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Supporting Victim and Community Safety Through Collaboration

<i>authors</i>	<i>year</i>	<i>acknowledgements</i>
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# SEX OFFENSE COURTS: SUPPORTING VICTIM AND COMMUNITY SAFETY THROUGH COLLABORATION

## INTRODUCTION

In 2004, the Center for Court Innovation, in collaboration with the New York State Office of Court Administration, began meeting with national experts working on the front lines of sex offender treatment, victim services, and community education. These collaborators sought to determine whether a problem-solving court should be added to the range of tools available to practitioners eager to improve the criminal justice response to sex offenders and sex offending behavior.

Problem-solving courts that address other populations—such as drug-addicted or mentally ill offenders—have shown that courts, as independent conveners, can bring stakeholders together to improve outcomes for victims, communities, and offenders. Based on this experience, the Center helped the New York State Office of Court Administration develop a first-of-its-kind model court to provide consistent management of sex offense cases and enhance services to victims. Several diverse New York State counties have adapted this model, demonstrating its versatility in a variety of settings.

This article traces the problem of managing sex offenders and the establishment of sex offense management courts in New York, discussing their history, how they work and challenges to implementation. By outlining New York's experience, this paper aims to provide lessons learned to other jurisdictions so that they can continue to improve criminal justice responses to the problem of sex offending.

## THE PROBLEM

Criminal justice players face numerous challenges when it comes to preventing sex offending and punishing those who commit such crimes. Many agencies, including those responsible for corrections and supervision, often lack sufficient resources or access to the full range of tools for effective sex offender management. Sex offenses continue to be among the most difficult crimes to prosecute. Public perception to the contrary, many sex offenders spend little time in prison. Instead, cases are pled to lower charges and the majority of sex offenders across the United States are on probation or other community supervision, rather than serving substantial

prison sentences.<sup>1</sup> And even when offenders are incarcerated, effective management is still required if and when they're released on parole. In these cases, as in so many others, we cannot assume that incarceration will solve the problem.

Research and practice have shown that specialized evaluations, tailored sex crime pleas, mandated sentencing guidelines and alternative approaches to vulnerable witness testimony can all help improve the response to sex offending cases. Despite this evidence, many of these proven sex offender management techniques are inconsistently applied and are not always available or in place to ensure that incidents are properly reported, cases are appropriately charged and that pleas and sentences are meaningful.

These inconsistencies exist in almost every phase of the criminal justice response, from investigation to arrest to sentencing to parole. In a review of the criminal justice processing of sex offense cases in New York's 62 counties, researchers found differences in the percentage of cases that result in conviction as well as large differences in the average jail and/or probation terms imposed. For example, the study found that conviction averages varied from 36 to 79 percent for felonies depending on the county. Researchers also documented that in highly populated areas of the state, prison sentences for sex offenses are more infrequent and of shorter duration.<sup>2</sup>

One source of inconsistency is confusion among community members, corrections officials and law enforcement agencies about how to conduct community notification programs and residency requirements while responding to intra-familial or acquaintance cases. This confusion leads to vast discrepancies in how these programs are carried out. Many community notification requirements and residency restrictions seem to be built around a paradigm that assumes that sex offenders target strangers, but evidence shows otherwise: most sex offenders target those they know, especially those with whom they live. How should community notification occur in these cases without violating the privacy of the victims? How can residency requirements be effective to reduce intra-family offending? Answering these questions is nothing short of complicated.

Law enforcement, corrections and social service agencies have recently focused new attention on working together to manage offenders who are in the community, on probation or on parole. In an effort to enhance defendant accountability and victims' access to services, court and law enforcement officials in New York State decided to develop a specialized Sex Offender Court.

## **THE SEX OFFENSE COURT MODEL IN NEW YORK**

### **A Comprehensive Planning Process**

With assistance from the Center for Court Innovation and the New York State Office of Court Administration, several New York jurisdictions, including Oswego, Nassau, Suffolk, Westchester, Erie, Orange, Queens and Tompkins Counties engaged in intensive planning, bringing together judicial and non-judicial court staff, prosecutors, defense attorneys, victim advocates, SANE program representatives, probation, parole, polygraph examiners, treatment providers and others to hash out issues. These representatives met for monthly meetings, on-site training and discussion of each agency's role in offender management.

Early in the planning process, the Center for Court Innovation conducted baseline interviews and satisfaction surveys with sex offense court stakeholders.<sup>3</sup> The instruments asked questions about case processing, post-disposition handling of cases, victim and community services and safety and communication amongst stakeholders. Among other findings, this baseline review found that community members were only “neutral to somewhat dissatisfied” with the level of victim and community safety. Additionally, the surveys showed that stakeholders were not satisfied with either judicial case processing or post-dispositional monitoring.

Statistical information from New York State’s Division of Criminal Justice Services was also used to help provide a framework for each community’s planning process. This included the number of sex offense cases in each county, disposition of those cases and the length of jail or probation.<sup>4</sup> This data driven process helped to determine the shape of the sex offense court in each jurisdiction: how cases would be identified and handled, how resources would be allocated and how communication would be facilitated. For instance, many jurisdictions expanded their planning team to include local Child Advocacy Centers once the crucial role of these agencies in coordinating the interviews of child victims became clear.

Planning discussions were also critical to developing cross-agency understanding. In many locations, victim advocates gained a clearer understanding of the court process and were better able to inform their clients of the role of the court, prosecutor and probation. According to Judge John Michaliski of the Erie County Sex Offense Court: “[O]ne of the best parts of presiding in court was having meetings with various members of our community and beginning to understand them and their perspectives on things, and it really gives me a greater perspective.”

At monthly meetings, the planning teams in each county reviewed sex offense management best practices gleaned from national research and the Center for Sex Offender Management (CSOM). CSOM promotes the use of clinical risk evaluations, standardized special sex offender probation conditions, interim probation supervision and specialized sex offender treatment.<sup>5</sup> Comparing local practice with these national standards helped participants to identify gaps in services including the need for improved calendaring of probation violations and services for female sex offenders in their communities.

Finding common ground among the various stakeholders was an essential ingredient of successful team building. Initially, many defense attorneys were very hostile to the idea of a specialized sex offense court: While the planning process did not eliminate all concerns, it did help stakeholders find common ground on many issues. The key, according to Robert Lonski, a defense attorney and executive director of the Assigned Counsel Panel in Erie County, is respect: “We have people who not only have personal respect for each other, but also respect the roles. You know, we all have different roles and some of the roles are polar at times. But that does not mean that there is not common ground. And if all you do...is focus on the polarity, you will end up with paralysis. If you can focus on where you can...get to the common ground then you can move forward.”

## KEY PRINCIPLES

Over the course of this intense planning period, practitioners in the six New York counties identified the following elements as essential to a successful sex offense management court:

- Early case identification;
- Rigorous judicial compliance reviews and enhanced accountability;
- Judicial leadership;
- Understanding and dedication to working with victim services providers;
- Coordination with sex offender treatment providers;
- Comprehensive training for all stakeholders; and,
- Commitment to evaluation and continuous quality improvement.

The resulting sex offense court model builds on common practices that have been tested in other problem-solving courts such as: expedited calendaring, graduated sanctions and agency coordination. Specialized court practices also include appropriate sentencing and effective supervision of offenders; use of sex offender treatment; clear and consistent responses to non-compliance; specialized training for stakeholders, such as prosecution, defense bar, probation, victim advocates and court personnel; and community education. Sex offense courts emphasize the importance of judicial compliance reviews and make use of the court's power to convene community stakeholders.<sup>6</sup>

These key principles and practices are discussed in greater depth below.

### Early Identification of Cases

Sex offense courts are not designed primarily to provide alternatives to incarceration. Although sex offender treatment is encouraged as part of community release and supervision, the court's primary goals are to improve consistency, coordination, community collaboration and accountability. Therefore, unlike many specialized treatment courts, defendants do not opt into New York's sex offense courts. Instead, all felony-level sex offense cases in which the defendant is initially charged with an offense that if convicted results in having to register with the New York State Sex Offense Registry are transferred to the sex offense court upon arraignment or shortly thereafter.<sup>7</sup> This allows the sex offense court to control what cases it hears as early as possible in the proceedings.<sup>8</sup> The sex offense courts handle all subsequent appearances through disposition, and monitor post-plea community supervision and any post-conviction violations.

Because of the seriousness of these cases, the need for federal and local sex offender registration, and the importance of providing victim services as early as possible, sex offense courts require early case identification. Bringing in other stakeholders early in the process also helps improve prosecution and disposition. Assistant District Attorney Rosanne Johnson of Erie County District Attorney's Office insists, "One thing that has become clear through the [planning] process is that the best practice clearly for the investigation and prosecution of sex

offenses is undoubtedly a multi-disciplinary approach.” Increased collaboration has led to a greater use of pre-sentence investigations by probation officers. The pre-sentence investigation report includes details of the incident but it also provides an opportunity for probation to make recommendations on sentencing. As part of the pre-sentence investigation, probation frequently requests special sex offense conditions that impose tailored restrictions for those individuals sentenced to probation.

### **Judicial Compliance Reviews and Enhanced Offender Accountability**

Judge James McCarthy, the first presiding judge of the Oswego Sex Offense Court, summarized the underpinnings of the court model and why judicial compliance reviews are so critical:

In order to be productive and comply with conditions of probation, sex offenders must have jobs, make a living, and stay away from things that could trigger the offending behavior. All of these things require supervision, constant monitoring, and a criminal justice system that can quickly respond to even the most subtle signs [of re-offending behavior] in order to be successful. When sex offenders know that they are being watched and the community knows that the court and probation are keeping a watchful eye on defendants, then it is rare that they will ever get away with something. Hopefully under these circumstances, the sex offender can live somewhere and work somewhere, without being demonized, while still being closely supervised.

As in other problem-solving courts, the idea is that convicted defendants who know they will have to return to see the judge for updates on their compliance with court-ordered conditions will have a greater incentive to comply. And, of course, by scheduling regular reviews, the court can respond swiftly to non-compliance. Sex offense courts also make use of another key problem-solving court innovation: a resource coordinator who provides assistance to the judge in monitoring defendants. Among other methods, the resource coordinator reaches out to stakeholders and regularly communicates with outside agencies to obtain up-to-date reports on defendant compliance with court mandates.

Defendants released on bail regularly appear before the sex offense court judge for updates while the case is pending. Detained defendants also return to court on a regular basis for judicial monitoring as well as case processing. When circumstances dictate, convicted offenders can be ordered to return to court between scheduled appearances in response to infractions, such as failing to find proper housing and employment or failing to register with the Sex Offender Registry. In Erie and Oswego, virtually all probationers are required to return to court weekly, bi-weekly or monthly in addition to their frequent visits with probation officers. In the process, sex offense courts have enhanced oversight. Probation officers and judges work together to deliver rapid consequences—such as immediate violation of probation hearings or increased judicial monitoring—for offender non-compliance. Another benefit of compliance reviews is that they offer a forum for defendants to request modifi-

cations, for probation departments to update the court on the defendant's progress and for defense attorneys to instruct and inform their clients.

According to Judge McCarthy of Oswego, "the feedback from the probation officers is that in the old days, probation violations could take months to get a disposition. In the sex offense court, if they file a violation on a Monday, there could be a hearing as early as that week. These violations are handled in front of the other defendants and they see what happens when someone violates. The effect is 1000 percent better. When someone does something they shouldn't, I know about it immediately. Their rights are preserved, the victims are safe and the court is able to address things appropriately and immediately."

### **Judicial Leadership**

The judge can play a critical role in spurring collaboration among divergent stakeholders. While judges occasionally shy away from this role, central position (and neutrality) can be just what is needed to bring disparate agencies to the table. For example, Erie County Sex Offense Court Judge John Michalski played a major leadership role in the development of the sex offense court by facilitating the planning and stakeholder meetings. He was actively engaged in learning as much as possible from each member of the planning team by asking specific questions about current practice. Robert Lonski, a member of the Erie County planning team, offered praise for the judge: "Judge Michalski ... listens to people, he brings people to the table, he brings people into the process and not just like a surface sort of thing for appearances, but, he is really willing to modify what he's thinking and get people to understand each other." This willingness to lead the discussion encouraged others to participate.

After implementation, judges continue to convene regular meetings with criminal justice and social service partners in order to generate new ideas for innovation. In Erie, these meetings have allowed agencies to work together on new policies. David Heffler of the Forensic Mental Health Counseling of Western New York felt it was particularly useful to ensure that "treatment providers and victim service providers and probation meet regularly to talk about how we manage this process [of assessment] and communicate with each other on what we are doing."

### **Working with Victim Service Providers**

Victim advocacy agencies have a unique perspective on the prosecution, supervision and release of sex offenders. For instance, advocates may have knowledge about the history and pattern of offending that may not be directly relevant to the prosecution but may be critical to anyone working with the survivor. Historically, victims of sexual crimes have had minimal involvement in the criminal justice process for a variety of reasons. Many are scared of the court and the perpetrator of the offense, and many don't see a role for themselves in the judicial proceedings. Additionally, victims may not be aware of what services are available to support them during and after the criminal proceedings. Victim service agencies can fill this critical gap, but only if they are knowledgeable about the process.



Victim service agencies in New York communities with sex offense courts continue to provide a broad range of services, including:

- Sites that co-locate the police, doctors, and child abuse services to reduce the number of interviews children must endure during the information gathering process
- Crisis intervention
- Legal and social service advocacy
- Long term counseling
- Assistance in securing medical services, including physical health and mental health
- Assistance with financial services
- Housing and shelter services and assistance
- Food and transportation assistance
- Assistance with protective orders

Planners identified additional services needs. During the Erie County planning process, for example, participants determined that there was a critical shortage of services for victims with special needs, such as mental health issues, developmental limitations and language barriers. Prosecutors worked with independent advocates to ensure those victims' needs were addressed.

Another important innovation is that many of New York's sex offense courts have a dedicated victim advocate on site in the sex offense court. One advocate stated, "Our increased presence in the courtroom allowed us faster access to information so that we could relay that to victims more quickly. Being in court also helped us understand the [court] process better."

### **Working with Sex Offender Treatment**

Sex offender treatment programs are often misunderstood. Unlike traditional counseling, sex offender treatment is not confidential and is explicitly focused on preventing re-offending. Indeed, the goal of sex offender treatment is to get the probationer to consciously identify risk factors that are linked to offending and reduce their occurrence. This is done through group therapy, individual therapy, family therapy, psychological evaluations, psychosocial evaluations and reunification work where appropriate. Polygraph examinations are also a critical part of sex offender treatment.<sup>9</sup>

Sex offender treatment must be provided by qualified therapists who possess adequate experience with this specific population. During the planning process, courts and stakeholder agencies spent time determining the availability and quality of treatment programs in their counties. In Nassau, for example, concerns about the availability and quality of sex offender treatment led the local sex offense task force to develop a preferred

provider list based on qualifications and experience. The court agreed to specify particular programs on conditions of probation.

After reviewing the research on the benefits and limitations of sex offense treatment as well as current resources, sex offense court planners in New York agreed that it should be included as a condition of probation where appropriate. In order for treatment to be used effectively, team members further agreed that court staff and other partners needed extensive training on sex offender treatment, including risk assessment instruments and treatment plans. New York sex offense courts do not use treatment as an alternative to probation, but rather in conjunction with probation and judicial oversight.

### **Judicial and Non-Judicial Training**

The legal, social science, medical and mental health issues around sexual offending are complex. On-going training for judges, court staff, stakeholders and the community has become a critical part of the sex offense court model in New York. Trainings were held to ensure judges and stakeholders had the most current information about sex offending behavior and were aware of the research on issues such as use of polygraphs and risk assessments and juvenile and female sex offending behavior.

Training topics included: understanding habits of offenders, tools available to help control and modify behaviors, civil confinement, information on sex offender treatment, polygraph services and risk factors for re-offending. In addition, programs included information about the benefits of securing housing for sex offenders and the shortcomings of using tools such as global position systems and sex offender registries.

### **Evaluation**

A commitment to continuous quality improvement is a key component of any successful problem-solving court. It reveals where the courts are reaching their established goals and highlights challenges and gaps in services. As the technical assistance providers on New York's sex offense courts, the Center integrated research into operations. Baseline surveys helped each county understand their strengths and weaknesses in sex offender management. Future research will determine whether the model has been effective in responding to sex offense cases, increasing collaboration among stakeholders and enhancing victim satisfaction with the criminal justice process.

The Center for Court Innovation and Office of Court Administration developed a data collection tool that allows courts to report back on dispositions, compliance, demographics and other relevant information. This data will help jurisdictions assess impact on the community and document how sex offense cases were handled prior to the implementation of the sex offense court, the process for developing and implementing such a court and how cases are handled differently in a sex offense court.

## **CONCLUSION**

Several diverse jurisdictions in New York have taken the sex offense court model and adapted it to serve their community. The planning and implementation of this model has caused these counties to rethink their

approach to sex offense cases and to ensuring victim safety. Additionally, it has spurred them to find ways to work more collaboratively to ensure offenders are managed effectively.

Judge James McCarthy sees the potential for these courts to be a permanent tool to improve the handling of some of the most difficult cases that appear in our courts: “I think [going forward] you will find a sex offender court in every county in New York and every state in this country. Sex offender courts are going to expand because the public wants to see compliance and monitoring by the criminal justice system of sex offenders that are in the community. Once the public realizes what can be done via these courts, I think the model will be established everywhere. All the partners are already there, it just needs to be organized, the partners need to be trained and the expertise needs to be applied.”

## NOTES

1. Greenfeld, L. (1997). *Sex offenses and offenders: An analysis of data on rape and sexual assault*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
2. "Case Processing of Sex Offenses in New York State, 2000-2005." Criminal Justice Research and Evaluation Center, John Jay College of Criminal Justice, 2008.
3. Many of these communities had existing task forces that had already done significant work in the area of sex offense management and were integral to successful implementation of the sex offense court.
4. DCJS provided this information in response to a request that included all sex offense charges that, if ending in a conviction, require SORA registration in NY. These penal offenses include offenses against both adults and children.
5. "The Importance of Assessment in Sex Offender Management: An Overview of Key Principles and Practices," Center for Sex Offender Management, Office of Justice Programs, U.S. Department of Justice, 2007.
6. The New York State Court System, together with the Center for Court Innovation, developed Sex Offense Court Model Mission Statement and Key Principles to encourage statewide uniformity in the development of sex offense courts in New York State. See [www.courts.state.ny.us/problem-solving](http://www.courts.state.ny.us/problem-solving).
7. A list of these crimes can be found at <http://criminaljustice.state.ny.us/nsor/sortab1.htm>.
8. Most criminal sex offense cases, both misdemeanors and felonies, are initially arraigned in the lower courts. Misdemeanors remain in the lower courts throughout judicial case processing. After indictment, felonies are transferred to Supreme Court (the court of general jurisdiction) for all subsequent appearances and potential trial and motions.
9. Results of polygraphs are not admissible evidence in New York and they are not used to gather evidence. Rather, they are used as part of terms of probation and treatment in order to control the offender's behavior and ensure that he is not hiding risky behaviors. See *United States v. Johnson*, \_F.3d\_, 2006 WL1148514 \*1-2, 6 (C.A.2(N.Y.))

### **Center for Court Innovation**

The winner of the Peter F. Drucker Award for Non-profit Innovation, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how the justice system can solve difficult problems like addiction, quality-of-life crime, domestic violence, and child neglect. The Center functions as the New York State Unified Court System's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts, reentry courts, and others.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping court reformers across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through original research, books, monographs, and roundtable conversations that bring together leading academics and practitioners and by contributing to policy and professional journals. The Center also provides hands-on technical assistance, advising innovators throughout the country about program and technology design.

### **The Center for Court Innovation's Sex Offender Management Team**

The Sex Offense Management team at the Center for Court Innovation provides technical assistance and training nationally and internationally on the creation and implementation of specialized criminal sex offense community management systems and courts. Technical assistance includes site visits and needs assessments, on-site and videoconference-based meetings with court staff and community stakeholders to plan and implement the specialized community initiatives as well as trainings for court personnel and community stakeholders.

**For more information, e-mail [info@courtinnovation.org](mailto:info@courtinnovation.org).**

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