or attempted to sexually assault a female aged 14 years or older (actual or attempted physical contact of a coercive nature with clear sexual intent). Offenders were classified as "child molesters" if they had actual or attempted physical sexual activity with a female under the age of 14 years, but only if the offender was at least five years older than the victim, or had sexually assaulted a male under the age of 16 when the offender was at least 5 years older than the victim. "Mixed offenders" sexually assaulted or attempted to sexually assault victims in both of these classifications (i.e., within the age parameters for both rapists and child molesters). These criteria while providing clear age-specific boundaries do not account for the actual intentions or actions of the sexual offenders. The DO and MSO groups each consisted of 45 rapists, 17 child molesters, and 20 mixed offenders.

Risk Assessment Instruments

The DOs and MSOs were compared on contemporary risk assessment instruments which have been predictive of both general and violent recidivism. Two of the measures utilized by forensic practitioners in their assessment of sexual (and other violent) offenders are the Psychopathy Checklist – Revised (PCL-R; Hare, 1991; 2003), and the Violence Risk Appraisal Guide (VRAG; Harris, Rice, & Quinsey, 1993; see also Quinsey et al., 1998; Webster, et al., 1994).

Psychopathy Checklist-Revised (PCL-R)

The Psychopathy-Checklist Revised (PCL-R) is a 20-item clinical rating scale that was developed to provide a reliable and valid measure of the construct of psychopathy, and not as a risk assessment instrument per se (Hare, 2003).¹⁹ The PCL-R, based on the Checkley's (1976) conceptualization of psychopathy, consists of 20 items scored on a three-point scale (0, 1, 2) depending on the items' applicability to an individual (see Arrigo & Shipley, 2001 for a historical overview of psychopathy). Accordingly, PCL-R Total Scores can range from 0 to 40 and represent the degree to which an individual resembles the prototypical psychopath. Although the PCL-R is a dimensional measure, scores of 30 or above have been used as the research and clinical cut-off for psychopathy (Hare, 1991; 2003). The PCL-R consists of two stable, oblique factors (Hare et al., 1990; Harpur, Hakstian, & Hare, 1988) which are correlated, on average, .56 for various prison samples, and .53 in forensic samples (Hart, Hare, & Harpur, 1992). Factor 1 (F₁) is defined by items reflecting the interpersonal and affective characteristics of psychopathy, whereas Factor 2 (F₂) items are related to the impulsive, antisocial, and unstable behavioural aspects of psychopathy. When it is not possible to score an item with confidence, the item is omitted and the respective Factor and Total Scores are prorated. As many as 5 items can be omitted without an appreciable reduction in reliability (Hare, 1991). The PCL-R includes a semi-structured interview and a file review procedure although researchers and clinicians²⁰ have used only file information to score and derive ratings for the PCL-R with acceptable inter-rater

¹⁹ The Hare PCL-R (2nd Edition) has been recently introduced (Hare, 2003). The PCL-R items, and their scoring, has not changed but one item (criminal versatility) now loads on Factor 2. The scoring of factor scores in this research was as set out in the Hare's (1991) PCL-R manual.

²⁰ Psychiatrists and other mental health professionals must often rely on file information to derive PCL-R ratings as the defense in DO hearings may not allow them to interview their clients to guard against the possibility of providing self-incriminating evidence. Offenders once sentenced, at times also refuse to participate with psychology in the preparation of risk based assessments for the Parole Board compelling mental health professionals to score the PCL-R and other risk instruments from only file information.

reliability and predictive validity (e.g., Harris, Rice, & Cormier, 1991). This procedure, particularly when there is extensive file information, has the same psychometric properties as the interview method (Hart, Hare, & Harpur, 1992), but may underestimate PCL-R scores compared to the interview-file review procedure (Hemphill, Hare, & Wong, 1998; see Hare, 2003 for a review).

The PCL-R was not developed as a risk assessment instrument but has since been demonstrated to be the single most robust predictor of general and violent offending (Hart & Hare, 1996). The predictive ability of the PCL-R is well-documented (see Hare, 1996; 2003; Hart & Dempster, 1997; Hart & Hare, 1996; Hart, Kropp, & Hare, 1988; Serin, 1992; 1996; Serin & Amos, 1995; Serin, Malcolm, Khann, & Barbaree, 1994; Serin, Peters, & Barbaree, 1990; Rice & Harris, 1995b) and has been examined in recent meta-analytic reviews.²¹ Salekin, Rogers, and Sewell (1996) reported moderate to large effect sizes for psychopathy based on the PCL or the PCL-R as a predictor of general and violent recidivism and concluded that the ability of the PCL-R to predict violence was “unparalleled” and “unprecedented” in the literature on the assessment of dangerousness. In a subsequent meta-analysis, Hemphill, Hare, and Wong (1998) found that in the first year following release from prison, psychopaths were three times more likely to reoffend, and four times more likely to reoffend violently, than were other offenders (see also Hemphill, Templeman, Wong, & Hare, 1998). Hemphill, Hare, and Wong (1998) reported the average correlations between the PCL-R and recidivism were .27 for general recidivism and for violent recidivism, and .23 for sexual recidivism, and that the correlations between the PCL-R and violent recidivism were greater than those between actuarial risk scales and violent recidivism. The authors concluded that the PCL-R should be considered “a primary instrument

²¹ Despite the sound psychometric properties of the PCL-R as a measure of psychopathy, and a risk factor for recidivism; the limitations, and potential for misuse and abuse of the PCL-R stemming from ignorance and/or incompetence have also been carefully considered (Hare, 1998).

for guiding clinical appraisals of criminal recidivism and dangerousness” (Hemphill, Hare, & Wong, 1998; see also Hart 1998a; 1998b). More recently, Douglas, Vincent and Edens (in press) in their review of the research as well as the meta-analyses indicated that the mean effect sizes supported a general relationship between the psychopathy and criminal recidivism despite the heterogeneity of effect sizes and difficulties associated with meta-analytic research.

With sexual offenders, there is evidence to support the use of the PCL-R in assessing risk for violent and general recidivism but much more divergent results for its use in assessing the risk for sexual recidivism (Douglas, Vincent & Edens, in press; Hare, 2003). Distinctions have however been made between psychopathic and non-psychopathic sexual offenders, and the greater prevalence of psychopathy in certain types of sexual offenders. Rapists, as well as sexual offenders who commit more than one type of sexual crime, tend to be more psychopathic than those who offend against children (Harris, Rice, Quinsey, Lalumière, Boer & Lang, 2003; Quinsey, Rice, & Harris, 1995, Porter et al., 2000; Serin, Malcolm, Khanna, & Barbaree 1994). Psychopathic sexual offenders have also been found to be more opportunistic and more likely to be violent or sadistic than other sexual offenders (e.g., Barbaree, Seto, Serin, Amos, & Preston, 1994; Brown & Forth, 1997).

There is also evidence that psychopathic sexual offenders exhibit higher levels of sexual arousal to violent stimuli than non-psychopaths (Quinsey, Rice, & Harris, 1995; Serin et al. 1994), and that a combination of psychopathy and deviant sexual arousal is particularly predictive of sexual recidivism (Rice & Harris 1997; see also Hildebrand, de Ruiter, & de Vogel, 2004; Olver & Wong, 2003a; 2003b, cited in Hare, 2003). Offenders with high PCL-R scores and evidence of sexual deviance in their index offences committed more pre-index sexual offenses, more kidnapping and forcible confinements, more nonsexual offenses, and were more likely to recidivate violently than were other offenders (Harris & Hanson, 1998 as cited in Hare, 2003).

Violence Risk Appraisal Guide (VRAG)

The Violence Risk Appraisal Guide (VRAG; Harris, Rice, & Quinsey, 1993) differs from the PCL-R in that it was designed as an actuarial risk assessment instrument for the prediction of risk of violent recidivism (see also Quinsey, Harris, Rice, and Cormier, 1998; Webster et al., 1994). Harris, Rice, and Quinsey (1993) used a stepwise discriminant function analysis of variables coded from the files of a sample of 618 male mentally disordered offenders who had been treated or assessed at a maximum security psychiatric hospital to develop the VRAG. The sample was followed for an average of 6.8 years, and had a violent recidivism rate of 31%. A large number of variables had been coded for each offender, but only variables with high inter-rater reliability that discriminated violent recidivists and nonrecidivists across various subsamples were retained (Harris, Rice, & Quinsey, 1993). The 12 items (see Appendix B) consisting of both continuous and dichotomous variables, are weighted and then summed into a VRAG Total Score which can then be converted into a correlational probability of violent recidivism based on the construction sample (Webster et al., 1994). When items on the VRAG cannot be scored, they are coded as not applicable and scored as 0 so the item neither increases nor decreases the VRAG Total Score. In the original construction study, multiple discriminant analyses produced a multiple correlation of .46 between VRAG scores and violent recidivism, and the classification of offenders as high or low risk for violent recidivism was approximately 75% accurate. Scores on the VRAG are positively related to the seriousness of the recidivistic violence and with the rate with which violent recidivism occurs (Quinsey, et al., 1998; Harris, Rice, & Cormier, 2002; c.f., Loza, Villeneuve, & Loza-Fanous, 2002) but published probabilities are specified only for any violence at seven and ten years post-release (see Appendix G).

The VRAG was subsequently “cross-validated” by testing how well it predicted violent and sexual recidivism in a sample of 159 sexual offenders not included in the original

construction sample (Rice and Harris, 1997).²² Of the 618 forensic patients in the original sample, 129 were sexual offenders. Sexual deviance had been identified as a factor unique to the prediction of sexual recidivism but it was uncertain whether there was a need for an instrument specific to sexual offenders as other factors appeared predictive of all types of offences whether nonviolent or violent, sexual or nonsexual. The average follow-up was 10 years and the base rates of violent recidivism (which included sexual offences) and sexual recidivism were 58% and 35%, respectively. The VRAG predicted violent recidivism in the sexual offender sample as well as it had in the original construction sample. However, the prediction of specifically sexual recidivism was poorer than the prediction of violent recidivism (AUCs of .76 versus .60 for the construction sample, and .77 versus .62 for the sexual offender sample) (Rice & Harris, 1997). The correlation between VRAG scores and outcome dropped considerably when the criterion was changed from violent recidivism ($r = .47$) to sexually violent recidivism alone ($r = .20$). Rice and Harris (1997) concluded that there was strong support for the use of the VRAG in predicting violent recidivism among sexual offenders and moderate support for the prediction of sexually violent recidivism.²³

The VRAG has since been found to significantly predict violent recidivism in forensic (e.g., Harris, Rice, & Cormier, 2002) and inmate samples (e.g., Glover, Nicholson, Hemmati, Bernfeld, & Quinsey, 2002; Kroner & Mills, 2001). There has also been research supporting the accuracy of the VRAG for predicting recidivism among sexual offenders (e.g., Barbaree, Seto, Langton, & Peacock, 2001; Harris, G. et al., 2003; Sjöstedt & Langström, 2002).

²² Recently, Hart, Laws, and Kropp (2003) have argued that actuarial risk measures such as the VRAG have not been properly replicated through cross-validations or calibrations of test results indicating that their accuracy has not yet been established (see also, Hart et al., 2003).

²³ Rice and Harris (1997) indicated that one of the VRAG items, victim injury, was inversely related to violent recidivism in the original sample comprised mainly of nonsexual offenders, but was positively related to sexual recidivism in this sample of sexual offenders.

Instruments Specific to Sexual Offenders

In response to research that has indicated there are unique factors in relation to sexual reoffending (e.g., prior sexual offenses, phallometrically measured sexual deviance), there have been some attempts to develop instruments specific to the prediction of violent and sexual recidivism for sexual offenders. At the time of their meta-analytic review, there had been relatively few instruments developed for risk prediction with sexual offenders and Hanson and Bussière (1998) indicated that the (current) actuarial methods were more effective in predicting violence generally than in predicting sexual violence specifically. This finding has been replicated in subsequent research with actuarial measures for sexual offenders performing moderately well with no particular instrument demonstrating a consistent advantage (or superiority) in predicting outcome (e.g., Harris, G. et al., 2003; Hanson & Morton-Bourgon, 2004; Nunes, Firestone, Bradford, Greenberg, & Broom, 2002).

Sexual Offender Risk Assessment Guide (SORAG)

The Sexual Offender Risk Assessment Guide (SORAG) was constructed as a variation of the VRAG by Quinsey and colleagues by incorporating factors (e.g., history of sexual offences) identified as having predictive importance in several studies of sexual offenders (e.g., Quinsey, Lalumière, Rice, & Harris., 1995; Quinsey et al., 1998; Rice & Harris, 1997; Rice, Quinsey, & Harris, 1991).

The development of the SORAG mirrors that of the VRAG as each of the 14 predictor variables retained were weighted according to their univariate relationship with recidivism (see Appendix C for items). Both of these measures were designed to predict new arrests or convictions for violent recidivism and not just sexual recidivism. The SORAG is also highly correlated with the VRAG as there are ten identical items in the two measures. As with the

VRAG, scores on the SORAG were divided into nine equal-sized groups (called “bins”), reflecting an increasing probability of recidivism across the bins. Scoring information and data on the construction samples for the SORAG are provided in Quinsey et al. (1998).

Quinsey, Rice and Harris (1995) reported the predictive utility of a preliminary version of the SORAG with 178 sexual offenders. There was an average follow-up period of 50 months and the recidivism rate in the sample was 28% for sexual offences and 40% for any violent offences. There was a linear relationship between the SORAG and both sexual recidivism and violent recidivism and the SORAG yielded 72% and 77% correct decisions with regard to violent and sexual recidivism respectively (Quinsey, Rice, & Harris, 1995). In their study of the VRAG with sexual offenders, Rice and Harris (1997) also examined the utility of the SORAG and found it to have limited predictive validity with respect to sexual recidivism. Although they did not report the results, they noted that the relationship between the SORAG and outcome was statistically significant. However, the SORAG was significantly poorer than the VRAG when applied to offenders not used in its construction. Rice and Harris (1997) conducted Cox proportional hazard analyses to determine if the same factors would have been chosen for inclusion as in the construction sample, and found that for sexual offenders, the selected variables were a combination of both VRAG and the SORAG variables. They concluded that with sexual offenders the VRAG was sufficient for the prediction of violent, rather than specifically sexual recidivism, as some of the SORAG items did not perform well. However, Quinsey et al., (1998) have subsequently indicated that the SORAG, which has been revised, marginally exceeded the VRAG in terms of predictive validity and recommended the use of the SORAG for sexual offenders as its accuracy, particularly when there is evidence of sexual deviance, would likely exceed that of the VRAG.

Several studies with sexual offenders have since shown the SORAG to be more accurate in the prediction of violent (including sexual) recidivism and to have moderate accuracy in

predicting sexual offences (Barbaree et al., 2001; Nunes et al., 2002; Rice & Harris, 2002).

Similar accuracy rates have been reported for both the VRAG and the SORAG in predicting violent and specifically sexual recidivism (Harris, G. et al., 2003; Rice & Harris, 2002) where in other studies, the predictive accuracy of the SORAG exceeded the VRAG for sexual recidivism (Barbaree et al., 2001; Dempster, 1998).

Static-99

The Static-99 (Hanson & Thornton, 1999) is another actuarial risk assessment scale for sexual offenders but designed specifically for the prediction of sexual recidivism based in part on a meta-analytic review (Hanson & Bussière, 1998). The Static-99 was constructed from two relatively brief screening instruments (Rapid Risk Assessment for Sex Offence Recidivism (RRASOR): Hanson, 1997; Thornton's Structured Anchored Clinical Judgement (SACJ): Grubin, 1998) as each contributed unique variance in the prediction of sexual recidivism. The Static-99 contains ten items which are easily scored and is intended to be a measure of long term risk potential (see Appendix E).

The predictive accuracy of the Static-99 was tested in an analysis of four diverse samples of sex offenders drawn from Canada and the U.K. (total $n = 1,301$) (Hanson & Thornton, 1999; see also Hanson & Thornton, 2000). Recidivism information was based on national police records, except in one sample that used both criminal and hospital records. The average follow-up periods ranged from four years to 23 years but for most offenders, the follow-up was more than 15 years. Across the samples, the recidivism rates after 15 years were 26% for sexual offences and 37% for any violence (including sexual offences). The Static-99 showed moderate accuracy in predicting both sexual ($r = .33$, ROC area = .71) and violent recidivism ($r = .32$, ROC area = .69) and was more accurate than the RRASOR though the incremental improvement was relatively small. The degree of predictive accuracy was consistent across the four samples,

showing no more variability than would be expected by chance. There was also no difference in the predictive accuracy of the scale for those who had offended against children (child molesters) or adults (rapists). For 1086 offenders, the sexual offence recidivism rate of the Static-99 low risk group (n = 157: 24%) was approximately 10%, whereas the recidivism rate of the Static-99 high risk group (n = 129: 12%) was greater than 50% at 15 years post release. The violent recidivism rate was 17% after 15 years for the low risk offenders, compared to 59% for the high risk group but Hanson and Thornton (1999) noted that Static-99 may not be the best choice for predicting violent recidivism as other instruments such as the VRAG would perform substantially better.

An updated and comprehensive scoring manual is now available that also lists further research findings for the Static-99 (Harris, Phenix, Hanson, & Thornton, 2003). The predictive accuracy of the Static-99 has been supported in subsequent research by those associated with its development (e.g., Hanson & Thornton, 2003), as well as in independent research (Barbaree et al., 2001; Nunes et al., 2002). As in the VRAG and the SORAG, there are risk probabilities attached to Total Scores but the Static-99 now provides estimates for both sexual and violent recidivism (Harris, A. et al., 2003; see Appendix G).

Sexual Violence Risk – 20 (SVR-20)

The Sexual Violence Risk-20 (SVR-20: Boer, Wilson et al., 1997; Boer, Hart et al., 1997) was developed to overcome the limitations of both unstructured clinical judgment and empirically based actuarial risk scales. The SVR-20 utilizes structured clinical judgment meaning that risk assessments are conducted according to explicit guidelines. The development of the SVR-20 was based on a review of the research identifying the factors that had empirical support as predictors of sexual recidivism. From this, a series of risk factors that were empirically based,

practically useful, non-discriminatory (in terms of human rights violations), and parsimonious but comprehensive enough, was developed (Boer, Wilson et al., 1997; Boer, Hart et al., 1997).

The resulting 20 items were grouped into three sections: Psychosocial Adjustment, Sexual Offending, and Future Plans (see Appendix D). It is primarily the factors in the Sexual Offending section that are unique to the prediction of sexual violence as many of the other factors are associated with risk for nonviolent and nonsexually violent recidivism. In addition to the 20 items, idiosyncratic factors which may have special relevance to the case at hand may be considered. An individual who presents only one risk factor may be judged to be high risk on the basis of that single factor and the allowance for so-called critical items is an advantage of clinical guidelines compared to actuarial scales (Boer, Wilson et al., 1997; Boer, Hart et al., 1997). Boer, Hart et al., (1997) advocate the consideration and integration of the SVR-20 factors, and other case-specific factors in assessing risk rather than the summation of risk factors. The SVR-20 is not meant to be used actuarially but rather, intended to guide clinical decision-making. The assessment of risk for sexual violence should also address the likelihood of sexual recidivism as an overall estimate (low, moderate, high), the probable severity of sexual offending, the likely victims, steps for risk management, and the factors that exacerbate an individual's risk for sexual violence (Boer, Hart et al., 1997).

The validity of the SVR-20 was examined in research which compared the PCL-R, VRAG, SORAG, RRASOR, and the SVR-20 in their ability to predict violent and sexual recidivism in 95 sexual offenders released from federal correctional institutions between 1988 and 1993 (Dempster, 1998). The items of the SVR-20 were summed to produce a total score as an actuarial measure of risk (SVR-20 actuarial), in addition to the low, moderate or high summary risk ratings (SVR-20 clinical). Consistent with previous research, all instruments had moderate to strong predictive validity with better than chance accuracy when the outcome was violent recidivism. However, when the outcome was sexual recidivism, all of the instruments

with the exception of the RRASOR, performed less well. The RRASOR consisting of only four factors related to sexual recidivism had higher predictive accuracy with sexual recidivism than with violent recidivism. The results also indicated that most of the risk assessment instruments (PCL-R, VRAG, SORAG, SVR-20 actuarial) did not distinguish between offenders who went on to commit sexual offences from those who committed violent nonsexual offences. Only the RRASOR and SVR-20 clinical judgment were significant in distinguishing sexually violent from generally violent recidivists. The SVR-20 clinical judgment of risk also had incremental predictive validity relative to actuarial measures of risk suggesting that clinical judgments may allow for the consideration of the interaction between risk factors unlike the existing actuarial instruments (Dempster, 1998). Clinical decisions may also be more sophisticated than actuarial decisions as the same factors are always scored and weighted according to fixed values in actuarial schemes whereas factors may be included or excluded in clinical judgment and are probably combined in a nonlinear manner (Dempster, 1998). As for legal contexts, Dempster (1998) suggested that the most efficient battery would include both the RRASOR and the SVR-20 structured clinical judgments as the RRASOR on its own provides little guidance with respect to risk management, whereas the SORAG emerged as the best instrument if the required prediction was any type of violent recidivism among sexual offenders, but again, would provide little information for intervention and/or risk management.

Most of the comparative research has since focused solely on actuarial measures, but some has also evaluated the utility of the SVR-20 (e.g., Macpherson, 2003). Sjöstedt and Långstrom (2002) found that the SVR-20 was not predictive of sexual recidivism but found a significant relationship between the Psychosexual Adjustment section of the SVR-20 and violent nonsexual recidivism. The authors cautioned that the small size of their sample and poor inter-rater reliability limited the generalizability of their findings. As in Dempster (1998), de Vogel, Ruiter, Beek, and Mead (2004) also found incremental predictive validity for the SVR-20

structured clinical risk judgments relative to the SVR-20 total score (i.e, tabulated as an actuarial measure). The SVR-20 risk judgments were also significantly more accurate in predicting sexual recidivism than the Static-99 risk categories.

Procedure

This research was conducted with the ethical approval, and in accordance with the ethical standards of both Simon Fraser University and the Correctional Service of Canada.

Subject Selection

A CSC OMS list (August 7, 2001) of DOs, DSOs, LTOs, and offenders who had committed sexual offences and were incarcerated or on parole in the Pacific Region was used to select potential subjects. Throughout the data collection period (August, 2001 – March, 2002) several updated OMS lists were generated for any subsequent DO designations and because DO and other sexual offenders are periodically transferred between regions and between institutions. The collection of data was restricted to Mountain, Mission, Kent, RRAC/Matsqui, and the Regional Treatment Centre as most of the DOs were incarcerated at these institutions as of August, 2001 (75 of 86: 87%). Although institutional placement is not contingent on the severity of offences or sentences as offenders are cascaded downward in security levels, approximately the same number of MSOs (as DOs) were collected at each of the various institutions.

The primary objective in selecting DO and MSOs for this research was to access as many DOs incarcerated in the Pacific Region as possible. At the end of data collection, there were five additional DOs in the Pacific Region which could not be utilized (and were not coded) for the current study due to an inability to meet the matching criteria. The remaining DOs would be classified as rapists whereas possible MSOs who met the first two matching criteria (index offences and number of victims) were child molesters or mixed offenders.

File Information and the Coding of Variables

Federally incarcerated inmates each have a number of institutional files. These files contain police reports, RCMP Fingerprint Services (F.P.S.) sheets, Pre-Sentence Reports, Reasons for Judgment, intake assessments and correctional plans, criminal profiles, progress reports, reports of psychological and psychiatric assessments, treatment progress evaluations, community assessments, and parole and community supervision decisions and reports. These files were used to abstract information regarding demographic information, developmental history, history of psychological functioning, criminal history, the severity of sexual offending, and risk of violent and sexual recidivism.

Demographic information included ethnic origin, marital status, years of education, and employment status. Developmental histories were examined for information regarding the occurrence of physical abuse, sexual abuse, parental alcohol or drug abuse, a violent family background, parental criminality, maladjustment or psychiatric difficulties, and the age the offender left or was removed from home. Psychological functioning was coded according to mental health evaluations regarding any childhood learning disabilities or retardation, any childhood psychiatric diagnosis or hospitalization as well as any debilitating AXIS I or AXIS II disorders in adulthood (DSM-IV-TR, APA, 2000), adult psychiatric hospitalization or fitness to stand trial evaluations. IQ scores or, when unavailable, estimated IQ range based on the opinions of psychiatrists or psychologists served as a measure of intellectual functioning. Compared to data collection in 1995, full IQ testing (e.g., WAIS) has become less frequent and measures such as the Shipley Institute of Living Scale (1939, renewed 1967) are used except for cases where there may be significant deficits or neurological problems. Offenders' alcohol and drug abuse as well as intoxication during the commission of their most recent offence was also documented. The thoroughness of the offenders' developmental and psychological history (particularly information about childhood and early family life) varied with how cooperative an offender was,

the thoroughness of earlier reports as information was often carried forward, and when (e.g., age) and for which offences the offender was first, and subsequently incarcerated in the federal system.

Several aspects of the offenders' criminal history were also coded. These included age at index offence, age when first charged, age when first convicted of a sexual offence, the number of victims in index offences and past sexual offences, the number of violent convictions and sexual convictions. Offenders' criminal records were recorded from RCMP F.P.S. sheets which list charges, convictions, and dispositions from the time of an offender's first appearance in adult Court to his or her most recent convictions. The definition of violent offences was that adapted by Hare, McPherson, and Forth (1988), and used in Zanatta (1996). Index and past sexual offences included not only sexual offences but also other violent offences related to and part of the sexual assault (e.g., unlawful confinement) as well as convictions (e.g., common assault, possession of a weapon) which were pleas to "lesser" offences in documented sexual assaults.

A cutoff of 17 years old was used as adult records typically begin at 17, although some F.P.S. sheets began at a younger age because of different provincial criteria and transfer (to adult court) decisions. As in the prior research (Zanatta, 1996), information detailing the sexual and violent offences of each the offenders as well as any exceptional circumstances was also recorded in a narrative form to allow for subsequently verifying coding accuracy and if required, the re-coding of a particular variable. The details included the number and ages of victims (for both convictions and offences not prosecuted), their relationship to the offender, circumstances surrounding the offence (e.g., when and where), the use of weapons and threats, the actions of the offenders, reactions of the victims, injuries sustained, and specifics regarding the violence and/or sexual assaults (how and what was done). Unfortunately not all files contained offence particulars that was clear and/or consistent and will be reflected in some of the variables in the results section as missing information.

The completed PCL-R, VRAG, SORAG, Static-99, and the SVR-20 are measures used in this research to evaluate the risk of violent and sexual recidivism. Although some items and/or criteria of these instruments pertain to offenders at the time of their most recent offences, the offenders' entire file (i.e., also during their current incarceration) was used to score these instruments and represent the offenders' current level of risk.²⁴ In contrast to data collection in 1995, virtually all offenders now have a completed PCL-R (and in some instances, the PCL-R interview schedule) in their psychology file as well as some of the other risk instruments used in this research. The coding and scoring of the risk instruments for this research was completed without reviewing any scoring protocols on file.

Inter-rater Reliability

Inter-rater reliability was only computed for the predictive and actuarial measures of risk used in the current research. The inter-rater reliability of the PCL-R and VRAG were evaluated and originally reported in Zanatta (1996).²⁵ In that study, intraclass correlation coefficients (ICC: Shrout & Fleiss, 1979) were calculated using a one-way random effects model. Inter-rater reliability for the PCL-R was based on scoring from two raters for 27 subjects (14 DOs and 13 SPIOs). The ICC₁ for Factor 1 was .89, .88 for Factor 2, and .90 for the PCL-R Total Score. Based on two raters for 15 subjects (8 DOs and 7 SPIOs), the ICC₁ for the VRAG Total Score

²⁴ For the most part, this does not effect the scoring of the actuarial measures as they are based primarily on static factors. Research on the PCL-R has provided evidence for the temporal stability of psychopathy, particularly for F₁ items, and the decline with age in F₂ scores was relatively slight (e.g., Harpur & Hare, 1994; but see also, Hare, 2003). SVR-20 items (i.e., relationship problems) which may change over time were coded to reflect the offenders' functioning at the time of their index offences.

²⁵ The PCL-R scores remain unchanged from Zanatta (1996) but due to subsequent publications and information on the VRAG/SORAG website clarifying scoring and criteria, as well as corrections to prior published errors; the VRAG scores from Zanatta (1996) have been rescored according to the corrections. These clarifications and corrections were applicable to only four of the twelve VRAG items. Corrections to SORAG have also been made available at their website (<http://www.mhcr-research.com>).

was .70. In the current research, intraclass correlation coefficients were calculated for the SORAG, Static-99, and the SVR-20 Total Score (Sections I and II) for 15 subjects (10 DOs and 5 MSOs) using the same two raters. The resulting ICC_2 for the instruments was .92, .92, and .87 respectively. With the exception of the ICC for the VRAG from the earlier study which is nonetheless in the “good” range of reliability, inter-rater reliability for the instruments was in the “excellent” range (Cicchetti & Sparrow, 1981). Raters were blind to the purpose and hypothesis of the studies but not to whether or not an offender was a designated DO.

RESULTS

Sample Characteristics

There were no significant differences between the DOs and MSOs in ethnic origin, years of education, employment status, and when they committed or were sentenced for their index offences. All offenders were male and the MSOs were slightly older than the DOs when they committed their index offences (35.65 vs. 32.91 years). The majority of the offenders in the DO and the MSO groups were White (77% vs. 66%) and the rest were Aboriginal (16% vs. 26%) or of other or mixed ethnic backgrounds (7% vs. 8.5%). Twenty-one DOs (26%) and 33 MSOs (40%) were employed when they committed their most recent offence, whereas the rest were either unemployed, receiving disability benefits, or retired. This difference was not significant at a Bonferroni corrected alpha level of 0.008, $\chi^2 (1, N = 164) = 3.98, p = .04$. The odds ratio²⁶ indicated that the DOs were almost twice as likely as the MSOs to be not employed at the time of their index offences (74% vs. 60%, odds ratio = 1.96). The DOs and the MSOs were similar in their educational background and most (87%) had fewer than 12 years of formal education (i.e., they were not high school graduates). The DOs had completed an average of 8.23 (SD 2.66, range 0-16) years of school and the MSOs an average of 8.81 years (SD 2.71, range 2-22).

There were significant differences between the two groups on only one demographic variable, namely, marital status. Only 17 DOs (21%) and 34 MSOs (41.5%) were involved in a significant relationship, either being married or living common-law, when they committed their current offences, $\chi^2 (1, N = 164) = 8.22, p = .004$. The others were single, separated or divorced.

²⁶ Odds ratios are an alternative measure of association which are particularly useful in the 2 X 2 case and refer to the odds that an individual in one group will fall in a particular category versus the odds that an individual from a second group will fall in that same category (e.g. Howell, 1997; Nunnally & Bernstein, 1994).

All of the 82 DOs were sentenced to indeterminate terms of incarceration. One of the MSOs received a Life (10) sentence for Aggravated Sexual Assault and Attempted Murder. The average sentence length of the other 81 MSOs was almost 7½ years (89.5 months) for their index sexual offences (range: 12 – 276 months, median: 72 months). Only the sentences for index offences were recorded regardless of whether the sentences were consecutive to time remaining in prior sentences or any allowances were made in sentencing for pre-trial custody. Only four DOs (4.9%) and nine (11%) MSOs were serving their first custodial (jail or prison) sentence and most of the DOs (91%) and the MSOs (79%) were sentenced in British Columbia. The majority of the DOs (48: 58.5%) were sentenced between 1980-1995 whereas only 22 (26.8%) MSOs were sentenced during this period. This difference may be partially a function of the present study incorporating prior data (41 DOs) that that was collected before 1996 (Zanatta, 1996). However, most of these DOs (35 of 41: 85%) remain incarcerated or on parole in the Pacific Region. The offenders' age at sentencing was also compared as sexual offenders, particularly in more recent times, have been prosecuted for historical offences. As noted earlier, there were no significant differences between the DOs and the MSOs in the mean age when they committed their index offences. There was also no significant difference in their age when they were subsequently sentenced for these offences and again, the MSOs were slightly older (39.07 vs. 35.32 years of age). At the time of sentencing for their index offences, there were more DOs than MSOs aged 25 and under (22% vs. 15%) whereas there were more MSOs than DOs over the age of 50 (22% vs. 12%).

Significance Testing

The Results Section is divided into Primary Analyses which entail comparisons specific to the main purpose of this research and the hypotheses being investigated, and Secondary Analyses which consider other important group comparisons. All analyses and significance

testing are two-tailed. Within the Primary and Secondary Analyses are subsections which represent separate questions or areas of research interest. The family-wise error rate of each subsection is adjusted according to the multi-stage (or step-wise) Bonferroni procedure as outlined by Holm (1979; reviewed in Howell, 2002).²⁷ This approach may be considered rather conservative but probability values are also provided allowing for other interpretations of the results based on different methodological or statistical considerations.

Primary Analyses

Offence Histories

All of the offenders (DOs and MSOs) were convicted of index sexual offences with the exception of three DOs who had prior sexual offences, but who were designated after committing violent non-sexual index offences against adult females. All the offenders were also convicted of at least one index offence with a possible sentence of ten years and 34 DOs (41.5%) and 21 MSOs (26%) were convicted of offence(s) that had possible life sentences. The majority of the sample (78%) was convicted of more than one index offence making consecutive sentences possible.²⁸ For their index offences, all DOs were sentenced to indeterminate terms and one of the MSOs received a Life (10) sentence. Thirty-seven MSOs (46%) received sentences between one and five years, 25 MSOs (31%) between six and nine years, 15 MSOs (18.5%) received sentences between 10 and 18 years and another 4 MSOs (5%) had sentences of 20 or more years.

The status of the DOs and MSOs at the time of their index offences is outlined in Table 7. Thirty-seven DOs (46%) and 31 MSOs (38%) were on some form of conditional release when

²⁷ With the exception of Zanatta (1996), prior research on DOs has not corrected the error rate for multiple group contrasts.

²⁸ Twenty-nine of the DOs were convicted of only one offence (6 had possible life sentences), and 16 MSOs were convicted of only one offence (3 had possible life sentences).

Table 7.

Status of DOs and MSOs at the Time of their Index Offence

Status	DOs (N = 80) ¹	MSOs (N = 81) ¹
At Liberty	36 (45%)	43 (53%)
On Conditional Release	13 (16%)	15 (18.5)%
On Conditional Release for Prior Sexual Offence	24 (30%)	16 (20%)
Held to Warrant Expiry Date (W.E.D) on last sentence	7 (9%)	5 (6%)
Escaped or Unlawfully At Large	0 (0%)	2 (2.5%)

¹ The status of two DOs and one MSO was unclear from the documentation available and not included.

Table 8.

Number of Prior Sentences of Two or More Years

Characteristic	DOs (N = 82)	MSOs (N = 82)
No Prior Federal Sentences	28 (34%)	45 (55%)
One Prior Federal Sentences	27 (33%)	22 (27%)
Two Prior Federal Sentences	18 (22%)	9 (11%)
Three Or More Prior Federal Sentences	9 (11%)	6 (7%)

they committed their index offences. Seven DOs and MSOs were unlawfully at large or had been detained to their Warrant Expiry Date (W.E.D.) on their prior sentence. Offenders may be held to their W.E.D. when deemed to be an unacceptable risk by the CSC and the National Parole Board (NPB). There was no significant difference between the offenders who were being supervised on a conditional release were compared with those that were not being supervised (at liberty, detained to W.E.D, or unlawfully at large), $\chi^2 (1, N = 161) = 1.05, p = .30$.

The severity of offenders' criminal histories may be evaluated by the number of separate offences which resulted in federal sentences (2 or more years of incarceration – whether sentenced in Canada or the United States). Offenders would most likely receive federal sentences for violent offences or if they commit property offences persistently. Table 8 provides a breakdown of the number of federal sentences that the two groups received. For 28 (34%) of the DOs and 45 (55%) of the MSOs; their current convictions resulted in their first federal sentence. There were no differences between the DOs and the MSOs in the number of prior federal sentences at the adjusted significance level of .0125, $\chi^2 (3, N = 164) = 8.07, p = .04$. However, the DOs had a greater probability of being previously sentenced to a period of two or more years than the MSOs (66% vs. 45%, odds ratio = 2.34). In the category of three or more prior sentences, one DO previously received six federal sentences, three DOs received five federal sentences, and two DOs and two MSOs received four federal sentences.

The two groups were also compared on the number of past non-sexual violent convictions. It was not possible to determine reliably the number of victims these offences involved which would have been a more important comparison for the purpose of this study. About one-half of the DOs (51%) and the MSOs (49%) did not have any prior convictions for violent offences. In comparing only offenders with prior violent crimes, the 40 DOs had fewer (M 3.23, SD 3.03) prior violent convictions than the 42 MSOs (M 4.0, SD 3.56), but this difference was not significant, $t (80) = -1.06 (p = .29)$.

The DOs were younger (M 18.15, SD 8.87) than the MSOs (M 23.33, SD 13.85) when first charged or convicted and this difference was significant, $t(134.74) = -2.80$ ($p = .006$). More DOs (68%) than MSOs (51%) also had juvenile criminal records but this difference was not significant at the adjusted significance level of .0125, $\chi^2(1, N = 160) = 4.94$, $p = .03$. However, the odds ratio indicated twice the likelihood of DOs having juvenile records than the MSOs (68% vs. 51%, odds ratio = 2.06).

Frequency of Sexual Offences

Table 9 lists various factors related to the sexual offence convictions for the DOs and the MSOs. There was no significant difference between the two groups in the total number of victims in their index sexual offences (includes any index offence victims of non-sexual violence), $t(162) = .23$ ($p = .82$). The DO and MSO groups both had an average of almost three index offence victims and had the same range of one to nineteen index offence victims. More DOs (48) than MSOs (35) were convicted of index offences involving only one victim. Comparing the groups on the number of prior sexual offence victims, there was a significant difference between the DOs and the MSOs, $t(84.64) = 3.12$ ($p = .002$). The DOs had an average of 3.34 prior victims (SD 3.13), whereas the MSOs had an average of 1.96 prior victims (SD 1.40). Seven DO (9%) had eight or more prior sexual offence victims (range 1-19), whereas none of the MSOs convicted of prior sexual offences had more than seven prior victims (range 1-7). Across the offenders' lifetime (juvenile, adult, index offences), the DOs also had more sexually related convictions (M 7.15, SD 5.45, range 1-25) than the MSOs (M 5.32, SD 4.32, range 2-31), but this difference was not significant at the adjusted significance level of 0.0125, $t(154.02) = 2.38$ ($p = .018$). Twenty DOs (24%) compared to five (6%) MSOs had more than ten or more total (lifetime) sexually related convictions. Notably, the number of victims were separated by index, prior sexual, and juvenile sexual offences for greater specificity, When combined (post-

Table 9.

Frequency of Sexual Offences

	DOs (N = 82)	MSOs (N = 82)	p for χ^2 or t
Mean Number of Index OffenceVictims (<u>SD</u>)	2.95 (3.56)	2.83 (3.30)	.82
Total Number of Past Sexual Offence Victims (<u>SD</u>) ¹	3.34 (3.13)	1.96 (1.40)	.00247 *
Total Number of Sexual Offence Convictions (<u>SD</u>)	7.15 (5.45)	5.32 (4.32)	.01848
Longest Prior Sexual Offence Sentence (yrs) (<u>SD</u>)	4.45 (2.62)	3.04 (2.36)	.00483 *
Number of Offenders with Sexual Offence Convictions as Juveniles (17 and under)	16 (19.5%)	9 (11%)	.13
Mean Age of First Sexual Offence Conviction (<u>SD</u>)	25.24 (9.43)	31.45 (14.06)	.00115 *
Evidence of Sexual Offences Not Prosecuted ²	58 (72%)	45 (58%)	.06

Note: ¹ One of the DOs was excluded as the offender had a number of prior convictions but no information file information on some of the offences and the number of victims involved. The means and standard deviations are based on 61 DOs and 56 MSOs with convictions for past sexual offences.

² Based on information on 81 DOs and 78 MSOs

* T-test or chi-square significant at $p < .007$ (first stage). None of the results were significant in the second stage ($p < .0125$).

hoc), there was no difference between the DOs ($M = 5.47$, $SD = 4.22$, range 1-20) and the MSOs ($M = 4.17$, $SD = 3.31$, range 2-21) in their total number of victims, $t(161) = 2.19$ ($p = .030$).

There was also no significant difference between the two groups in the number of offenders convicted of sexual offences as juveniles (17 years and under).²⁹ However, the DOs were convicted of their first sexual offence at an earlier age than the MSOs (25.24 vs. 31.45 years), and this difference was significant, $t(141.63) = -3.32$ ($p = .001$). Offenders were at times arrested, charged, or reprimanded without being criminally charged earlier than the age that they were convicted. This information was not consistently available in the file documentation and therefore could not be used. Sixty-two of the DOs (76%) and 56 of the MSOs (68%) were convicted of prior sexual offences which they committed as either juveniles or as adults and for these, one DO was fined and five MSOs were sentenced only to Probation terms (the sentence of three other MSOs was not recorded on their F.P.S. sheets or specified in their files). The rest of the sample, 61 of 62 DOs and 48 of 56 MSOs convicted of prior sexual offences, received custodial sentences. In comparing the longest prior sentence for their sexual offences (offences prior to their index offences), the DOs had received lengthier custodial sentences ($M 4.45$ years, $SD 2.62$, range 3 months – 8 years) compared to the MSOs ($M 3.04$ years, $SD 2.36$, range 1 day – 8 years), and this difference was significant, $t(105) = 2.88$ ($p = .005$). However, this comparison excluded two MSOs. One MSO raped two females and received 30 years in the United States and was considered an outlier for statistical purposes as such a lengthy determinate sentence would be unlikely in Canada.³⁰ Another MSO received a prior Life sentence in Canada for sexually

²⁹ The 16 DOs and 9 MSOs with convictions as juveniles averaged over two victims for both the DOs ($M = 2.19$, range 1-11) and the MSOs ($M = 2.33$, range 1-5). One DO had sexual assaults as a juvenile dealt in military court and these were not included in any analyses as there was no official (criminal) record.

³⁰ Of the seven offenders who received prior sentences of 10 years or more, three offenders were sentenced in the United States. If the outlier, the 30 year sentence in the U.S. was included in the t-test, the difference between the groups would be non-significant, $t(106) = 1.20$ ($p = .23$).

assaulting and murdering his victim.³¹ Including these two MSOs, 17 MSOs (35%) compared to 31 DOs (51%) who received jail sentences for prior sexual offences were sentenced to four or more years. Bivariate correlations indicate no relationship between the number of prior sexual assault victims and longest prior sexual offence custodial sentence for both the DOs ($r = .126$), and the MSOs ($r = .012$). This indicates that, for both groups, the length of prior custodial sexual offence sentences did not increase as the number of victims in the prior sexual offences increased.

Dangerous Offender proceedings are sentencing hearings and can feature evidence and testimony from victims of sexual crimes that were not prosecuted. The files of 58 of 81 DOs (72%) and 45 of 78 MSOs (58%) had clear evidence of other sexual crimes that were investigated or charged and/or had admissions by the offender to unknown offences including sexual assaults against ex-partners. At times, a lack of evidence and/or reluctant or absent witnesses would have negated further legal action. As indicated in Table 9, the two groups did not differ significantly on the number of offenders in the groups with evidence of other sexual offences that had not been prosecuted, $\chi^2 (1, N = 159) = 3.37, p = .06$.

Severity of Sexual Offending

The two groups were compared on a number of factors noted in previous research on DOs and in Reasons For Judgment as being important and even instrumental to the selection of offenders for possible designation as DOs. All of the factors pertain to sexual offences and the criteria for the coding of these (exploratory) variables are presented in Appendix F. Some of these criteria and coding will be detailed as the results are reviewed. File information must have

³¹ The offender was scheduled to meet the Parole Board, walked away from a minimum security institute after serving 15 years, committed another sexual offence, and is now serving a second Life sentence.

clearly indicated the presence or absence of the scoring criteria or the item was coded as missing. Any and/or all of the offenders' offences were used in the coding which means that if the characteristic occurred in at least one of the sexual offences, the item was coded as applicable.

Some of the characteristics investigated pertain, to a greater extent, to sexual offences against adults (e.g., use of force/violence) as opposed to others which are more germane to sexual assaults on children (e.g., age, gender of victims). The results compared the rapists and child molesters but included the mixed sexual offenders with both of these subgroups because the mixed offenders have both child and adult victims (see Table 10). Of course, it is possible for a child molester to use excessive force or for a rapist to assault the same victim more than once; but the subgroups were utilized to be most representative of the sexual offenders and their offences. For some of the characteristics in Table 10 (e.g., humiliation), the specific behaviours used in coding were not exhaustive but those which occurred most frequently in this research and prior research (Zanatta, 1996). The labeling of various characteristics in this research (e.g., terrorization, humiliation) are merely convenient and not meant to imply that other aspects of sexual assaults that have not been examined here could not also fit that characterization. Specifically, the same act could evoke terror, fear, humiliation, and be sadistic but would be coded only according to specific criteria (see Appendix F).

As noted above, offenders are rarely prosecuted as DOs for exclusively intra-familial sexual offences. In this sample there was only one DO who sexually abused his daughter (index offence) and was not charged with any of his prior sexual crimes although the evidence was provided at his DO hearing. For the rest of the sample, there was no difference between the two groups in their relationship to the victims they chose, $\chi^2 (1, N = 163) = 3.19, p = .07$. The majority of the DOs (74%) and MSOs (61%) sexually assaulted at least one victim that was a stranger (a person previously unknown to the offender). How these unknown victims were selected or targeted was separated into three categories with offenders that assaulted unknown

Table 10.

Sexual Offence Characteristics

Variable	DOs (N = 82)	MSOs (N = 82)	p for χ^2
Any Strangers or Unknown Victims	60 of 81 (74%)	50 of 82 (61%)	.07
Assaulted or Abducted off the Street	40 of 58 (69%)	17 of 48 (35%)	.00056 *
BnE and Assaulted	16 of 58 (28%)	14 of 49 (29%)	.91
Other Encounters with Unknown Victims	33 of 57 (58%)	26 of 48 (54%)	.70
Rapists/Mixed Offenders	DOs (N = 65)	MSOs (N = 65)	
Offenders Using Excessive Force	19 of 61 (31%)	9 of 61 (15%)	.03132
Possession, Threat of, or Use of Weapon	43 of 65 (66%)	28 of 63 (44%)	.01349
Threats to use Weapon, Cause Harm, or Death	51 of 63 (81%)	41 of 60 (68%)	.10
Fear of Imminent Harm	26 of 49 (53%)	20 of 59 (34%)	.04496
Terrorization of Victim	27 of 64 (42%)	28 of 61 (46%)	.67
Serious Victim Injuries or Physical Harm	25 of 65 (38.5%)	9 of 64 (14%)	.00166 *
Abduction or Kidnapping of Any Victims	23 of 64 (36%)	8 of 63 (13%)	.00230 *
Unusually Lengthy Sexual Assaults	23 of 59 (39%)	11 of 64 (17%)	.00693
Sadistic Sexual Acts	13 of 64 (20%)	11 of 65 (17%)	.62
Humiliation of Victims	7 of 65 (11%)	7 of 65 (11%)	1.00
Child Molesters/Mixed Offenders	DOs (N = 37)	MSOs (N = 37)	
Only Female Victims	20 (54%)	23 (62%)	.48
Any Victims Under 6 years old	14 of 35 (40%)	17 of 37 (46%)	.61
Attempted or Rape of Child Victims	17 of 33 (51.5%)	23 of 35 (66%)	.23
Assaulted Victims More Than Once	14 of 33 (42%)	26 of 36 (72%)	.01225
Diagnosis of Pedophilia	23 of 35 (66%)	21 of 33 (64%)	.86
Production of Pornographic Materials	6 of 37 (16%)	1 of 37 (3%)	.04702

Note: There are 21 comparisons in this section (only 20 are listed here).

* Chi-square significant at $p < .00238$. No other results were significant in the second stage ($p < .00277$).

victims appearing in any or all of the categories. As can be seen in Table 10, there was no difference between the two groups in the number of offenders who sexually assaulted strangers after breaking into their residence, or those who had interactions and/or manipulated victims previously unknown to them. This latter category includes some interactions prior to the sexual assault in which the victim was initially “deceived”. Such ploys or deception include for example, manipulating or tricking victims to play, to assist the offender, to go to a different location, to get into the victim’s or the offender’s car, to get into the victim’s homes or hotel rooms, or entering into agreements with prostitutes. A slight majority of the DOs (58%) and the MSOs (54%) used such ploys to deceive and/or isolate previously unknown victims.

The DOs and MSOs differed significantly in the number of offenders who assaulted or abducted victims “off the street”. The designation “off the street” included any location (e.g., a park) from which an unknown victim was taken by force or assaulted without the use of a ruse or any other manipulation prior to the assault, $\chi^2 (1, N = 106) = 11.89, p = .0005$. The odds ratio indicated four times the likelihood that the DOs assaulted or abducted a stranger “off the street” than the offenders in the MSO group (69% vs. 35%, odds ratio = 4.05). Child molesters are typically less likely to sexually assault victims that are not known to them or to use direct force in targeting victims. In this sample, six of 17 DOs (35%) and five of 17 MSOs (29%) targeted children who were strangers and of these cases, four of six DOs and two of three MSOs child molesters assaulted or abducted children “off the street”. There was not enough information on two of the MSOs to determine whether the children interacted with the offender prior to being assaulted.

There was no significant differences between the DOs and the MSOs in their use of excessive force, weapons, or threats at the adjusted significance levels (see Table 10). A minority of the DOs (31%) and the MSOs (15%) used more force or violence than was necessary to gain and/or ensure compliance from their victim. For these offenders, however, the violence itself

appeared to be an aim of their assaults (not just victim compliance). In coding excessive force, only the actions of the offenders was considered – not the resulting harm – as some victims would be more passive or conversely, more resistant than others.

Most sexual assault victims, particularly rape victims, sustain at least minor physical injuries (e.g., scratches and minor bruises). There was however, a significant difference between the DOs and MSOs in the number of rapists and mixed offenders who caused moderate or severe physical injuries or harm, $\chi^2 (1, N = 129) = 9.89, p = .001$. Moderate to severe harm would include injuries such as swollen eyes or face, broken or fractured bones or teeth, and any injuries that required surgery or hospitalization. Moderate or severe physical injuries or harm however resulted from the assaults of only a minority of the DOs (38.5%) and the MSOs (14%).³² Although only a minority, these offenders may have injured more than one or several victims as offenders often use similar *modus operandi* and degree of violence in their sexual crimes. This information was not tabulated but is apparent in the manner which judges review any patterns or commonalities in crimes committed by sexual offenders (e.g., *R. v. Kim*, 2000; *R. v. Peddon*, 2001; *R. v. Singh*, 1994; *R. v. Sundman*, 2001). Notably the same number of MSOs who used excessive force seriously injured their victims whereas there were more serious injuries for the DO group regardless of the degree of violence or compliance of the victim. In some instances, victims suffer some serious and perhaps inadvertent injuries as an offender is trying to gain or maintain control of a victim and some victims (e.g., the elderly) may be more susceptible to physical injury.

³² There was an attempt to quantify psychological harm but file information was inconsistent. In addition, psychological harm (particularly with children) can only be reliably assessed or determined after a considerable period of time has lapsed since the assault. Clearly this is reflected in the policy of the NPB which deems that serious psychological harm to have occurred in all sexual offences when the victim is a child. Many of the CSC files, particularly earlier DO cases, did not contain direct victim information. Any inferences made without this information would only reflect the severity of the sexual offences – many of the factors which have been considered and whose criteria are specified more accurately.

As can be seen in Table 10, the majority of the rapists and mixed offenders in both groups threatened their victims with harm or death.³³ The threats of the DOs may be considered more significant and intimidating as more DOs (66%) than MSOs (44%) had weapons. However, when the offences of the DOs and MSOs were evaluated for the potential of imminent harm (e.g., weapon at a victim's throat or body, see Appendix F), there were no significant differences between the two groups although again more DOs (53%) than MSOs (34%) posed the potential for imminent harm. Of the 43 DOs and 28 MSOs who had weapons, only six (14%) of the DOs and three (11%) of the MSOs actually struck, cut, or otherwise harmed their victims with a weapon (regardless of weapon, e.g., knife, needle, stick). Most of the moderate to severe injuries resulted from physical force or assault rather than the use of weapons.

The abduction or kidnapping of victims can result in additional criminal charges and are often aggravating factors in the sentencing of sexual offenders. In this sample, the DOs were significantly more likely than the MSOs to abduct and/or kidnap their victims, $\chi^2 (1, N = 127) = 9.29, p = .002$, regardless of the relationship between the offender and victim. The groups include three DOs and three MSOs who may have targeted other victims but managed to only kidnap prostitutes. In prior research (Zanatta, 1996), the length of time that a victim was sexually assaulted emerged as possibly an important influence on DO designations. Although there was not a significant difference between the groups at the adjusted levels of significance (see Table 10), the rapists and mixed offenders in the DO group were three times more likely than the rapists and mixed offenders in the MSO group to have sexually assaulted their victims for longer periods of times (> 1½ hours) (39% vs. 17%, odds ratio = 3.08).

There was also no difference between the two groups in the terrorization of victims, sadistic sexual acts, and humiliation of victims (see Appendix F for the specific behaviours used

³³ The analysis did not include three MSOs who threatened to harm or kill a family member in the future and one MSO who threatened to harm and/or kill himself in front of his victims.

in coding these variables). The latter two variables occurred relatively infrequently for both groups (11-20%). Almost half of the DOs' (42%) and the MSOs' (46%) rapists and mixed offenders however terrorized their victims by choking their victims during the assault, by binding or blindfolding their victims, and/or by sexually assaulting their victims in the presence of their children.

Any combination of the characteristics listed in Table 10 for rapists and mixed offenders would perhaps suggest a greater severity in the sexual offences committed. Only 4 (6%) of the DOs' and 13 (20%) of the MSOs' rapists and mixed offenders did not have any of these characteristics. Although the DOs had on average more characteristics ($M = 4.18$, $SD = 2.10$) than the MSOs ($M = 3.37$, $SD = 2.08$), this difference was not significant at the adjusted significance level, $t(111) = 2.06$ ($p = .04$). Twice as many DOs (17) than MSOs (8) satisfied more than five sexual offence characteristics listed in Table 10 for rapists and mixed offenders.

The criteria for defining child victims (or child molesters) in this research is female victims under age 14 and male victims under age 16 if, in either case, the offender was at least five years older than the victim(s). There were no significant differences between the two groups on various characteristics related to the sexual assault of children (also listed on Table 10). The majority of the DOs' (54%) and the MSOs' (62%) child molesters and mixed offenders sexually assaulted only female children. More MSOs (24%) than DOs (13.5%) sexually assaulted only male children whereas more DOs (32%) than MSOs (13.5%) sexually both male and female children. Comparing the DOs and MSOs across these gender groups however indicated no significant difference, $\chi^2(2, N = 74) = 4.23$, $p = .12$. The majority of offenders in the DO (51.5%) and MSO (66%) groups simulated intercourse (no penetration), attempted to or actually raped their child victims – perhaps in contrast to the notion that child molesters only fondle or molest their victims. As can also be seen in Table 10, approximately the same number of DOs (40%) and MSOs (46%) sexually assaulted victims under the age of six, and the diagnosis of

pedophilia was also approximately the same with 66% of the DOs' and 64% of MSOs' child molesters and mixed offenders receiving the diagnosis. More MSOs (72%) than DOs (42%) sexually assaulted their victims more than once. While this comparison is statistically accurate, it is also somewhat misleading. The file information was often unreliable or simply too vague to accurately record the number of child victims that were assaulted repeatedly and for determining the number of times they were assaulted by the offenders. Instead, typical file information might include notations such as "repeated assaults on some of his victims", and "numerous incidents". As such, it is not possible to accurately indicate how many child victims, or the number of times these children were assaulted by the offenders. Some of the offenders may have had hundreds of assaults on a few victims whereas others may have assaulted more victims fewer times.

In coding sexual offences, any exceptional or unusual sexual assault circumstances were also noted to capture any other important factors that were clinically or perhaps judicially significant (see Table 11). These factors would always be noted in psychological and psychiatric reports or risk assessments as aggravating factors and may have been, at least partially, instrumental to the targeting of certain offenders for prosecution as DOs. However, their importance can not be evaluated in isolation as any of the factors already examined (e.g., use of weapons, sadistic acts, terrorization of victims) are considered among the most aggravating factors in the sentencing of sexual offenders³⁴. Only the specific characteristics and their frequencies are presented in Table 11 as the base rates are expected to be, and are, very low. There was no significance testing for differences between the two groups.

Table 11 is divided into exceptional victim and sexual offender characteristics and was restricted to data that would always be noted in the specification of offenders' offence(s) and

³⁴ Such characteristics could be recorded as other considerations on the SVR-20 – possibly overriding other SVR-20 risk markers. The actual significance of any of these factors can however only be established within the consideration of offenders' entire profile.

Table 11.

Exceptional or Unusual Sexual Assault Considerations or Circumstances

Exceptional Victims Characteristics	DOs (N =82)	MSOs (N = 82)
Sexual assault of non-conscious, sleeping, or passed-out victims	9 (11%)	21 (26%)
Use of chloroform, drugs or alcohol, to subdue victims	3 (4%)	3 (4%)
Rape of grandmother, mother, or sister	2 (2%)	2 (2%)
Sexual assault of the elderly (65 and over), the mentally retarded or disabled, or infants (< 2 years).	10 (12%)	8 (10%)
Sexual assault of pregnant victims	1 (1%)	3 (4%)
Number of offenders ¹	17 (21%)	31 (38%)
Exceptional Offender Characteristics		
Prepared, or equipped to watch or abduct victims	3 (4%)	1 (1%)
Construction of a containment structure for victims	2 (2%)	0
Video taped sexual assaults or terrorized victims with photos	2 (2%)	1 (1%)
Sexual assault with offender knowing that he is HIV+	1 (1%)	1 (1%)
Evidence of fetishes	13 (16%)	6 (7%)
Number of offenders ¹	20 (24%)	9 (11%)

Note: ¹ Any offenders who met the criteria for more than one characteristic was counted only once.

victim(s).³⁵ It is not possible to determine or quantify the relative importance of any the characteristics, but as can be seen in Table 11, there were more DOs (24%) than MSOs (11%) with the exceptional offender characteristics listed and more MSOs (34%) than DOs (21%) with the exceptional victim characteristics. Notably, 50 (61%) DOs and 46 (56%) MSOs did not have any of these characteristics or offence features.

Risk Of Recidivism

Violent and Sexual Recidivism

The hypothesis that the DOs would be at greater risk for violent recidivism than the MSOs was examined using the Psychopathy Checklist-Revised (PCL-R) and the Violence Risk Appraisal Guide (VRAG). Means and standard deviations are reported in Table 12. There was a significant difference between the DOs and the MSOs on both PCL-R, $t(162) = 2.99$ ($p = .00318$) and VRAG Total Scores, $t(162) = 2.76$ ($p = .00647$). These differences were in the predicted direction.

PCL-R Total Scores similarly ranged from 13.7 to 37.9 for the DOs and from 11 to 36.7 for the MSOs and PCL-R means of 25.42 for the MSO group and 28.18 for the DO group signify a moderate risk for violent recidivism for the entire sample.³⁶ Thirty-one (38%) of the DOs and 24 (29%) of the MSOs met the recommended cut-off for the classification of psychopathy with

³⁵ Other offender factors were coded, including stalking or cruising for victims and deviant sexual violent or sexual fantasies, but were considered too unreliable to be accurate. Whether an offender had been stalking or following possible victims was not always noted nor were the details prior to sexual assault required to make that determination. Admitting deviant fantasies requires the cooperation of offenders and could vary with how long an offender has been incarcerated, treatment participation, parole considerations, etc.

³⁶ Comparing the 41 DOs from Zanatta (1996) to the 41 DOs in this study indicates a slightly higher PCL-R Total Score (27.85 vs. 28.50) and a greater prevalence of psychopathy (32% vs. 44%) in the DOs collected for the current study, but these differences were not statistically significant. Eight of the 24 (33%) rapists from the earlier study compared to 13 of the 21 (62%) rapists collected for the current study would be classified as psychopathic.

Table 12.

Means and Standard Deviations of DOs and MSOs on Risk Assessment Instruments

Risk Factor	DOs (N = 82)	MSOs (N = 82)	p for χ^2 or t
PCL-R Total Scores	28.18 (5.40)	25.42 (6.35)	.00316 *
PCL-R Factor 1	11.03 (2.84)	10.62 (2.76)	.35
PCL-R Factor 2	12.91 (3.47)	10.68 (4.13)	.00026 *
PCL-R (≥ 30)	31 (38%)	24 (29%)	.24
VRAG Total Scores	15.10 (9.16)	11.04 (9.69)	.00647 **
SORAG Total Scores	25.18 (9.41)	19.80 (10.71)	.00080 *
SVR-20 Psychosocial Adjustment	15.13 (3.69)	13.48 (4.10)	.00760 **
SVR-20 Sexual Offending	9.85 (2.39)	8.51 (2.57)	.00067 *
Static-99	6.10 (1.65) ¹	4.90 (1.99)	.00005 *

Note. ¹ One of the DOs was too young for scoring the Static-99.

* two-tailed t-test significant at $p < .00555$.

** two-tailed t-test significant at $p < .0125$ (second stage).

the PCL-R (≥ 30) (Hare, 1991). The DOs and the MSOs did not differ significantly in the prevalence of PCL-R assessed psychopathy, $\chi^2(1, N = 164) = 1.34, p = .24$. While approximately 66% of the offenders in the study would not be classified as psychopathic, 35% (31 DOs and 27 MSOs) had PCL-R scores between 25 and 30. Only 51 of the 164 offenders in this sample (31%) had PCL-R Total Scores of less than 25.

There was also a significant difference between the DOs and MSOs on PCL-R Factor 2 scores, $t(162) = 3.74 (p = .00026)$, but not on PCL-R Factor 1 scores, $t(162) = .932 (p = .35)$. The DOs and MSOs had comparable means of 11.03 and 10.62 and the same range of four to sixteen on the PCL-R's Factor 1. Although the groups also had a similar range of scores (DOs 1.1-18, MSOs 2-17) on Factor 2, their means were significantly different (12.91 vs. 10.68). These means are not elevated (e.g., + 1 SD) compared to the normative offender sample (Hare, 2003).

The range of Total Scores on the VRAG was also similar for the DOs (-11 to 31) and the MSOs (-10 to 28). Converting the VRAG Total Scores into actuarial estimates,³⁷ the Mean Total Scores for the DOs and the MSOs fell into adjacent risk categories (see Appendix G).³⁸ The DOs ($M = 15.10$) had a higher probability of violent recidivism at 7 years (55%) and at 10 years (64%) than the MSOs ($M = 11.04$), whose estimated probability of violent recidivism is 44% at 7 years and 58% at 10 years. The VRAG Total Scores of 70 DOs (85%) and 56 MSOs (68%) had violent recidivism probabilities of 44% (7 years) and 58% (10 years) or higher (VRAG risk categories or "bins" 6-9, see Table 13). Of these offenders, only 20 DOs (24%) and 14 MSOs (17%) had VRAG Total Scores which fell into the latter two VRAG risk bins which have violence probabilities of, at least, 76% and 82% at 7 and 10 years (VRAG risk bins 8 and 9).

³⁷ These estimates are based initially on data for 618 men who were evaluated and/or treated at Penetanguishene Mental Health Centre, a secure hospital for individuals who have been referred from the Courts and other prisons or psychiatric facilities (e.g., Quinsey et al., 1998).

³⁸ There was no significant difference on the VRAG Total Scores for the 41 DOs from Zanatta (1996) ($M = 14.73$) and the 41 DOs collected for the current study ($M = 15.46$).

Table 13.

Distribution of DOs and MSOs in VRAG, SORAG, Static-99, and SVR-20 Risk Categories

Risk Category	VRAG		SORAG			
	7 years & 10 years		7 years		10 years	
	DOs	MSOs	DOs	MSOs	DOs	MSOs
1-5	12 (15%)	26 (32%)	9 (11%)	24 (29%)	8 (10%)	20 (24%)
6	17 (21%)	19 (23%)	10 (12%)	13 (16%)	11 (13%)	17 (21%)
7	33 (40%)	23 (28%)	13 (16%)	13 (16%)	18 (22%)	17 (21%)
8	13 (16%)	12 (15%)	28 (34%)	22 (27%)	27 (33%)	19 (23%)
9	7 (8.5%)	2 (2%)	22 (27%)	10 (12%)	18 (22%)	9 (11%)

Static-99 Scores	Risk Category	DOs (N = 81)	MSOs (N = 82)
0, 1	Low	0	5 (6%)
2, 3	Medium-Low	8 (10%)	17 (21%)
4, 5	Medium-High	15 (18%)	23 (28%)
6 +	High	58 (72%)	37 (45%)

SVR-20 Sections I & II Scores		DOs (N = 82)	MSOs (N = 82)
Low	1-12	2 (2%)	4 (5%)
Medium	13-24	29 (35%)	52 (63%)
High	25-36	51 (62%)	26 (32%)

The DOs and MSOs were also compared on measures developed specifically for use with sexual offenders. As can be seen in Table 12, the two groups were significantly different on the SORAG Total Scores, both the Psychosocial and Sexual Offending sections of the SVR-20, and the Static-99 Total Scores – all in the predicted direction. The distribution of PCL-R Total Scores and the various measures for the risk of violent and sexual recidivism for the two groups are displayed as Box-and-Whisker Plots in Figure 1. The distributions are notable for certain consistencies. First, the median values for the two groups across all of the measures are similar according to the scaled scores but the median values are all higher for the DO group, as are the group means. Second, the plots' interquartile ranges, which contain 50% of the groups' data, indicate a greater dispersion of these scores for the MSO group on all of the measures. Third, the scores for the DOs on these measures are notable by having outliers at the lower end of the distribution. Finally, the distribution of scores including outlying cases for both groups across the measures are similar (e.g., range of scores).

As can be seen in Appendix G, the mean of 25.18 on the SORAG places the DO group at a probability of 75% and 80% of recidivism at seven and ten years respectively. By contrast, the MSO's group mean of 19.80 on the SORAG has an estimated probability of 58% at seven years and 76% at ten years. At both follow-up periods (7 and 10 years), the DOs and MSOs are at adjacent probabilities of risk. Only 33 of the 164 offenders (20%) in this sample had SORAG Total Scores that fell into the first five SORAG risk categories ("bins") at seven years and only 28 (17%) at ten years (see Table 13). Most of the DOs (89%) and the MSOs (71%) at seven years, or 90% of the DOs and 76% of the MSOs at ten years, had SORAG scores in risk bins 6-9. The majority of DOs, 61% at seven years and 55% at ten years, had SORAG Total Scores in the two highest SORAG risk bins (8 and 9). By contrast, 39% of the MSOs at 7 years or 34% at 10 years fell into the latter two SORAG risk bins.

There are also recidivism probabilities provided for the interpretation or conversion of

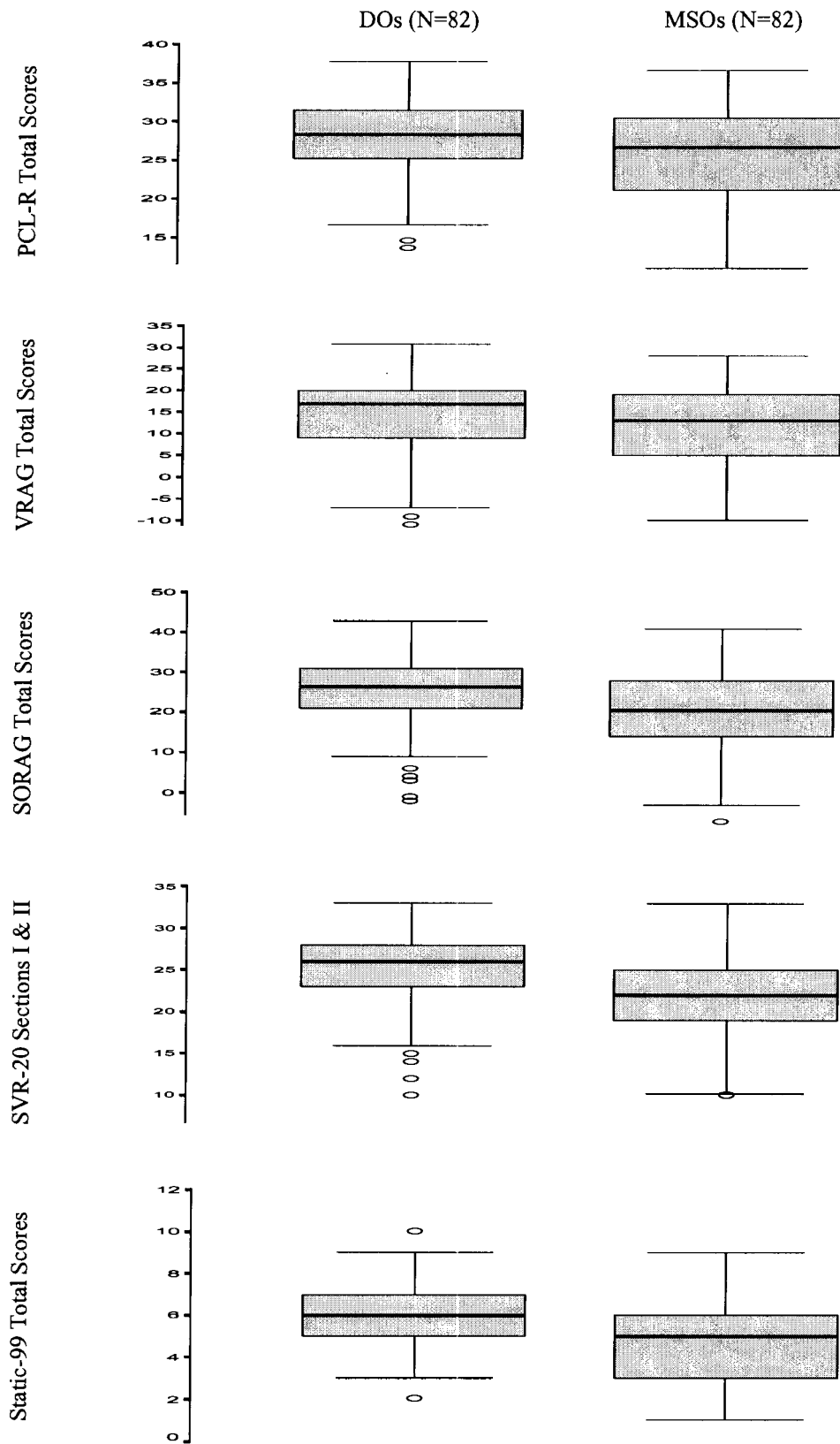


Figure 1. Box-and-Whisker Plots for PCL-R Total Scores and Risk Assessment Instruments

Static-99 Total Scores (see Appendix G). The DO group had a Static-99 mean of 6.10 and are in the highest risk category for both sexual and violent recidivism. For sexual recidivism, the estimated probabilities for the DOs are 39% and 45% at five and ten years and 44% and 51% for violent recidivism at five and ten years. In contrast, the MSO group, whether their Static-99 mean of 4.90 is interpreted as a score of four or as closer to a score of five, are at a lower estimated probability of sexual and violent recidivism than the DOs (see Appendix G). On the Static-99, total scores of six and above are classified as high risk whereas scores of four or five are classified as medium-high risk. As can be seen on Table 13, 133 of 163 offenders (81.5%) would be classified as being at least, a medium-high risk for sexual recidivism based on their Static-99 Total Score. Fifty-eight (72%) of the DOs and 37 (45%) of the MSOs would be classified as high risk.

The SVR-20 is not an actuarial measure, but one whose factors guide and structure clinical judgment. Only in research contexts are the items of the SVR-20 scored as an actuarial scale or converted into numerical values. For the purposes of this study, the items making up the first two sections of the SVR-20 were scored 0, 1, or 2 according to the applicability of each item to an offender (i.e., “definitely not”, “to some extent”, or “definitely applies”). Scores on the Psychosocial Adjustment section could range from 0-22 and from 0-14 on the Sexual Offending section. The DOs and MSOs were significantly different on these sections (see Table 12). The SVR-20 is not a numeric measure but rather made up of 20 separate dichotomously-rated items making specific interpretations of the obtained group means difficult. However, the higher means for the DOs would generally indicate greater psychosocial needs or deficits (M of 15.13 vs. 13.48) and higher sexual offending risk (M of 9.85 vs. 8.51). A composite score for the SVR-20 was derived for each offender by adding together these two sections. The composite scores could range from 0-36 and they were separated into three equal ranges of scores categorized as Low (0-

12), Medium (13-24), and High (25-36). As can be seen in Table 13, the majority of DOs (62%) fell in the high category whereas 63% of the MSOs had scores within the medium category.

The correlations between the PCL-R and the various risk assessment measures were examined for consistency among these risk assessment procedures. The VRAG, SORAG, and the SVR-20 each incorporate offenders' PCL-R Total Score into their assessment procedure. Although the PCL-R Total Score is represented by 1 item in each of these instruments, it is weighted (most heavily) on the VRAG and the SORAG. As can be seen in Table 14, each of these measures had a moderately high Pearson r (.724 – .780) with PCL-R Total Scores indicating that there would be some consistency among these measures in the level of risk (e.g., low, medium, high) that would be attached to offenders. The correlation coefficients also indicate that PCL-R Factor 1, although not a separate risk index in-of-itself, does capture unique variance as it has lower correlations with the other instruments. PCL-R Factor 2, by contrast, has higher correlations with the measures ($r = .701 - .833$), except with the Static-99 ($r = .528$). The Pearson coefficients between the Static-99 and the other measures (Total Scores) are comparatively lower ($r = .391 - .597$) than the correlations between the other measures, suggesting that Static-99 is accounting for unique variance and may identify offenders at different risk categories than the other indices. There is a strong correlation between the VRAG and the SORAG ($r = .945$) and virtually identical correlations with the other instruments indicating that the VRAG and SORAG are accounting for similar variance, although their classification of risk may differ (see Table 13). As noted earlier, there are ten items (of 12) on the VRAG and (of 14) on the SORAG that overlap.

Offender Types

The risk of recidivism of the DOs and the MSOs was also evaluated by comparing the rapists, child molesters and mixed offenders within the two groups on the various risk assessment

instruments. Any differences within these sexual offender subtypes could possibly account for the significant difference on these measures between the DOs and the MSOs or at least, provide great specificity for the difference between the DOs and MSOs.

As can be seen on Table 15, the distribution of mean scores among the various types of offenders across the DOs and MSOs are in the expected direction with rapists having the highest, and child molesters having the lowest mean scores on all of the risk assessment measures. This is consistent with prior research (Zanatta, 1996), and research on these sexual offender subtypes (e.g., Hart & Hare, 1997).

Consistently, the means as well as the prevalence of psychopathy for the DOs are higher than the MSOs on each of the measures across the sexual offender subtypes. Only one group contrast met the required significance level, the SORAG Total Score for the Mixed Offenders. The SORAG means for the mixed offenders in the DO group (27.55) and the MSO group (18.00) fall into the same SORAG risk categories as the overall DO and MSO means on the SORAG. With the exception of the difference in means between DO and MSO child molesters on PCL-R Factor 2 scores, the largest differences between the means of the DOs and MSOs are for the mixed offenders on all of the measures (see Table 15). These mean differences for the groups' mixed offenders are not statistically significant (except for the SORAG). Notably, the mean Total Scores on the measures for the DO's mixed offenders are comparable to the DO's rapists means, whereas such a pattern or consistency is not apparent for the MSO's mixed offenders.

Secondary Analyses

Developmental Histories and Psychological Functioning

The developmental experiences, and psychological functioning of the offenders at the time of their index offences was also examined. Of the potentially aversive developmental

Table 15.

Means and Standard Deviations of DO and MSO Sexual Offender Types on the PCL-R and Risk Assessment Instruments

Measure	Rapists			Child Molesters			Mixed Offenders		
	DOs (N = 45)	MSOs (N = 45)	p	DOs (N = 17)	MSOs (N = 17)	p	DOs (N = 20)	MSOs (N = 20)	p
PCL-R Total Scores	29.39 (4.96)	27.86 (5.51)	.17	24.63 (5.68)	20.40 (6.91)	.06	28.45 (5.05)	24.18 (4.78)	.00924
PCL-R Factor 1	11.01 (3.10)	11.28 (2.57)	.65	10.41 (2.00)	9.62 (2.95)	.36	11.59 (2.82)	9.98 (2.75)	.07
PCL-R Factor 2	13.74 (2.74)	12.16 (3.28)	.01482	11.11 (4.72)	7.70 (4.75)	.04390	12.58 (3.25)	9.90 (3.89)	.02341
PCL-R Total Score (≥ 30) ¹	21 (47%)	20 (44%)		3 (18%)	2 (12%)		7 (35%)	2 (10%)	
PCL-R Total Score (25-29) ¹	16 (35%)	15 (33%)		6 (35%)	3 (18%)		9 (45%)	9 (45%)	
VRAG Total Score	17.27 (7.90)	14.80 (8.80)	.16	8.82 (11.41)	4.71 (9.05)	.25	15.55 (7.55)	7.95 (8.49)	.00486
SORAG Total Score	27.20 (8.19)	23.78 (9.57)	.07	17.06 (10.18)	11.41 (11.12)	.13	27.55 (7.76)	18.00 (8.31)	.00058*
SVR-20 Psychosocial Adjustment	15.81 (3.13)	14.43 (3.60)	.05509	12.61 (4.81)	10.71 (4.06)	.22	15.74 (2.97)	13.71 (4.33)	.09
SVR-20 Sexual Offending	9.87 (2.43)	8.51 (2.70)	.01339	8.35 (2.26)	7.97 (2.08)	.61	11.08 (1.68)	8.97 (2.66)	.00476
Static-99	6.31 (1.53)	5.27 (1.78)	.00369	5.31 (1.99) ²	4.41 (1.91)	.19	6.25 (1.48)	4.50 (2.39)	.00910

Note: ¹ PCL-R Total Score frequencies are reported for descriptive purpose and not analysed for group differences.

² One of the DOs classified as a child molester was too young for scoring the Static-99.

* Two-tailed t-test significant at $p < .00208$. No other results were significant in the second stage ($p < .00217$).

experiences listed in Table 16, only reporting being sexual abused as children significantly differentiated the DOs and MSOs at the adjusted significance level, $\chi^2(1, N = 162) = 9.86$, $p = .00169$. The DOs were more than twice as likely to have reported incidents of having been sexually abused than the MSOs (63% vs. 39%, odds ratio = 2.75). Although sexual abuse was the only statistically significant developmental difference, the reported frequencies also indicate that the majority of DOs experienced physical abuse, came from families or placements where there was violence between other people, and had parents or guardians who abused alcohol or drugs. Parental drug and alcohol abuse was also a factor for the majority of offenders in the MSO group. Almost twice as many DOs (23) than MSOs (12) also had immediate family members who were sentenced for criminal offences and/or had mental disorders. There was however no difference in average age of the DOs (14.30) and the MSOs (15.96) when they left, or were removed from home.

Several factors related to the offenders' psychiatric history and psychological functioning were also considered (see Table 16). The DOs and MSOs were compared on their intellectual functioning or deficits – based on IQ scores or estimated IQ³⁹ – which were categorized into the Wechsler's IQ ranges for adults. Sixty-one of the DOs (74%) and 64 of the MSOs (78%) were of at least, average intelligence. There was no difference between the two groups when the retarded and borderline ranges were compared to the higher IQ levels, $\chi^2(1, N = 164) = .536$, $p = .46$. According to the classification of IQ scores, only one DO was retarded (IQ < 69) and ten DOs and eight MSOs were in the borderline IQ range (70-79).⁴⁰

³⁹ IQ testing is no longer routine and appears reserved for exceptional circumstances, in particular when deficit or impairment is suspected. As such, numerical IQ results (from a range of tests) were only available or reported for 56 DOs (68%) and 49 MSOs (60%).

⁴⁰ In addition, another eight DOs and one MSO were suspected of being or assessed to be learning disabled in childhood or adolescence. Because there have been changes over time in assessing, recognizing, and reporting such difficulties – this information was not considered complete or reliable.

Table 16.

Developmental History and Psychological Functioning

Developmental History	DOs	MSOs	p
Physical Abuse	46 of 81 (57%)	33 of 81 (41%)	.04102
Sexual Abuse	52 of 82 (63%)	31 of 80 (39%)	.00169 *
Violence In The Family Home	38 of 76 (50%)	29 of 80 (36%)	.08
Parental Drug or Alcohol Abuse	55 of 80 (69%)	46 of 80 (57.5%)	.14
Parental Criminality/Mental Disorders	23 of 77 (30%)	12 of 80 (15%)	.02523
Age left/removed from home [<u>M</u> (SD)]	14.30 (4.89)	15.96 (4.12)	.03368
<u>Psychological Functioning</u>			
Retardation or Borderline Intelligence	11 of 82 (13%)	8 of 82 (10%)	.46
Major Psychiatric Disorders (AXIS I)	15 of 82 (18%)	3 of 82 (4%)	.00272 *
Significantly Impaired Social Competence	10 of 82 (12%)	3 of 82 (4%)	.00606
Adult Alcohol Abuse or Drug Abuse	68 of 82 (83%)	50 of 82 (61%)	.00897
Index Offence Intoxication	39 of 81 (48%)	43 of 82 (52%)	.58

Note: There are 12 comparisons in this section (only 11 are listed here).

* Significant at $p < .00416$. No other results were significant in the second stage ($p < .005$).

Stringent criteria were used to evaluate the psychiatric histories of the offenders.

Although some had psychiatric intervention in childhood and/or adolescence – the focus was on persistent mental health problems effecting adulthood adjustment or functioning. The statistically significant difference between the 15 DOs and 3 MSOs includes only offenders who were hospitalized in a psychiatric facility, were found unfit to stand trial, or had debilitating verified DSM AXIS I disorders (e.g., psychotic disorders, organic brain syndromes, major mood disorders).

The “social competence” of the offenders was also coded. Social Competence considered three areas of functioning: intellectual ability, the offenders’ history of and ability to live independently, and whether or not the offenders have had mature social and sexual relationships. Based on this information, offenders were rated as having no concerns, some or mild problems, or a significant impairment in their social competence. It is only the latter group of offenders that is of interest as Reasons For Judgment have at times referred to an offender’s inability to function without constant supervision as an aggravating factor in Dangerous Offender proceedings. For most of the DOs (67%) and the MSOs (88%), there were no problems or concerns in their social competence. Ten of the DOs (12%) and three (4%) of the MSOs were rated as being significantly impaired in their social competence but this difference was not statistically significant.

The majority of DOs (83%) and MSOs (61%) abused alcohol or drugs in adulthood and the odds ratio indicates that the DOs were three times as likely to have had alcohol or drug abuse problems (odds ratio = 3.10). Intoxication was however not a factor in the commission of their index offences as approximately 50% of the offenders in both groups were not intoxicated at the time of their offence(s) (see Table 16). More MSOs (23%) than DOs (7%) sexually assaulted intoxicated victims (not drugged) and although this difference was statistically significant, $\chi^2(1, N = 163) = 7.79, p = .005$, only 25 of 163 offenders (15%) sexually assaulted intoxicated victims

DISCUSSION

The *Supreme Court of Canada* indicated that Dangerous Offender (DO) hearings must evaluate the risk posed by an offender as the purpose of the legislation is the identification and sentencing of offenders for the protection of society and the prevention of future violence and harm (*R. v. Jones*, 1994; *R. v. Lyons*, 1987). Though considered separately, past conduct and the potential for further harm are intricately linked in the legislative criteria. Prior offences and acts of violence form the basis of judging expected subsequent injury or harm. The treatability and manageability of offenders in the community are also evaluated within the determination of risk and whether offenders are sentenced as Dangerous Offenders, Long-Term Offenders, or to some other sanction under the regular Criminal Code provisions.

DOs are thus a distinct group of offenders designated by the Courts as having committed particular crimes and also having the potential, if not probability, for further serious harm. Since the inception of this legislation in 1977, there have been questions regarding its application, discretion, and the effectiveness of its purpose. These concerns have been expressed in commentaries, and in the methodological design of various research projects. Thus far, research findings have been conclusive but not definitive and results remain subject to differences in philosophical opinions and/or concerns. There may be no manner in which to adequately evaluate preventive detention as there will always be questions about the appropriateness of various comparison groups.

The primary purpose of this research was to evaluate the risk of recidivism in designated DOs that had committed sexual offences. Prior research has indicated that the vast majority of DOs have committed sexual offences, and most had sexually assaulted more than one victim. However, there has not been any research comparing DOs with other repetitive sexual offenders. The comparison group in this research was a group of sexual offenders (MSOs) matched by having the same number of age-defined offender types (child molesters, rapists, mixed offenders)

as in the DO group. Each of the offenders in the MSO group also had to have at least two victims. In addition to the comparison of risk, the results of this research sought to identify features of DOs or their crimes that may have been instrumental in their designation and provide further data on the characteristics of DOs.

Pre-Index Offence Characteristics

This sample (majority of offenders in the DO and MSO groups) can be generally characterized as single, unemployed, white males in their early to mid thirties with an average of eight years of education. These characteristics are consistent with a national 1996 “snapshot” of all the incarcerated sex offenders in Canada (Statistics Canada, 1999). The MSOs were only significantly more likely to be living common-law or be married at the time of their offences but this distinction captured only a minority of offenders in the groups (41.5% of the MSOs vs. 21% of the DOs). Such findings are consistent with previous studies where there have been few demographic and cultural differences between DOs and various comparison groups (e.g., Bonta et al., 1996; Zanatta, 1996). Trevethan, Crutcher and Moore (2002) felt that perhaps being employed and having the ability to provide for their families may have served as a mitigating factor as significantly more LTOs than DOs were employed (39% vs. 24%). However, review of the Reasons for Judgment for the offenders in the current study indicates that in essence only age, whether an offender is relatively young or elderly, has occasionally surfaced as the only potentially mitigating demographic consideration in DO hearings.

Examining the offenders’ background revealed some differences in various developmental factors. The majority of, and more DOs than MSOs, reported experiencing physical abuse, sexual abuse, other family violence (e.g., parental spousal assault), and having parents who abused alcohol and/or drugs. However, only reported histories of sexual abuse was a significant difference between the DOs and the MSOs (61% vs. 39%). And although consistent

with prior research comparing DOs and other violent offenders (Bonta et al., 1998; Zanatta, 1996) and research comparing offender types and abuse histories (e.g., Dutton & Hart, 1992), group differences in sexual abuse histories would be expectedly less likely to occur in comparison to other sexual offenders. In addition, there may be differences in the severity of prior sexual abuse experiences which could have contributed to different sexual offence patterns or dynamics (not evaluated in this study; see generally, Glasser et al., 2001). In finding no relationship between aversive developmental experiences including sexual abuse and sexual recidivism, Hanson and Morton-Bourgon (2004) have emphasized the difference between factors associated with becoming a sexual offender and those that are predictive of sexual recidivism.

Pre-index offence comparisons also included the offenders' psychiatric histories and/or any significant psychopathology which affected their adult functioning. Although a statistically significant difference, only fifteen DOs and three MSOs had a major debilitating AXIS I disorder in adulthood and/or had required psychiatric hospitalization. Of these, only two DOs and MSOs were diagnosed with schizophrenia at the time, or prior to, their index offences as coded on the VRAG (another DO was diagnosed with schizophrenia several years after his designation). None of these offenders' AXIS I disorder(s) could be considered instrumental in the commission of their sexual crimes (i.e., during a psychotic episode). Paraphilias were not included in the coding of AXIS I disorders as these diagnoses have been questioned as proper "diseases of the mind", are not exculpatory conditions, and may only be debilitating in the legal or societal responses to their inappropriate sexual behaviour (see generally, Coles & Grant, 1991). For similar reasons, AXIS II disorders were also not included in the comparison of the offenders' psychopathology. Although related to risk, these disorders (e.g., APD) are fairly prevalent among federal inmates particularly violent offenders. In this sample, 88% were coded as having a personality disorder on the VRAG (75 DOs and 68 MSOs). Relatively few, only ten DOs and three MSOs were rated as being significantly impaired in their "social competence" that is, to the extent of curtailing

their ability to function independently (or without constant supervision). These offenders typically garner significant concern as available resources for adequate monitoring do not exist and such concerns can have a significant bearing in sentencing decisions. Impairment in social competence (as coded in this study) can elevate risk for some fail to, or can not, appreciate the gravity and consequences of their crimes (i.e., due to significant cognitive impairment or deficit).

The offenders' age at various developmental points, and in the offenders' criminal histories, were also compared. Although not significantly different, the DOs left or were removed from home earlier (approximately age 14, more than 1½ years younger than the MSOs) perhaps in part, due to the greater prevalence of potentially aversive developmental experiences in their backgrounds. The DOs were also significantly younger when first charged or convicted (M of 18.15 vs. 23.33), but the DOs were not significantly more likely to have a juvenile record (though more DOs than MSOs did). Similarly, the DOs were significantly more likely than the MSOs to be convicted of a sexual offence at a younger age (M of 25.24 vs. 31.45), but not as juveniles (17 years old and under). The early onset of sexual crimes has sometimes been referred to in sexual offender cases as being formative in their sexual deviancy. Bonta et al., (1996) found that 97% of 59 DOs and all 12 sexual offenders in the DF group had forced sexual activity prior to the age 16, but in this sample only 16 DOs and 9 MSOs were convicted of sexual offences as juveniles. Twenty-two percent of the DOs (compared to 15% of the MSOs) were aged twenty-five and under when they were sentenced for their index offences. However, there were no significant differences in when the DOs and MSOs committed nor when they were subsequently convicted of their index offences. The latter comparison accounts for offenders who may have been prosecuted for historical offences or after lengthy crime sprees. In both the commission and sentencing for offences, the MSOs were slightly older (but only by a few years).

Almost all of the offenders (92 %) in this research had been previously sentenced to terms of incarceration and all offenders were convicted of at least one index offence with a

possible sentence of ten years. Only approximately (25%) of the MSOs received sentences of ten or more years for their index offences whereas it is unlikely that any of the DOs would serve less than ten years. Of the 82 DOs in this study, 44 (54%) were designated before January 1, 1995 (i.e., ten years ago) and of these, 32 (73%) remain incarcerated, 7 (16%) are currently on parole (M of 14.7 years before first receiving some form of day parole, range of 9-22 years) and 4 (10%) have died (one other DO has recently won an appeal and is awaiting a new hearing). Whether the DOs and MSOs were free (at liberty), held to WED on their last sentence, or on some form of conditional release did not distinguish the two groups. An offender's pre-index conviction status would always be considered at sentencing especially if previously held to Warrant Expiry or released from earlier sexual offence convictions.

Frequency of Sexual Offences

This sample can be regarded as sexually violent but not generally violent as the majority of the DOs and MSOs were convicted of prior sexual offences but not previously convicted of non-sexual violent offences. The majority of DOs (72%) and MSOs (58%) also had evidence of other sexual crimes that were not prosecuted. This difference was not significant. Evidence and testimony regarding sexual and violent crimes that have not been prosecuted or charged is permitted and routinely reviewed in DO hearings.

The legislation is made up of four disjunctive definitions for Dangerous Offenders focusing on *patterns* of violent and aggressive offences or behaviour in sections 753(a)(i) and (ii) whereas sections 753(a)(iii) and 753(b) focus on acts of brutality and sexual violence respectively. In DO hearings, past offences and acts of violence are reviewed in order to establish patterns of behaviour though only two similar offences is sufficient (*R. v. Langevin*, 1984). Prior research has indicated that DOs had significantly more index sexual offence victims than the 12 sexual offenders in the DF group (Bonta et al., 1996), the 20 sexual offenders in the SPIO group

(Zanatta, 1996), but not compared to the number of index, or past, victims of 91 LTOs (Trevethan, Crutcher, & Moore, 2002). Comparison between the number of prior sexual assault victims were not reported in either Bonta et al. (1996) or Zanatta (1996).

Compared to a matched group (MSOs), the DOs had significantly more past sexual offence victims (\underline{M} of 3.34 vs. 1.96) but there was no difference in the number of victims in their index offences. The range of past sexual offence victims for the DOs (1-19) and the MSOs (1-7) suggest that DOs may represent more severe (or extreme) cases. However, past and index victims were tabulated separately to determine their relative importance but when pooled, there was no significant difference between the DOs and MSOs in their total number of sexual offence victims (\underline{M} of 5.47 vs. 4.17). Likewise, there was no significant difference between the groups in their total sexual offence convictions (\underline{M} of 7.15 vs. 5.32), but in both instances, the DOs had more total victims and sexual offence convictions.

The DOs were significantly more likely to have received longer prior custodial sentences for their sexual offences. However, bivariate analysis indicated no relationship between number of prior victims and length of longest prior custodial sentence within the DO and MSO groups. This finding indicates that the Courts in determining the sentence length for the prior sexual crimes did not systematically assign lengthier sentences to either the DOs or the MSOs with more victims. At the same time, the significant between group differences indicate that the DOs may have received lengthier prior sentences because of the nature or severity of their crimes and/or because they had more (prior) victims. Whether or not the DOs (or MSOs) were sentenced on more separate occasions and/or for a greater number of different crime periods was not tabulated.

A larger number (and majority) of DOs had only one index victim. Both groups, on average, had the same number (\underline{M} of 2.95 and 2.83) and range (1-19) of index victims of violence. Of the offenders with one index victim, the DOs and MSOs did not differ significantly

in the average number of prior sexual assault victims (M of 2.8 and 2 respectively). These results suggest that DOs have had the same number of victims as other sexual offenders (i.e., MSOs, LTOs) but have been targeted for designation as DOs for other reasons. Although frequency of victims and assaults is a rather simplistic comparison, it has served as an aggravating factor in some cases (e.g., *R. v. Noyes*, 1986), but apparently not in others (*R. v. McLellan*, 2000).⁴¹ Having more victims, but in particular being sentenced more often, suggests to the Courts that offenders have not benefited from either being “punished” or the opportunity for treatment.

Severity of Sexual Violence

An underlying or implicit assumption of the DO legislation is that the actual or potential severity of the harm already caused represents the probable or potential severity of any future harm (e.g., *R. v. Dow*, 1999, reviewing the legislative criteria). The Courts’ evaluation of harm and severity may be based on the totality or overview of the crimes committed or focus on specific features of the offences and/or the offenders. Particularly in the absence of witnesses or their statements, certain sexual offence features are taken to constitute greater severity which can obscure the actual psychological harm to some victims in less obviously violent sexual offences. Perhaps by necessity, sentences reflect upon the offenders and their actions and not necessarily (always) on the actual harm caused. Several factors identified in prior research and in Reasons

⁴¹ In these cases, both of the offenders who were subsequently diagnosed as homosexual pedophiles worked as teachers. Both offenders groomed their victims extensively and both were charged with numerous assaults on 18 or 19 index victims aged 6-15. In one instance, the offender was designated to be a DO and the other who also had two other sexual offence convictions and committed more diverse and arguably more severe assaults was sentenced to 2 years plus 3 years Probation. Part of the reasoning for the latter decision was that the offender was offence free for a number of years though other child molesters have been designated as DOs for historical offences (e.g., *R. v. Taylor*, 1997).

For Judgment as constituting more severe or particularly heinous aspects of sexual assaults were evaluated in this research.

The results pertaining to the severity of sexual crimes may be organized along various victim or offence characteristics most of which are aggravating sentencing considerations. The absence of a pre-existing relationship between the offender and the victims is generally regarded as more serious or brazen than when a relationship existed. Yet, violations of positions of trust can be, and are often the most psychologically harmful to victims.

There was no significant difference between the groups with the majority of the DOs (74%) and the MSOs (61%) sexually assaulting at least one victim that was a stranger. How offenders targeted and assaulted previously unknown victims emerged as potentially important, and was examined. A similar number of DOs (28%) and MSOs (29%) assaulted strangers during break-ins. For some, the sexual assaults could be characterized as impulsive or opportunistic (incidental to the break-in) but in other instances, the break-ins were part of the offenders' sexual *modus operandi* and/or could have had a "home invasion" quality to their crimes (see *The Queen v. Henry*, 1983; *The Queen v. Singh*, 1994 for example). At times, victim(s) awoke or were awakened to being sexually assaulted.⁴² A similar number of DOs (58%) and MSOs (54%) also manipulated strangers before, and in order to facilitate the sexual assault or attempted sexual assault of the victim. These ploys were typically used to isolate victims. Whereas some sexual assaults were an afterthought to a break-in, manipulating or tricking victims was clearly more premeditated with the intent of committing a sexual assault. The differences between the number of DOs and MSOs who sexually assaulted strangers they manipulated, or committed sexual assaults during break-ins were not statistically significant.

⁴² Perhaps surprising was the number of victims who were sexually assaulted while they were sleeping, passed out, or otherwise not conscious (not necessarily only in the context of break-ins). Although not tabulated, it did not appear to be a particularly aggravating factor in the sentencing of the offenders.

By contrast, there was a significant difference between the number of DOs' (69%) and MSOs' (35%) who, without first interacting with an unknown victim, abducted or attempted to abduct the victim. Though opportunistic, these crimes are often considered premeditated where offenders have planned or are at least prepared to sexually assault a victim ("cruising for victims" would be the most obvious example). Grabbing a woman or child off the street, or from any location, certainly fits the more stereotypical or popularized notions of "dangerous" or of being a "sexual predator".

Sexual Offences Against Adults

The DO group, regardless of victims, was significantly more likely to simply abduct strangers (or try to). Perhaps not surprising, there was also a significant difference between the rapists and mixed sexual offenders in the DO group (36%) and the MSO group (13%) *who did* abduct and/or kidnap at least one of their adult victims (not necessarily only unknown victims). These results are consistent with research indicating that forcible confinement was a statistically significant difference between the prior, and index offences, of DOs and LTOs (Trevethan, Crutcher, & Moore, 2002). Although not statistically different, more than twice as many DOs (23) than MSOs (11) also committed lengthy sexual assaults (more than 1½ hours). These "unusually long" assaults would more likely occur in the context of an abduction and/or kidnapping. However, only a minority of the rapists and mixed offenders in this research abducted or kidnapped victims, and committed lengthy sexual assaults. Without doubt, these offenders would likely be regarded as "predators" or as "dangerous".

Prior research has indicated that the DOs (70%) were significantly more likely than the comparison group (DFs: 48%) to have used some brutality in their index offences but not to have been excessively violent (20% vs. 35.5% respectively) as pedophiles in the DO group could have

skewed the latter comparison (Bonta et al., 1996).⁴³ Although brutality⁴⁴ was not investigated directly in this research, the use of excessive force which was greater force than was necessary to ensure the compliance of victims (i.e., gratuitous violence) did not significantly differentiate the DOs (31%) and the MSOs (15%). The same number of MSOs who used excessive force injured their victims whereas for the DOs more moderate to severe injuries resulted regardless of whether excessive force was used. One possible explanation, and one that would be an aggravating consideration, is that the DOs selected victims which were much more frail and/or vulnerable (see *R. v. Jones*, 1992; for example). Though such a hypothesis can not be explored without information regarding the physical disposition or characteristics of victims, approximately the same number of DOs (10) and MSOs (8) sexually assaulted infants, the disabled, and/or the elderly. Trevethan, Crutcher, and Moore (2002) also reported low frequencies (1-8%) and no significant difference between the number of DOs and LTOs who victimized the elderly and the handicapped.

There was also no significant differences between the DOs and MSOs in their use of weapons, or threats. The majority of DOs (81%) and MSOs (68%) threatened their victims with harm or death but fewer DOs (66%) and MSOs (44%) actually had or used weapons. Prior research has indicated that differences were not statistically different in the frequency of DOs (50%) and DFs (65%) who used weapons in the commission of their index offences (Bonta et al., 1996). By contrast, Trevethan, Crutcher, and Moore (2002) reported that significantly more DOs than LTOs, in both index and prior offences, used weapons, and threatened violence. In that study, most of the DOs threatened their index (74%) and past (75%) victims with violence

⁴³ Coding on a 5 point scale for brutality as: none (0), excessive threats, violent or sexual (1), attempts to degrade the victim (2), excessive violence of beating beyond necessary for commission of the crime (3), torture (4), or "over-kill" (5). The mean score for the DOs was 1.2.

⁴⁴ Brutally which is set out in section 753 (a)(iii) of the *Criminal Code* has rarely formed the basis of DO designations and definitional difficulties have been noted in both case law and from an empirical perspective (for review, see Rogers & Lynett, 1991; Rogers & Mitchell, 1991).

whereas 40% and 48% of the DOs used weapons in their index and past offences respectively (Trevethan, Crutcher, & Moore, 2002). Across these studies, it can be concluded that the frequency of DOs using weapons in commission of their offences has ranged from 40% to 66% which was significantly more frequent than LTOs (Trevethan, Crutcher, & Moore, 2002), not significantly different than a comparison group of repetitive sexual offenders (MSOs), and similar to the prevalence of weapons use by a violent offender comparison group (DFs) (Bonta et al., 1996). When the documented actions of the offenders were coded as posing possible imminent harm (e.g., knife readily used during the assault), there was no difference between the groups but there was again a greater prevalence of DOs (53%) than MSOs (34%) that posed this type of risk. Notably, focusing primarily on the actions of the offenders as these comparisons have done underscores how victims may respond or can be traumatized by the most minimal, or aggravating, circumstances of imminent or perceived danger.

Of the offenders who had weapons, only six of the DOs and three of the MSOs who caused injuries, caused these injuries with a weapon. The assault on a victim or physical force to render compliance caused most of the moderate to severe injuries (any injuries beyond minor cuts or bruises). However, moderate to severe injuries while relatively infrequent for the DOs (38.5%) and the MSOs (14%) did significantly differentiate the two groups. Elsewhere, Bonta et al., (1996) reported no group differences but considerably larger frequencies of victim injuries⁴⁵ (62% for the DOs and 68% for the DFs), whereas Trevethan, Crutcher, and Moore (2002) reported comparable frequencies of serious injuries in 29% of the index offences and 31% of the prior offences of the DOs. In that study, the DOs were significantly more likely than the LTOs to have caused minor, and serious injuries, in both their index and prior offences (Trevethan,

⁴⁵ Coding information from the authors indicates that the 7 point scale for victim injuries was coded as none (1), slight damage, no weapon (2), slight damage, weapon (3), treated in clinic and released (4), hospitalized at least one night (5), death (6), death and mutilation (7). The mean for the DOs was 2.5.

Crutcher, & Moore, 2002). Again, compared to other sexual offenders (MSOs and LTOs), the DOs caused more injuries but not compared to the frequency of injuries in a group of predominantly non-sexual violent offenders (DFs) (Bonta et al., 1996). These studies do differ in the coding of injuries and Bonta et. al., (1996) and Trevethan, Crutcher and Moore (2002) do not indicate the frequencies of offenders who assaulted only children or adults.

The rapists and mixed offenders in the DO and MSO groups were also compared on others aspects of their crimes which are aggravating factors in the sentencing of sexual offenders. These factors were separated into categories which included sadistic sexual acts (e.g., use of foreign objects), and acts humiliating (e.g., cleaning rituals), or terrorizing to victims (e.g., being bound or blindfolded). There were no differences between the DOs and the MSOs with very similar frequencies for both of the groups. Humiliating acts, and sadistic acts, were both relatively infrequent for the groups (11%-20%), whereas 27 (of 64) DOs and 28 (of 61) MSOs terrorized their victims. With the exception of this latter comparison (terrorization of victims) and the same number of offenders in the groups who humiliated their victims, there was a greater frequency of DOs than MSOs in all other comparisons pertaining to the severity of sexual offences for rapists and mixed offenders. Only two comparisons (abduction or kidnapping, and serious victim injuries) significantly differentiated the DOs and MSOs. These results, and greater frequencies, suggest that the DO group committed more violent and/or severe sexual assaults against adult victims.

Sexual Offences Against Children

When comparisons focused on offenders who victimized children (child molesters and mixed offenders), there were no significant differences between the DOs and MSOs. This included comparisons between the DOs and MSOs in the gender of the victims they selected. The majority of DOs and MSOs assaulted only female children (54% and 62% respectively),

more MSOs (24%) than DOs (13.5%) assaulted only male children, whereas more DOs (32%) than MSOs (13.5%) assaulted both male and female children. Approximately the same number of DOs (66%) and MSOs (64%) met the DSM diagnostic criteria for pedophilia. Most of the child molesters in this research (91%) and approximately one third (32.5%) of the mixed offenders could have (or had been) diagnosed with pedophilia. The diagnosis of pedophilia, while necessary and informative, can as in the instance of Antisocial Personality Disorder (APD) capture an array of offenders and modus operandi from the most “innocuous” fondlers to the more violent or sadistic child rapists. There was no significant difference in the prevalence of pedophilia for either the child molesters or the mixed offenders in the DO and MSO groups. What was perhaps unexpected in the child sexual offence comparisons was the frequency of DOs (40%) and MSOs (46%) who sexually assaulted very young children (under the age of six) and the number of DOs (51.5%) and MSOs (66%) who treated children as “adult surrogates” in their attempted, simulated, or actual rape of child victims. Such assaults were, at least at one time, thought to represent the actions of offenders who preferred adults but “regressed” or acted out sexually with underaged victims. The majority of DOs (52%) and MSOs (75%) who could be diagnosed as pedophiles engaged in these mature or adult-like sexual behaviours with children. Clearly, these findings perhaps dispel earlier stereotypes of child molesters and conceptualizations of pedophilia although more recent research and typologies have recognized the diversity of child molester profiles and offence patterns (Prentky, Knight, & Lee, 1997; see also, Beech & Ward, 2004).

No particular profile emerged for the seventeen DOs in this research who only sexually assaulted children as the nature and pattern of their offences were varied. Clearly, there are specific cases where particular factors served as decisive aggravating factors (e.g., making pornography of child victims). By contrast, the offences of some MSOs appeared qualitatively different (i.e., less serious) than those of the DO child molesters although some MSOs did not,

and still other MSOs appeared destined for some designation if convicted again. To be included as a MSO in this research only two victims were required and there was no significant difference between the DOs' and MSOs' child molesters in the total number of sexual offence victims (ranges were 1-19 and 2-21 respectively). The DOs' child molesters had more past sexual offence victims (M of 3.7 vs. 1.6) whereas the MSOs' child molesters had more index victims (M of 4.9 vs. 3.7). Notably, two DOs were designated with only one child sexual offence conviction – one was also suspected as being instrumental in the drowning death of a three year old when he was eleven years old whereas the other was suspected but never charged with several sexual assaults of two boys and involved in bestiality (*R. v. Laboucan*, 1999; *R. v. Lockerbie*, 1998). By contrast, five of the seventeen MSO child molesters (29%) had only two victims whereas none of the DOs had (only) two victims.

The absence of significant differences between the DOs and MSOs suggest that perhaps offenders who sexually assault children may be designated for unique offence features, or for a constellation of factors that were not captured by the offence comparisons in this research. On the other hand, DO designations in the exercise of prosecutorial and/or judicial discretion do not need to *necessarily* ensure DOs differ either quantitatively or qualitatively from other offenders. It is also possible that plea bargaining or plea arrangements have steered some offenders to determinate sentences rather than the potential consequences of a DO hearing (such “threats” by Crown Counsel were documented in some file information).

Risk of Recidivism

In evaluating risk, several factors can be considered. First, the crimes committed are of utmost importance and captured by various factors in degrees of severity on all risk assessment instruments (often as items for the frequency and diversity of offences). In some cases, the history of violence may anchor an offender to at least a particular risk level regardless of changes

or improvement. The distinction has often been made between static (historical) or stable and dynamic (changeable) factors and between actuarial and/or predicted risk level and the manageability of risk. The current research focuses primarily on static factors in sexual offenders which can, and do, provide an initial baseline for offenders when they are sentenced. Second, the risk of recidivism in sexual offenders is routinely evaluated and reported in probabilistic terms. Clinicians as well as other professionals who use risk measures often make probabilistic statements which carry weight in the decisions that are made, and may well offer the opinion of risk that is adopted by the Courts.⁴⁶ The acceptable (or unacceptable) degree of risk is a judicial matter and has not been specified as an uniform standard but rather determined on the merits of each case (Eaves et al., 2000). However, in a more recent DO hearing, the *Court of Appeal* considered the importance of actuarial measures and indicated that the likelihood of causing injuries is in the high range when it is greater than 50 per cent (*R. v. H (J.T.)*, 2002). Finally, the probable severity of violence must also be considered. Severity of offences is always at issue in sentencing and considers not only offence specifics, but also what could have happened, as in the case of, failed abduction attempts. Several of these factors were previously reviewed (severity of sexual offences) and are notably absent in some of the actuarial instruments for sexual offenders including the SORAG and the Static-99, but are reflected in some of the items of the SVR-20. Actuarial instruments (e.g., VRAG) have been criticized for not taking into account the seriousness of the possible violent recidivism in their outcome research (e.g., Litwack, 2001; Litwack & Schlesinger, 1999).

The purpose of the present research was to evaluate the hypothesis that DOs are “dangerous” by comparing DOs and other repetitive sexual offenders on validated measures

⁴⁶ Several have pointed out the inherent problems associated with reporting probabilities including the appearance of precision, and the possible abdication of responsibility among decision makers in favor of reported probabilities (e.g., Webster, Hucker & Bloom, 2002; see also Coles & Grant, 1999; Hart, 2003).

predicting both violent, and specifically sexual recidivism. The results clearly pertain to the potential for further harm which is an essential component to designating an offender as a DO. Although hampered by methodological limitations, early research studies suggested that DOs were not more dangerous or more violent than other violent offenders. More recently, research has indicated that there were no significant differences between DO groups and Detention Failures (Bonta & Motiuk, 1996) and Serious Personal Injury Offenders (Zanatta, 1996) in their probability of violent recidivism as measured on actuarial, and predictive instruments (PCL-R and VRAG). By contrast, there was a statistically significant difference between 161 DOs and 78 LTOs in their level of risk to reoffend although nearly all of the offenders were rated to be at a high risk (98% of the DOs and 90% of the LTOs) (Trevethan, Crutcher, & Moore, 2002). How the level of risk in that study was determined or measured was not specified.

Probability Of General And Violent Recidivism

The DOs and the MSOs were compared on the Psychopathy Checklist Revised (PCL-R) and the Violence Risk Assessment Guide (VRAG). Both of these measures are routinely employed in forensic assessments and have accumulated empirical support for their ability to predict violent recidivism. Most assessments prepared on sexual offenders, and for DOs in particular, have used measures of general and violent recidivism and not just measures for the potential of sexual reoffending. Although the PCL-R and the VRAG have also been used with sexual offenders their predictive accuracy has been better for any violence than for specifically sexual recidivism (e.g., Barbaree et al, 2001; Hare, 2003; Quinsey et al., 1998). It was hypothesized that the DOs, by virtue of their designation and the intent of the legislation, would have higher scores on the PCL-R and VRAG compared to a group of repetitive sexual offenders (MSOs). The results supported the hypothesis as there were statistically significant differences

between the DOs and the MSOs on both PCL-R and VRAG Total Scores indicating that DOs as a group, have a greater probability of violent recidivism.

The PCL-R is one of the most widely utilized and accepted forensic instruments (Hemphill & Hare, 2004; Lally, 2003; Tolman & Mullendore, 2003). Generally, psychopathy can be characterized as a personality disorder epitomized by impulsive acting out in the context of affective and interpersonal detachment. Offenders with higher or elevated PCL-R scores (particularly those classified as psychopathic) begin committing crimes at an earlier age, commit more violent crimes, and are more likely to use weapons, violate conditional releases, and be violent while institutionalized (e.g., Hart, 1998b; Hare, 2003; Hemphill et al., 1998; Salekin, Rogers, & Sewell, 1996; Simourd & Hoge, 2000). The DOs and MSOs had a similar range of PCL-R Total Scores and means of 28.18 and 25.42 respectively. These means are higher than the PCL-R original pooled mean of 23.6 (Hare, 1991) and the more recent pooled mean of 22.1 for 5408 male offenders incarcerated in various North American (federal and provincial) institutions (Hare, 2003). However, these means (in the current research) are consistent with a prior file-based review of DOs ($n = 48$, M of 27.6; Bonta et al., 1996) as well as some samples of sexual offenders (e.g., Brown & Forth, 1997; Porter et al., 2000).⁴⁷

There are varying opinions in how to translate PCL-R Total Scores into probabilistic risk terms where some suggest scores of ≥ 25 , and others suggest that scores of ≥ 30 , should be regarded as high risk (see Hare, 2003 for related discussion and consideration of various diagnostic cutoffs and schemes). The “accepted” practice in British Columbia is to use a score ≥ 30 for designating psychopathy, and high risk. Thus, the mean PCL-R Total Scores for both the

⁴⁷ In recently completed research on memory for violence, Cooper (2005) found similar PCL-R Total and Factor scores for the 135 inmates incarcerated at either a maximum or medium security institution in B.C. and convicted of at least one sexual or violent offence. PCL-R Total, Factor 1, and Factor 2 scores were 26.45, 9.47, and 13.03 respectively, with the 39.3% of the sample meeting the diagnostic criteria for psychopathy ($> 80\%$ of the PCL-R protocols were scored based on both interview and file information).

DOs and the MSOs place them in the moderate range of recidivism.⁴⁸ Most of the offenders in the current research (86%) had PCL-R Total Scores of ≥ 20 (i.e., at least moderate risk). The difference between the mean PCL-R Total Scores for the DOs and the MSOs may be considered relatively small (2.76). As such, it is possible to highlight either how different (i.e., DOs being close to the suggested cut-off of 30 for psychopathy; Hare, 1991; 2003), or how similar the groups are. Again, these results parallel the earlier reviewed findings that DOs are somewhat more severe or serious offenders than other repetitive sexual offenders (i.e., the MSOs). At the same time, the prevalence of psychopathy in DOs (29-40%) in research thus far (Bonta et al., 1996; Zanatta, 1996) including the current research (38%) is perhaps surprisingly low, or can dispel any popularized notions that DOs are “psychopaths”.

Research on the PCL-R has identified and validated an underlying two factor solution which has recently come under greater scrutiny with other factor solutions being proposed (Cooke & Michie, 2001; c.f. Hare, 2003).⁴⁹ Factor 1 items are related to the interpersonal and affective components of psychopathy including the selfish, callous, and remorseless use of others. By contrast, social deviance is captured by Factor 2 consisting of items related to a chronically unstable and antisocial lifestyle. There was a significant difference between the DOs and the MSOs on PCL-R Factor 2 Scores (again in the predicted direction) but not on Factor 1 scores. Notably, the mean Factor 1 and Factor 2 scores for the MSOs (10.62 and 10.68 respectively) were comparable to the Factor 1 and Factor 2 means for 329 federally incarcerated sexual offenders in Canada (10.04 and 10.99 respectively) (Porter et al., 2000). By contrast, the DOs had a mean Factor 1 Score of 11.03 and 12.91 for Factor 2. Research has examined the

⁴⁸ Parts of Eastern Canada ascribe to the former, translating PCL-R Total Scores of ≥ 25 as high risk. (35% of this sample, 31 DOs and 27 MSOs, had PCL-R Total Scores between 25 and 30).

⁴⁹ Subsequent to data collection, the scoring of PCL-R Factor 2 Scores has been revised to include the criminal versatility item which previously did not load on either Factor in original PCL-R manual (Hare, 1991). Evidence supporting the two factor structure of psychopathy indicates that each factor can be separated into two correlated components or facets (Hare, 2003).

factor structure of the PCL-R and how the two factors relate or contribute to understanding risk of violent recidivism. Results indicating that (for example), Factor 2 has been a stronger predictor of impulsive, reactive, and/or disinhibited violence whereas Factor 1 has been correlated, to a greater extent, with instrumental, planned or predatory violence (e.g., Cornell et al., 1996; Hart & Dempster, 1997; Woodworth & Porter, 2002) could have some explanatory significance for risk of sexual recidivism. However, in a recent review of the research, neither PCL-R Total Scores nor either of the Factor Scores demonstrated a strong or consistent association with sexual offending except when PCL-R scores were combined with measures of sexual deviance (Hare, 2003; see also Hemphill & Hare, 2004). Most of the difference in the PCL-R Total and Factor 2 Scores between the DOs and MSOs were for the child molesters and mixed offenders in these groups. By contrast, the rapists which made up the majority (55%) of the DOs and MSOs had more similar mean PCL-R Total Scores (29.39 and 27.86 respectively) and mean Factor 2 Scores (13.74 and 12.16 respectively).

The results also indicated that the DOs and MSOs were significantly different on the VRAG which is an empirically derived actuarial instrument for predicting risk for violence. The VRAG was originally constructed on forensic patients⁵⁰ and has since been used with various inmate samples though questions regarding validation and generalizability remain (e.g., Hart, 2003). Total scores for the VRAG have been divided into nine bins (or categories) of risk probabilities which can translate into three ranges of risk (low, moderate, high) each consisting of three bins.⁵¹ The DOs' and MSOs' mean VRAG Total Scores, though in adjacent bins, would be categorized at high and moderate risk for violence respectively. DOs have previously been compared to other violent offenders and the mean VRAG Total Scores for Detention Failures

⁵⁰ In their updated summary of all replication studies of the VRAG/SORAG the authors of these instruments report a median of .72 ROC areas for the prediction of violent recidivism (<http://www.mhcr-research.com/ragreps.htm>).

⁵¹ While this does occur in practice, it is not necessarily advocated by the authors of the VRAG.

(Bonta et al., 1996) and Serious Personal Injury Offenders (Zanatta, 1996) also fall into the high risk range (mean VRAG Total Scores of 16.9 and 15.8 respectively). The VRAG identified 53 DOs (65%) and 47 MSOs (57%) as high risk. By contrast, PCL-R Total Scores (≥ 30) would place 31 DOs (38%) and 24 MSOs (29%) at a high risk to recidivate.

Mean VRAG Total Scores indicate probabilities of violence of 55% for the DOs and 44% for the MSOs by seven years post release and probabilities of 64% for the DOs and 58% for the MSOs at ten years. Although significantly different, the difference between the DOs and MSOs in their likelihood of violence is only approximately 10% at these follow-up periods. The same can be said about the number of DO and MSO classified as high risk (or psychopathic) with the PCL-R (i.e., approximately a 10% difference between the groups). How statistically significant differences translate into legal significance (Litwack & Schlesinger, 1999; see also Gendreau, 2002), clinical significance, or policies (public or administrative) are questions which arise from such findings. Is a risk for violence difference of approximately 10% sufficient to justify special provisions for sexual offenders or do these statistically significant differences confirm the appropriate application of the legislation?

Probability Of Sexual Recidivism

Despite the linear relationship between higher PCL-R (and VRAG) scores and the increased probability of recidivism, lower PCL-R scores for sexual offenders (particularly for pedophiles) do not necessarily indicate lower risk to sexually reoffend (e.g., Hare, 1999; Hart, 1998). The relationship between psychopathy and sexual violence is complicated. Psychopaths are more likely to commit violent offences but not necessarily sexual offences thereby reducing their opportunity to sexually reoffend as they would be incarcerated for other offences (Brown & Forth, 1997; Hare, 2003; Porter et al., 2000). Sexual offenders also have lower base rates of recidivism, and are heterogeneous, varying with the type of sexual crimes they commit. For these

reasons (and others, such as different predictors than for general and violent recidivism), sexual offenders require specifically designed risk measures (e.g., Hanson, 2001).

Several actuarial and semi-structured instruments have been developed to enhance the predictive accuracy of violent recidivism to encompass the unique factors of sexual reoffending. Some of these instruments (i.e., Static-99) with the accumulation of outcome studies now also have probabilities for both sexual and violent recidivism perhaps negating the need for instruments that have not been developed for sexual offenders.

The DOs and MSOs were compared on two empirically derived actuarial measures (SORAG, Static-99) and an instrument designed for the structured clinical assessment of sexual offenders (SVR-20). The SVR-20 is based on 20 theoretically guided factors which are empirically related to sexual offending whereas both the SORAG and the Static-99 are empirically derived but atheoretical. However, these latter measures are now said to have some items which tap into underlying constructs that are conceptually related to sexual offending and recidivism (Beech & Ward, 2004). As hypothesized, there were statistically significant differences between the DOs and the MSOs on the SORAG, Static-99, and SVR-20 indicating that the DOs, as a group, have a higher probability of violent and sexual recidivism.

The SORAG, whose development parallels the VRAG, identified 63 DOs (77%) and 45 MSOs (55%) as high risk at both seven and ten years post-release (high risk being the three of nine upper SORAG risk bins). The SORAG identified 10 more DOs, and 2 fewer MSOs, as high risk compared to VRAG indicating that the four additional items on the SORAG (three pertaining solely to sexual offences) are capturing some unique variance.⁵² It may be that the

⁵² Sexual deviance is captured on one SORAG item (phallometric results), and the SORAG is said to have greater applicability when such testing has been completed (though this item is only coded as -1 or +1, and 0 if not applicable). In this research, only 26 (16%) of the offenders had undergone phallometric testing. The other two items specific to sexual offending account for the number of prior sexual offence convictions, and whether or not the offender has only sexually assaulted females under the age of 14.

SORAG provides greater specificity for identifying high risk sexual offenders but this comparison (as others) is predicated on the assumption that the DOs which have been designated are at a greater risk to commit future violence or sexual crimes than other sexual offenders.

Comparing the mean SORAG Total Scores for the DO group (25.18) and the MSO group (19.18) indicates that the DOs have a higher likelihood of violent (including sexual) recidivism at seven years post-release (75% vs. 58%) which at ten years, is 80% and 76% for the DOs and MSOs respectively. Although statistically significant, these differences in risk probabilities (as in those of the PCL-R and the VRAG) are arguably relatively small for specific legislation concerned with the probability of further harm targeting the most “dangerous” sexual offenders. Trevethan, Crutcher and Moore (2002) also reported only an 8% difference between DOs and LTOs who were rated as high risk (98% versus 90%). Of course, the difficulty lies not in the probability of sexual (or violent) recidivism but in the potential severity of any further crimes. Probability outcome studies have not distinguished between the seriousness of sexual (or violent) recidivism but in DO hearings, the potential harm appears to be taken as being related to that which occurred in the prior offences of the offenders. In contrast, a recent meta-analysis found that the relationship between the probability of sexual recidivism and the severity of sexual index offences in the degree of force used (i.e., victim injury, use of weapons) was “trivial” (less than 5%) (Hanson & Morton-Bourgon, 2004). Probability of sexual recidivism was also negatively related to sexual intrusiveness but both degree of force, and sexual intrusiveness, were significantly related to general (non-violent) criminality and violent non-sexual recidivism.

The Static-99 has accumulated empirical support in its ability to predict sexual recidivism with a reported mean ROC area of .72 (Harris, A., et al., 2003) and has recently been paired with both measures of stable dynamic, and acute, risk factors for a continuous evaluative process (Hanson & Harris, 2002). Mean total scores on the Static-99 were significantly different between the DOs and MSOs, again in the predicted direction. The mean total score for the DO

group (6.10) fell into high risk category whereas the MSOs' mean total score (4.90) was in the medium-high risk range. The range of differences in risk probabilities between the high and medium-high risk categories is 13-16% for sexual recidivism and 7-8% for any violent recidivism at various follow-up periods of 5, 10, and 15 years (Harris, A., et al, 2003; see Appendix G).

The recommended and *proper* use of SVR-20 entails the consideration of 20 factors in deriving an opinion of low, medium, or high risk. There are no corresponding numerical values or weights attached to the factors or explicit guidelines for making determinations of risk. In attempting to avoid potential bias and/or reduce subjectivity, there were no global judgments made for the DO's and MSO's overall risk. Instead, each factor was rated on three point scale (0, 1, 2) resulting in summation scores for first two sections of the SVR-20.⁵³ Similar procedures have been utilized in other research projects (e.g., Dempster, 1998; de Vogel et al., 2004) but such an adaptation of this instrument does reduce the meaning of group differences to very general statements about the SVR-20 sections.⁵⁴ Specifically the DOs and MSOs were significantly different on both Sections I (Psychosocial Adjustment) and II (Sexual Offending) indicating that the DOs had more difficulties associated with their psychosocial development and functioning, and committed more serious sexual offences and/or exhibited attitudes or beliefs supporting their sexual crimes. It is difficult to be more specific about these mean differences, but there is also no meaning for scores on the SORAG or Static-99 – only corresponding risk probabilities. Overall, results from the SVR-20 indicate, as the other measures have, that the DOs are at a greater risk for sexual recidivism.

⁵³ SVR-20's third section (Future Plans), which is made-up of two dynamic factors, was not used in this study as the coded information, and offender and offence details from the earlier study of DOs (Zanatta, 1996) did not contain the information required for the coding of these items.

⁵⁴ Notably, both of these studies (Dempster, 1998; de Vogel et al., 2004) also utilized global risk judgments which had greater predictive accuracy than when the SVR-20 was scored as an actuarial instrument.

It has been suggested that the utility of the SVR-20 will increase with the provision of associated risk probabilities (Hanson, 2000), but the SVR-20 as a risk instrument, does potentially identify areas of offenders' risks and needs whereas the actuarial measures do not. Particularly in DO hearings and in other serious sexual offender cases, the flexibility of structured professional judgment using guidelines such as those in the SVR-20 is necessary to capture any exceptional or high risk characteristics which are probably not well represented in actuarial construction samples (i.e., because of low base rates).

Risk of Recidivism in Sexual Offender Types

Rapists, child molesters (or pedophilic offenders) and mixed offenders are recognized as basic and distinct types of sexual offenders in research and in practice. These subtypes were utilized as part of the matching criteria for the DOs and MSOs and comparisons were made between the subtypes on the various risk measures. Within the DO and MSO groups, the means for the PCL-R and SVR-20 as well as the actuarial measures (VRAG, SORAG, Static-99) were consistent with other research findings with rapists having the highest means and the child molesters having the lowest means (e.g., Hare, 2003; Porter et al, 2000). Between the groups, the biggest differences in the means for the various measures was between the mixed offenders in the DO and MSO groups. This was consistent across all measures with the exception of Factor Two of the PCL-R where the means for the child molesters differed the most. The largest, and only (error corrected) significant difference among the various measures across the offender types was between the DOs' and MSOs' mixed offenders on the SORAG (M of 27.55 and 18.00 respectively). Notably on the SORAG (and VRAG), the DOs' and MSOs' rapists and child molesters were in the same risk range (high and moderate respectively) whereas the mixed offenders were in the high range for the DOs and the moderate range for the MSOs.

The mean scores on the various measures for the DOs' mixed offenders were more like (or comparable to) the DOs' rapists rather than the DOs' child molesters. By contrast, the mixed offenders in the MSO group had more varied obtained mean scores with some comparable to the MSOs' child molesters (Static-99) and the others somewhere between MSOs' child molesters and rapists (PCL-R, VRAG, SORAG). These results suggest that the differences between the DOs and the MSOs can, to some extent, be attributed to differences in the groups' mixed offenders. It may be that the mixed offenders in the DOs are more aggressive or psychopathic as their scores on these measures resembled those of the DOs' rapists. The DO mixed offenders also had the highest means on the Sexual Offending Section of the SVR-20 suggesting more frequent, varied, and severe sexual offences than any of subtypes in either of the DO or MSO groups.

The use of Predictive Measures of Risk in the Assessment of Dangerous Offenders

A recent meta-analysis has indicated that structured clinical assessments were superior to unaided clinical judgment but actuarial measures outperformed both of these methods of assessment in predicting sexual recidivism. The predictive accuracy of actuarial instruments, regardless of recidivism outcome (i.e., general, violent, sexual) was in the moderate to large range with no significant differences between actuarial measures including the SORAG and the Static-99 (Hanson & Morton-Bourgon, 2004; see also, Barbarree et al., 2001).⁵⁵ There are no guidelines on when a particular actuarial recidivism measure may be more applicable apart from the need to consider the similarity of an offender to the standardization and/or other outcome samples for a particular measure. Both the Static-99 and SORAG now have outcome research with federal inmate samples (e.g., Harris, G., et al., 2003), but there are limitations with the use of any actuarial measures (for review, see Douglas & Ogloff, 2003).

⁵⁵ Although there were no significant differences between the measures, the VRAG and SORAG were the most accurate (largest ROC areas reported).

In this research, mean scores on the Static-99 and on the SORAG (and VRAG) place the DO group at a high risk for recidivism and would identify a similar number of DOs on the Static-99 (72%) and on the SORAG (77%) as high risk (for sexual and violent recidivism respectively). However, based on individual scores, eight (14%) of the DOs identified as high risk on the Static-99 were at lower than high risk levels on SORAG. Correlations between the measures did indicate, in particular, consistently lower correlations between the Static-99 and the other measures utilized in this study (range of .39 to .60) suggesting that the Static-99 is measuring different attributes and accounting for unique variance. But this finding also indicates that some offenders would be assessed at different risk levels depending on the measure that was used and the recidivism outcome that is predicted. Although some discrepancy and measurement error is perhaps not unexpected, it does raise some concern or considerations in the use of actuarial measures in the assessment of sexual offenders.

There are several actuarial instruments developed for the prediction of sexual (and violent) recidivism and one solution would be to use more than one and explain any resulting discrepancies. Another would be to describe contexts where a particular instrument may be limited. In this research, several DOs were designated after committing numerous sexual crimes without being previously detected, or with relatively few (if any), prior charges or convictions. Their crimes (as in any sexual offender) can represent sexual deviance whether it is pedophilic, violent, sadistic, or some other deviant sexual interest. Mental health experts would need to confirm any such diagnoses based on patterns of behaviour, self-reported information, and/or testing (phallometric or self-report inventories). Sexual deviance, in the absence of prior charges or convictions, is not captured particularly well by either the SORAG or the Static-99 but is recognized as an attribute that needs to be accounted for in subsequent risk measures as it is predictive of recidivism (Hanson & Morton-Bourgon, 2004) particularly when it interacts with psychopathy (Hare, 2003; Hemphill & Hare, 2004). Notably, some of the more dynamic and

acute risk factors pertain to sexual deviance (e.g., Hanson, 2001). To what extent is either the SORAG or the Static-99 appropriate for sexual offenders with several index sexual crimes but few, or no prior convictions? In this research, 20 DOs (24%) had no prior convictions for sexual offences whereas another 17 DOs (18%) had conviction(s) related to only one prior victim.

Methodological Considerations

Since the inception of the DO legislation in 1977, one question has persisted. Why have some offenders been selected and designated and not others? In response, one study (Bonta et al., 1996) considered the role of prosecutors in this legal process⁵⁶ but most research efforts have focused on comparisons between DOs and other violent offenders. Actual or proper outcome comparisons of risk are not possible as some, if not most, DOs will not be released (see Litwack & Schlesinger, 1999 generally for a thorough discussion of the early research in this area). Others will likely spend more time incarcerated because the Courts have declared them to be DOs and release decisions will thereafter, at least consider, if not be influenced by their designation. The question then becomes, what research design could provide a sufficient examination of discretionary preventive detention legislation?

The current research arose out of findings that DOs were not significantly different from other violent offenders on various predictive risk measures (Bonta et al., 1996; Zanatta, 1996) but were comprised mainly of sexual offenders. DOs are “hand-picked”, and some for characteristics that may be remarkable or distinguish them from most other sexual offenders. The comparison group in this research (MSOs) were selected according to simple and quite liberal

⁵⁶ This study considered the responses of only Crown Attorneys who had successfully prosecuted DO cases and provides data on decisions to proceed with an application. However, not all high-risk sexual offenders who could (or should) be designated are considered for a DO application. For example, some sexual offenders that need to be detained to WED have arguably not received sufficient determinate sentences or were not appropriately considered for a DO/LTO designation.

matching criteria (i.e., at least two sexual offence victims) and accordingly limit the generalizability of the results. More rigorous criteria or case-by-case matching would probably reduce the sample size considerably but likely reveal few (or fewer) differences between DOs and other sexual offenders. This conclusion is premised on the following: The Courts that process DO cases do not *necessarily* and can not (always) appreciate the comparative gravity and circumstances of different cases. The application of the legislation is discretionary, and arguably because judges do not specialize or focus on particular legal or criminal matters, judgments focus primarily on the application of law and the case at hand. Prior decisions are reviewed more for legal precedent rather than the comparison of particular cases. As such, it is possible to identify some cases with similar crimes or characteristics but with very different outcomes (though some provincial initiatives have now been established to identify and/or track high-risk offenders).

In this research, the severity of violence focused on specific (objective) features of various sexual assaults as there were concerns regarding the possibility of some bias (files were coded by one researcher). Instead, global judgments (and ratings) of severity could have been made for the offenders' crimes based on specific criteria and tested through inter-rater agreement (as have the risk instruments in this research). Overall ratings are often used in risk assessments (e.g., guided by SVR-20 or HCR-20) and in some respects, parallel the function of judges.⁵⁷

Other methodological considerations include file-based research, the classification of sexual offender subtypes, and statistical analyses. A major shortcoming of this research was relying on file information to code the various characteristics of the offenders and to complete the PCL-R, SVR-20, and the actuarial measures. When reviewing files, the absence of

⁵⁷ DO and MSO offender and crime vignettes could also be rated by members of the public to determine their perceptions of "dangerousness", risk, and the influence of various offence particulars in the sentencing of sexual offenders. Such research would indicate whether or not the sentencing of DOs and other sexual offenders reflect community interests or standards of tolerance.

information cannot be taken as confirmation that certain events or incidents have not occurred unless that is stated explicitly. Research utilizing interviews, by contrast, would at least ensure that the pertinent questions have been posed to the subjects as well as providing an opportunity to confirm, clarify, or challenge the accuracy of file information.

In Zanatta (1996) a particular age-defined separation of child and adult sexual offenders was adopted, and subsequently used in this research. Such parameters, however clear and simple, do not take into account either the motives for sexual crimes nor any other characteristics in distinguishing between rapists, child molesters, and mixed offenders. As in any research, the classification of any sexual offender subtypes also always, and can only, rely on detected, known, and self-reported crimes.

This research focused on univariant comparisons at the expense of more exploratory but potentially explanatory models. Part of the rationale for this (and the manner in which the results have been presented) rests on how, or the focus in, assessments of sexual offenders and their characteristics. Research in this area, however poorly operationalized and/or statistically conducted, has also tended to focus on simple or “straight-forward” between-group comparisons. Sample size is also almost always a concern for power in statistical analyses (e.g., Cohen, 1992). The coding of subjects in this research, as in Zanatta (1996), ended when no further DOs which could be matched to control subjects were available. Thus, the present research “exhausted” all DOs that were available in the CSC Pacific region.

The focus of this research has been primarily on group differences but in recent years and since this data set was collected, there have been many developments or contributions to risk assessment and the use of actuarial measures in particular, which could have changed this research procedurally. A new technical manual is available for the PCL-R (Hare, 2003) which alters the items which make up PCL-R Factor 2 scores. More extensive scoring guidelines and decision examples have been produced for the Static-99 (Harris, A. et al., 2003). Some have

suggested that the use of static risk instruments without the consideration of dynamic factors is now unjustified or redundant with dynamic scales (e.g., Bonta, 2002). If or when recidivism follow-up studies which define outcome with greater specificity (e.g., degree or type of violence or harm) become available (e.g., Douglas & Ogloff, 2003), they will undoubtedly contribute to further research on the risk of DOs compared to other offenders. Finally, but most importantly, there are some that now contend that the superiority of actuarial instruments has of yet not been empirically established, that some actuarial instruments have not been properly cross-validated, and that justifications for their use are as valid as justifications for not using them (e.g., Hart, 2003; Hart, Laws & Kropp, 2003).

Summary

The purpose of this research was a comparison of offenders designated as DOs and sentenced to preventive detention because of their sexual crimes and probability of future harm with other non-designated sexual offenders. The impetus for such investigations has been questions regarding the need for preventive detention, the civil liberties of offenders, and the consistent application of such measures. Prior research findings has questioned the effectiveness of the legislation (Berzins, 1983; Koopman, 1985; Zanatta, 1996) or claimed support for its application (Bonta et al., 1996; Trevethan, Crutcher, & Moore, 2002) by comparing DOs with other violent offender groups.

Designated DOs, who are primarily sexual offenders, were compared to a group of repetitive sexual offenders. Both Bonta et al., (1996) and Zanatta (1996) found that the DOs had more index sexual offence victims but in this matched design, the DOs had significantly more prior sexual assault victims than the MSOs. However when offences were combined, there was no difference in the total number of past and index victims for the DOs and MSOs. There were also no apparent sexual offence victim frequency differences between the DOs and LTOs in the

Trevethan, Crutcher and Moore (2002) study. Number of victims is always an important sentencing consideration contributing to the severity or enormity of the crimes committed (or the pathology of an offender) but unlikely to be solely instrumental in the decision to proceed with a DO application. DOs have been designated for as few as one victim (conviction), and in this study, the DOs and MSOs had a similar range of total number of sexual offence victims.

There is some evidence that the DOs who victimized adults (rapists and mixed offenders) committed more serious or severe sexual offences. Their crimes may be characterized as more brazen or callous as they were significantly more likely to abduct and/or injure their victims. And although consistent with the findings of Trevethan, Crutcher and Moore (2002), relatively few DO rapists and mixed offenders committed such crimes (less than 39%). Perhaps the most compelling, and prevalent, offence difference to emerge was that the DOs did not simply approach strangers, but grabbed them (children or adults) and/or attempted to take them forcefully. Although more prevalent in the sexual crimes of DOs, other serious sexual offence features did not differentiate the DOs and MSOs who sexually assaulted adults. It is unclear whether any particular type (or characteristics) of child molesters or pedophilic offenders has been captured by the DO provisions as there were no significant differences in the DOs and the MSOs in the various offence features pertaining to child victims.

Prior research has indicated that there were no significant differences in the risk for violent recidivism between DOs and other violent offenders (Bonta et al., 1996; Zanatta, 1996) or a minor difference (8%) in the prevalence of high risk offenders among DO and LTOs (Trevethan, Crutcher, & Moore, 2002). The current study is the first one that has produced results indicating that the risk of violent and sexual recidivism, based on actuarial measures, is significantly greater in DOs than in a comparison group. The DOs, as a group, would be classified as at a high risk for recidivism on the VRAG, SORAG, and the Static-99 whereas the MSOs would be classified at a lower risk level and had lower prevalences of high risk offenders.

Based on mean scores and the various follow-up periods for these measures, the difference in the reported probabilities for either violent or sexual recidivism between the DOs and MSOs ranged from 4 to 17%.

Ostensibly, the results of research using predictive and actuarial measures indicate that DOs, while as likely to recidivate as other violent offenders (Bonta et al., 1996; Zanatta, 1996), are, as a group, more likely to recidivate than other repetitive sexual offenders. Some of the more serious crime features for offenders who sexually assaulted adults were also more prevalent among, but not unique, to the DO group. To some extent, the results of the current study can be taken as supporting the appropriate use of the legislation. At the same time, preventive detention remains primarily reactive sexual offender legislation, perhaps in lieu of appropriately sturdier determinate sentences for all sexual offences, and the need to focus on prevention.

The direction for further research on DOs was clearer with the completion of Bonta et al., (1996) and Zanatta (1996) than with the results of this research and Trevethan, Crutcher and Moore's (2002) study. This is not to suggest that results clearly support or advocate a particular position on the DO legislation, or its administration. Part of the difficulty pertains to research on legal issues which can not ever necessarily pertain to any particular case as empirical investigations are primarily nomothetic whereas criminal proceedings are essentially idiographic (see generally Coles & Grant, 1999). To some extent, this caveat applies more so to preventive detention. The *Supreme Court* has indicated, and reaffirmed, that discretion is a necessary component of the legislation. Few can argue with the foundation of their reasons, but there is still a case to be made that the DO provisions are not (or have not) been consistently applied. It is not clear whether the question of why some offenders are selected for DO hearings/proceedings, and not other high-risk sexual offenders, has yet been answered. The creation of the LTO designation may, in some respects, serve as a legislative solution to this problem.

An Alternative to the Designation of Dangerous Offenders

The backdrop for the current research are studies that have attempted to evaluate, through various methodological designs, the discretionary application of legislation enabling the prevention detention of certain sexual offenders. The research on DOs can not be considered an evaluation of the DO legislation per se, but rather comparisons between designated DOs and other offenders. None have condemned the purpose of the legislation, only its selective application. Almost without exception, the research studies have concluded, rather boldly, as either providing evidence supporting the legislation or refuting its necessity. Certainly, depending on how the findings of the current (and prior) research is presented or highlighted, either position could be supported. Regardless of philosophical differences or concerns, such findings should indicate that the legislation is not applied consistently, or alternatively, not applied in a thorough enough manner. Should more sexual offenders be designated as DOs, or are there other alternatives? One solution is advocated for its simplicity, cost-effectiveness, and ease in application.

Prior to the restructuring of sexual offences and their sentences in the *Criminal Code*, it was possible for a repeat sexual offender to receive a life sentence for one count of rape (e.g., *The Queen vs. Truscott*, January 20, 1983: County Court, Chilliwack, B.C., sentenced February 10, 1983: Case No. 431/81). Life sentences are no longer an option for sexual offences but remain so for certain property offences reflecting the continuing disparity between public opinion and criminal sanctions which have supposedly sought to represent the codified sentiment of public values (e.g., Douglas & Ogloff, 1997; Peebles, 1999; Petrunik, 2002). Sentences for sexual offences have traditionally been less harsh than those for other offences and property offences in particular, and not proportionate to the harm caused (Petrunik, 2002). Although some DOs and sexual offenders are charged with offences (i.e., kidnapping) that have possible life

sentences, sexual offenders rarely receive life sentences.

Offenders who have (or could) receive life sentences for sexual offences would, as do DOs, have their cases reviewed by the Parole Board on a regular and mandated basis. There are also mandatory psychiatric and psychological assessments before any offender with a life sentence is considered for release by the Parole Board essentially evaluating risk at a more crucial juncture, prior to release rather than (only) at sentencing. There is no difference in the composition of Parole Boards who review, or revoke (once in the community), DOs and offenders with life sentences. With automatic parole reviews after the first seven years of detainment, DOs sentenced under the current regime are functionally serving a life sentence with a minimum of seven years to be served before parole eligibility. Life sentences (as are sentences for DOs) are also indeterminate and protective, but without a special designation that can affect reintegration potential when the Parole Board does deem an offender ready for release. There is also not the necessity, time, expense, or ritual of an additional sentencing hearing. There would be no need for the Crown to select cases for DO hearings, nor the need to seek the approval of the Attorney General. Judges could simply sentence offenders, and set the minimum sentence to be served, on the bases of the severity of their sexual crimes and the obvious failure of any prior punitive or rehabilitative efforts. Psychiatric and psychological opinion would be available, as it currently is, for the most serious offenders or offences.

Regardless of the risk prediction at sentencing, the actual rehabilitation efforts of offenders begin when they start serving their sentences. This is alluded to as an important, yet unpredictable factor in sentencing hearings. Rather than speculate, very serious sexual offenders (i.e., repetitive and/or particularly sadistic/heinous offenders) can be treated consistently by being sentenced to life (with minimum terms) allowing for “the test of time” without any discretionary or symbolic application of special legislation. This does not alter the function of the Parole Board and can potentially capture more high risk sexual offenders. That sexual offenders

are frequently considered for detention to their Warrant Expiry Date because of the continuing risk that they pose, and that public/media notification or tracking of offenders is required when they are released indicates that the sentencing options that are currently available are either not adequate, or not properly utilized. The sentencing of repeat sexual offenders needs to become more preventive, rather than reactive (or demonstrative) as it is in DO designations.

Conclusion

Across time and jurisdictions, there have been several and varied legislative responses addressing the devastation and outrage caused by repeat, and/or particularly heinous, sexual offenders. In Canada, the Dangerous Offender provisions allow for the preventive detention of certain sexual offenders. The results of the current research provide some support for the harm caused, and the risk posed, by (some) designated DOs. However, there is not the clear demarcation of characteristics or risk between DOs and other repetitive sexual that special preventive measures should strive for, and attain. Research results again indicate that there are other offenders as likely as DOs to commit further violence and/or sexual crimes. One solution is advocated, not necessarily as a replacement for the current legislative provisions, but as an option which can be readily utilized (in cases where life sentences are available) and potentially captured more high risk sexual offenders and detain them until their risk is deemed manageable. Such sentences would accomplish the same preventive goal as indeterminate sentences.

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Appendix A. Part XXIV as revised in 1997.¹

PART XXIV: DANGEROUS OFFENDERS AND LONG-TERM OFFENDERS

Interpretation

Definitions - “Court” - “Serious personal injury offence”.

752. In this Part,

“court” means the court by which an offender in relation to whom an application under this Part is made was convicted, or a superior court of criminal jurisdiction;

“serious personal injury offence” means

(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder involving

(i) the use or attempted use of violence against another person,
or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person, and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Dangerous Offenders and Long-Term Offenders

Application for finding - Report.

752.1 (1) Where an offender is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a) and, before sentence is imposed on the offender, on application by the prosecution, the court is of the opinion that there are reasonable grounds to believe that the offender might be found to be a dangerous offender under section 753 or a long-term offender under section 753.1, the court may, by order in writing, remand the offender, for a period not exceeding sixty days, to the custody of the person that the court directs and who can perform an assessment, or can have an assessment performed by experts. The assessment is to be used as evidence in an application under section 753 or 753.1.

(2) The person to whom the offender is remanded shall file a report of the assessment with the court not later than fifteen days after the end of the assessment period and make copies of it available to the prosecutor and counsel for the offender. 1997, c. 17, s. 4.

Application for finding that an offender is a dangerous offender - Time for making application - Application for remand for assessment after imposition of sentence - If offender found to be dangerous offender - if application made after sentencing - If offender not found to be dangerous offender - Victim evidence.

¹ Adapted from Department of Justice Canada, <http://canada.justice.gc.ca> (non-commercial use is not prohibited).

753. (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find the offender to be a dangerous offender if it is satisfied

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

- (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
- (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or
- (iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

(2) An application under subsection (1) must be made before sentence is imposed on the offender unless

- (a) before the imposition of sentence, the prosecution gives notice to the offender of a possible intention to make an application under section 752.1 and an application under subsection (1) not later than six months after that imposition; and
- (b) at the time of the application under subsection (1) that is not later than six months after the imposition of sentence, it is shown that relevant evidence that was not reasonably available to the prosecution at the time of the imposition of sentence became available in the interim.

(3) Notwithstanding subsection 752.1(1), an application under that subsection may be made after the imposition of sentence or after an offender begins to serve the sentence in a case to which paragraphs (2)(a) and (b) apply.

(4) If the court finds an offender to be a dangerous offender, it shall impose a sentence of detention in a penitentiary for an indeterminate period.

(4.1) If the application was made after the offender begins to serve the sentence in a case to which paragraphs (2)(a) and (b) apply, the sentence of detention in a penitentiary for an indeterminate period referred to in subsection (4) replaces the sentence that was imposed for the offence for which the offender was convicted.

(5) If the court does not find an offender to be a dangerous offender,

(a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find that the offender is a long-term offender or hold another hearing for that purpose; or

(b) the court may impose sentence for the offence for which the offender has been convicted.

(6) Any evidence given during the hearing of an application made under subsection (1) by a victim of an offence for which the offender was convicted is deemed also to have been given during any hearing under paragraph (5)(a) held with respect to the offender. 1997, c. 17, s. 4.

Application for finding that an offender is a long-term offender - Substantial risk - If offender found to be long-term offender - Exception - if application made after sentencing - Exception - life sentence - Exception to length of supervision where new declaration - If offender not found to be long-term offender.

753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

(a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

(b) there is a substantial risk that the offender will reoffend; and

(c) there is a reasonable possibility of eventual control of the risk in the community.

(2) The court shall be satisfied that there is a substantial risk that the offender will reoffend if

(a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

(b) the offender

(i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or

(ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.

(3) Subject to subsections (3.1), (4) and (5), if the court finds an offender to be a long-term offender, it shall

(a) impose a sentence for the offence for which the offender has been convicted, which sentence must be a minimum punishment of imprisonment for a term of two years; and

(b) order the offender to be supervised in the community, for a period not exceeding ten years, in accordance with section 753.2 and the *Corrections and Conditional Release Act*.

(3.1) The court may not impose a sentence under paragraph (3)(a) and the sentence that was imposed for the offence for which the offender was convicted stands despite the offender's being found to be a long-term offender if the application was one that

(a) was made after the offender begins to serve the sentence in a case to which paragraphs 753(2)(a) and (b) apply; and

(b) was treated as an application under this section further to the court deciding to do so under paragraph 753(5)(a).

(4) The court shall not make an order under paragraph (3)(b) if the offender has been sentenced to life imprisonment.

(5) If the offender commits another offence while required to be supervised by an order made under paragraph (3)(b), and is thereby found to be a long-term offender, the periods of supervision to which the offender is subject at any particular time must not total more than ten years.

(6) If the court does not find an offender to be a long-term offender, the court shall impose sentence for the offence for which the offender has been convicted. 1997, c. 17, s. 4.

Long-term supervision - Non-carceral sentences - Application for reduction in period of long-term supervision -- Notice to Attorney General.

753.2 (1) Subject to subsection (2), an offender who is required to be supervised by an order made under paragraph 753.1(3)(b) shall be supervised in accordance with the *Corrections and Conditional Release Act* when the offender has finished serving

(a) the sentence for the offence for which the offender has been convicted; and

(b) all other sentences for offences for which the offender is convicted and for which sentence of a term of imprisonment is imposed on the offender, either before or after the conviction for the offence referred to in paragraph (a).

(2) A sentence imposed on an offender referred to in subsection (1), other than a sentence that requires imprisonment of the offender, is to be served concurrently with the long-term supervision ordered under paragraph 753.1(3)(b).

(3) An offender who is required to be supervised, a member of the National Parole Board, or, on approval of that Board, the parole supervisor, as that expression is defined in paragraph 134.2(2)(b) of the *Corrections and Conditional Release Act*, of the offender, may apply to a superior court of criminal jurisdiction for an order reducing the period of long-term supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending and thereby being a danger to the community. The onus of proving that ground is on the applicant.

(4) The applicant must give notice of an application under subsection (3) to the Attorney General at the time the application is made. 1997, c. 17, s. 4.

Breach of order of long-term supervision - Where accused may be tried and punished.

753.3 (1) An offender who is required to be supervised by an order made under paragraph 753.1(3)(b) and who, without reasonable excuse, fails or refuses to comply with that order is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but if the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province. 1997, c. 17, s. 4.

Where new offence

753.4 (1) Where an offender who is required to be supervised by an order made under paragraph 753.1(3)(b) commits one or more offences under this or any other Act and a court imposes a sentence of imprisonment for the offence or offences, the long-term supervision is interrupted until the offender has finished serving all the sentences, unless the court orders its termination.

Reduction in term of long-term supervision

(2) A court that imposes a sentence of imprisonment under subsection (1) may order a reduction in the length of the period of the offender's long-term supervision.

754. HEARING OF APPLICATION - By court alone - When proof unnecessary - Proof of consent.

5. Sections 755 to 757 of the Act are replaced by the following:

755. EVIDENCE OF DANGEROUS OFFENDER STATUS - Nomination of psychiatrists - Nomination by court - Saving.

756. DIRECTION OR REMAND FOR OBSERVATION - Idem.

757. Without prejudice to the right of the offender to tender evidence respecting his character and repute, evidence of character and repute may, if the court thinks fit, be admitted on the question of whether the offender is or is not a dangerous offender.

Evidence of character

757. Without prejudice to the right of the offender to tender evidence as to his or her character and repute, evidence of character and repute may, if the court thinks fit, be admitted on the question of whether the offender is or is not a dangerous offender or a long-term offender.

758. PRESENCE OF ACCUSED AT HEARING OF APPLICATION - Exception.

6. Subsections 759(1) to (5) of the Act are replaced by the following:

Appeal - dangerous offender

759. (1) An offender who is found to be a dangerous offender under this Part may appeal to the court of appeal against that finding on any ground of law or fact or mixed law and fact.

⇒ Repealed 759 (1) read ... who is sentenced to detention in a penitentiary for an indeterminate period under this Part may appeal... [and also 759(3)] It would appear now that a dangerous offender can challenge the designation and not only the indeterminate sentence. Paradoxical ruling quashes sentence but not designation.

Appeal - long-term offender

(1.1) An offender who is found to be a long-term offender under this Part may appeal to the court of appeal against that finding or against the length of the period of long-term supervision ordered, on any ground of law or fact or mixed law and fact.

Appeal by Attorney General

(2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part, or against the length of the period of long-term supervision of a long-term offender , on any ground of law.

Disposition of appeal - dangerous offender

(3) On an appeal against a finding that an offender is a dangerous offender , the court of appeal may

(a) allow the appeal and

(i) find that the offender is not a dangerous offender, find that the offender is a long-term offender, impose a minimum sentence of imprisonment for two years, for the offence for which the offender has been convicted, and order the offender to be supervised in the community, for a period that does not, subject to subsection 753.1(5), exceed ten years, in accordance with section 753.2 and the Corrections and Conditional Release Act,

(ii) find that the offender is not a dangerous offender and impose sentence for the offence for which the offender has been convicted, or

(iii) order a new hearing ; or

(b) dismiss the appeal.

Disposition of appeal - long-term offender

(3.1) On an appeal against a finding that an offender is a long-term offender, the court of appeal may

(a) allow the appeal and

(i) find that the offender is not a long-term offender and quash the order for long-term supervision, or

(ii) order a new hearing; or

(b) dismiss the appeal.

Disposition of appeal - long-term offender

(3.2) On an appeal by a long-term offender against the length of a period of long-term supervision of the long-term offender, the court of appeal may

- (a) allow the appeal and change the length of the period; or
- (b) dismiss the appeal.

Disposition of appeal by Attorney General

(4) On an appeal against the dismissal of an application for an order that an offender is a dangerous offender under this Part, the court of appeal may

760. DISCLOSURE TO SOLICITOR GENERAL.

761. REVIEW FOR PAROLE - Idem

APPENDIX B. Violence Risk Appraisal Guide (VRAG).¹

1. Psychopathy Checklist Revised (PCL-R) Score

<input type="checkbox"/> Scores 4 and under = -5	<input type="checkbox"/> Scores of 15 through 24 = 0
<input type="checkbox"/> Scores of 5 through 9 = -3	<input type="checkbox"/> Scores of 25 through 34 = +4
<input type="checkbox"/> Scores of 10 through 14 = -1	<input type="checkbox"/> Scores 35 and over = +12

2. Elementary School Maladjustment

<input type="checkbox"/> No problems = -1
<input type="checkbox"/> Slight (minor discipline or attendance) problems = +2
<input type="checkbox"/> Moderate (seeming behaviour or attendance) problems = +2
<input type="checkbox"/> Severe (serious discipline and/or attendance) problems = +5

3. DSM-III Diagnosis of Personality Disorder

<input type="checkbox"/> No = -2	<input type="checkbox"/> Yes = +3
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4. Age at Index Offence

<input type="checkbox"/> Age of 39 or over = -5	<input type="checkbox"/> Age of 27 = 0
<input type="checkbox"/> Age of 34 through 38 = -2	<input type="checkbox"/> Age of 26 or under = +2
<input type="checkbox"/> Age of 28 through 33 = -1	

5. Lived with both Parents to Age 16 (except for death of parent)

<input type="checkbox"/> Yes = -2	<input type="checkbox"/> No = +3
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6. Failure on Prior Conditional Release

<input type="checkbox"/> No = 0	<input type="checkbox"/> Yes = +3
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7. Non Violent Offence Score (Prior to the Index Offence)

<input type="checkbox"/> 7 Robbery (bank, store)	<input type="checkbox"/> 1 Possession of Weapon
<input type="checkbox"/> 3 Robbery (purse snatching)	<input type="checkbox"/> 1 Procuring Prostitution
<input type="checkbox"/> 5 Arson (church, house, barn)	<input type="checkbox"/> 1 Trafficking in Narcotics
<input type="checkbox"/> 1 Arson (garbage can)	<input type="checkbox"/> 1 Obstructing/Resisting
<input type="checkbox"/> 3 Threatening with a weapon	<input type="checkbox"/> 1 Causing a Disturbance
<input type="checkbox"/> 2 Threatening	<input type="checkbox"/> 1 Wearing a Disguise
<input type="checkbox"/> 5 Theft Over	<input type="checkbox"/> 2 Indecent Exposure
<input type="checkbox"/> 5 Mischief Over	
<input type="checkbox"/> 2 Break and Enter and Commit	Non Violent Offence Raw Score
<input type="checkbox"/> 1 Theft Under/PSP Under	<input type="text" value=""/>
<input type="checkbox"/> 1 Mischief /Public Mischief	
<input type="checkbox"/> 1 Break and Enter (or with intent)	
<input type="checkbox"/> 5 Fraud (extortion, bank scams)	<input type="checkbox"/> Score 0 = -2
<input type="checkbox"/> 1 Fraud (forged cheque, impersonation)	<input type="checkbox"/> Score 1 or 2 = 0
<input type="checkbox"/> 1 Dangerous Driving, Impaired Driving	<input type="checkbox"/> Score 3 or over = +3

8. Marital Status

<input type="checkbox"/> Ever married (or equivalent) = -2	<input type="checkbox"/> Never married = +1
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9. DSM-III Diagnosis of Schizophrenia

<input type="checkbox"/> Yes = -3	<input type="checkbox"/> No = +1
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10. Victim Injury (for Index Offence): the most serious is scored

<input type="checkbox"/> Death = -2	<input type="checkbox"/> Non-Violent Offence = 0
<input type="checkbox"/> Hospitalized = 0	
<input type="checkbox"/> Treated and Released = +1	
<input type="checkbox"/> None or slight = +2	

11. History of Alcohol Abuse

One point is allotted for each of the following: <input type="checkbox"/> Alcohol Abuse in Biological Parents <input type="checkbox"/> Teenage alcohol problem <input type="checkbox"/> Adult alcohol problem <input type="checkbox"/> Alcohol involved in a prior offence <input type="checkbox"/> Alcohol involved in the index offence.	
<input type="checkbox"/> 0 = -1	<input type="checkbox"/> 1 or 2 = 0
<input type="checkbox"/> 3 = +1	<input type="checkbox"/> 4 or 5 = +2

12. Female Victim (for Index Offence)

<input type="checkbox"/> Yes = -1	<input type="checkbox"/> No = +1
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¹ Adapted from Quinsey et al., (1998) (by permission).

APPENDIX C. Sexual Offender Risk Appraisal Guide (SORAG).¹

Lived with both Biological Parents to Age 16 (except for death of parent)

Yes = -2 No = +3

Elementary School Maladjustment

No problems = -1
 Slight (minor discipline or attendance) problems = +2
 Moderate (seeming behaviour or attendance) problems = +2
 Severe (serious discipline and/or attendance) problems = +5

History of Alcohol Abuse

One point is allotted for each of the following: Alcohol Abuse in Biological Parents
 Teenage alcohol problem Adult alcohol problem Alcohol involved in a prior offence Alcohol involved in the index offence.
 0 = -1 1 or 2 = 0 3 = +1 4 or 5 = +2

Marital Status

Ever married or C-L for 6 months = -2 Never married = +1

Criminal History Score for Non-violent Offences (for past offences)

Score 0 = -2 Score 1 or 2 = 0 Score 3 or above = +3

Criminal History Score for Violent Offences (for past offences)

Score 0 = -2 Score 2 = 0 Score 3 or above = +3

Number of Previous Convictions for Sexual Offences

Count any offences known to be sexual, including, e.g., indecent exposure

0 = -1 1 or 2 = +1 3 or more = +6

History of Sexual Offences only against girls under 14 (including index) (if offender was less than 5 years older than the victim, always score +4)

No = +4 Yes = 0

Failure on Prior Conditional Release (includes parole/probation violation or Revocation, failure to comply, bail violation, arrest on conditional release)

No = 0 Yes = +3

Age at Index Offence (at most recent birthday)

Age of 39 or over = -5 Age of 27 = 0
 Age of 34 through 38 = -2 Age of 26 or under = +2
 Age of 28 through 33 = -1

DSM-III Diagnosis of any Personality Disorder

No = -2 Yes = +3

DSM-III Diagnosis of Schizophrenia

Yes = -3 No = +1

Phallometric Test Results

None/Not yet completed = 0

Nondeviant sexual preferences = -1 Any deviant sexual preferences = +1

Psychopathy Revised Checklist (PCL-R) Score

Scores 4 and under = -5 Scores of 15 through 24 = 0
 Scores of 5 through 9 = -3 Scores of 25 through 34 = +4
 Scores of 10 through 14 = -1 Scores 35 and over = +12

¹ Adapted from Quinsey et al., (1998) (by permission).

APPENDIX D. SVR-20 Coding Sheet.¹

Presence
(N, ?, Y, NI)

Psychosocial Adjustment	
<input type="checkbox"/>	1. Sexual Deviation
<input type="checkbox"/>	2. Victim of Child Abuse
<input type="checkbox"/>	3. Psychopathy
<input type="checkbox"/>	4. Major Mental Illness
<input type="checkbox"/>	5. Substance Use Problems
<input type="checkbox"/>	6. Suicidal/homicidal ideation
<input type="checkbox"/>	7. Relationship Problems
<input type="checkbox"/>	8. Employment Problems
<input type="checkbox"/>	9. Past Nonsexual Violent Offences
<input type="checkbox"/>	10. Past Nonviolent Offences
<input type="checkbox"/>	11. Past Supervision Failure
Sexual Offending	
<input type="checkbox"/>	12. High Density Offences
<input type="checkbox"/>	13. Multiple Offence Types
<input type="checkbox"/>	14. Physical Harm to Victim(s)
<input type="checkbox"/>	15. Uses Weapons or Threats of Death
<input type="checkbox"/>	16. Escalation in frequency/severity
<input type="checkbox"/>	17. Extreme minimization/denial of offences
<input type="checkbox"/>	18. Attitudes that support or condone offences
Future Plans	
<input type="checkbox"/>	19. Lacks Realistic plans
<input type="checkbox"/>	20. Negative Attitude towards Intervention
Other Considerations	
<input type="checkbox"/>	• _____
<input type="checkbox"/>	• _____

¹ Adapted from Boer, Hart, Kropp & Webster, (1997) (by permission).

APPENDIX E. Static-99.¹

Risk Factor	Codes		Score	Risk Category
Prior Sex Offences	Charges	Convictions		
	None	None	0	
	1-2	1	1	
	3-5	2-3	2	
	6 +	4 +	3	
Prior sentencing dates (excluding index)	3 or less		0	
	4 or more		1	
Any convictions for non-contact sex offences	No		0	
	Yes		1	
Index non-sexual violence	No		0	
	Yes		1	
Prior non-sexual violence	No		0	
	Yes		1	
Any Unrelated Victims	No		0	1. score 0,1 Low
	Yes		1	
Any Stranger Victims	No		0	2. score 2,3 Medium-Low
	Yes		1	
Any Male Victims	No		0	3. score 4,5 Medium-High
	Yes		1	
Young	Aged 25 or older		0	4. score 6 + High
	Aged 18 – 24.99		1	
Single	Ever lived with lover for at least two years?			
	Yes		0	
	No		1	
Total Score	Add up scores from individual risk factors		<input type="text"/>	

¹ Source: Hanson & Thornton (1999) (by permission). © Her Majesty The Queen in Right of Canada, 2005.

APPENDIX F. Severity of Sexual Offending.

Variable	Criteria/Coding
Relationship to Victim(s)	<ol style="list-style-type: none"> 1. only family members 2. only acquaintance(s) 3. any Strangers

Severity of Sexual Offending – Rapists/Mixed Offenders

Variable	Criteria/Coding
1. Instrumental versus Excessive Force	<ol style="list-style-type: none"> 1. instrumental force – necessary for compliance and abates once victim becomes compliant 2. excessive force – deliberate, physical harm, clearly beyond that which is necessary for compliance
2. Possession or Threat of Weapon versus Use of Weapon	<ol style="list-style-type: none"> 1. none 2. possession or threat of weapon 3. weapon used to harm victim
3. Threat To Use Weapon or Death Threats	<ol style="list-style-type: none"> 1. none 2. threats (to harm), to use weapon, or death threats
4. Fear of Imminent Harm (attempted or actual threat to cut, burn, shoot or mutilate)	<ol style="list-style-type: none"> 1. none noted 2. gun, knife, or needle at victim’s throat, face, or body during sexual assault
5. Terrorization of Victim	<ol style="list-style-type: none"> 1. suffocation/choking during assault 2. assault with victim bound or blindfolded (eyes covered) 3. sexual assault in the presence of the victims’ child
6. Most Serious Victim Injuries/Physical Harm from Sexual Offence(s)	<ol style="list-style-type: none"> 1. none/mild (scratches/minor bruises) 2. moderate/severe (e.g., broken/fractured bones or teeth, swollen face, harm requiring surgery)
7. Abduction/Kidnapping	<ol style="list-style-type: none"> 1. none 2. abduction and/or transporting victim to another location
8. Unusually Lengthy Sexual Assault	<ol style="list-style-type: none"> 1. none noted 2. + 1½ hours
9. Sadistic Sexual Acts	<ol style="list-style-type: none"> 1. insertion of weapons/objects 2. fellatio after anal intercourse 3. analigus
10. Humiliation of Victims	<ol style="list-style-type: none"> 1. urination during sexual assault 2. intercourse during menstruation (or with tampon) 3. forcing victims to perform sexually with each other 4. cleaning rituals

APPENDIX G Probability of Recidivism for VRAG, SORAG, and Static-99 Total Scores.

VRAG Category	VRAG Score	7 years	10 years
1	≤-22	0	0.08
2	-22 to -15	0.08	0.10
3	-14 to -8	0.12	0.24
4	-7 to -1	0.17	0.31
5	0 to +6	0.35	0.48
6	+7 to +13	0.44	0.58
7	+14 to +20	0.55	0.64
8	+ 21 to +27	0.76	0.82
9	≥+28	1.00	1.00

SORAG Category	SORAG Score	7 years	SORAG Score	10 years
1	< - 9	0.07	< - 10	0.09
2	-9 to -4	0.15	-10 to -5	0.12
3	-3 to +2	0.23	-4 to +1	0.39
4	+3 to +8	0.39	+2 to +7	0.59
5	+9 to +14	0.45	+8 to +13	0.59
6	+15 to +19	0.58	+14 to +19	0.76
7	+20 to +24	0.58	+20 to +25	0.80
8	+ 25 to +30	0.75	+ 26 to +31	0.89
9	≥+31	1.00	> +31	1.00

Static-99 score	Sexual Recidivism			Violent Recidivism		
	5 years	10 years	15 years	5 years	10 years	15 years
0	.05	.11	.13	.06	.12	.15
1	.06	.07	.07	.11	.17	.18
2	.09	.13	.16	.17	.25	.30
3	.12	.14	.19	.22	.27	.34
4	.26	.31	.36	.36	.44	.52
5	.33	.38	.40	.42	.48	.52
6+	.39	.45	.52	.44	.51	.59

VRAG and SORAG probabilities reported in Quinsey, V.L., Harris, G.T., Rice, M.E., Cormier, C. (1998). Violent Offenders: Appraising and Managing Risk. Washington, D.C.: American Psychological Association.

Static-99 probabilities reported in Harris, A., Phenix, A., Hanson, R. K., & Thornton, D. (1999). Static-99: Coding Rules Revised - 2003. (User Report). Ottawa: Department of the Solicitor General of Canada. Also available @<http://www.sgc.gc.ca>.