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Extended Supervision or Civil Commitment for Managing the Risk of Sexual Offenders: Public Safety and Individual Rights

James Vess
Owenia Victoria University of Wellington

Abstract

Since the early 1990’s, there has been a proliferation of legislative initiatives in North America, the United Kingdom, and Australasia that are intended to improve public protection from high risk sexual offenders. These laws include extended supervision of sexual offenders once released from prison and indefinite involuntary civil commitment to secure treatment facilities following the expiration of a prison sentence. The enactment of these laws has sparked intense debate and numerous legal challenges on a variety of issues, including the need to strike a proper balance between public safety and the rights of individual offenders. Recent challenges to Extended Supervision Orders in New Zealand have included the assertion that this approach is inconsistent with the Bill of Rights Act. This article compares the use of Extended Supervision Orders in New Zealand to the use of civil commitment of Sexually Violent Predators in the United States, and particularly in California, which currently confines the largest number of offenders under this type of commitment. It is argued that Extended Supervision is more flexible, less intrusive, less punitive, and less costly than civil commitment. The degree to which it is effective in improving public safety remains an empirical question.

Introduction

The purpose of this article is to provide a comparative perspective between civil commitment initiatives in the United States and Extended Supervision Orders in New Zealand, where the question has recently been raised as to whether this legislation is inconsistent with the New Zealand Bill of Rights Act. At issue are several important questions involving public protection and individual rights. These include: Do the measures taken (e.g. extended supervision or involuntary civil commitment) serve a purpose sufficiently important to justify curtailment of freedom? Are the measures rationally connected with this purpose? Do the measures taken impair rights or freedom no more than is reasonably necessary for the sufficient achievement of this purpose? Are the limitations imposed in due proportion to the importance of the objective?

In order to provide a broadened perspective on these issues, information is presented regarding the nature of the Extended Supervision regime in New Zealand as it compares to civil commitment and supervision schemes in the United States, and particularly in California, where the largest number of sexual offenders are currently confined as Sexually Violent Predators.

A Brief History of Sexual Offender Laws in The United States

The use of indefinite civil commitment of sexual offenders in the United States began during the 1930’s with the emergence of various Sexual Psychopath statutes. These laws typically mandated that individuals convicted of sexual offences who were found to be mentally disordered, to the extent that they could not control their sexual impulses, were committed for psychiatric treatment in lieu of incarceration. The goal of these laws was to protect society from future sexual offences by treating sexual offenders in order to cure the underlying mental disorder (Burdon and Gallagher, 2002). Such statutes fell out of favor during the 1970’s and 1980’s following criticisms they depended on diagnostic classifications which lacked scientific validity, that risk prediction methods were inaccurate, and that available treatment was ineffective (Janus, 2000). As American society shifted from an emphasis on rehabilitation to an emphasis on retribution in dealing with offenders, most of these laws were eventually repealed (American Psychiatric Association, 1999, as cited in Burdon and Gallagher 2002).

These changes in the approach taken to sexual offenders also reflect different prevailing models of society’s statutory responses to dangerousness. Petrunik (2003) distinguishes between three models in the United States over time: the forensic-clinical, justice, and community protection models. The forensic-clinical model of dangerousness evolved in the early 1900’s in reaction to classical liberal criminology, which had maintained that offenders should be held accountable through due process and penalties proportionate to the crime. The forensic-criminal model moved away from this position to advocate indeterminate confinement, so that there was adequate time for treating a disordered offender’s condition, thereby reducing the risk sufficiently to permit release. This approach emphasized diagnosis of the underlying...
mental disorder thought to cause sexual offending, treatment of that disorder, and prediction of risk.

The justice model emerged in the 1970’s and re-emphasized determinate sentences in proportion to the seriousness of the offence. Because of increased attention to due process in the criminal justice system and broader concerns about the civil rights of the mentally ill, lengthy involuntary civil commitments became more difficult to obtain (Petrunik 2003).

Most recently, the community protection model emerged during the late 1980’s and early 1990’s in response to perceived inadequacies in the forensic-clinical and justice models to provide for public safety. As compared to the justice model, the community protection approach attempted to strike a different balance between public safety and concerns over due process, the proportionality of punishment to the crime, and the protection of offenders’ rights. In contrast to the forensic-clinical model, it is less concerned about treatment or rehabilitation of offenders intended to reduce recidivism or facilitate community reintegration. The primary goal of the community protection model is the incapacitation of sexual offenders for the sake of public safety. This model has gained support most emphatically in the United States, but also to various degrees in Canada, the United Kingdom, Australia, and New Zealand (Petrunik 2003).

The Sexually Violent Predator Commitment in California

California implemented its Sexually Violent Predator (SVP) law in 1996, and has since become the state with the largest SVP population, with over 550 offenders currently committed (California Department of Mental Health, 2007). The following description of the SVP programme is based on available documentation within the California Department of Mental Health and from the author’s professional involvement as a staff member of Atascadero State Hospital, the facility until recently designated to confine and treat the SVP population in California.

In establishing the SVP Act, the California Legislature declared that there is a small group of extremely dangerous sexual predators who have diagnosable mental disorders and can be readily identified while incarcerated. It further declared that these individuals are not safe to be at large in the community and represent a danger to the health and safety of others if they are released. It is the intent of the legislation that such Sexually Violent Predators (SVP’s) be confined and treated until they no longer present a threat to society. The aim of this law is to confine these individuals only as long as their disorders continue to present a danger to the health and safety of others, and not for any punitive purposes. The legislature determined that these “persons shall be treated, not as criminals, but as sick persons.” (California Assembly Bill 888, 1995).

Commitment Criteria

California’s Welfare & Institutions Code 6600 establishes three major criteria to define a Sexually Violent Predator:

1. The offender has been convicted of a sexually violent offense (penal code offenses are listed in statute; offenses usually include either child molestation or rape.)
2. The offender has had two or more victims as a result of these sex offense convictions.
3. The person has a diagnosed mental disorder that makes him likely to engage in future sexually violent predatory behavior (predatory is defined as a crime against a stranger, a person of casual acquaintance, or a person whose relationship is established for the purpose of sexually offending). Although major mental illnesses such as schizophrenia, bipolar disorder, or organic brain syndrome qualify as mental disorders, many SVP’s suffer from some type of paraphilia.

Paraphilic disorders are diagnosable conditions characterized by deviant sexual urges, fantasies or behaviors involving humiliation of others, sexual activity with children and/or other non-consenting persons, which occur over a period of at least six months. These deviant sexual urges are sufficiently intense that they cause significant distress or impairment in important areas of functioning.

The Commitment Process

Individuals are identified for potential commitment while they are incarcerated in the California Department of Corrections. Usually this process begins six months prior to the inmate’s scheduled release from prison. Cases are referred to the Sex Offender Commitment Program (SOCP) Evaluation Unit of the Department of Mental Health, where they are re-screened to ensure they meet the legal criteria established in statute. At this stage, background data regarding convictions are gathered. This information is used by clinical evaluators in making risk assessments of sex offenders, as well as by district attorneys if the case is referred for civil commitment.

Once the review of records determines that an inmate may meet the SVP criteria, the SOCP Evaluation Unit assigns two clinicians to perform an in-depth psychological evaluation. These clinicians are either licensed clinical psychologists or psychiatrists with experience in the diagnosis and treatment of mental disorders. They evaluate the offender to determine if he has a diagnosable mental disorder and if, as a result of this disorder, he presents a likelihood of committing...
new sexually violent predatory acts when released. The evaluation utilizes an adjusted actuarial approach consisting of actuarial factors empirically linked to recidivism using an actuarial risk assessment tool, currently the Static 99 (Hanson & Thornton, 2000), and consideration of other risk factors associated with sexual offending. If the two evaluators agree that the inmate does not meet the requisite criteria, the SVP commitment process terminates at this point, and the person is released from prison, usually to parole. If both evaluators agree the inmate does meet the SVP criteria, his case is referred to the district attorney for SVP commitment proceedings. If there is disagreement between the two initial evaluators, the case is referred to two additional independent evaluators who must agree the inmate meets all criteria before the case can be referred to the district attorney for filing a commitment petition.

If the district attorney decides to file the petition, a probable cause hearing is held before a judge to determine if the facts of the case warrant a full commitment trial. The individual has a right to a trial by jury, although the trial may be heard before a judge if the district attorney and the subject of the petition agree. If the court or a unanimous jury determines beyond a reasonable doubt that the person is a Sexually Violent Predator, he is committed to the State Department of Mental Health for a period of two years for appropriate treatment in a secure facility.

If at any point during the period of commitment the Department of Mental Health determines the offender no longer meets the SVP criteria, it must seek review by the committing Superior Court. In addition, annual examinations are conducted on the offender’s risk status and reported to the Court. At the time of the annual examination, the offender has a right to a file a writ for a hearing to determine if his condition has changed so that he is no longer a danger to the health and safety of others if discharged. If the Court rules for the committed person, he is unconditionally discharged. If, however, the Court rules against the committed person, the term of commitment will run for another two years.

At the conclusion of a two-year commitment, DMH may seek an extension by filing a new petition if evaluations conclude that the offender continues to meet all of the SVP criteria. There is no limit to the number of these two year extensions that can be imposed. After a minimum of one year of confinement, SVP’s have the right to petition the Court for conditional release. If the Court determines the person would not present a danger to others while under supervision and treatment in the community, the Court will order his placement in an appropriate state-operated forensic Conditional Release Program in the community. To date, seven SVP’s have been given conditional release into the community on the recommendation of the California Department of Mental Health (Parrilla, 2007).

Individual rights issues

SVP laws such as the one enacted in California present several controversial and potentially troubling aspects. Legal controversy remains over due process, double jeopardy, proportionality, and ex post facto challenges (Janus, 2000; La Fond, 2000). Concern has been expressed over the precedent set by the expanded use of civil commitment as an expression of the state’s police power for public protection, and the eventual effectiveness of this approach has yet to be demonstrated for significantly reducing rates of sexual offending (Burdon & Gallagher, 2002; La Fond, 2000; Levenson, 2004; Levesque, 2000). It has therefore been argued that the laws themselves raise important concerns about human rights. Even if such laws are more effective for increasing public safety than less restrictive approaches, some question whether they are morally or legally justifiable (see e.g. Doren, 2002; Nash, 2006).

Another important issue arises from the fact that, unlike determinate sentences following conviction for a criminal offense, current community protection laws provide for the imposition of legal and civil sanctions against sex offenders based on the risk of future offences. Therefore the primary concerns about human rights in relation to judicial decisions under such laws derive from the limited accuracy of current measures to predict the likelihood of sexual reoffending. There is ample opportunity for confusion on this issue in the evidence provided to the Court through risk assessment reports and expert testimony. This will make it difficult for the Court to draw clear conclusions about the accuracy of risk assessment findings, and therefore to decide the proper weight to place on the available evidence.

A detailed analysis of the predictive accuracy of current risk assessment measures is beyond the scope of this article, and has been presented elsewhere (see e.g. Campbell, 2003; Vess, in press). The focus here is how potential threats to individual rights stemming from the limited accuracy of available measures are manifested in the SVP law as implemented in California. One potential safeguard is the requirement for two independent evaluators to assess and report the individual offender’s risk for sexual reoffending. However, this safeguard may not be as robust as it might seem. The service provider panel of experts who contract with the state to conduct SVP evaluations, and the psychologists working for the state psychiatric hospital who conduct the annual assessments, may all be seen as employees, and therefore agents or representatives, of the state. Although the state provides ongoing training to maintain the expertise of
these practitioners, and thereby helps to ensure adequate knowledge for the proper use of available risk assessment procedures, this expertise is largely concentrated in the cadre of state-sponsored experts. This is balanced, at least to some degree, by the large and diverse professional community available in California, a state with over 36,000,000 residents. Within this population, there are at least a small number of experts, some formerly employed and trained by the state, who are available to provide independent risk assessment expertise for the defense in SVP proceedings.

Another aspect of this large population, and the associated volume of the SVP assessments and hearings that are conducted, is that an active legal sub-community has developed with increasingly sophisticated knowledge of the strengths and limitations of current sex offender risk assessment procedures. A number of attorneys who participate in SVP commitment hearings now have a detailed understanding of this area of forensic practice, and are capable of vigorous and effective cross-examination of an expert’s findings. The greater availability of forensic and legal expertise represents one of the differences between community protection efforts in California as compared to New Zealand.

**Contrast with New Zealand’s Extended Supervision Order**

New Zealand recently introduced the Parole (Extended Supervision) Amendment Act 2004 (www.legislation.govt.nz), which allows for supervision in the community of high risk sexual offenders with child victims for up to ten years after their release from prison (Watson & Vess, 2007). Under the Parole (Extended Supervision) Amendment Act 2004 any offender considered eligible for an Extended Supervision Order is assessed by a Health Assessor, specified to be a clinician experienced in the field of forensic risk assessment. The clinician must provide the Court with a report that specifies an offender’s risk of sexually reoffending against children under the age of 16 once they are released. The report must stipulate “the nature of any likely future sexual offending by the offender, including the age and sex of likely victims, the offender’s ability to control his or her sexual impulses, the offender’s predilection and proclivity for sexual offending, the offender’s acceptance of responsibility and remorse for past offending, and any other relevant factors” (Parole (Extended Supervision) Amendment Act, 2004, section 107 (F) (2)). The writing of this report is informed by the use of an actuarial measure, the Automated Sexual Recidivism Scale (ASRS). The ASRS was developed by the New Zealand Department of Corrections and normed on large samples of sexual offenders released to the community for periods of up to 15 years. It has shown levels of predictive validity similar to other internationally recognized actuarial measures (Skelton, Wales, Riley, & Vess, 2006). The risk assessments for extended supervision also routinely include a measure of dynamic risk factors, the Sex Offender Need Assessment Rating, or SONAR (Hanson & Harris, 2000; 2004).

There are several issues inherent in the civil commitment schemes for protecting the public from SVP’s in the United States which distinguish them from Extended Supervision for sexual offenders in New Zealand. One difference is that when an offender is found to present sufficiently high risk to be committed under an SVP law, he is not released to the community until such time as his risk is found to be such that he no longer poses a significant threat to the safety of the public. In contrast, a high risk offender in New Zealand is released into the community, albeit under an extended period of supervision. This contrast serves to amplify the issues inherent in the limited accuracy of our current risk assessment procedures. The consequences of a false positive finding, in which an offender is predicted to reoffend when in fact he would not, are higher under an SVP act, because the unnecessary loss of freedom is substantially greater with indefinite, involuntary commitment to a secure facility. Under either regime, the costs associated with false negatives accrue to public safety, whereby an offender is predicted not to reoffend (and available interventions are not applied), when in fact he does commit a subsequent sexual offence, and new victims are created.

Another issue is linking risk to a diagnosis of mental disorder for SVPs. Available information indicates that more than 90% of SVP commitments do not suffer from any form of psychosis (the traditional definition of mental disorder in most legal contexts), and that the most common diagnosis is one of the paraphilia disorders, reflecting an abnormality of sexual behaviour, with or without a comorbid diagnosis of some type of personality disorder. In the case of sexual offenders against children, the diagnosis is typically paedophilia, and with rapist it is paraphilia not otherwise specified, as there is no diagnosis specific to those who commit rape.

A common criticism against the use of these diagnoses is that the behavioural diagnostic criteria are seen as circular to the offending behaviour that initially lead to conviction and incarceration. Furthermore, paraphilias and personality disorders do not typically involve the loss of contact with reality that are a key feature of psychotic disorders, and have typically served as a source of diminished capacity or responsibility in criminal offending. Several experts in
the area of sexual offenders and related legislative initiatives suggest that in such cases the law is relying on the weakest aspects of psychodiagnosis (see e.g. Zander, 2005), and have made a dangerous departure from established legal precedent in matters of mental illness and judicial decision-making.

An issue related to diagnosis is the intent in most SVP laws to provide treatment to sexual offenders in order to reduce their risk of re-offending and thereby reduce the risk to public safety. While recent analyses of extensive collections of outcome data indicate that treatment reduces risk in large samples of sexual offenders, it is also clear that treatment is not effective for all offenders. This issue has been addressed in landmark cases involving SVPs in the United States such as Kansas v. Hendricks, in which it was found that while treatment must be provided, treatments proven to be effective need not be available, nor is it necessary that the individual offender is likely to benefit from current treatments, for the laws to stand. Thus indefinite detention of offenders as SVPs need not hold out much hope for a positive treatment response and a corresponding reduction in risk that will result in the offenders eventual release to the community. In fact, California’s experience to date suggests that very few SVPs will be released from involuntary treatment as an inpatient in the state’s new maximum security state psychiatric hospital any time soon.

Eric Janus, a noted legal expert in SVP cases in the United States, points out that the Court’s discussion in Kansas v. Hendricks suggests that for civil commitments based on the state’s police power to protect the public, treatment is not the constitutional justification for confinement. Rather, when the state uses civil commitment to deprive a person of liberty for the benefit of society, one source of justification is the danger posed by the person, such that commitment is limited to a narrow class of particularly dangerous individuals (Janus, 2003). In California, approximately 730 registered sexual offenders are released from state prison each month, so that between the start of the SVP Act in 1996 and July, 2003, about 65,000 sexual offenders were released. Less than 1% of these sexual offenders were civilly committed as SVPs (Vess, Murphy & Arkowitz, 2004).

Extended Supervision Orders in New Zealand appear to apply to a similarly narrow class of particularly dangerous sex offenders as those identified under the California’s SVP legislation. Empirical research findings have established that when properly conducted, current methods of risk assessment with sexual offenders can reliably place individuals within groups of offenders with similar characteristics for whom there are known rates of sexual recidivism. The limitations of current risk assessment practices based on actuarial assessment using empirically validated static and dynamic risk assessment have been alluded to above; the specific properties of the measures used in New Zealand have been presented elsewhere (Skelton, Riley, Wales, & Vess, 2006; Vess, 2006; Watson & Vess, in press). The primary argument here is that a relatively small subset of high risk sexual offenders can be identified through current assessment procedures, and that these offenders can be considered by the Court for special measures such as Extended Supervision.

This approach avoids the problem inherent in less discriminating mandatory minimum sentencing laws, which are overinclusive by identifying high risk offenders based on criminal history alone rather than more specific risk assessment procedures. Such sentencing laws can also be underinclusive by failing to confine offenders who would be found to pose a high risk of sexual recidivism if proper risk assessment techniques were used (LaFond, 2005). Because Extended Supervision in New Zealand is based specifically on empirically validated risk assessment procedures, it is directly linked to the level of risk presented by the individual offender. Like the SVP commitment scheme, it is not based on overly-broad categories of offenders. It is designed so as to identify those offenders who, once released from prison, warrant longer periods of supervision in order to provide additional public safety.

In fact, New Zealand’s Extended Supervision scheme applies to a more narrowly defined group of offenders, in that it is limited to sex offenders with child victims, whereas California’s SVP law applies to those with either child or adult victims. Yet there may be little difference between these groups in terms of the threat for sexual reoffending. Figures reported from the meta-analysis conducted by Hanson and Bussiere (1998) indicated an average sexual recidivism rate of 18.9% for rapists and 12.7% for child molesters.

In a meta-analysis with a total combined sample of 4,724 sexual offenders producing sexual recidivism estimates for periods of up to 15 years, Harris and Hanson (2004) report that the combined overall recidivism rates for all offenders (14% after 5 years, 20% after 10 years and 24% after 15 years) were similar to rapists (14%, 21% and 24%) and the combined group of child molesters (13%, 18% and 23%). Furthermore, recent research in New Zealand indicates that a significant portion of offenders who sexually reoffend do so in a way that is not “true to type”, such that 37% of those with prior offence history that included only adult victims sexually reoffended against a child (Vess & Skelton, 2008). Such findings suggest that if the primary intent is to protect the public from the risk of sexual offending, relevant laws should include those who sexually offend against adults as well as children.
Individual rights issues

The integrity of this process depends of course on the adequacy of the expertise applied in the assessment of risk in any given case. As currently implemented, a psychologist from the New Zealand Department of Corrections Psychological Service assesses each offender, and makes a recommendation as to whether the level of risk is considered sufficiently high for the Department to proceed with an application to the Court for an Extended Supervision Order. The assessment reports and recommendations are routinely reviewed by senior Psychological Service management to ensure that best practice standards have been followed.

The concerns noted earlier regarding the limited accuracy of currently available risk assessment procedures are relevant. These concerns are potentially magnified in New Zealand in that typically there is only one risk assessment provided to the court in such cases, and this assessment comes from a Department of Corrections Psychologist. This is not meant to imply that departmental psychologists do not strive to take an impartial approach to risk assessment based on best practice standards. Rather, the issue here involves the scope of the professional roles assumed by a psychologist employed by the government department that will be seeking a specific judicial decision. Bush, Connell, and Denney (2006) present several relevant distinctions, including the issue of objectivity and whether expert opinion reflects advocacy of a particular belief or consistently favours the retaining party, in this case the department. This distinction becomes particularly important at the point that the department’s psychologist becomes an advocate for the legal outcome desired by the department, such as the goal of obtaining an order for extended supervision.

A related issue concerns the threshold of risk used to determine when to make an Extended Supervision Order application. There are different perspectives on how high the risk should be before Extended Supervision is warranted, but it is the Department of Correction’s standard that ultimately determines the initiation of this process, and often the only opinion provided to the court is based on this standard. In the current context, there is relatively little independent risk assessment expertise available to offenders (i.e. few experienced experts who do not work for the Department of Corrections), so that there are limited opportunities to effectively challenge the recommendations of the department on the basis of assessed risk. This raises a concern about adequate checks and balances in the administration of the Extended Supervision scheme.

Nevertheless, New Zealand’s Parole (Extended Supervision) Amendment Act 2004 avoids or minimises several of the most problematic issues associated with the SVP laws of the United States. It does not involve a consideration of mental disorder or psychiatric diagnosis. It does not require that risk be causally linked to a diagnosable mental disorder, and does not involve the issue of treatment availability or treatment effectiveness. Perhaps most significantly, Extended Supervision in the community following release from prison is substantially less restrictive of the freedom of the offender than indefinite involuntary commitment in a secure facility as a psychiatric inpatient. From this perspective, Extended Supervision appears less punitive, in both intent and impact, than initiatives such as SVP legislation, which have nonetheless been upheld at the state and national Supreme Court level in the United States.

Best Alternative for Managing Risk

Monitoring dynamic risk

Extended periods of intensive supervision in the community after release may also offer the best mechanism for enhancing public safety. This approach offers several potential advantages over indefinite detention. Experts in the field have often noted that risk is affected by dynamic factors that change over time and in different environments. One of the difficulties of assessing risk while the offender is incarcerated involves not knowing what these environmental factors will be, and not knowing with certainty how the offender will respond until he encounters these factors. Extended Supervision allows for an individualized assessment of risk that follows the offender in the community over time, and can respond flexibly to changes in risk associated with environmental contingencies and known dynamic risk factors.

Cost Effectiveness

Another set of issues in the comparison of civil commitment in a treatment facility with Extended Supervision in the community is cost effectiveness. Housing and treating SVP’s in California is expensive, both in terms of money and clinical resources. Currently the average cost per year to incarcerate someone in state prison is approximately $26,000, compared to $110,000 per year at Atascadero State Hospital. The state has built a new 1,500 bed facility dedicated exclusively to the confinement and treatment of SVP’s at a cost of $388 million, with an estimated ongoing operational cost of about $150 million annually (California Department of Mental Health, 2006). Beyond these financial considerations, there are concerns about redirecting limited treatment resources from the traditional mentally ill populations served by the state to attempts at treatment of an often unwilling, and potentially unresponsive, SVP population.
The costs and implementation problems associated with the SVP initiative are avoided with Extended Supervision. Regular incarceration in prison for a determinate sentence is much less extensive than commitment to a secure treatment facility, and therapeutic resources can be made available to those who demonstrate the inclination and capacity to engage in treatment. Release to the community under Extended Supervision is substantially less costly than ongoing confinement, and offers the advantages of a flexible approach to risk assessment and intervention after release.

**Effective Public Protection**

Referring to the recent trend in sex offender legislation in the United States, English, Jones and Patrick (2003) offer the following conclusion:

“The new legal responses to sexually dangerous offenders cannot succeed in isolating and incapacitating all potential recidivists from the community. Nor can inpatient sex offender treatment succeed in changing the behavior patterns of sex offenders. How offenders behave in institutional settings does not always predict how they will behave once released to the community. Given the inevitability that many sex offenders will be released to the community from prison and from the hospital, we need to develop systematic ways of monitoring their behavior in the community that manage the risk that many will continue to present and that provide postinstitutional treatment opportunities that can increase the likelihood of rehabilitation when the individual is subjected to the stresses and temptations of resuming life in society” (p. 277).

Some experts have gone so far as to propose lifetime community supervision for sexual offenders following their release from prison (see e.g. English, Pullen & Jones, 1996). In comparison to the aggressive approach taken to the confinement and supervision of sexual offenders in a number of U.S. states, one concern is whether the Extended Supervision scheme in New Zealand offers enough intervention to ensure public safety. A recent review of data available on 89 offenders under Extended Supervision Orders over a period of up to 28 months showed a 23.6% rate of general recidivism (i.e. including all offence types), and more specifically, that 4.5% (four individuals) reoffended sexually (Watson & Vess, 2007b). A comparison group of sexual offenders matched by assessed level of risk but released prior to the enactment of the ESO Act showed a 38.2% general recidivism rate and a 17.6% sexual reoffence rate. So while it appears that Extended Supervision may contribute to a reduction in general and sexual recidivism, it does not completely eliminate sexual offending among this high risk group.

As previously described, SVP commitment results in a population that poses unique challenges for patient management and security (Vess et al, 2004). Extended Supervision Orders provide the judiciary with a mechanism that is responsive to changes in risk resulting from dynamic risk factors and environmental contingencies in the community following release. If effectively implemented, this approach can enhance public safety in high risk cases with minimal restrictions of the offender’s liberty.

**Conclusions**

It is recognized that current risk assessment procedures have limited accuracy for identifying which individuals will reoffend. Risk is contingent on a variety of relevant factors, and can be best assessed by monitoring dynamic risk factors that change over time. The factors that will influence risk in the community cannot effectively be approximated and assessed in a controlled institutional environment. Furthermore, the effectiveness of inpatient treatment programs is limited, and appears to reduce risk for some offenders but not for others (Hanson et al., 2002; Losel & Schmucker, 2005). Each of these issues bears directly on the question of whether special sexual offending legislative initiatives may excessively impair the rights of offenders in pursuit of public protection.

Returning to the initial questions posed in this article, it is argued that protecting the public from high risk sex offenders is clearly a sufficiently important purpose to justify curtailment of individual freedom. Both civil commitment and extended supervision are rationally connected to this purpose. Yet the curtailment of freedom is substantially less severe under extended supervision than indefinite confinement under involuntary civil commitment. Extended supervision may therefore be said to curtail the rights and freedom of offenders no more than is reasonably necessary for the sufficient achievement of community protection, if this proves to be an effective approach. The limitations on rights imposed by extended supervision in the community, which may last up to 10 years, appear to be more proportional to the offences for which offenders have been convicted and already served their sentence than the indefinite, potentially lifelong, confinement that results from commitment as an SVP. At this stage in its development, the effectiveness of extended supervision for protecting the community remains an empirical question requiring ongoing investigation. However, based on the current rate at which SVPs are being released into the community, it will take many years and a great expenditure of resources before we will have much information on the success of an involuntary confinement approach with far more impact on individual rights.
References


