

# The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems

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## Abstract

This study was designed to compare the Adam Walsh Act (AWA) classification tiers with actuarial risk assessment instruments and existing state classification schemes in their respective abilities to identify sex offenders at high risk to re-offend. Data from 1,789 adult sex offenders released from prison in four states were collected (Minnesota, New Jersey, Florida, and South Carolina). On average, the sexual recidivism rate was approximately 5% at 5 years and 10% at 10 years. AWA Tier 2 offenders had higher Static-99R scores and higher recidivism rates than Tier 3 offenders, and in Florida, these inverse correlations were statistically significant. Actuarial measures and existing state tier systems, in contrast, did a better job of identifying high-risk offenders and recidivists. As well, we examined the distribution of risk assessment scores within and across tier categories, finding that a majority of sex offenders fall into AWA Tier 3, but more than half score low or moderately low on the Static-99R. The results indicate that the AWA sex offender classification scheme is a poor indicator of relative risk and is likely to result in a system that is less effective in protecting the public than those currently implemented in the states studied.

## Keywords

sexual recidivism, risk classification, risk assessment, Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA)

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## Sex Offender Risk and Classification Systems

In 1994, the Jacob Wetterling Act was passed by the U.S. Congress in response to the threat posed by convicted sex offenders living in the community. The Wetterling Act required each state to develop and implement a system for registering and tracking the addresses of convicted sex offenders so that law enforcement officers could stay apprised of their whereabouts and investigate known offenders residing within close geographic proximity to new sex crime allegations. In 1996, this registration policy was amended by the passage of Megan's Law, which allowed states to make registry information publicly accessible. By 2003, all 50 states had created online registries by which the public could easily obtain information about sex offenders living in their communities, although state policies varied greatly with respect to who was required to register or subjected to notification and for how long. In 2006, the Wetterling Act was replaced by the Adam Walsh Act which was intended to provide standardized Sex Offender Registration and Notification (SORN) requirements across the states.

Sex offenders demonstrate a wide range of risk for recidivism. Harris and Hanson (2004) noted that allocating the majority of resources to offenders at highest risk for re-offending better serves the public interest. On the contrary, imposing higher levels of treatment and supervision than is necessary based on offender risk is not cost-effective and can create collateral consequences to offenders and communities that potentially compromise public safety (Levenson, Fortey, & Baker, 2010; Schiavone & Jeglic, 2009; Zgoba, 2011; Zgoba, Levenson, & McKee, 2009). Thus, clarifying the predictive validity of various risk assessment procedures and building empirically derived classification models into policy development can facilitate improved community safety and a more efficient distribution of fiscal resources.

The impact of risk classification procedures on sex crime prevention in the United States is largely unknown because empirical investigations using American samples have been limited. Although there is wide consensus on the need for improved strategies to protect communities from sexual offenders, there is also considerable doubt as to whether current criminal justice responses actually reduce sexual re-offending (Blasko, Jeglic, & Mercado, 2011; Freeman & Sandler, 2010; Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2010; Levenson & D'Amora, 2007; Levenson et al., 2010; Petersilia, 2003; Prescott & Rockoff, 2011; Tewksbury, Jennings, & Zgoba, 2012; Zgoba, Witt, Dalessandro, & Veysey, 2008). Further hindering the ability of legislators to make informed decisions is the dearth of empirical analyses of U.S. risk classification procedures and their effectiveness in protecting the public from repeated sexual crimes.

The purpose of this study is to compare the classification tiers recommended by the AWA with actuarial risk assessment instruments in their respective abilities to identify high-risk individuals. We also sought to evaluate the predictive accuracy of existing state risk assessment classification schemes, and to examine the distribution of risk assessment scores within and across tier categories as defined by the AWA.

## Background

### *State Classification Methods*

Various strategies are currently used in the United States to categorize and manage convicted sexual offenders who are subjected to SORN. For instance, some states classify sex offenders into relative risk categories and assign different registration and notification requirements depending on the assessed threat posed to public safety, whereas other states use broad notification strategies to distribute information about all sex offenders regardless of risk (Harris & Lobanov-Rostovsky, 2010; Matson & Lieb, 1996). About 14% of states operate single tier systems that subject all Registered Sex Offenders (RSO) to similar requirements, 18% operate modified single tier systems with a special category for offenders identified as “sexual predators,” and 68% set forth separate requirements for two or more categories of sex offenders (Harris, Levenson, & Ackerman, 2014). To distinguish risk levels, jurisdictions typically use the conviction offense (70% of states), the number of convictions (45%), and/or a form of empirically guided risk assessment (32%).

The four states included in the present study provide examples of differing state classification methods for determining offender risk. Florida has a system that distinguishes offenders and predators based on the type and number of conviction offenses. Florida’s sexual predator designation is reserved for offenders convicted of one first degree felony sexual offense or two second degree felony sexual offenses. South Carolina has a system that subjects all offenders convicted of one or more designated sexual offenses to registration and notification. Individuals can be considered for the sexually violent predator (SVP) designation if, subsequent to conviction for a sexually violent offense, the individual is found to suffer from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence. Regardless of SVP status, all RSO in South Carolina are required to register for life and are included on the state’s online notification site.

In states that go beyond distinguishing offenders and predators, there are substantial differences in the methodology for arriving at an individual’s tier status. New Jersey developed a state-specific tier system to distinguish between low-, medium-, and high-risk sex offenders. Specifically, a “Registrant Risk Assessment Manual” (RRAS), based on empirically derived risk factors, was developed to provide an objective standard to determine community notification decisions and to ensure that the notification law is applied in a uniform manner (Ferguson, Eidelson, & Witt, 1998; Witt, DeRusso, Oppenheim, & Ferguson, 1996). Prosecutors are granted the authority to determine which offenders are eligible for SORN requirements. Tier 1 (low risk) offenders’ information is not made public via New Jersey’s online registration, but their residence information can be shared with law enforcement agencies, victims, witnesses, and other individuals designated by the prosecuting attorney. In general, Tier 2 offenders’ information is also shared with schools, child care centers, and other organizations that have potential victims. A subclass of Tier 2 offenders and all Tier 3 offenders appear on New Jersey’s publicly accessible online registry. In addition to

appearing on the online registry, residence information for Tier 3 offenders is distributed by law enforcement via in-person notification.

Minnesota also employs a tier system to distinguish between low-, medium-, and high-risk offenders, but the specifics depart significantly from those in New Jersey, as does the type of notification. Minnesota employed the Minnesota Sex Offender Screening Tool Revised (MnSOST-R; Epperson, Kaul, & Hesselton, 1999) to provide the starting point for risk level assignment. This tool comprises 16 items measuring empirically derived static (historical) and dynamic (changeable) risk factors. In Minnesota, offenders rated as high risk (Level 3) are included on the online registry and are the subject of community notification meetings held with nearby residents and business owners. Offenders rated as medium risk (Level 2) are not included in the online registry, although their information is shared with schools, child care centers, and other organizations that have potential victims. Information about offenders rated as lower risk (Level 1) can be shared among law enforcement agencies and with victims, witnesses, and other individuals designated by the prosecuting attorney (Minnesota Department of Corrections [MnDOC], 2013).

### *AWA Classification*

In response to a perceived need for standardization across the states, Title 1 of the AWA (the Sex Offender Registration and Notification Act; referred to as SORNA) created guidelines that each state was required to implement by 2011 or risk losing 10% of their federal criminal justice funding. SORNA created a “tier” classification system based on the type and number of sex offense convictions for determining the duration of registration, frequency of address verifications, and extent of website disclosure. Tier 3 offenses generally encompass sexual assaults involving sexual acts regardless of victim age, sexual contact offenses against children below the age of 13, non-parental kidnapping of minors, and attempts or conspiracies to commit such offenses. Offenders classified as Tier 3 are presumably at highest risk for re-offense and are subjected to lifetime registration and notification and must register with law enforcement 4 times per year. Tier 2 offenses include most felony sexual abuse or sexual exploitation crimes. Offenders classified as Tier 2 are subjected to 25 years of registration and notification, with bi-yearly updates. Tier 1 offenses include all sex offense convictions that do not support a higher classification, such as misdemeanor offenses. Offenders classified as Tier 1 are subjected to 15 years of registration and notification and must update their information once a year.

### **Research Summary: SORN Policies**

According to the National Center for Missing and Exploited Children (NCMEC), in December 2013, there were a total of 769,402 RSO in the United States, although a considerable number of RSO do not reside in the community (Ackerman, Harris, Levenson, & Zgoba, 2011; Ackerman, Levenson, & Harris, 2012). Approximately 12% of RSO listed on public registries were incarcerated or civilly committed,

deceased, or deported, and as many as 18% may be counted in more than one state. Approximately 33% of RSO reported by NCMEC were not found on public registries, presumably because they have been assessed by their state's sex offender management procedure to pose low risk for future offending (Ackerman et al., 2011). Among public registrants (higher risk offenders from some states and all offenders from other states), about 14% nationally had been designated as high risk, predator, or sexually violent (Ackerman et al., 2011). At least 85% had only one sex offense conviction. Approximately 90% of RSO had a minor victim, and about 33% had victims under 10 years old. Most (87%) of the victims (adult and minor) were female.

### *Impact of SORN on Sex Offense Recidivism*

At this time, a number of empirical studies have been conducted to determine the efficacy of SORN laws and policies. Researchers have examined the impact of SORN laws on sex crime rates in general and sex offense recidivism more specifically. The empirical research is somewhat limited due to the recent implementation of these laws and partly due to methodological challenges faced by researchers when conducting sex crime policy analysis (Levenson & D'Amora, 2007). For example, low base rates, the multiple criminal justice policies enacted within short time frames, challenges in obtaining reliable recidivism data, and the need for long follow-up periods all contribute to the complexity of understanding the impact of these laws. Furthermore, each state's SORN policy is idiosyncratic, subjecting different types of offenders to a variety of registration and notification requirements. The variability in research methodologies and SORN policy characteristics likely accounts for the varied results reported across the studies.

Two studies that have detected reductions in sex crime recidivism as a result of SORN were conducted in Minnesota and Washington (Duwe & Donnay, 2008; Washington State Institute for Public Policy, 2005). Both states use empirically derived risk assessment instruments to classify offenders, and they limit public notification only to those who pose the greatest threat to community safety. In Minnesota, the recidivism rates of the notification group (5%) were significantly lower than both the pre-notification group (those matched on risk but released before the law went into effect) and the non-notification group (lower risk offenders not subjected to disclosure; Duwe & Donnay, 2008). After controlling for generally decreasing crime trends, researchers in Washington found a significant decrease in sex offense recidivism (from 5% to 1%) after 1997 (Washington State Institute for Public Policy, 2005). The authors acknowledged they were unable to account for other possible explanations for this reduction (e.g., more severe sentencing guidelines, or improved probationary supervision), yet they concluded that community notification has likely contributed moderately to reductions in sexual offending.

Most studies, however, have revealed no significant reductions in sex crime rates that can be attributed to SORN laws and policies. An earlier study from Washington found no statistically significant difference in recidivism rates between high-risk offenders who were subjected to notification (19% recidivism) and those who were

not (22% recidivism; Schram & Milloy, 1995). There was, however, evidence that registration assisted law enforcement agents to apprehend registered suspects more quickly for new sex crimes (Schram & Milloy, 1995). In Iowa, 223 sex offenders subjected to sex offender registration were tracked for an average of 4.3 years. Their sex offense recidivism rate (3%) was not significantly different from a control group of 201 sex offenders (3.5%) who were not required to register because they were adjudicated before the law went into effect (Adkins, Huff, & Stageberg, 2000). In Wisconsin, there were no statistically significant differences between 47 high-risk sex offenders exposed to aggressive community notification (19% recidivism) and 166 high-risk sex offenders who were not aggressively identified (12% recidivism; Zevitz, 2006).

Researchers in other states have found similar results. In New Jersey, researchers compared 250 sex offenders released before Megan's law went into effect with 300 sex offenders released after the passage of the law, and found no significant reductions in sex offense recidivism (Zgoba, Veysey, & Dalessandro, 2010). As well, no significant differences were detected in the time it took for sex offenders to re-offend, or the number of victims. The authors followed up with a trend analysis, and though they found a significant decrease in sexual offense recidivism aggregated across counties, they cautioned that variations in jurisdiction rates made it difficult to conclude that reductions were attributable to Megan's Law implementation (Veysey, Zgoba, & Dalessandro, 2008). In South Carolina, 6,064 sex offenders convicted between 1990 and 2004 were followed to estimate the influence of registration status on risk of sexual recidivism while controlling for time at risk; the findings indicated registration status did not predict recidivism in any model (Letourneau et al., 2010). Though SORN status was not a significant predictor of sexual recidivism in New Jersey, high-risk sex offenders were more likely to commit future criminal offenses, including sex offenses, and to do so fairly quickly following release, suggesting that empirically based risk assessment is a valuable component of sex offender management (Tewksbury et al., 2012). In New York, SORN was not associated with reductions in sex crime rates (Sandler, Freeman & Socia, 2008).

Multi-state studies have also produced mixed findings. An interrupted time-series analysis investigated the impact of registration and notification laws on sexual assault rates in 10 states (Vasquez, Maddan, & Walker, 2008). Of the 10 states examined, California had a significant increase in rape rates following implementation of registration, yet Hawaii, Idaho, and Ohio had significant decreases in rape rates, and the remaining 6 states (Arkansas, Connecticut, Nebraska, Nevada, Oklahoma, and West Virginia) showed non-significant trends. The authors concluded that registration and notification policies did not appear to systematically reduce sex crime rates. Another analysis examining more than 300,000 sex offenses in 15 states found that whereas registration with law enforcement appeared to reduce recidivistic sex offenses, public notification did not (Prescott & Rockoff, 2011). Using Uniform Crime Report (UCR) data from 1985 to 2003, Agan (2011) did not find a significant decrease in arrest rates of rape or sexual abuse after the implementation of a registry or public access to the registry via the Internet. The researcher also utilized Bureau of Justice Statistics (BJS) data that tracked individual sex offenders after their release in 1994, and determined

that having to register as a sex offender did not lead to significant reductions in sex offense recidivism (Agan, 2011). Using UCR data for the years 1970 to 2002, Ackerman, Sacks, and Greenberg (2012) investigated the effect of Megan's Laws and SVP legislation on rates of rape, and reported that these laws have not resulted in dramatic declines in forcible rapes. They concluded that the accumulation of empirical evidence suggests that the costs outweigh the benefits of such laws.

In summary, the majority of SORN effectiveness studies have shown very little evidence of reduced recidivism as a result of these laws, and the few studies finding reductions attributable to SORN were conducted in states using empirically derived risk classification systems and targeted notification strategies.

### *The Utility of AWA Classification*

The introduction of the AWA tier categories inspired empirical inquiry into the impact of the new classification system on improvements in public safety. Researchers in New York investigated the ability of the federally mandated systems of classification to distinguish between registered offenders who present significant threats to public safety and those who may pose lower risk for recidivism (Freeman & Sandler, 2010). The authors tested the AWA tiers compared with risk factors associated with recidivism to determine which were superior in detecting sex offense recidivists. They found that empirically derived risk factors were better able to predict recidivism than were AWA tiers (Freeman & Sandler, 2010). Other researchers have documented the "net widening" effect of implementing the AWA-mandated classification system (Harris, Lobanov-Rostovsky, & Levenson, 2010). The AWA reclassification process in Ohio and Oklahoma redistributed a significant majority of registrants from lower tier levels to higher ones, contradicting empirical evidence suggesting that the highest risk of sexual re-offense is concentrated among a much smaller group of offenders (Harris et al., 2010).

### **Risk Assessment Procedures**

Risk assessment instruments that aim to improve the accuracy of assessing risk for sexual recidivism have been developed and tested and can enhance criminal justice decisions for supervision, management, and treatment of offenders (Hanson & Thornton, 2000). Validated sex offender risk assessment instruments outperform clinical judgment (Hanson & Morton-Bourgon, 2005) and therefore, are useful in informing risk related case management decisions. The most widely researched and commonly used instrument is the Static-99R, which improved upon the original Static-99 (Hanson & Thornton, 1999), by modifying the age variable from two into four increments (Helmus, Thornton, Hanson, & Babchishin, 2012). There is ample evidence to suggest that using multiple risk assessment instruments can add to predictive validity, and different measures may be better at discriminating risk for general, violent, and sexual recidivism (Babchishin, Hanson, & Helmus, 2012). A meta-analysis (8,106 sex offenders in 23 samples) of the Static-99R and the Static-2002R demonstrated consistent

relative predictive validity in distinguishing high-risk from low-risk offenders, though considerable variation was found in the rates of absolute recidivism across studies (Helmus, Hanson, Thornton, & Babchishin, 2012). The findings supported the use of actuarial measures to screen sex offenders into relative risk categories (Helmus, Hanson, Thornton, Babchishin, & Harris, 2012).

## **Purpose of the Study**

This study sought to investigate important components of the United States's SORN system, with a focus on risk classification and sexual recidivism (measured by re-arrest). The principal aims of this study were (a) to compare the AWA classification tiers with actuarial risk assessment instruments in their respective abilities to identify high-risk individuals and recidivists, (b) to evaluate the predictive accuracy of existing state risk assessment classification schemes, and (c) to examine the distribution of risk assessment scores within and across tier categories as defined by the AWA. By testing the utility of federally mandated classification procedures, we hope to contribute to the development, implementation, and refinement of evidence-based policy.

## **Method**

### *Participants*

The participants were comprised of 1,789 formerly incarcerated male sex offenders who were randomly selected from four states: New Jersey ( $n = 291$ ), Minnesota ( $n = 500$ ), Florida ( $n = 500$ ), and South Carolina ( $n = 498$ ). Eligible cases were convicted sex offenders who had been released from prison into the community between January 1, 1990, and December 31, 2004. Sexual offenses were defined as any index crime requiring registration and/or end of confinement review. In addition, offenders must have been released into the community and not to a civil commitment program.

### *Data Collection*

Data were collected using available automated databases and in the majority of cases, supplemented by review of prison and probation records. The project proceeded in two phases. Phase 1 included coding items to score the Static-99R, using available archival records, as well as extracting relevant demographic and criminal (including juvenile justice) history data at the time of release into the community for each offender. Phase 2 included coding recidivism data for each offender. Recidivism was defined as a new arrest, and these data were provided by each state's law enforcement agency. Independent raters, trained to abstract files, coded relevant variables in each state, and a single rater coded each file. To maintain comparable ratings across states, video conferencing was used to train all coders simultaneously. Training was conducted over a 1-week period. Coders and study investigators were specifically trained to code items from the Static-99R, by a certified trainer, using standard training procedures



and materials. A reliability coder, trained at the same time as all other coders, rated a 10% random sample of charts from all four states. Kappa statistics were computed for all ordinal and nominal data. Kappa statistics were significant ( $p < .001$ ) and ranged from .59 to .89, except for the Static-99R item “prior non-sexual violence,” where Kappa was small (.15) and not significant. The distribution on this item was skewed such that only five participants were coded as yes on this item. Inter-rater reliability was not calculated for Static-99R score as it was automatically calculated from the individual items coded.

### *Tiering Procedures*

For the purposes of this study, every offender in the dataset was assigned an AWA tier designation intended to correspond with the requirements set forth in SORNA guidelines established by the Department of Justice. This process is inherently idiosyncratic from one state to the next, due to differences in each state’s criminal code, as well as the range of available data concerning factors such as victim’s age and the presence of aggravating circumstances. In addition, the imprecision in some state criminal codes complicates the tier assignment, particularly where factors such as the victim’s age or the degree of force used could not be ascertained from the offense statute and other available information. To account for these anomalies, tier assignments were made along a continuum of certainty, with “borderline” cases flagged as such. At the time of this study, Florida and South Carolina were rated by the Department of Justice as being in substantial compliance with the AWA. Nevertheless, AWA tiers did not exist at the time of release of these cohorts. Therefore, AWA tiers were assigned for each offender based on the tier that would have been appropriate at the time of release based on the offense of conviction. The steps used in assigning tiers included a detailed review of statutory codes for each state, assignment of baseline tiers for each type of offense across three victim age groups: 12 and under, 13 to 17, and 18+, as well as review of both instant offense and most serious offense fields, and assignment of initial tiers based on this information. Additional steps included reviewing supplemental fields in the dataset to identify cases in which the offender had a history of two or more sexual offenses, a history of victimizing children under 12, and/or history of use of force in the commission of offenses, all of which can increase tier designations. A third party researcher with experience in the AWA tiers completed these tasks (Zgoba et al., 2012).

### *Analytic Strategy*

First, descriptive statistics were used to explore the demographics and risk characteristics of the sample. Then, the 5- and 10-year recidivism rates were examined and compared within the statutory tiers by state using chi-square analyses, as were the Static-99R scores by tier and their corresponding recidivism rates. The ability of both existing state tier designations and AWA classifications to predict recidivism was examined using logistic regression. Five- and 10-year sexual recidivism rates were

examined with particular emphasis on 10-year rates as these rates were both more complete and less vulnerable to short-term suppression effects.

## Results

### *Descriptive Statistics*

As seen in Table 1, more than 80% of offenders had no prior sentences for a sexual crime, but two thirds had prior involvement in the criminal justice system for any criminal offense. Of the cases in which victim characteristics were available, three quarters were unrelated to the offender, and less than one fifth of victims were strangers. About half of the victims were age 12 or under. In addition, the majority of the offenders were not married at the time of their instant offense. The majority of the sample was White, with an average release age of 37 years. The valid sample varied between 997 (56%) and 1,695 (95%) for these analyses. In particular, South Carolina Department of Corrections had no information on victim characteristics, which was necessary for scoring the risk assessment measures. Although the data were recorded in their data banks, the South Carolina Probation, Pardon, and Parole Department did not release victim characteristics for the purpose of this research. There were some variations in sample characteristics across States (see Table 1).

The overall recidivism rate for the sample was 5.1% over 5 years and 10.2% over 10 years. There was an apparent trend for sexual recidivism rates to differ among states after 5 years, but this trend failed to reach significance,  $\chi^2(3) = 6.38, p = .095$ . The trend reached significance at the 10-year follow-up, with the highest rate occurring in Florida (13.7%) and the lowest rate in South Carolina (7.5%),  $\chi^2(3) = 13.39, p = .004$ . The overall 10 year recidivism rate in Minnesota was 12.0%, and in New Jersey, it was 8.7%.

### *AWA Tiers and Recidivism Rates*

In each state, the majority of the participants fell into the Tier 3 category (see Table 2). These proportions were more discrepant, however, in New Jersey and Minnesota, than in Florida or South Carolina. In New Jersey and Minnesota, offenders who are sentenced to prison (and therefore released as part of our cohorts) tended to be convicted of offenses that are more serious, and are therefore more likely to meet criteria for Tier 3.

The 5-year and 10-year overall sexual recidivism rate for Tier 2 offenders was 6.4% and 13.5%, respectively. The 5-year and 10-year overall sexual recidivism rate for Tier 3 offenders were 4.5% and 9.1%, respectively. In Minnesota and South Carolina, the 5-year rates were nearly equivalent in the two tier groups, but in Florida, the Tier 2 offenders had significantly higher rates of recidivism than did the Tier 3 offenders,  $\chi^2(1) = 6.2, p = .013$ . After 10 years, the trend remained similar except that South Carolina's recidivism rate was higher for Tier 2 offenders, but not significantly so. In Florida, the difference between tiers for sexual recidivism remained significant and inversely related,  $\chi^2(1) = 14.5, p < .001$ . No significant differences emerged among tier groups in the other states.

**Table 1.** Sample Descriptives.

	Florida		Minnesota		New Jersey		South Carolina		Total	
	%	<i>n</i> <sup>a</sup>	%	<i>n</i> <sup>a</sup>	%	<i>n</i> <sup>a</sup>	%	<i>n</i> <sup>a</sup>	%	<i>n</i> <sup>a</sup>
No prior sentencing occasions for sexual offenses	85	494	73	392	85	244	90	448	83	1,578
Any prior sentencing occasions for any offense	71	494	83	393	68	244	48	447	67	1,578
Any convictions for non-contact sexual offenses	5	493	2	393	6	244	19	206	7	1,336
Prior sentencing occasions for non-sexual violence	29	494	39	392	20	244	89	94	35	1,224
Any unrelated victims	73	342	86	394	59	244	77	90	75	1,070
Any stranger victims	15	351	17	389	18	241	75	16	17	997
Victim age 6 or younger <sup>b</sup>	12	540	15	510	20	308	21	141	16	1,499
Victim age 7 to 12 <sup>b</sup>	37	540	31	510	42	308	36	141	36	1,499
Victim age 13 to 15 <sup>b</sup>	36	540	29	510	20	308	23	141	29	1,499
Victim age 16 or older <sup>b</sup>	15	540	25	510	18	308	20	141	19	1,499
Race—White	56	492	61	397	50	244	52	448	65	1,360
Race—Black	35	492	24	397	29	244	47	448	27	1,360
Race—Latino	8	492	7	397	21	244	0	448	6	1,360
Race—Other	1	492	8	397	0	244	1	448	2	1,360
Age at release: M (SD)	38.2 (12.2)	495	35.2 (10.9)	389	39.9 (12.0)	242	36.2 (10.4)	448	37.1 (11.5)	1,574

<sup>a</sup>Valid number for whom data were available.

<sup>b</sup>Valid *n* exceeds number of subjects because more than one victim age category can be reported.

**Static-99R Scores by State and by Tier**

There were substantial amounts of missing data in all states, primarily due to the unavailability of victim information in corrections files. As noted earlier, despite efforts to obtain victim information from multiple sources, these data were missing for most of the South Carolina cases. Given the necessity of victim characteristics for computing Static-99R scores, South Carolina data did not contribute to these analyses.

The combined mean Static-99R score was 2.59 (*SD* = 2.29). The mean Static-99R scores for Florida, Minnesota, and New Jersey were 1.97, 3.12, and 1.99, respectively.

**Table 2.** Frequency of Tier 2 and 3 Assignments and 5- and 10-Year Re-Offense Rates by State.

State	5-year re-offense						10-year re-offense					
	Tier 2		Tier 3		Tier 2		Tier 3		Tier 2		Tier 3	
	n assigned (%)	Re-offense rate (n) <sup>a</sup>	n assigned (%)	Re-offense rate (n) <sup>a</sup>	n assigned (%)	Re-offense rate (n) <sup>b</sup>	n assigned (%)	Re-offense rate (n) <sup>b</sup>	n assigned (%)	Re-offense rate (n) <sup>b</sup>	n assigned (%)	Re-offense rate (n) <sup>b</sup>
Florida	208 (44%)	8.2% (17)	266 (56%)	3.0% (8)	95 (40%)	24.2% (23)	145 (60%)	6.9% (10)	60 (15%)	11.7% (7)	350 (85%)	12.0% (42)
Minnesota	60 (15%)	6.7% (4)	350 (85%)	6.9% (24)	60 (15%)	11.7% (7)	350 (85%)	12.0% (42)	5 (2%)	0% (0)	213 (98%)	8.9% (19)
New Jersey	5 (2%)	0% (0)	233 (98%)	2.9% (7)	5 (2%)	0% (0)	213 (98%)	8.9% (19)	180 (40%)	8.9% (16)	272 (60%)	6.6% (18)
South Carolina <sup>c</sup>	182 (40%)	4.4% (8)	272 (60%)	4.4% (12)	180 (40%)	8.9% (16)	272 (60%)	6.6% (18)	455 (29%)	6.4% (29)	1,121 (71%)	9.1% (89)
Total	455 (29%)	6.4% (29)	1,121 (71%)	4.5% (51)	340 (26%)	13.5% (46)	980 (76%)	9.1% (89)				

<sup>a</sup>Offense rates significantly different at  $p = .013$ .

<sup>b</sup>Offense rates significantly different at  $p < .001$ .

<sup>c</sup>6% were assigned at Tier 0 and less than 1% ( $n = 3$ ) were assigned to Tier 1. In all other States, there were no Tier 0 or Tier 1 offenders.

**Table 3.** Mean Static-99R Scores by State and Tier.

State	Static-99R			Static-99R Score Tier 2			Static-99R Score Tier 3		
	<i>n</i>	<i>M</i>	<i>SD</i>	<i>n</i>	<i>M</i>	<i>SD</i>	<i>n</i>	<i>M</i>	<i>SD</i>
Florida	103	1.97	1.96	54	2.18	1.82	49	1.73	2.09
Minnesota	371	3.12	2.10	51	3.08	1.53	320	3.03	2.18
New Jersey	233	1.99	2.51	5	2.80	1.10	228	1.97	2.23
South Carolina <sup>a</sup>	10	—	—	—	—	—	—	—	—
Combined (excluding South Carolina)	707	2.59	2.29	110	2.85	1.94	597	2.61	2.24

<sup>a</sup>SC data are not present due to missing cases.

**Table 4.** Static-99R Distribution Within AWA Tiers.

Static-99R	Static-99R distribution of risk within tier				
	Low (%)	Moderate-low (%)	Moderate-high (%)	High (%)	<i>n</i> in tier
AWA Tier 2	24	46	27	3	110
AWA Tier 3	33	32	24	11	597

One-way ANOVA comparing Static-99R scores in Florida, Minnesota, and New Jersey yielded significant differences,  $F(2, 706) = 23.14, p < .001$ . Post hoc comparisons using the Least Significant Difference test (LSD) showed that scores were significantly higher for Minnesota than for Florida or New Jersey ( $p < .001$ ). Consistent with previous research, the Static-99R showed a significant association with sexual re-offending, Area Under the Curve (AUC) = 0.70, 95% confidence interval (CI) = [0.63, 0.77],  $p < .001$ .

The combined Static-99R score for Tier 2 offenders ( $M = 2.85, SD = 1.94$ ) was slightly higher than that for the Tier 3 offenders ( $M = 2.61, SD = 2.24$ ), but this difference was not statistically significant (Table 3). In Florida, however, the Static-99R score for Tier 2 was significantly higher than for Tier 3 ( $p < .01$ ).

Table 4 shows the distribution of Static-99R risk categories by tier. Though the majority of sex offenders were classified as AWA Tier 3, the majority of Tier 3 offenders fell into the low, and low to moderate risk bands according to the Static-99R. There was a significant difference between the tiers in the distribution of Static-99R levels,  $\chi^2(3) = 14.8, p = .002$ . Tier 3 had a slightly higher proportion of high-risk cases, but this difference was not significant. Overall, however, in both Tiers 2 and 3, about two thirds of the offenders fell in the low or moderate to low risk categories. Approximately 1 in 10 was identified as high risk. In fact, the differences appear to be in the distributions of the moderate risk categories, with those offenders assigned to Tier 2 more likely to score as moderate risk.

## State Classification and Recidivism

The efficiency of the current state tier systems in classifying sex offenders was examined by comparing the recidivism rates of higher risk with lower risk individuals in each state. Florida and South Carolina assign a sexual predator designation for offenders using an offense-based model, yet Minnesota and New Jersey assign tiers using unique evidence-based risk assessment procedures. Because Florida and South Carolina use systems with two levels, whereas Minnesota and New Jersey use systems with three tiers, Minnesota and New Jersey samples were partitioned into high risk (Level 3) and not high risk (Levels 1 and 2). At the 5-year follow-up, higher risk state tiers were associated with higher sexual recidivism rates (8%, 12/158, vs. 5%, 40/767, in the lower risk categories), but the results were not statistically significant. At the 10-year follow-up, 18% (19/106) of the higher risk offenders had recidivated, compared with 12% (67/582) of the lower risk group,  $\chi^2(1) = 3.37, p = .066$ .

The ability of state and AWA tier designations to predict 10-year recidivism rates were examined via logistic regression. A higher state assigned tier was found to be significantly associated with sexual recidivism in the expected, positive direction,  $\beta = 0.70, p = .02$ , whereas a higher AWA tier was significantly associated with sexual recidivism in the inverse and thus unexpected direction,  $\beta = -0.81, p = .001$ . The comparable analyses for 5-year sexual recidivism yielded similar results, but these were statistically significant only for the inverse relationship of AWA tier to re-offending.

## Discussion

Title 1 of the AWA sought to improve community safety by standardizing the procedures used by states to classify sex offenders and to determine registration and notification requirements. Presumably, classification schemes are expected to assist with identifying and managing offenders who pose the greatest threat to public safety. In this study, we have investigated three ways of determining the level of concern that authorities should have for specific individuals: the offense-based tier system mandated by the AWA, the existing tier systems in four states, and the Static-99R, an actuarial risk assessment instrument. Overall, rates of recidivism were consistent with prior research: 5- and 10-year recidivism rates were, across the four-state sample, 5.1% and 10.2%, respectively. There were very few Tier 1 offenders in our sample, likely because AWA Tier 1 criteria require an offender to be sentenced to less than 1-year incarceration, and our sample was selected from a released prison population. AWA Tier 1 may reflect misdemeanor status in many jurisdictions.

The findings of the present study call into question the accuracy and utility of the AWA classification system in detecting high-risk offenders and determining concordant risk management procedures upon an offender's release into the community. After 5 and 10 years, AWA Tier 3 offenders did not have significantly higher rates of recidivism than Tier 2 offenders. In fact, in Florida, AWA classification was significantly, but inversely, associated with sexual recidivism. In other words, Tier 2 offenders had higher recidivism rates than Tier 3. The findings suggest that AWA tiers did a poor job of identifying high-risk offenders, and thus may not meaningfully guide sex

offender management practices. Existing state classification showed a more consistent trend in the expected direction, with lower tier offenders recidivating at lower rates than higher tier offenders at both 5- and 10-year follow-up times.

Actuarial risk assessment scores were found, on average, to be in the moderate to low risk range, and few offenders were found in the highest risk bands. Actuarial scores were not systematically consistent with assigned AWA tier levels; AWA Tier 3 offenders did not have higher Static-99R scores than Tier 2. To illustrate, the mean Static-99R score of Tier 2 offenders was 2.85, while the mean Static-99R score of Tier 3 offenders was 2.61. While the majority of sex offenders in all the four states fell into AWA Tier 3, most offenders were classified as low or moderately low risk using the Static-99R. This distribution suggests that the AWA tiers overestimate risk in most cases and erroneously imply that the majority of RSO pose a high threat to community safety.

### *Implications for Policy and Practice*

The most salient policy considerations are twofold. First, if the purpose of a classification scheme is to identify higher risk offenders to guide public awareness and law enforcement monitoring, it is essential for that classification scheme to approximate relative risk in a meaningful fashion. Second, it follows that if the classification scheme is not an accurate portrayal of relative risk, then the resources for tracking and monitoring sex offenders cannot be allocated efficiently. The AWA classification scheme implies that Tier 3 offenders are more dangerous and requires them to register more often for longer durations. Thus, testing and ascertaining the validity of the Tier 3 designation has provided valuable information. Comparing the corresponding recidivism rates of actuarial risk assessments and AWA tier categories revealed that the AWA classification scheme did not represent a systematic and hierarchical classification of relative risk categories. It follows, then, that resource distribution may not be as efficient as might be optimal, both in terms of cost-effectiveness and public safety benefits.

Notably, the latest research on long-term sex offense recidivism indicated that sex offender recidivism risk is highest during the first few years after release, and decreases substantially over time as individuals remain in the community sex offense-free (Hanson, Harris, Helmus, & Thornton, 2014). After 16.5 years offense-free in the community, even high-risk sexual offenders (defined by Static-99R scores) had no greater likelihood of committing a new sex offense than non-sexual criminals. Thus, policies such as lifetime (or even 25 year) registration may be unnecessary and resources might be better spent on more intensive supervision in the early years of re-entry (Hanson et al., 2014).

### *Limitations*

All studies that include multiple states, historical files, and individualized criminal codes pose challenges to researchers, and this study was no exception. First, because the sex offenders randomly selected for these analyses were released prisoners (making it impossible to include civilly committed sex offenders), they may represent a higher risk sample than sex offenders who were not sentenced to prison. The group

may differ, therefore, from the overall population of RSOs. As well, officially sanctioned offenders might differ from undetected offenders, and sex offenders who were convicted and sent to prison might differ from detected offenders who were diverted from judicial punishment. Findings from the present study might not generalize to lower risk or non-incarcerated sex offenders.

Second, our ability to control for potentially confounding variables was limited. In particular, we speculated that the doubling of recidivism between 5 and 10 years follow-up may have been the result of some suppression occurring during the first 5 years, possibly due to greater formal supervision. For most cases, we were unable to determine the degree of supervision after release, and therefore we were unable to control for or to test differences based on supervision conditions in our analyses. Presently, sexual offenders released into the community experience different conditions than the sexual offenders released in most of the samples that have been previously used to study the predictive accuracy of assessment instruments. Major differences include longer prison sentences, tighter probationary supervision, longer supervision periods, community notification, residence restrictions, and electronic monitoring. All of these conditions may collectively alter the recidivism potential posed by sexual offenders either by reducing opportunities for crime or by increasing the likelihood that new crimes will be more quickly detected.

Third, we recognize that the system we generated for classifying offenders into AWA tiers in this study might not precisely reflect the procedures ultimately approved by the federal government. The complicated process of applying AWA criteria varies by state because of the idiosyncratic statutory definitions in each jurisdiction. Although we recognize the potential imperfections of our strategy, we are confident that the method approximates the federal classification system in a reliable and valid fashion. The results of the present research indicate that it is essential for both state and federal government agencies to allocate sufficient financial resources for evaluating their risk classification systems.

## Conclusion

Title 1 of the AWA intended to standardize the procedures that states use to classify sex offenders by providing an offense-based categorization scheme. As of this writing, the AWA has been substantially implemented by 17 states. Presumably, classification models are expected to accurately identify offenders who pose the greatest threat to public safety, so that management strategies can be implemented accordingly. If decision making is going to be driven by assigning offenders into defined risk classes, then those categories must be determined by empirically derived procedures that are more likely to correctly identify high-risk offenders. In this study, not only did existing State classification systems outperform AWA tiers, but also when the AWA tiers were related to re-offending or risk level, offenders assigned to the lower tier (Tier 2) consistently offended at a higher rate and had higher actuarially predicted risk than offenders assigned to the higher tier (Tier 3). Assessment procedures serve multiple, important roles in treatment and management of sex offenders. They not only allow clinicians to



target the risk factors and criminogenic needs most relevant for intervention planning, but they also play an integral role in supervision and monitoring (Andrews, Bonta, & Wormith, 2011; Poston & Hanson, 2010). Moreover, they can direct the allocation of limited resources to the highest risk offenders so that public safety can be maximized in a cost-effective manner. Assessment tools and risk classification systems that are not empirically driven offer misinformation to the public and lead to an inefficient distribution of resources, perhaps ultimately undermining the important goal of public safety.

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### **Authors' Note**

The views presented in this report represent those of the authors and do not necessarily reflect the position of the National Institute of Justice, the U.S. Department of Justice, or the individual state governments of New Jersey, Minnesota, Massachusetts, South Carolina, or Florida.

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