

Office of Sex Offender Sentencing, Monitoring, Apprehending,
Registering, and Tracking (SMART)
FY 2010 Comprehensive Approaches to Sex Offender Management Newsletter
October 2012

Introduction

This edition of the newsletter for CASOM grantees features:

- A summary of several recent and important sex offender-related court rulings;
- An overview of how Motivational Interviewing can be used in working with sex offenders;
- Special recognition for the winner of this year's Gail Burns-Smith award; and
- Important dates of and information about sex offender management related events.

Summary of Recent Court Rulings on Sex Offender Issues

Courthouse News

<http://www.courthousenews.com/2012/09/14/50302.htm> has reported on two important sex offender related court rulings that were handed down in September 2012:

Residency Restrictions in California

As reported in [this local article](#), headlined "San Diego Sex Offenders Upset Residency Limit," there was a notable ruling last month concerning California's sex offender residency restrictions. Here are the basics from the published press report:

- It is "unreasonable" and "oppressive" to forbid registered sex offenders from living within 2,000

feet of a school or park, a California appeals court ruled.

- California voters adopted Proposition 83, also known as Jessica's Law, in 2006 to impose strict regulations on registered sex offenders. One provision in particular prohibits sex offenders from living within 2,000 feet of any school or park. In 2010, the California Supreme Court ruled that the housing restriction applies to all paroled sex offenders, regardless of when they committed their crime, but the court said it did not have enough evidence to rule on law's constitutionality.
- Following this ruling, four sex offenders, all registered sex offenders living in San Diego County, challenged the residency restriction in Superior Court. All four parolees were unable to find housing after their release: two lived in an alley behind the parole office on the advice of their parole agents, one lived in the San Diego riverbed with other registered sex offenders who had no place to live, and one other lived in his van.
- In 2011, Judge Michael Wellington held an eight-day evidentiary hearing in which experts testified that 24.5 percent of San Diego residential properties comply with the Jessica's Law residency requirement, but most of these dwellings are single-family homes. Less than 3 percent of multifamily housing meets the requirement. Wellington subsequently ruled that

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the parole condition was "unconstitutionally 'unreasonable'" because it "violated petitioners' right to intrastate travel, their right to establish a home and their right to privacy and was not narrowly drawn and specifically tailored to the individual circumstances of each sex offender parolee."

- California's Fourth Appellate District affirmed, finding that the law's "blanket enforcement as a parole condition in San Diego County has been unreasonable and constitutes arbitrary and oppressive official action."

The full 37-page appellate panel ruling is [available at this link](#).

California Supreme Court Upholds 25-to-Life Term for Sex Offender's Failure to Register as Third Strike

The California Supreme Court also recently issued an Eighth Amendment ruling today rejecting an offender's appeal of his three-strikes sentence following his conviction for failing to update his sex offender registration.

[I]n *People v. Carmony* (2005) 127 Cal.App.4th 1066 (*Carmony II*), a panel of the California Court of Appeal, Third Appellate District, concluded in a two-to-one decision that a 25-year-to-life sentence under the Three Strikes law constituted cruel and/or unusual punishment, in violation of the federal and state Constitutions, as applied to a defendant whose triggering offense was the failure to

annually update his sex offender registration within five working days of his birthday. The defendant in *Carmony II* had properly registered as a sex offender at his current address one month before his birthday, had continued to reside at the same address throughout the relevant period, had remained in contact with his parole agent, and was arrested at that same address by his parole agent one month after his birthday. Observing that "because defendant did not evade or intend to evade law enforcement officers, his offense was the most technical and harmless violation of the registration law we have seen" (127 Cal.App.4th at p. 1078), the majority opinion in *Carmony II* concluded that, notwithstanding the defendant's record of serious prior offenses, the imposition of a 25-year-to-life sentence was grossly disproportionate to the gravity of the defendant's offenses and violated the constitutional prohibition of cruel and/or unusual punishment. Thereafter, a three-judge panel of the United States Court of Appeals for the Ninth Circuit, addressing a cruel and unusual punishment claim in a factual setting very similar to that presented in *Carmony II*, reached the same conclusion as the California appellate court in *Carmony II*. (*Gonzalez v. Duncan* (9th Cir. 2008) 551 F.3d 875.)

In the present habeas corpus proceeding, a panel of the Court of Appeal, Second Appellate District, Division Five, considering the constitutionality of a 25-year-to-life sentence imposed upon a defendant who also was convicted of failing to update his sex offender registration within five working days of his birthday, expressly

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disagreed with the analysis and conclusion of the appellate court in *Carmony II* and held that the punishment was constitutionally permissible. In light of the conflict in the two Court of Appeal decisions, review was granted.

The Supreme Court agreed with the Court of Appeal in the present case that imposition of a 25-year-to-life sentence upon petitioner in this matter does not constitute cruel and unusual punishment in violation of the federal Constitution. Unlike the defendant in *Carmony II*, who had very recently registered at his current address and who the Court of Appeal found "did not evade or intend to evade law enforcement officers" (*Carmony II, supra*, 127 Cal.App.4th at p. 1078), the trial court in this case, in refusing to strike any of petitioner's prior convictions and in imposing a 25-year-to-life sentence under the Three Strikes law, found that the petitioner's triggering offense was not simply a minor or technical oversight by a defendant who had made a good faith effort to comply with the sex offender registration law. Rather, the court found that petitioner had never registered as a sex offender at his current address and had knowingly and intentionally refused to comply with his obligations under the sex offender registration law.

The petitioner's conduct, as found by the trial court, demonstrated that, despite the significant punishment petitioner had incurred as a result of his prior serious offenses, he was still intentionally unwilling to comply with an important legal obligation, and thus the Court found that

his triggering criminal conduct bore both a rational and substantial relationship to the antirecidivist purposes of the Three Strikes law.

For a complete discussion of this case and a link to the court's findings, visit <http://sentencing.typepad.com/sentencing-law-and-policy/2012/08/california-supreme-court-upholds-25-to-life-term-for-sex-offenders-failure-to-register-as-third-stri.html>.

Using Motivational Interviewing in Work with Sex Offenders

Motivational Interviewing is a person-centered counseling approach in which the practitioner uses a guiding style to enable the client to build and strengthen his or her own motivation for change. This approach has gained traction in recent years in the general criminal justice community and with sex offenders in particular. What follows is a summary of some of the central tenets of Motivational Interviewing and suggestions about how to begin to think about using it in our work with sex offenders. This summary is adapted from a white paper by Dr. David Prescott that can be found in its entirety at: http://www.davidprescott.net/pub_32.pdf.

Central to Motivational Interviewing is the professional's capacity for collaboration, evocation, and support of the client's autonomy. This is more challenging than it might seem, especially with clients who appear to have little investment in change or willingness to participate in treatment. Under these conditions, professionals understandably might resort to tactics that

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gain short-term compliance with treatment or supervision expectations; but harsh, confrontational approaches are more likely to meet the momentary needs of the professional than the long-term needs of the client and community (Garland & Dougher, 1991). These short-term tactics may come remarkably easily to professionals; however, research has found them to be less effective than warm, empathic, rewarding, and directive therapeutic styles (Marshall, 2005).

Listening is a central tenet of Motivational Interviewing. Many professionals believe they are listening when they are not. Truly good listening involves entering each interaction with undivided attention, curiosity, appreciation, and wonder. It means listening with the heart as well as the ears. Most importantly, good listening requires demonstrating to the client that the professional is listening and soliciting feedback as to how well they are listening (Miller, Hubble, & Duncan, 2007). In motivational interviewing, good listening does not include agreeing, advising, persuading with logic, arguing, sympathizing, or consoling. Professionals working with sexual offenders commonly find these clients defensive, reserved, or argumentative. Simply taking extra time at the beginning of each interaction to demonstrate that one is listening can alter the tone of the interview dramatically. The challenge is that good listening often involves reflecting back statements that indicate antisocial attitudes. The professional will doubtless be tempted to provide feedback on these attitudes, but doing so too early disrupts the conversation

and demonstrates that the professional is more interested in fixing the client than listening to him or her.

Miller and Rollnick (2002) provide four basic principles in Motivational Interviewing: developing discrepancy, rolling with resistance, supporting self-efficacy, and expressing empathy.

Expressing empathy. Empathy has received significant attention in offender treatment (see, e.g., Fernandez, 2002). It may help professionals to view empathy as their ability to enter and understand a client's world, expressing a clear and deep understanding of the client's perspective, including both what the client says and has not yet said (Moyers, Martin, Manuel, Miller, & Ernst, draft manuscript). Clearly, sexual offenders are responsible for many of the consequences of their actions, but that does not preclude professionals from actively expressing empathy. For example:

- It's hard for you to talk about this.
- You're wondering what this is going to mean for your family.
- You really miss your loved ones.
- You're concerned that discussing your past might get you into more trouble.
- Having to trust others in treatment is really new to you.
- You're wondering if anything is ever REALLY going to change.

Empathy is not the same as sympathy. While it may be tempting to sympathize with clients ("I hear you. Being on the sex offender registry is no fun."), this does little

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to support their autonomy and is potentially harmful.

Developing discrepancy. Discrepancy is the difference between where someone is at and where he or she wants to be with respect to a given issue. Demonstrating meaningful change in the factors that contributed to one's offending can be a long and difficult journey. Developing discrepancy can include exploring what a better life would be like ("Tell me about some times when things were going well and you weren't engaged in this behavior"). It may include exploring specific issues ("On one hand you believe it wasn't a big deal, and on the other hand your family has expressed concern about your coming home").

Rolling with resistance. The term "resistance" can be misleading. It is important to consider what the client is resisting and what the motivation for resisting actually is. Are they genuinely uninterested in changing some area of their life? Or are they resisting the professional's attempts to engage them in a change process? Whatever the case, professionals gain nothing by combating resistance. Resistance is an interpersonal phenomenon, which most likely to appear during interactions where the client feels misunderstood or unheard. When all else fails, the most human response can often be the best one. ("So with all the reasons you have for not being here, what would be the most helpful way we can spend our time together?") It is easy to forget that what may appear to be resistance is actually an invitation to understand. ("Since this is

obviously a difficult conversation, can I just ask you something? You and I seem to be from different worlds. What's it like in your world?")

Supporting self-efficacy. Autonomy and choice are vital to change. It is easy to assume that people who have sexually abused are unable to make good decisions for themselves. Too often, well-intended professionals attempting to help their clients build safety into their lives end up restricting rather than allowing them to explore and improve their decision-making. Professionals frequently experience a strong righting reflex when they feel responsible for their clients' actions. Although there can be a time and place where direct intervention in an emergent situation can become necessary, professionals will be most effective when they guide clients in making decisions rather than impose them. Many professionals have expressed concern during trainings that this is time-consuming. A helpful phrase to remember at these times is "the slower we go the faster we get where we're going."

In working with people who have sexually abused, clinicians often wonder how best to offer constructive feedback that is consistent with the style and spirit of Motivational Interviewing. These clients often seem to invite clinicians to get aggressive in providing feedback. Some general tips include:

Ask, don't tell. Asking permission to share feedback sets the stage for a more respectful interaction and ensures that the

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client has some responsibility in that by giving permission he or she has acknowledged a readiness to listen. Likewise, eliciting the client's response helps ensure that they listen to the feedback.

No fixing things. Clinicians may feel the urge to set the record straight or immediately fix a problem. It helps to view feedback as an offering that the client must decide whether to use.

Style is everything. Providing feedback can be a particularly sensitive time in the course of an interview. Maintaining a spirit of collaboration and respect for autonomy is vital. Given correctly, feedback can be far more helpful than unsolicited advice.

Ask - Provide - Ask. This framework (also known as elicit - provide - elicit) is an excellent approach for clinicians. Essentially it is asking permission to provide feedback, providing the feedback, and asking what thoughts the client might have.

Although proficiency at Motivational Interviewing can be a life-long endeavor involving many skills, four basic "micro-skills" are vital. These are open-ended questions, affirmations, reflections, and summaries, or "OARS." For examples of OARS, and to learn more about how to be more effective at Motivational Interviewing and the research supporting this approach with offenders, visit:

http://www.davidprescott.net/pub_32.pdf.

Congratulations to this Year's Winner of the Gail Burns-Smith Award!

Congratulations to one of our CASOM grantees from Washington State: the King County Sexual Assault Resource Center's own Lindsay Palmer! Lindsay is being honored with the Gail Burns-Smith Award for her prevention work and dedication to making our communities safer.

The award, jointly sponsored by the Association for the Treatment of Sexual Abusers (ATSA) and the National Sexual Violence Resource Center (NSVRC), is named in honor of Gail Burns-Smith, who committed her life to strengthening the partnership between advocates in the sexual violence prevention field and those working in the area of sex offender management and treatment. Lindsay's work on both the Interfaith Symposium and the DOJ SMART grant are examples of her tremendous commitment to strengthening partnerships in our community and ending the silence around sexual assault.

"Lindsay is a proven leader who finds creative ways to support victims and facilitate important community conversations about safely reintegrating former offenders," said Karen Baker, NSVRC Director.

"We applaud Lindsay on the impact she's had addressing state public policy work. This award celebrates her accomplishments and successful collaborative partnerships," said Maia Christopher, Executive Director of the Association for the Treatment of Sexual Abusers.

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Lindsay will receive the award at the ATSA Conference in October. Congratulations Lindsay, it has been our honor to work with you!

Important Upcoming Dates and Events

National Adolescent Perpetrator (NAPN) Network 2013 Annual Conference

The NAPN 2013 28th Annual Conference will be convened from April 8-10, 2013. The theme for this year's event is "Seeing the Forest for the Trees: An Ecological Perspective on Juvenile Sexual Offending."

This conference is sponsored by the Kempe Center for Prevention & Treatment of Child Abuse & Neglect, University of Colorado School of Medicine, with Support from the Kempe Foundation and is hosted by the Oregon Adolescent Sexual Offending Treatment Network (Hosted by OASOTN). The event will be convened at the Double Tree Hotel in Portland, Oregon. For more information, visit the Latest from CSOM <http://csom.org/index.html>.

Mid-Atlantic Region Association for the Treatment of Sexual Abusers (MARATSA) Conference

The 5th Annual MARATSA Conference "Learning Together, Working Together" will be convened on May 8th-9th, 2013 at the

Sheraton Station Square Hotel in Pittsburgh, Pennsylvania. Visit

http://csom.org/pubs/MARATSA%20eBlast_V5.pdf for more information.

New York State Association for the Treatment of Sexual Abusers 2013 Conference

The 18th Annual Joint NYS ATSA and NYSASOSP Conference will be held May 20-22, 2013 at the Hilton Albany, which is located at 89 State Street, in Albany, NY. Workshop and poster session proposals can be submitted to: nysatsa@gmail.com.

Next Newsletter

The next newsletter for CASOM grantees will be published in Winter 2012.



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