

The Impact of the Federal Pretrial Services Act of 1982 on the release supervision and detention of pretrial defendants

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New Defendants, New Responsibilities: Preventing Suicide among Alleged Sex Offenders in the Federal Pretrial System

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SUICIDE IS A MAJOR public health problem worldwide. Each year in the United States, more than 30,000 people commit suicide and at least 2 to 3 times that many attempt suicide. Suicide is the second leading cause of death among people aged 25 to 34 and leaves surviving family members, friends, and coworkers confused, guilty, angry, and depressed (Centers for Disease Control and Prevention, 2005). The causes of suicide are manifold. However, most individuals who commit or attempt suicide suffer from a psychiatric or substance use disorder, or both, or have experienced a devastating or unexpected loss (material or status) or feelings of hopelessness, isolation, or despair. Others commit suicide because of overwhelming shame or remorse. Men are four times as likely as women to complete suicide; women are three times as likely as men to attempt suicide (Centers for Disease Control and Prevention, 2008).

This article focuses on a group that *appears* to be at significantly higher risk of suicide than members of the general population: sex defendants on pretrial supervision at the federal level. We say “appears” for a reason. Although considerable research has been conducted on the nature and extent of suicide in prisons and jails (World Health Organization, 2007, Liebling, 2006), suicide among offenders and alleged offenders under various forms of community supervision—pretrial, probation, parole—has been largely ignored. Indeed, no national data sources have been compiled on

the number of suicide attempts or completions among pretrial defendants or any other groups of people under community correctional supervision. In this paper, we direct attention to the need to collect more data and to reformulate policies and practices that create more effective interventions for defendants at risk for suicide in the community.

The article is divided into four sections. The first examines the prevalence and causes of jail suicide, highlighting the need to monitor suicide among defendants both within custody and on community supervision. The second discusses the growing number of federal defendants charged with sexual exploitation crimes. The third describes new paradigms for assessing and monitoring pretrial detainees being charged with sexual exploitation as well as an innovative and successful pretrial program in the federal system that is designed to lower the risk of suicide among such defendants. The fourth explores directions for future research in this uncharted domain of federal correctional practice.

Overview of Suicide at the Pretrial Level

We begin our discussion of suicide during the federal pretrial process by examining the research on suicide in federal, state, and local pretrial detention facilities. Out of necessity, we will use these research findings to explore the problem—largely ignored by researchers to this point—of suicide while under community supervision.

Suicide in Jails

Detention administrators have a legal, moral, and ethical responsibility to protect detainees from self-harm. Suicide in custody is rare, but until recently it was the leading cause of death in county jails and municipal police lockups (World Health Organization, 2007). Most jail suicides are perpetrated by hanging (self-asphyxiation) (Rosazza, 1994). The creation of a definitive profile of the pretrial detainee at greatest risk for suicide is problematic, because a large percentage of detainees have characteristics that heighten the risk for suicide and the base rates for suicide in this population are low (Rosazza, 1994). In such circumstances, accurate prediction is difficult and fraught with a high rate of false positives (Lurigio, 1986). Nonetheless, jail detainees are significantly more likely to commit suicide than their counterparts in the general population (Jenkins et al., 2005).

The elevated risk of suicide among detainees is significantly higher than the risk in the general population. Heightened risk stems from a variety of dispositional and situational factors. With respect to the former, jail detainees have disproportionately high rates of psychiatric, substance use, and personality disorders as well as unemployment, weak social ties, and homelessness—all of which increase the risk for suicide. In addition, the majority of detainees are men, who are significantly more likely to commit suicide than women. These dispositional risk factors

are difficult to modify in the short-term but must be addressed in any efforts to identify and monitor at-risk detainees (World Health Organization, 2007).

With respect to situational factors, the jail environment and the experience of being in custody can be extremely stressful. Detainees are uncertain about their futures, lose their freedom, and could face substantial changes in their personal and professional lives. They are separated from their families, support networks, and jobs and forced to fend for themselves in a chaotic, loud, threatening and disorienting setting. Jails provide few immediate resources to assist detainees in coping with the overwhelming psychological stressors of pretrial status (World Health Organization, 2007).

Since 1983, the suicide rate in jails has dropped from 129 to 47 per 100,000 detainees. Nevertheless, suicide is the second leading cause of death in jails and responsible for 33 percent of detainees' deaths in custody. The suicide rate in jails is three times higher than the rate in prisons. The suicide rate in the 50 largest jail systems is substantially lower than the rate in all the other smaller-sized jails in the United States. In 2005, detainees with the highest risk of suicide were male, white, and members of the youngest (younger than 18) and oldest (55 or older) age groups of detainees and were charged with violent crimes (Mumola, 2005).

Suicide under Pretrial Supervision

Most of our knowledge about suicide at the pretrial level is based on studies of detainees in custody. The prevalence and prevention of jail suicide has received considerable attention from researchers and practitioners (Hayes, 2006). However, the majority of people at the pretrial level in the state court system are not confined to jail. For example, 60 percent of felony defendants in the nation's 75 largest counties are released prior to adjudication (Kyckelhahn & Cohen, 2008). Hence, the majority of defendants in the state court system are not in custody before their cases are tried; estimates of the incidence of suicide among this state-level pretrial release population are not available, however, because the necessary research has not been done.

The federal court system relies on pretrial detention much more heavily than their state court counterparts (Byrne and Stowell, 2007). Between 2001 and 2007, the federal pretrial detention rate increased from 53 percent to 64 percent of all federally charged offenders. As a group, defendants charged

with sexual exploitation charges are typically released at the pretrial stage at a higher rate than defendants with other types of pending charges. In 2006, for example, 53 percent of sex crime defendants were released prior to trial, primarily because they are assessed and classified—correctly, it turns out—to be at low risk for absconding or committing a new offense while on pretrial release. According to a recent review by Motivans (2007:3) “Of sex exploitation defendants terminating pretrial release in 2006, 11% received a violation and 7% had their pretrial release revoked. Sex exploitation defendants had lower rates of violation and revocation than violent, drug, weapons, and immigration defendants.”

While these defendants are certainly at low risk for new offenses or absconding prior to trial, pretrial release may actually increase their risk of suicide. However, we should emphasize that this is simply speculation at this point, because the necessary incidence/prevalence studies have yet to be completed. We should also point out that we are not suggesting that suicide among this group of sex crime defendants would be reduced by simply detaining them pretrial; whether such defendants have a lower or higher risk of suicide than those in custody is currently unknown. On the one hand, their risk of suicide might be lower than that of people in confinement. They might have less serious criminal histories and greater levels of financial resources and family support than those in custody. On the other hand, their risk of suicide might be higher than that of those in confinement. They might be less likely to be assessed for suicide risk and to receive services to lower the risk of suicide. Further, pretrial defendants in the community have more access to the means to commit suicide and cannot be watched to prevent or respond to attempts. As noted above, alleged child exploitation offenders are one such group of federal defendants.

Suicide and Alleged Child Exploitation Offenders

Defendants charged with child exploitation offenses, such as child pornography, sex transportation, and sex abuse, are a small but fast-growing segment of the federal criminal caseload in this country. According to a Bureau of Justice Statistics Study, more than 2,000 suspects were prosecuted for federal sex offenses in 2006, constituting nearly 3 percent of the 83,000 suspects prosecuted in federal courts (Motivans, 2007). Therefore, only a small proportion of all defendants have been

charged with a federal sex crime. Nevertheless, recent changes in sex offender laws and a renewed emphasis on the enforcement of federal sex crimes has resulted in an increasing proportion of federal defendants being charged as child exploitation offenders. From 1994 to 2006, the number of suspects arrested and booked for a federal sex offense increased from 431 to 2,191—a 15 percent annual average increase—“making sex offenses among the fastest growing crimes handled by the federal justice system” (Motivans, 2007, p. 1).

Not only has the number of federal sex defendants grown, but the types of crimes for which they are charged has also changed, suggesting that sex crime defendants today are different from those previously charged. In 1994, sex abuse defendants referred to U.S. Attorneys for possible prosecution constituted 74 percent of all sex exploitation cases (568/774); by 2006, they constituted only 16 percent (601/3661). During this same period, the number of federal child pornography referrals increased from 22 percent (169/774) to 69 percent (2,539/3,661) of all referrals for sex crimes. Similarly, the percentage of sex transportation referrals increased from 5 percent (37/774) to 14 percent (521/3,661) of all referrals for sex exploitation offenses (Motivans, 2007).

Today's child sex exploitation defendant population, which consists mostly of child pornography cases, might be characterized by a much different—and potentially higher—suicide risk profile than that of an earlier generation of such defendants, which consisted mostly of sex abuse defendants who (while incarcerated) were generally at lower risk for suicide. However, the research on suicide risk by specific conviction types is prison-based, not community-based; as we emphasize throughout this article, the lack of basic data on the extent of the suicide problem among the community supervision population limits what we can say—and do—in this area (World Health Organization, 2007). Motivans (2007:5) offers the following profiles of the three types of federal sex crime defendants that offer some useful detail on how the profile of the child pornography defendant varies from the profiles of the other two categories of sex crime defendants. While all three groups are generally low risk, some noticeable differences emerge that may affect suicide risk:

(1) *Child pornography* defendants are overwhelmingly white (89%), middle-aged (md=42) males (99%), U.S. citizens (96.3%), many with college backgrounds (42% had

attended), and no prior felony convictions (79.9%),

(2) *Sex abuse* defendants tended to be American Indian/Alaskan native (70.7%), younger ($md=29$), U.S. citizens (96.3%), with less education (almost half did not graduate high school), and with no prior felony convictions (78.6%).

(3) *Sex transportation* defendants were typically white (70.2%), in their mid-30s ($md=36$) males (91.2%), U.S. citizens (88.5%), with no prior felony convictions (74.0%).

In addition, the stressors associated with the gamut of criminal justice processes of arrest, pretrial release, prosecution, conviction, incarceration, and supervision upon release are greater today than they were in the past, because today's child exploitation defendants are significantly more likely to be arrested, prosecuted, detained, convicted, and sentenced to incarceration than their 1994 counterparts (Motivans, 2007). Given the suicide risk profile of these defendants and the situational stressors associated with adverse federal case processing decisions, suicide prevention is likely to become a new responsibility of the federal court system.

Challenges to the Risk Principle

A new group of federal sex crime defendants—mostly charged with pornography offenses—are entering the system with problems and needs that are usually ignored in pretrial release and supervision decisions. According to the recently released review of the federal pretrial release system conducted by VanNostrand and Keebler (2009), these defendants are at low risk for re-offending or failure to appear. Notwithstanding, these defendants could be at higher risk for self-injury than their earlier counterparts. If so, the federal pretrial system must re-examine its definition of risk and redefine “best practices” for risk classification and reduction for this group of defendants.

On the preceding point, consider the following “best practices” recommendation included in the study by VanNostrand and Keebler (2009, p. 37): “*Defendants in risk levels 1 and 2 have the lowest risk of pretrial failure and, consistent with the EBP risk principle, on average these defendants are more successful if released without ATD conditions.*” The problem with this recommendation is that the majority of defendants charged with sex crimes are low-risk, category 1 and 2 defendants. Applying this evidence-based recommendation,

judges would order few, if any, release conditions for low-risk sex crime defendants.

Two alternatives to detention (ATD) release conditions that are primarily used for sex crime defendants released before trial are sex offender treatment and computer monitoring. Between 2001 and 2007, 692 defendants were released with an ADT condition of sex offender treatment; 586 (85 percent) of these defendants were classified as category 1 or 2 defendants. Similarly, a computer monitoring condition was ordered for 2,582 defendants; 2,285 (88 percent) of these defendants were classified as category 1 or 2 (VanNostrand & Keebler, 2009). Although this EBP recommendation makes sense in terms of traditional definitions of risk, it is problematic when an expanded definition of risk that includes suicide risk becomes the basis for release decisions.

Suicide Prevention and Sex Crime Defendants

According to the Office of Probation and Pretrial Services, a total of 3,039 cases were activated in 2008—a 172 percent increase since 2001. As noted earlier, the sex crime defendant population is one of the fastest-growing criminal populations handled in the federal courts (along with immigration law violators). A number of recent reports have focused on the reduction of attempted and completed suicides in prison and jail settings (Liebling, 2006; Metzner, 2006; World Health Organization, 2007). However, no empirical research has been conducted to date on the nature and extent of the suicide problem among the pretrial release population in general and sex crime defendants in particular. The challenge for federal districts is to identify the most effective strategies to best manage this population at the pretrial level. Given the increased likelihood that these defendants will be prosecuted, convicted, and incarcerated for sex crimes, federal pretrial officers must incorporate supervisory strategies to prevent sex crime defendants from committing suicide before their cases are disposed.

At arraignment, defendants with charges for sexual offenses are often released with a mental health or treatment condition. At first blush, it seems logical that such a defendant would be referred to sex offender treatment. However, the unique dynamics of traditional sex offender treatment can impinge on a pretrial defendant's rights against self-incrimination under the Fifth and Sixth Amendments. Sex offender treatment, which often includes

polygraph testing and full disclosure of sexual and deviant behavior, puts the pretrial defendant in a precarious legal position. Crisis management is an equally challenging issue in designing effective mental health programming for the pretrial defendant. Defendants charged with sexual exploitation crimes often exhibit symptoms of anxiety, depression, and suicidal ideation that stem from feelings of shame, isolation, fear of the unknown, and the prospect of a probable prison sentence.

Although no nationwide estimates of suicide attempts or completions among federal pretrial sex crime defendants have been generated, the problem gained attention after several well-publicized suicides occurred in two California federal districts. From 2003 to 2005, the Central District of California experienced four separate suicides of defendants charged with possession of child pornography. In an eight-month span in 2008, the Northern District of California experienced seven suicides of defendants being investigated or charged with sexual exploitation (mostly possession of child pornography). The majority of these defendants had no criminal or mental health history. Based on their low probability of committing a crime or failing to appear in court, they would be classified as low-risk using traditional definitions of risk, which ignored their very high risk for self-injury.

The Central District of California's Suicide Prevention Strategy

In response to these tragic cases, the U.S. Pretrial Services Office in the Central District of California created a program to protect defendants against self incrimination while managing symptoms of anxiety, depression, and suicidality. The program was developed in collaboration with a mental health provider, the federal defender's office, and the court. The program model/curriculum consists of five modules:

- Crisis Intervention
- Support (group sessions)
- Healthy Coping Skills
- Cognitive Behavioral Therapy
- Keys to Successful Incarceration (prison preparation)

Crisis Intervention: Upon release from court, the defendant is immediately referred for psychological assessment. The defendant is evaluated for depression, anxiety, and suicidal ideation. The need for any additional services, such as psychiatric medication or individual counseling, is also identified at this time.

Support Group Sessions: If found suitable, the defendant participates in weekly group sessions with other pretrial defendants charged with a sex offense. Information related to the offense or other deviant behavior is prohibited from discussion. The groups focus on dealing with the impact of arrest on defendants' daily lives. Group sessions provide social contact for isolated defendants and support from others who are experiencing similar feelings.

Healthy Coping Skills: Defendants learn how to manage the stress of the federal judicial process in healthy ways.

Cognitive Behavioral Therapy: Defendants are taught how to eliminate their catastrophic thinking patterns (I will never find a job when released from prison; I will get killed in prison; etc.).

Keys to Successful Incarceration (Prison Preparation): Participants are educated about the Bureau of Prisons System. They learn about designation, facilities, communication with court and detention officers, self-surrender procedures, etc.

Since 2005, U.S. Pretrial Services in the Central District of California has referred more than 100 defendants to the program. Defendants and mental health providers report positive outcomes. Specifically, participants appear better equipped to manage the pretrial process and the prospect of being incarcerated in a federal prison. To date, all of the group participants have self-surrendered to federal marshals. The program has also been useful in identifying individuals in crisis and providing them with services. The most critical outcome is the fact that no program participants have committed suicide. However, the base rate for suicide among pretrial defendants (overall) is very low; thus, the measurement of a district-level suicide risk reduction effect among a specific subgroup of defendants in a single court is quite difficult to achieve. The most valid study of the impact of the program must involve pre/post comparisons of participants (vs. non-participants) in the suicide prevention program, which is being administered by *Sharper Future*, the vendor in this jurisdiction. An independent evaluation of the program is currently in progress.

Evaluating New Strategies Designed to Prevent Suicide among Federal Sex Crime Defendants: Issues to Consider

Each day in federal district courts across the country, judges render difficult pretrial release

decisions for individuals who are charged with federal sex crimes (e.g. child pornography, sex abuse, sex transportation). When making these decisions, judges primarily consider whether the alleged sex offender is a potential flight risk, as well as the likelihood of criminal activity if the defendant is released before trial. Judges might also want to consider the risk of suicide in these decisions. Hence, sex crime defendants pose a unique challenge for the federal pretrial services system, because they expand the purview of pretrial risk assessment and confront several of the key recommendations on how to apply evidence-based practice (EBP) in pretrial settings (VanNostrand & Keebler, 2009). If the federal system does expand its definition of risk—and we think they should—then a number of basic evaluation research questions must be answered:

(1) Do sex crime defendants pose unique problems, not only in terms of primary considerations (failure to appear, pretrial crime), but also in terms of secondary considerations (need for treatment, suicide risk)?

(2) Can suicides by individuals charged with violating federal sex crime statutes be prevented?

(3) How can and should the federal pretrial system respond to the mental health needs of pretrial defendants charged with sex crimes?

(4) Can national estimates of the extent of the suicide problem, failure to appear, and pretrial crime among defendants in federal sex crime cases be calculated? If so, how does the Central District of California compare to other federal districts on each of these outcomes?

(5) Do these rates (if available) for defendants in sex crime cases vary by charge type, release/detention practices, location, or demographic characteristics?

(6) If available, can the rates of suicide, failure to appear, and pretrial crime be compared to the risk (for suicide, appearance, and crime) posed by other categories of pretrial defendants?

(7) Do defendants charged with violating federal sex crime statutes pose lower flight risk and/or pretrial crime risk—but higher suicide risk—than other categories of federal pretrial defendants?

Answers to these questions are needed before the federal pretrial services system can design and implement an evidence-based suicide prevention strategy.

Concluding Comments

While this article has focused on defendants charged with federal sex crimes who may be at risk for suicide, it is certainly possible that other groups of federal detainees have similar problems during the pretrial stages. Much has changed since the passage of the Sentencing Reform Act of 1984, due to changes in *laws* (such as mandatory minimums for drug offenders, weapons law violators, and other categories of offenders; new laws to address internet sex crimes and techno-crime), changes in *technology* (the internet has spawned new opportunities for a variety of old crimes—fraud, gambling, sex crimes—and created new categories of offenders and victims) and changes in *immigration* (in particular, the recent surge in illegal immigration from Mexico). As a result, the federal offender population today looks quite different from the federal offender population in 1984. Examination of the most recent figures available from the U.S. Sentencing Commission (October 1, 2008 through March 31, 2009) reveals that there are currently four major categories of federal offenders:

(1) Immigration violators (32.2 percent)

(2) Drug Law violators (30.6 percent), with the following three major drug types: powder cocaine, crack cocaine, and marijuana

(3) Fraud, larceny, and other white collar offenders (14.8 percent)

(4) Weapons law violators (10.4 percent)

It would seem reasonable to propose that we examine suicide risk among the entire federal pretrial population, and consider the implementation and evaluation of a new generation of risk reduction strategies that incorporate suicide risk in assessment systems currently focused on the narrower issues of appearance and new criminal behavior.

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