



I15 Determining Clinical Criteria for Use in Evaluations of Sexually Violent Offenders: Exploration of Case Examples

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The goals of this presentation are to present to the forensic community assessment strategies to assist the courts in determining which defendants meet criteria for being “sexually violent offenders.”

This oral presentation will discuss assessment strategies used by the author when performing court ordered evaluations of defendants in Nebraska who were convicted of specific violations deemed to be sex offenses. Courts often ordered such defendants to be committed to the state inpatient forensic mental health facility for the purposes of determining a defendant’s diagnosis, treatment needs, and prognosis for treatment. In addition, the courts specifically requested these evaluations to determine if a defendant met statutory criteria for being a “sexually violent offender.” In the Nebraska Revised Statutes (section 29-4005), a “sexually violent offender” is defined as follows: “a person who has been convicted of one or more offenses listed in subdivision (1)(a) of section 29-4003 (e.g., 1st degree sexual assault on a child), and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at a stranger, or at a person with whom a relationship has been established or promoted, for the primary purpose of victimization.” “Mental abnormality” is specifically defined as a “congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of a criminal sexual act to a degree that makes the person a menace to the health and safety of other persons.”

A specific example will be presented that seems to fit the sexually violent offender criteria well. This middle-aged offender had a history of victimizing young female girls. He would minimize the impact of his behavior on his victims and would often blame the victims for “coming on” to him. He appeared to establish relationships with mothers of young girls so that he would have easy access to young girls for sexual exploitation. On tests specifically designed to measure deviant sexual interests and behaviors, he evidenced a very “defensive” profile. Despite this, his performance on these tests was similar to persons known to be repeat offenders with histories of child molestation and rape. On measures of psychopathy designed to gauge personality characteristics shown to predispose persons to criminality, violence, and impulsive acting out, he scored high on the trait representing a general lack of empathy, remorse and guilt. His penile plethysmograph results showed a significant heightened sexual arousal to scenarios involving both persuasive and coercive scenarios with female preschool and grammar school girls. His history of abusing alcohol and street drugs further predisposed him to the perpetration of sex crimes. This case example can be easily seen to fit the statutory definition of a sexually violent offender.

Another example will be given in which it will be much more difficult to show a connection between the unlawful behavior constituting the sex crime and criteria for being a sexually violent offender. In this case, the offender is a family member who had a longterm relationship with the victim. The relationship did not appear to be specifically “established or promoted for the primary purpose of victimization.” In fact, both the victim (a granddaughter) and the defendant appeared to have a good friendship and caring relationship that had lasted over many years. Family members substantiated this as well. The defendant appeared very remorseful for his actions. He did not score high on measures of psychopathy and showed no significant physiological arousal to deviant (pedophilic) stimuli on the penile plethysmograph. It did not appear to this evaluator that he met criteria for being labeled a violent sexual offender.

These and other examples will be presented shedding light on the difficulties entailed in this kind of evaluation. The Nebraska statute seems to put great emphasis on the relationship with the victim. In this sense, perpetrators of incest do not appear to easily qualify for the sexually violent offender definition. Also, the use of the word “violent” places the evaluator in a difficult position at times. For example, what happens when the offense(s) that the perpetrator is convicted of meets the legal criteria for assessment of sexually violent offender status, but the actual nature of the offense is not violent per se (e.g., child pornography, or groping). These issues will be discussed and the ethical obligations of the examiner (e.g., whether or not to answer the ultimate issue) will be explored. A determination that one is a sexually violent offender can have a significant impact on the ultimate legal disposition of a case and have long-term consequences as well. Sexually violent offenders are often required to register with the State Patrol who may give formal notification to the community depending on how the offender is classified.

Sexually Violent Offenders, Sex Offender Registration, Forensic Mental Health Assessment