

DETERMINING SEX OFFENDER RISK TO PUBLIC SAFETY: A SURVEY OF SUPERIOR COURT  
JUDGES HEARING PETITIONS FOR REMOVAL FROM THE NORTH CAROLINA SEX  
OFFENDER REGISTRY

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## ABSTRACT

### DETERMINING SEX OFFENDER RISK TO PUBLIC SAFETY: A SURVEY OF SUPERIOR COURT JUDGES HEARING PETITIONS FOR REMOVAL FROM THE NORTH CAROLINA SEX OFFENDER REGISTRY

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Under Finding of Fact 6 of the Petition and Order for Termination of Sex Offender Registration, North Carolina Superior Court Judges are required to make a determination of the potential risk posed by offenders petitioning the Court for removal from NC sex offender registry. Among the requirements to grant removal, these Judges are required by the standards of the petition and General Statutes to find that “the petitioner is not a current or potential threat to public safety” (AOC-CR-262, IV,(6); N.C.G.S. 14-208.12A(1)(3)). Participants of this study are NC Superior Court Judges who were surveyed regarding their experiences presiding over hearings of petitions for termination of sex offender registration.

Building on findings of a previous survey of NC Superior Court Judges, this study looked to identify the types of information available to Judges on which to base the required determination of the petition, and the perceived importance of this evidentiary information to determining the potential threat a petitioner may pose to public safety. Survey results were examined relative to accepted research literature on risk factors and associations of information (that might be available during removal hearings) to the risk of sexual recidivism. Results of actuarial risk assessments may not always be available or preferable to a judge for the specific case. Some researchers (Hanson & Morton-Bourgon, 2009; Knight & Thornton, 2007) have suggested a best practice for the assessment of risks related to recidivism is to include an analysis of dynamic, changeable risk factors in combination with static factors. Judges inherently use a combination of deliberative thinking and structured professional judgement in their decision-making as

Triers of Fact (Guthrie, Rachlinski, & Wistrich, 2007). For the purposes of North Carolina Superior Court Judges deliberating the question of potential threat posed by an offender petitioning for removal from the NCSOR, knowledge of the static and dynamic risk associations relevant to the individual case information available to them may prove beneficial to assist in the difficult determination with which they are tasked. This thesis examined judicial perceptions of the types of information (e.g., demographics, criminal history) and information sources (e.g., records, testimony, reports) available as evidentiary material for the determination of a petitioner's potential risk to public safety. Survey results offer a window into Judges' perceptions of the level of importance and availability of certain types of information, relative to judicial decision-making during hearings of petitions for termination of sex offender registration. Findings suggest judges might benefit from access to a structured guide to research on factors identified as having empirically validated associations with sexual reoffending. When tasked with making a determination of offender's potential risks to public safety (as required under N.C.G. S. 14-208.12A (1a)(3)), a better understanding of risk factors may assist judges in recognizing the most pertinent information and information sources (e.g., records) for identifying the presence of specific risk factors applicable to the case before them. Results are further discussed relative to the research questions raised herein. The implications of Finding of Fact 6 of the petition and related legislation, comparative to established research on risk factors for sexual recidivism, and the concerns of NC Superior Court Judges presiding over hearings for termination of sex offender registration are discussed. Conclusions call for future research and a practical application in the form of an informative guide to factors relevant to risk, to assist Judges tasked with this determination of petitioner risk required by the standards of removal hearings under N.C.G.S. 14-208.12A.

## INTRODUCTION

Sex offender registration is the practice of requiring convicted sex offenders to register with law enforcement and provide current information about their residence, employment, and other details, under penalty of law. Registration is required of those convicted of certain reportable offenses (ranging from public indecency and peeping to first degree rape and kidnapping), the inclusion and specifics of which vary as determined by Federal and individual State legislation. The registration requirement is a mandate of public protection, not a sentence of punishment. The original intent of registration laws was to provide a database of information to aid law enforcement in monitoring known sex offenders and investigating new allegations (Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2010). The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (1994; 42 U.S.C.A. §14071 (West 2008)) was enacted in 1994 as the first federal legislation mandating and establishing minimum standards for the creation of individual state sex offender registries. In 1996, the North Carolina General Assembly created the North Carolina Sex Offender and Public Protection Registry (NCSOR) and enacted state legislation governing sex offender regulation and registration (N.C.G.S. §14-208 et seq.) in direct compliance with the federal Wetterling Act.

The Wetterling Act was amended several times, most significantly in 2006, by the Adam Walsh Child Protection and Safety Act (AWA). AWA made fundamental and controversial changes to sex offender legislation, including stricter requirements for registration. These standards are found in Title I of AWA, known as SORNA (Sex Offender Registration and Notification Act; Pub. L. No. 109-248, SORNA § 111). SORNA standards significantly impact registration inclusion, maintenance, length, monitoring, and possibility for reduction in length of required registration.

Current registration laws aim to increase awareness and visibility of sex offenders to law enforcement and the public, with the intent of increasing public safety (CSOM, 1999; Letourneau et al., 2010). In recent years, however, the value of removing lower risk offenders from sex offender registries has been emphasized (Levenson, 2011; Matson & Lieb, 1996; Ewing, 2011; Wright (Ed.), 2009;

Malcolm, Levenson, & Harris, 2012). There is concern that as the registered sexual offender population grows, fiscal and personnel resources can be spread thin, and law enforcement's capacity to target monitoring toward more dangerous individuals can become compromised. Concerns have also been voiced that dilution of the registry with low-risk offenders can potentially impact the general public's ability to distinguish dangerous offenders (Levenson, 2009; Malcolm, et al., 2012). In addition, ample research suggests that public identification as a sex offender can result in serious financial and social consequences for sex offenders and their families (Letourneau et al., 2010; Levenson & Cotter, 2005a, 2005b; Levenson, D'Amora, & Hern, 2007; Levenson & Hern, 2007; Levenson & Tewksbury, 2009; Zevitz & Farkas, 2000). Despite ample debate concerning public notification, it is inarguable that sex offender registration serves the best interest of public protection by providing law enforcement with an invaluable asset for offender monitoring. However, even State and Federal government has provided a method that, under certain circumstances, a registered offender may qualify for a reduction in their required registration term. Under Federal legislation and the General Statutes of North Carolina, certain registered sex offenders have an opportunity to shorten (42 USC §16928 [P.L. 109-248] Title I(A), §115(b), 120 Stat.) or terminate (N.C.G.S. §14-208.12A) their registration requirement.

In North Carolina, offenders meeting the requirements of NC General Statute 14-208.12A, can petition the Superior Court for termination of sex offender registration and removal from the public sex offender registry. The conditions of the Petition and Order for Termination of Sex Offender Registration (AOC-CR-262) comprise nine findings of fact that must be met, without exception (see Appendix A). One of these conditions for removal from the North Carolina sex offender registry (NCSOR) is that the removal request be in compliance with federal law (N.C.G.S. 14-208.12A(1a)(2); specifically, the Jacob Wetterling Act (1994). However, SORNA (2006) made substantial changes to federal law governing sex offender registration, after which the North Carolina and federal registration requirements ceased to dovetail. These changes included increased and stricter registration requirements that also affected the qualifications for a reduction in registration term. In 2012, like many states challenging the controversial changes made by SORNA, the North Carolina General Assembly decided not to ratify it. Currently, the

unresolved discrepancies between registration standards at State and Federal levels remain, and extend to the conditions necessary for termination of NC sex offender registration.

Previous research was conducted by this student (Love & Malesky, 2012) on the legislative requirements for termination of sex offender registration. In that study, North Carolina Superior Court Judges were surveyed about the decision process and challenges faced when presiding over hearings for removal from the North Carolina Sex Offender Registry (NCSOR). Additional information gleaned from qualitative responses to questions about the removal hearing process as a whole, and the required Findings of Fact in particular, led to this follow-up thesis study. Despite looming questions about if, and to what extent, SORNA's federal standards apply to NC removal hearings (Markham, 2011; Rubin, 2012), our survey results revealed the emergence of a different Finding of Fact (statutory condition) as a primary judicial concern (Love & Malesky, 2012). Finding of Fact 6 of the Petition and Order for Termination of Sex Offender Registration requires the Superior Court Judge to find that "the petitioner is not a current or potential threat to public safety" (G.S. 14-208.12A(a1)(3) AOC-CR-262(IV)(6)). Judges' responses expressed concerns regarding making such a crucial determination based on information presented at a hearing for termination of sex offender registration.

The purpose of the current study is to further explore this aspect of North Carolina hearings for termination of sex offender registration, which requires the Trier of Fact to determine if a particular sex offender poses a threat to the safety of the public. Building upon information gleaned from the 2012 survey, this thesis is an inquiry into what factors influence judicial deliberations of whether a petitioner poses a "threat to public safety" (as required for the determination of Finding of Fact 6 of the petition(AOC-CR-262). This study will focus on (1) the types of information available to NC Superior Court Judges on which to base the required determination of the petition regarding the potential threat a petitioner may pose to public safety, and (2) the Judge's perceptions of the importance certain types of information have to their decisions about the potential threat a petitioner may pose. Results of this survey will be examined relative to accepted research literature on the association of certain factors and information (that might be available during removal hearings) to the risk of sexual recidivism. As in the

previous study, data was obtained by surveying North Carolina's Superior Court Justices as participants in this research. Survey results will be discussed within the context of the research questions raised herein, the standards of Finding of Fact 6 of the petition (AOC-CR-262, IV), related federal and state legislation, established research on risk factors for sexual recidivism, and the concerns of NC Superior Court Judges presiding over hearings for termination of sex offender registration.

The importance of judicial training designed specifically to address sexual offense issues has been emphasized (Center for Effective Public Policy, 1996). However, publication of systematic examinations of judges' knowledge about sex offender-specific issues, or identifying specific areas of concern or knowledge deficit in order to inform sex-offender specific judicial training programs, have been scarce. Along this vein, the present study was designed to provide initial insight into these areas as well as offering insight into judicial decision-makers' opinions regarding sex offender registration in general, hearings of petitions for removal, and the challenges they face therein. Given the importance of this determination to the outcome of these hearings, and the high-stakes nature of the responsibility involved in making such a determination, it is believed that the results of this study will help shed much-needed light on the challenges and concerns faced by the Superior Court Judges tasked with this grave responsibility.

## LITERATURE REVIEW

### **A Brief History of Sex Offender Registry Legislation**

Early sex offender registration programs were developed largely in response to high profile abduction cases, wherein the need for law enforcement to quickly identify and locate potential suspects in the proximate area was critical. States first recognized the need for law enforcement and then the public to have access to knowledge of the current addresses of convicted sex offenders residing in their local communities. The first state legislation to require convicted sex offenders to register with local law enforcement agencies was enacted by California in 1947. In 1990, the State of Washington passed the Community Protection Act, with the first provision for public notification regarding sex offenders. Presently, all 50 states have sex offender registration laws. The prevailing rationale underlying the enactment of all sex offender legislation is best summarized in Alaska's sex offender registration bill (1994) which states that:

- (1) sex offenders pose a high risk of reoffending after release from custody;
- (2) protecting the public from sex offenders is a primary governmental interest;
- (3) the privacy interests of persons convicted of sex offenses are less important than the government's interest in public safety; and
- (4) release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety (H.B. 69, Alaska Sess. Laws 41, § 1(1994) (enacted)).

The initial federal legislation requiring the creation of individual sex offender registries by all states and jurisdictions, and establishing the minimum standards thereof, was enacted in 1994. This Act, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C.A. § 14071, West 2008) was named for 11 year old Jacob Wetterling, who was abducted at gunpoint in 1989. It was later discovered that, unbeknownst to law enforcement, released sex offenders were being housed in local halfway houses. Jacob was never found. The Wetterling Act was passed in recognition of the need for law enforcement to be able to efficiently identify the whereabouts of known

sex offenders, particularly in the critical hours of an investigation. The Wetterling Act was amended several times, largely in response to public outcry and high profile cases. Beginning with Megan's Law (42 U.S.C. 14071) which added the provision of community notification in 1996, each amendment mandated further changes in the interest of public safety, including public access to state registries, lifetime registration for repeat and aggravated offenders, and a federal sex offender database (42 U.S.C. 14071; 42 USC §14072, 1996). The most recent amendment, the Adam Walsh Child Protection and Safety Act of 2006, (AWA), (42 USC § 16915 *et seq.*), was enacted on July 27, 2006. This Act mandated the standardization of state sex offender legislation to more extensive federal requirements, for all aspects of sex offender registration. These stricter standards are found in AWA's controversial Title I, Sex Offender Registration and Notification Act (SORNA) (Pub. L. No. 109-248, SORNA § 111). But, unlike preceding amendments, the Adam Walsh Act expressly *repeals* the Wetterling Act (SORNA SEC. 129 of Title I; Pub. L. No. 109-248, §129, 120 Stat. 587, 600, (2006)) and was therefore intended to be a stricter replacement of the entire Jacob Wetterling Act and its previous amendments (McPherson, 2007). SORNA's changes affect the required duration of registration, conditions for a reduction in time, risk determination, retroactivity, juvenile registration and mandate the use of a federally defined tier system for categorizing offenders.

The federal law places offenders into one of three tiers, based on offense severity. This tiered system, which is one of the most controversial aspects of SORNA, is intended as the basis for determining the specific registration requirements of each offender. The system requires that the tier and conditions such as the length or reduction of registration, verification requirements and restrictions placed on an offender, be based solely on the offense<sup>1</sup> for which an offender was *convicted* (despite underlying details, or possible plea-bargain). The highest tier, Tier III, requires lifetime registration and includes offenses such as kidnapping, aggravated sexual abuse (18 USC §2241-2242), sexual contact with a child under age 13(18 USC §2244), and recidivism by a Tier II offender (73 Fed. Reg. 38030, 38053-54). Tier

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<sup>1</sup> Exception: All tribal court convictions, regardless of offense, are considered Tier I offenses; thus it is up to the discretion of the Tribe to impose higher standards of registration requirements.  
[http://www.ojp.usdoj.gov/smart/pdfs/final\\_sornaguidelines.pdf](http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf)

II requires 25 years registration and includes most sexual abuse and offenses such as exploitation of a minor, production or distribution of child pornography, and recidivism of a Tier I offender (73 Fed. Reg. 38030, 38053-54). Registration for Tier I, the lowest category, is 15 years. Tier I is a residual category of all offenders who do not meet criteria for Tier II or III. Some examples of North Carolina offenses qualifying as Tier I include Sexual Battery (G.S.14-27.5A), felony Indecent Exposure (§14-190.9(a1)), third degree Sexual Exploitation of a Minor (§14-190.17A), Peeping offenses (§14-202), and Indecent Liberties with a Minor (without intimate contact) (§14-202.1) (Markham, 2009). Tier I is the only tier eligible for a federal reduction (of 5 years) in registration time. If a Tier I offender's registration is thus reduced to 10 years, they may also be eligible to petition for removal from the North Carolina sex offender registry.

However, there remains a question as to what extent the stricter federal standards (that replaced the Wetterling Act) apply to North Carolina's requirements for removal from the NCSOR (Markham, 2011; Rubin, 2012). Up until the federal legislative changes in 2006, North Carolina's statutory minimum requirements for sex offender registration (N.C.G.S. § 14-208.7(a); 14-208.6A) met or exceeded the severity of those mandated by the Wetterling Act (1994; 42 USC § 14071(b)6). But with SORNA's changes, the General Assembly of NC determined that compliance with federal registration requirements was no longer feasible (H.R.1317 Session, 2009). The final deadline for state and jurisdictional compliance to SORNA was July 27<sup>th</sup> 2011. As of June 3<sup>rd</sup> 2012, only 15 states were in substantial compliance (Office of Justice Programs, US DOJ, 2012)<sup>2</sup>. The General Assembly of NC decided to decline ratification of SORNA in 2012. This move left unresolved differences between the federal and State's determination of requirements for length of registration, and eligibility for its termination (under N.C.G.S. 14-208.12A) (See Table 1 for comparison).

### **North Carolina Sex Offender Registration**

The North Carolina Sex Offender and Public Protection Registration Programs were enacted in 1996, in compliance with the federal Wetterling Act. North Carolina separates sex offenders into two

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<sup>2</sup> Retrieved from [http://www.smart.gov/newsroom\\_jurisdictions\\_sorna.htm](http://www.smart.gov/newsroom_jurisdictions_sorna.htm)

broad categories for registration purposes (i.e., Part 2 and Part 3, named for corresponding sections of the State registration program (N.C.G.S. 14-208.6A)). Part 3 Registration is a lifetime requirement, without termination (N.C.G.S. §14-208.23). Part 3 consists of three offender sub-classifications: *aggravated offenders*<sup>3</sup> (NCGS§ 14-208.6(1a), 14-208.21 [2001S.L.373]), *recidivists*<sup>4</sup> (NCGS§ 14-208.6(2b), 14-208-21 [2001S.L.373]), and *sexually violent predators*<sup>5</sup> (NCGS§ 14-208.6(6), 14-208.20, 14-208.21[1997 S.L.516]). Part 2 Registration consists of a residual class of sexual “offenders,” not otherwise required to register under Part 3. Part 2 offenders are required to register for 30 years<sup>6</sup> (N.C.G.S. §14-208.6A). However, the General Statutes of North Carolina (G.S. 14-208.12A) allow eligible Part 2 offenders to petition for removal from the registry after a minimum registration period of 10 years (G.S. 14-208.6A; G.S. 14-208.12A).

#### **Conditions for removal from the NCSOR.**

The minimum duration of registration required for non-lifetime offenders in North Carolina is 30 years (N.C.G.S. § §14-208.6A, 14-208.7, 14-208.12A [2001 S.L. 373; 2006 S.L. 247]); but even once this term is complete, termination of the registration requirement is neither automatic nor assured. Beginning with registrations due to terminate on or after December 1, 2006, North Carolina sex offenders are required to file a petition to the Superior Court (in the district of their conviction) for removal from the NC sex offender registry (S.L. 2006-247, sec. 10.(b); NCGS14-208.12A). A petition may be filed after 10 years of registration has elapsed. If a petition for removal is denied, the offender may petition after one year from the date of denial. Removal from the sex offender registry is considered a privilege, not a right. If a registered offender does not petition for removal, or if their petitions to the Court are continually denied, registration requirements can continue indefinitely.

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<sup>3</sup> Aggravated Offender: convicted of an aggravated offense, defined as engaging in a sexual act involving vaginal, anal, or oral penetration by force or threat of violence, or with a victim who is less than age 12 (14-208.6(1a))

<sup>4</sup> Recidivist: (208.6(2b)) having any prior reportable convictions (requiring registration N.C.G.S. §14-208.6(4)a,14-208.6(4)d), or subsequent registerable convictions after an initial registration as a Part 2 offender.

<sup>5</sup> Sexually Violent Predator: (N.C.G.S. §14-208.20) having a sexually violent offense conviction (N.C.G.S. §14-208.6(5)) and suffering from a mental abnormality (N.C.G.S. §14-208.6(1f)) or personality disorder (N.C.G.S. §14-208.6(2a)), creating the likelihood of sexually violent offending directed at strangers... (N.C.G.S. §14-208.6(6)).

<sup>6</sup> Offenders initially registered under Part 2 prior to December 1, 2008 were registered for life, and could remain registered indefinitely unless able to successfully petition for termination of registration. (Markham, J. 2009; NCGS § 14-208.12A, 14-208.23[2001 S.L.373;2006 S.L.247]).

To petition for removal, an offender must have been registered under Part 2 of the program for at least 10 years, with no subsequent convictions requiring registration. These are the first two of nine conditions of the petition (AOC-CR-262). Of the nine, three of the requirements are key. Under North Carolina statute §14-208.12A(1), “the court *may* grant” a petition if the following three main conditions are found true:

- (1) The petitioner “has not been arrested for any crime that would require registration...since completing the sentence,” (G.S.14-208.12A(a1)(1); AOC-CR-262,( IV)(4))
- (2) “The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State,” (G.S.14-208.12A(a1)(2); AOC-CR-262(IV)(7)) and
- (3) “The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety” (G.S.14-208.12A(a1)(3); AOC-CR-262, IV(6)).

In addition to these three main conditions, the petition must meet a threshold of six other criteria<sup>7</sup>. These nine total conditions comprise the specific standards with which the petitioner must be in full compliance, to be considered for termination of registration (AOC-CR-262, (V); G.S. 14-208.12A). All nine requirements are presented as specific Findings of Fact, on the Petition and Order for Termination of Sex Offender Registration (AOC-CR-262) (see Appendix A). These findings are listed as checkboxes to be completed by the Judge at the hearing. The Superior Court Judge presiding over the hearing is solely responsible for granting or denying the petition for removal from the NCSOR. Underlying that decision, all nine of these Findings of Fact must be found to the satisfaction of the Court, without exception, for the petition to be granted (AOC-CR-262 (V)(1)).

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<sup>7</sup> In broad terms, the other six conditions of North Carolina statute (§14-208.12A) state that to grant a petition the offender must have been *registered with a conviction under Part 2* of the program for *at least 10 years* with *no subsequent convictions* requiring registration, provide proof of proper *timely notice of the petition to the District Attorney (and to the sheriff* in the county of any out-of-state conviction), and be *at least one year past the denial date* of any previous petitions (G.S.14-208.12A; AOC-CR-262, IV(1-3)(5)(8-9)).

***Issue of the required Findings of Fact.***

The second key requirement for termination of registration, (G.S.14-208.12A(a1)(2)), corresponding to Finding of Fact 7 on the petition (AOC-CR-262, (IV)(7)), requires compliance with the Jacob Wetterling Act (1994) and its amendments. Since 2006, State and Federal standards for sex offender registration no longer dovetail, creating specific problems for determining legislative compliance. If this second requirement for termination of registration is interpreted as including compliance with the standards of SORNA, then offenders petitioning for removal could also have to meet stricter federal mandates (Pub. L. No. 109-248 §115, 120 Stat. 595) in addition to State removal criteria (see Table 1 for a comparison of State and Federal standards).

The legislative issue surrounding Finding of Fact 7 was the topic of a survey of North Carolina Superior Court Judges conducted by this researcher in 2012. That survey focused on hearings for termination of registration and to what extent “superior court judges are having difficulty with [this condition]... requiring compliance with federal law” (Markham, 2009). However, it was the third statutory condition (sixth finding of fact), that the Court must find “the petitioner is not a current or potential threat to public safety” (G.S. 14-208.12A(a1)(3)), which emerged from qualitative responses as a significant concern of the NC Superior Court Judges responding to the survey (Love & Malesky, 2012). The aforementioned survey revealed judges hearing petitions for removal from the NC sex offender registry have concerns about being tasked with the responsibility of determining if a petitioner poses a threat to public safety. Eleven of the 16 participants who provided comments about their greatest challenges, issues or concerns of these hearings identified *assuring public safety* as a primary concern; nine of which specifically conveyed apprehension over the responsibility of determining whether or not a petitioner poses a potential threat to public safety. Judges were also asked to identify which petition Findings of Fact most often contributed to the denial of these petitions to terminate sex offender registration. Of the nine statutory criteria listed in the removal petition, the majority of the 26 respondents (65%,  $N=17$ ) cited Finding of Fact #6 and its determination of *threat to public safety* as the most significant contributor to petition denial. Additional questions about removal hearings highlighted other judicial concerns,

particularly about the case-by-case variance in the information with which they have to make this determination. There was considerable variation in the types of information reportedly used for determining a petitioner's potential threat to public safety. In addition, Judges were uncertain as to whether petitioners were entitled to court-appointed counsel; the majority stated they do not appoint counsel for these hearings. Judges' concerns included: petitioners who are uninformed about the proceedings, poor case presentation, lack of defense counsel, and inadequate resources for investigation by the State (Love & Malesky, 2012).

Considering that, of the petition criteria, Finding of Fact 6 was most often identified as contributing to petition denial, the determination of this Finding appeared to be significant enough to the outcome of these removal hearings as to warrant further investigation. Thus, the method and materials by which Superior Court Judges determine this finding became the focus of this present study.

### **Sexual Offense Recidivism**

Research, legislation, policy and literature on sex offender recidivism are prolific and diverse. So too are the current body of empirically derived data available to inform and guide decision-making about sexual reoffense risk, and the available methods by which to assess it. Recidivism studies are notable for a wide variation in methodology and design. Unfortunately, the vast methodological differences in existing studies complicate comparison of the vast array of study outcomes. The subsequent section will nonetheless briefly highlight some of the more accepted research findings on the factors found to be empirically associated with sex offender reoffending and desistance from reoffending. Before we can do that, however, we must first present a few cautionary caveats regarding such a basic review of psychological research on sexual recidivism as is presented here, and some of the critical issues relevant to defining recidivism and attempting to identify its associated risk factors. The present section will highlight these concerns.

The long-standing confound in this research is what is referred to as the "base-rate problem" with the prediction of dangerousness (Quinsey, 1980). That is, very low overall base rates of reported sexual reoffending, coupled with higher base rates for reoffense in certain samples of sex offenders studied. This

contributes to a wide variation of results in both the amount of measured recidivism and the factors associated with the outcomes. Measurement issues such as this make it nearly impossible to determine the exact and overall rate (i.e., base rate) of recidivism for such as is the entire population of sexual offenders, and though the probabilities of recidivism have been empirically studied, accurate individual predictions of recidivism are difficult to make, generalize from, and systematically improve. What is known about the rates of sexual recidivism tends to vary with the parameters of the research study (e.g., type of offender, measure of recidivism, follow-up data, and source of data collection). Even using the best methodologies, base rates are statistically low and varied. In one large longitudinal study, 24% of known sex offenders were charged with or convicted of a new sexual offense after 15 years, suggesting that the majority of sexual offenders (76%) did not sexually re-offend over time (Harris & Hanson, 2004). A 2003 Bureau of Justice Statistics report on a study of 9,691 sex offenders from 15 states indicated that the re-arrest rate for new sexual offenses 5.3% over 3 years (by the U.S. Department of Justice). This finding is consistent with the low end of some generally accepted estimates, suggesting a range of 5-14% of known sex offenders will commit a subsequent sexual offense within three to six years (Levenson, 2009). Meta-analyses of sex offense recidivism studies of nearly 30,000 sex offenders from North America and England found an average re-arrest rate on the high end of this range: 14% over four to six years (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). One of the most widely referenced empirical studies on recidivism, reports the rate of observed sexual recidivism is typically considered to be 10% to 15% within 5 years (Hanson & Bussiere, 1998). Though base rates are statistically low, it has been noted that actual reoffense rates are likely to be much higher than reported or observed (Harris, et al., 2003).

Much of the difficulty with measuring recidivism can be tied explicitly to the difficulties inherent in obtaining accurate and discrete records and reports by which to measure offending and reoffending. These issues are not new, and have traditionally plagued sex offender recidivism studies (Quinsey, 1980). Though recidivism is often measured through official criminal justice system data, it should be noted that sexual assault is a vastly underreported crime. A recent report of the Bureau of Justice Statistics' National

Crime Victimization Survey (NCVS) indicated that only half of all sexual assaults against persons 12 or older were reported to law enforcement (U.S. Department of Justice, 2011). In addition, some reoffenders are likely to escape capture, and thus their crimes are unaccounted for. The method of obtaining data for measuring patterns of offending also varies between studies (e.g., conviction records, arrests, offender self-report and interview, polygraph interviews, disclosures required as a component of sex-offender treatment programs). Furthermore, resulting rates of sexual reoffending can vary significantly depending on the categorization of sexual offender (e.g., rapist, child molester, exhibitionist), length of study and follow-up period (Hanson and Bussiere, 1998; Quinsey, 1984; Quinsey, Lalumiere, Rice, and Harris, 1995; Quinsey, Rice, and Harris, 1995; Prentky, Lee, Knight, and Cerce, 1997). Another limitation of both risk assessment tools and studies is a lack of universal agreement on defining the terms "recidivism" or "reoffense." Thus, the operant definition of recidivism is inconsistent across studies (e.g., arrests, charges, or convictions, uncharged accounts (unprosecuted victim reports, offender disclosure/admissions)). The way in which recidivism is defined and measured can have a marked difference in study results, and differing variables can affect conclusions about sex offender recidivism, and applicability to decisions regarding individual cases. It is equally important to know how "sex offender" is defined by the researchers. Sex offenders are a highly heterogeneous group of individuals who have engaged in a wide range of inappropriate and criminal sexual behaviors (Ahlmeyer, Heil, McKee, & English, 2000). If various types of offenders and offenses are grouped into a superficially homogenous category, distinctions within the category and in the factors related to recidivism can become muddled, yielding differential results between studies of reoffending. However, researchers must exhibit caution in placing sex offenders into exclusive categories, as many offenders have diverse victims and histories of offending.

Finally, as the overwhelming majority of sex offender research and validation of risk assessment tools has been conducted with adult male offenders, the research literature presented here extrapolates primarily to that population. All said, the majority of ambiguity and debate surrounding research results on the recidivism of sexual offenders is likely best attributed to variances in the samples of sex offenders

(Quinsey, 1984; Schwartz and Cellini (1997) and the operational parameters used in the studies. Such inconsistencies make even meta-analyses of risk assessment studies problematic, as studies are potentially measuring different things (Gerhold, Brown, & Beckett, 2007; Reitzel & Carbonell, 2006). Nonetheless, the development of statistically sophisticated techniques such as meta-analysis (for estimating the combined effects of various studies meeting certain methodological criteria) has provided great gains in the summarization of sex offender recidivism research, by producing estimations of effects generalizable across studies and samples (Quinsey, Harris, Rice, and Lalumiere, 1993). Despite noted caveats, and from a perspective of public policy and safety, existing and continuing recidivism research remains an invaluable resource.

### **Established Factors and Characteristics Related to Sexual Recidivism**

Recidivism rates can vary based on characteristics of the offender and the offense including the type of offense, offender age, degree of sexual deviance, criminal history, and victim preferences (Hanson & Bussiere, 1998; Hanson & Thornton, 1999). By using techniques such as meta-analysis, researchers have been able to make great strides in determining the relative importance of various factors across recidivism studies. This allows for the estimation of how strongly certain offender and offense characteristics are related to recidivism based on the consistency of their relevance across research findings. Extensive research on general criminal recidivism has identified a set of factors (which include: young age, unstable employment, substance abuse, and pro-criminal associations and attitudes) that are consistently associated with subsequent criminal behavior among the general criminal population. (Gendreau, Little, & Goggin, 1996). However, the risk factors and rates of general recidivism, while somewhat overlapping, are not wholly identical to the risk factors for sexual recidivism. Many sex offenders commit other criminal offenses, and are more likely to recidivate with a non-sexual crime than a sexual crime (Bureau of Justice Statistics, 2003; Hanson, 2000; Hanson & Bussière, 1998). However, other types of offenders rarely commit sex offenses (Bonta & Hanson, 1995; Hanson, Steffy, & Gauthier, 1995). In addition, many persistent sex offenders receive low risk scores on instruments designed to predict general criminal recidivism (Bonta & Hanson, 1995). Research evidence supports that sexual

offending differs from other criminal behavior, with additional behavioral indicators particular to this offense and population of offender (Hanson & Bussiere, 1998).

Legislation, policies and procedures for the management of sexual offenders and evaluations of risk for future offending, including the determination of Finding of Fact 6 by North Carolina's Superior Court Judges which is the focus of this study, rely on the ability to identify and differentiate offenders according to a perceived level of risk. The accuracy of risk assessment prediction has improved markedly with the identification of risk factors correlated with violent and sexual recidivism. The identification of potential risk factors associated with recidivism of sex offenders can aid practitioners and policy makers alike in developing strategies that best protect the community and reduce the likelihood of further victimization. The crucial caveat here is that these factors are characteristics that tend to be associated with certain behaviors, but are not of themselves guaranteed predictors of a certain behavioral outcome in all individuals. That said, the following section will discuss risk factors associated with sex offenders' commission of subsequent crimes.

#### **Static and dynamic factors related to sexual reoffending.**

Offender characteristics can be categorized into two general groups of factors associated with the risk of sexual recidivism. These variables can be classified as *static* (unchangeable or historical) risk factors and *dynamic* risk factors (which can be changeable over time) (Andrews & Bonta, 2006; Hanson & Morton-Bourgon, 2005, 2007). Historical characteristics and facts that typically cannot be altered (e.g., age, prior offense history, victim age and gender, perpetrator's age at time of the offense) are often referred to as *static* factors. Though some static factors (such as age or criminal records) may change with time, generally only change in one direction; that is, they are part of a history that can be added to, but not subtracted from. *Dynamic* factors are characteristics, circumstances, and attitudes that can undergo change throughout one's life. These factors may remain relatively stable (e.g., personality traits, deviant sexual interests, substance abuse) or be situationally acute (e.g., intoxication, anger, victim access), but nonetheless have the potential for change. Static and dynamic risk factors of an individual offender can often be identified from information found in the case file, criminal, psychological and

treatment records, underlying offense details, and lifestyle stability (e.g., employment, homelessness, substance use). Static factors (e.g. criminal history, age, and victim characteristics) are found in an offender's history, and identify long-term risk factors for recidivism; whereas dynamic factors (e.g. treatment progress, substance abuse, prosocial supports) represent the ongoing presence (or absence) of immediate or stable risk factors related to reoffending in the shorter term. Dynamic factors associated with desistance (reduced recidivism) have the potential to be strengthened with effective supervision and treatment strategies (Bynum, 2001). Existing research has largely supported static or historical factors as better predictors of the likelihood of long-term sexual recidivism, in particular. Most well-established empirically supported research on risk factors tends to be on static (e.g. criminal history) or highly stable characteristics (e.g. personality disorders, deviant sexual interests). There is less overall research on dynamic factors, but a growing body of studies supports their predictive value (Andrews & Bonta, 2006; Hanson & Bussiere, 1998; Gendreau et al., 1996; Hanson & Harris, 2000; Hanson & Morton-Bourgon, 2005, 2007). Given that research supports that there are changeable conditions (dynamic risk factors) that are likely associated with reoffense risks, it seems only prudent to seek to identify these conditions in individual cases and be mindful of these targets for change. Finally it should be noted that distinctions between a static predictor and a stable dynamic predictor often are blurred; depending on how it is defined, a factor (e.g., marital status, personality traits, sexually deviant interests) may be considered a static predictor in some research, but a stable dynamic predictor in other studies (Hepburn & Griffin, 2002).

It is also well noted that correlations between any single possible risk factor and sexual offense recidivism rates are typically low. For example, correlation coefficients for empirically established factors most correlated with increased recidivism rates typically range from a high of .32 to a low of .10 (e.g., the highest correlation (.32) being sexual interest in children as measured by a phallometric assessment (Gendreau et al., 1996; Hanson, 2000; Hanson & Bussière, 1998; Hanson, Morton, & Harris, 2003). As no single risk factor is sufficiently and significantly associated with sexual recidivism to be used on its own, evaluators need to consider and incorporate a range of relevant risk factors. The most

widely accepted way to do this is through the use of actuarial methods validated for risk assessment along with their underlying static factors. Research has also suggested that when determining risk, both static and dynamic factors should be taken into consideration (John Howard Society of Alberta, 2000). Certain dynamic factors have been shown to be especially effective when reviewed in combination with static historical data, assisting to significantly increase the accuracy of risk prediction beyond the level achieved by the actuarial assessment of static factors alone (Beech, Friendship, Erikson, & Hanson, 2002; Hanson, Harris, Scott, & Helmus, 2007). Some validated actuarial tools currently in use have taken the combined approach with both static and dynamic factors incorporated into their risk assessment design. Examples of these include the Sex Offender Risk Appraisal Guide (SORAG; Quinsey, Harris, Rice, & Cormie, 1998) and the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R; Epperson, Kaul, & Hasselton, 1998) or the more recent version MnSOST-3.1 (Duwe & Freske, 2012). Currently however, there is no single standard or universally established method for combining static and dynamic factors into comprehensive risk evaluations. Thus, if an actuarial tool is not in use, it is up to evaluators to consider current research, specify the empirically identified factors most important to the nature and purpose of the assessment of the individual case before them, and to structure a method of reviewing available information to identify the static and dynamic risk factors pertinent to that case.

Accurate and effective assessment of sexual offender risk requires access to empirical sex offender-specific knowledge and objective, comprehensive, case-specific information. From these one might identify potential case-specific risk factors for sexual reoffending. Therefore, an extensive literature review was initially conducted on characteristics identified as risk factors for recidivism, and then narrowed to those factors associated with *sexual* reoffending in particular. Viewing these risk factors in the context of the evaluation and the types of information reliably available to evaluators for identifying these factors and making their risk determination, also warranted careful consideration. This study, building on earlier research (Love & Malesky, 2012) particularly sought to identify the types of information reliably available to judges during hearings for termination of sex offender registration. As the specific context at hand (determination of the risk an offender poses to public safety, tasked to a Trier

of Fact as a requirement of a legal proceeding) was distinctly lacking from any of the risk assessment literature reviewed, the scope of the literature findings was further narrowed. Therefore, the information presented here addresses those risk factors most relevant to: the purpose of the legal proceeding (to grant or deny removal from the sex offender registry), the specific evaluation (determination of petitioner's potential threat to public safety), the offender population (community based registered sex offenders petitioning for removal from the NCSOR), the types of information most likely to be available to the court, and most importantly, the sole evaluator tasked with this decision (the Superior Court Judge).

### **Risk Factors for Sexual Reoffending Relative to Information Available to the Court**

Factors associated with sexual reoffending will be framed and discussed in the context of how evidence of this information might be presented to the court or otherwise available to the Superior Court Judge presiding over the hearing for termination of sex offender registration.

### **Static and Historical Factors**

Static risk factors are fixed, unchangeable variables, also known as historical variables. They represent fixed unchangeable points in an offenders history (e.g. criminal history), and are especially useful in the assessment of long-term recidivism potential (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005, 2007). Static (or historical) factors are largely objectively determinable from the facts of record. Examples of static risk factors include: prior criminal history, age, and offense details (e.g., victim age, acquaintance, diversity).

### **Criminality.**

Information in the offender's criminal record speaks to the factor of criminality. This kind of information is a static, or historical, factor. The availability of various official records as sources can provide formal documentation of numerous variables related to offense history. Such records include, but are not limited to, police reports, RAP sheets, victim statements, arrest records and other criminal history documents. The petitioner's prior sexual offenses, violent offenses, and general criminal offenses should be taken into consideration in addition to the registered offense of the petition. Persons with a prior criminal record are more likely to re-offend than those with no prior criminal history. The two major

historical constructs responsible for sexual recidivism are sexual criminality and general criminality (Babchishin, Hanson, & Helmus, 2012).

### ***History of sexual offense.***

Although the registered offense of the petition must be considered as a determinate of the removal process, it is the overall history of offense severity that should be considered when evaluating an offender's risk. Quantitative review by Hanson & Bussiere (1998) found that the seriousness of the index offense alone was unrelated to sexual recidivism. The most relevant factors are those related to an offender's history of sexual offenses, in particular: severity of sexual offense history (Rice, Quinsey, & Harris, 1991), the number of prior sex offenses (Prentky, Knight, & Lee, 1997; Hanson & Bussiere, 1998), and having engaged in diverse sex crimes (Hanson & Bussiere, 1998).

### **Victim characteristics and underlying history of offense.**

Risk factors related to the details and victim(s) of the offense(s) include having a history of: male, unacquainted (stranger), extra-familial, multiple, or diverse (e.g., differing age, gender) victims (Hanson & Bussiere, 1998; Hanson & Harris, 1998; Knight & Thornton, 2007). Deviant victim preferences (unacquainted, male, child) are stable dynamic factors correlated with increased recidivism rates. Characteristics of victims noted in the record are historical facts of offending behavior. Risk factors associated with victim characteristics and deviant sexual preferences including: having any stranger victims, related, or boy victims, and engaging in diverse sexual crimes have shown correlation coefficients with sexual recidivism which ranging from a high of .22 to a low of .10 (Hanson et al., 2003). Of deviant victim characteristics, recidivism risk is greater for those who commit sexual offenses against strangers. However, most sexual perpetrators are well known to their victims, and most child sexual abuse offenders are often family members (34%) or close acquaintances (59%) (Bureau of Justice Statistics, 2000).

### **Early sex offending.**

The offender's age at the time of the offense must be considered in the context of their criminal history. Committing the offense at a young age or having begun sex offending at a young age are

important factors to note. Research literature indicates early sex offending is an important predictor of sexual recidivism (Bonta & Motiuk, 1996; Hanson & Bussière, 1996; Hanson & Bussiere, 1998; Hanson & Harris, 1998). Age at first offense can be representative of enduring antisociality. Thus, age as a factor is better assessed using age at first offence rather than age at release (Harris & Rice, 2007).

**Current age.**

Being young (under age 25) is considered a static risk factor (Hanson & Thornton, 1999) that is consistently but weakly related to subsequent sexual offending (Hanson & Bussiere, 1998). A causal effect of aging is that sexual offenders become less risky as they grow old (Barbaree & Blanchard, 2008) and most studies have found that older sexual offenders are lower risk to reoffend than younger sexual offenders (Barbaree & Blanchard, 2008; Hanson, 2002, 2006). However, present data suggest that lower sexual recidivism rates due to ageing out of risk do not occur until at least after the age of 60 (Knight & Thornton, 2007). The effects of age, however, are not found in every sample (Thornton & Knight, 2007) and may vary subject to the effects of other factors. In addition, researchers “would not recommend adjusting actuarial risk estimates on the basis of offenders’ aging in prison” (Knight & Thornton, 2007, p. 86). There is still some debate about influence of age on reoffending, but the new coding rules for the Static-2002-R indicate age at release no longer significantly contributed to the prediction of sexual recidivism (Helmus, Babchishin, Thornton, & Hanson, 2009). Taken together, research findings suggest that for the purpose of Finding 6 of the petition, an offender’s current age is best considered in conjunction with the amount of time he has spent offense-free in the community. The effects of age would be considered irrelevant, for example, for a recently-released offender who had aged during incarceration.

**Length of time registered (in the community).**

An important factor to the petition is the amount of time an offender has been registered. However, an important factor for recidivism is the amount of time an offender has spent, offense-free, in the community. Recidivism studies of sex offenders, like other criminals, indicate the likelihood of repeating the crime diminishes with increased length of abstinence from that behavior (Harris & Hanson,

2004). Thus, the recidivism rate is likely to be proportionally much higher in the first five years after release, than after 10-15 years in the community. In other words, recidivists are most likely to reoffend within the first few years of release, and an offender's likelihood of committing a new sex offense declines the longer they successfully live in the community without incurring new offenses (Harris & Hanson, 2004; Harris, Phenix, Hanson, & Thornton, 2003; Levenson, 2009). For example, according to the Static-99 (Hanson & Thornton, 1999) risk assessment scoring guidelines, the expected offense recidivism rate may be reduced by half after five to ten offense-free years in the community (Hanson & Thornton, 1999)<sup>8</sup>. Thus, research indicates that in the context of NC petitions for termination of registration Finding of Fact 6, the length of time an offender has been registered *while living in the community* is more pertinent to potential risk than the overall time the offender has been "subject to the NC registration requirements" (AOC-CR-262, IV (2)).

**Marital status (never married).**

Historically, research has indicated that the static condition of having never been married can be associated with risk for sexual recidivism (Hanson & Bussière, 1996, 1998; Hanson, 2003). In addition, one of the static factors considered on the Static-99, a widely used risk assessments for sexual recidivism, is whether the offender has a history of living with a romantic partner for at least two years (Hanson & Thornton, 1999). This item was removed from scoring of the Static-2002 (a similar but separate instrument from the Static-99 (Phenix, Doren, Helmus, Hanson, & Thornton, 2008) due to difficulty scoring and validating this item in adversarial contexts where information about personal relationships was often unreliable (Phenix, et al., 2008). More recent research tends to focus on the ability to form and maintain intimate relationships, and related intimacy issues, as a stable dynamic risk factor (Knight & Thornton, 2007; Hanson & Harris, 2000). Ongoing, rather than historical, information may easier to obtain such as in treatment settings, or from observational reports (e.g., probation records, character references, reports of domestic disputes).

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<sup>8</sup> The Static-2002 version is not intended for offenders who have been free from violent offenses in the community for a period of greater than 8 years since release from their latest sexual offense (Phenix, et al., 2008)

### **History of compliance with registration requirements.**

Studies conducted in several states concluded that a sex offender's failure to register does not typically contribute to the likelihood for sexual recidivism (Levenson & Harris, 2011). Research on the impact of the requirements of sex offender registration and notification laws on actual recidivism is somewhat limited, but few studies found any significant effects of registration or notification on repeat sex crimes (Levenson, 2009). Research does not generally support that sexual offenders who fail to register are any more sexually dangerous than those who comply with registration requirements (Gray, Fields, & Maxwell, 2001; Letourneau et al., 2010; Zgoba & Levenson, 2008).

In a broader sense, however, the nature of this transgression must be kept in perspective, relative to how an offender's history of compliance with registration requirements might be pertinent to a hearing of that offender's petition for removal from the sex offender registry. Ultimately, it is at the discretion of the Court to decide if transgressions related to registration compliance are evidentiary of a potential threat to public safety. Perspectives on this are varied depending on whether viewed through the lens of State or Federal standards. As nothing in N.C.G.S. 14-208.12A specifically requires 10 years of *compliance* to registration, a transgression related to registration (e.g., a late verification update, failure to register, or notify of address change) is not a bar, per se, to petitioning for removal. However, the court is free to consider information about registration compliance under Finding of Fact 6 of the petition regarding "the...potential threat to public safety" (G.S. 14-208.12A(a1)(3)) (Markham, 2009; Welty, 2009, May 21). In addition, if a Judge chose to apply federal guidelines, noncompliance with registration requirements could be construed to disqualify a petition on the grounds of violating federal law (specifically, requirements of: "not being convicted of any offense for which imprisonment for more than one year may be imposed" (42 U.S.C 16915(b)(1)(A)), (as the majority of NC registration transgressions carry felony charges), and/or successful completion of any "supervised release, probation, and parole" (42 U.S.C 16915(b)(1)(C)).

Though compliance with registration requirements does not show any direct associations with sexual recidivism, it does speak to similar risky behavior as the dynamic risk factors rule violations and non-compliance with community supervision. This view is consistent with research on absconding which indicates that sex offenders without a history of other rule violations are unlikely to abscond, but that a history of other criminality and rule breaking behavior predicts absconding (Gray et al., 2001; Letourneau et al., 2010; Williams, McShane, & Dolny, 2000). Considering the outcome of granting a petition would be the offender's removal from the sex offender registry, the relevance of registration compliance to a petitioner's threat to safety may be more evidentiary of the threat for ongoing antisocial behavior or criminality, than of sexual reoffending.

#### **Sex offender treatment.**

##### ***Sex offender treatment records, provider testimony, or report.***

Sex offender treatment is but one element of a comprehensive plan of monitoring and intervention (Prentky & Schwartz, 2006). However, input from treatment providers is valuable information in that it can provide insight into ongoing offender compliance and progress, status of treatment completion or drop-out, and potential changes in an offender's dynamic risk variables. Some studies present optimistic conclusions about the effectiveness of empirically based, individualized, comprehensive programs (Alexander 1999; Bynum, 2001; Gendreau and Andrews, 1990; Hall, 1995; Hanson, 2002; Quinsey, 1998). Research suggests that the most effective interventions directly address dynamic risk factors such as criminogenic needs and precursors to criminal sexual behavior (e.g., lifestyle instability, deviant sexual interests, sexual preoccupations, cognitions and impulses) (Bynum, 2001; Hanson et al., 2002; Hanson & Morton-Bourgon, 2005; Quinsey, 1998). There is some evidence to suggest that provision of sex offender-specific treatment is associated with reductions in both sexual and non-sexual recidivism (Kruttschnitt, Uggen, & Shelton, 2000; Levenson, 2009). However, research findings are mixed as to whether actual differences in recidivism rates can be detected between treated and untreated offenders, or attributed to treatment provision.

### ***Sex offender treatment completion.***

Despite different conclusions about the relationship between treatment outcomes and recidivism reduction, research on adult offenders has shown agreement that offenders who *fail to complete* treatment are at higher risk of recidivism than offenders who successfully complete the treatment programs (Gendreau et al., 1996; Hanson, 2000; Hanson & Bussière, 1998; Hanson et al., 2003; Marques, Day, Nelson, & West, 1994).

### **Psychological records and mental health diagnoses.**

Though general mental health concerns may raise issues related to overall stability and adjustment, general psychological problems are not related to sexual offense recidivism (Hanson & Bussiere, 1998). Furthermore, despite prolific research on the subject, it also remains unclear whether mental illness is a risk factor for violence (Skeem, Douglas, & Lilienfeld, 2009). However, the mental health diagnoses of paraphilias and personality disorders are associated with the risk of sexual reoffending.

Paraphilias are diagnostic categories of sexual disorders defined as intense, recurring sexual fantasies, urges or behaviors involving objects, situations or individuals that are generally considered to be atypical, deviant, or extreme (e.g. pedophilia, sexual sadism, exhibitionism). The presence of multiple paraphilias within the same offender elevates their level of risk (Hanson & Harris, 1998; Knight & Thornton, 2007). The diagnosis of paraphilia represents an enduring stability of deviant sexual interests, and is therefore categorized as a static factor in that regard.

The diagnosis of any personality disorder, and particularly antisocial personality disorder (APD), is a risk factor for reoffending (Hanson & Bussière, 1996, 1998). A diagnosis of personality disorder represents an enduring and stable pattern of personality traits, and is categorized as a static risk factor in that regard. Higher levels of personality disorders have been reported in sexual offenders, particularly rapists (Rice & Harris, 1997; Hanson & Bussiere, 1998). Other conditions, such as a persistent antisocial lifestyle orientation and associations, or acutely deteriorating stability of lifestyle, are also considered dynamic factors for risk of reoffending, even in absence of an APD diagnosis.

There has been continued interest in the role of antisocial personality and psychopathy in the assessment of dangerousness; in particular, scores on the Psychopathy Checklist–Revised (PCL-R; Hare, 1991). However, antisocial personality disorder and its associated risks should not be confused with PCL-R psychopathy. While most high scorers on the PCL-R are likely to also meet diagnostic criteria for APD, many offenders diagnosed with APD would not be classified by the PCL-R as psychopathic (Hare, 2003). The PCL-R has been shown to have strong associations with violence and recidivism (Harris, Rice & Cormier, 1991), and has been found effective for predicting future sexual offending (Quinsey et al., 1998) in some offenders. There is support for its use in the legal arena for assessing the risk of violence or other criminal behavior of adult, white, male offenders in the community (Skeem et al., 2009). However, this is largely due to its predictive validity as a violence risk assessment, not as a psychological diagnostic tool (Skeem et al., 2009). Its effectiveness has been attributed largely to the fact that its 20 items arguably capture most traits generally understood as contributive to criminal behavior (Cooke, Forth, & Hare, 1998), and thereby its ability to capture past criminal behavior and antagonistic traits (Skeem et al., 2009). Some research findings have shown that while use of the PCL-R does classify a *portion* of violent recidivists as psychopaths, and these psychopaths may have higher risks for future crime and violence, the majority of high risk violent offenders are not diagnostically psychopathic and would not be identified by the PCL-R (Bonta & Motiuk, 1996). In addition, just being assigned the label of “psychopath” can cause a defendant to be “perceived and treated more harshly by stakeholders in the justice and correctional systems” (Skeem et al., 2009, p. 191). There are alternative risk assessments for violence that have been validated for use in correctional samples (e.g., the Level of Service Inventory-Revised (LSI-R, Andrews & Bonta, 1995). Given the limitations, possible misperceptions, and potential stigmatization of using a psychopathy measure as risk assessment tool, it has been strongly suggested that other alternatives to the PCL-R be considered for use in legal cases (Skeem et al., 2009).

***Psychologist testimony and reports.***

Psychological information available about an offender may include psychological test results, information about intellectual, cognitive functioning, aptitude, personality, and overall mental health.

Results of evaluations and tools designed to assess sexual arousal, interests, attitudes, behaviors, and functioning may also be included. Potential problems with obtaining access to psychological records include incomplete records, multiple records from multiple providers stored in multiple locations, treatment notes requiring specific request, difficult to obtain release for protected measures and test data, delays and expense to access older or extensive records. Psychological reports and testimony can be important to understanding an offenders test results, diagnosis, and treatment information. Information about substance abuse and treatment compliance may also prove to be pertinent contextual factors for an individual case.

### **Dynamic Factors and Criminogenic Needs**

Dynamic factors are variables associated with risk that are changeable over time. Dynamic factors take into account the changes over time that can affect and adjust static risk predictions. Compared to static factors, dynamic characteristics of the offender are more subjective in measurement and more malleable over time (Gendreau et al., 1996). Dynamic factors can fluctuate in response to changes in an offender's individual internal or external circumstances or environment and can inhibit or disinhibit sexual offending (Hanson & Harris, 2000). ). Dynamic factors can provide important information about the types of conditions and interventions most related to desistance (Bynum, 2001). Some dynamic factors like support networks and positive social influences (Bynum, 2001; Hanson & Harris, 1998) can produce positive changes associated with recidivism reduction. Factors associated with reduced offending include a combination of stable employment, supportive relationships, and sex offender treatment (Kruttschnitt et al., 2000; Levenson, 2009).

#### **Criminogenic needs.**

The term "criminogenic needs" was originally coined by Andrews, Bonta, & Hoge (1990) to describe attributes that are directly linked to the criminal behavior of offenders. In risk assessment literature, criminogenic factors are stable, but potentially changeable psychological characteristics empirically associated with, and theoretically predictive of, sexual reoffending (Knight & Thornton, 2007). Several sex offender-specific dynamic risk factors overlap with individual criminogenic needs

associated with general criminal behavior. Criminogenic needs have been shown to affect an offenders' level of recidivism risk (Hanson & Harris, 2000). Among some of the more influential criminogenic needs are unstable or antisocial lifestyle, unstable or lack of employment, rule violations, and anti-social companions, anti-social personality (temperament), and family and/or marital difficulties (Hanson, 1998, 2003).

#### **Stable and acute dynamic factors.**

Researchers have further divided dynamic factors into *stable dynamic* and *acute dynamic* categories (Hanson & Harris, 1998). *Stable dynamic factors* have the potential to change over time, but have relatively lasting qualities that are more difficult to change (e.g., deviant sexual preferences or substance abuse). *Acute dynamic factors* are described as conditions (such as intoxication, victim access, or sexual arousal) that can change, or fluctuate, over a short period of time. Stable factors (e.g. addiction, alcoholism, sexual preoccupation) can endure for relatively long periods of time (months to years), and change slowly, whereas acute factors (e.g. intoxication, victim access, mood) can rapidly change over weeks, days or moments. Research indicates a general consensus in the association of sexual recidivism with certain broad, enduring factors, particularly deviant sexual preferences interests behavior and an unstable, antisocial lifestyle (Hanson & Morton-Bourgon, 2005; Hanson & Bussiere, 1998; McGrath, Lasher & Cumming, 2011; Quinsey, Lalumiere, Rice, & Harris, 1995; Roberts, Doren, & Thornton, 2002). The stable characteristics of a prototypic sexual recidivist are describes someone who leads “an unstable, antisocial lifestyle and ruminates on sexually deviant themes” (Hanson & Morton-Bourgon, 2005, p.5). Stable dynamic factors, such as personality disorders or deviant sexual preferences, are useful for long-term risk assessments. They are crucial for assessing enduring changes. In contrast, acute, rapidly changing factors such as negative mood or alcohol intoxication, can signal the likely timing of reoffending, and are particularly useful for monitoring risk during community supervision. Risk factor categories are not purely discrete. Criminogenic factors can be found in both dynamic categories, and some factors dynamic factors may move between stable and acute presentations depending on individual circumstance.

*Stable dynamic factors.*

Some stable dynamic factors include: deviant sexual interests, intimacy deficits, unstable lifestyle, unemployment, sexual, behavioral, and emotional self-regulation, negative peer influences, and attitudes that support sex offending or condone crime, (Hanson, 2003; Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005; McGrath et al., 2011; Quinsey, et al., 1995; Roberts et al., 2002).

*Sexually deviant interests.*

A primary risk factor for sexual recidivism is an offender's recurring sexually deviant interests, arousal, or preferences, such as sexual interest or urges involving children, non-consenting force, or sexualized violence (Hanson, 2003; Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2004, 2005; Knight & Thornton, 2007; Mann, Hanson, & Thornton, 2010; McGrath et al., 2011; Prentky, Knight, & Lee, 1997; Quinsey, et al., 1995; Roberts, Doren, & Thornton, 2002). Sexual deviancy is generally indicated by types of offending patterns, diagnosis of paraphilias, and plethysmographic assessment. Research has found a strong relationship between deviant sexual interests and preferences (e.g., deviant and/or illegal sexual preferences, and interest in children; particularly boys) and sexual offense recidivism (Hanson & Morton-Bourgon, 2005; Hanson & Bussiere, 1998). Recidivists were more likely to report engaging in deviant sexual activities (Hanson & Harris, 1998) and more likely to have deviant phallometrically measured sexual preferences (Quinsey et al., 1995). Sexual preoccupation with children was a primary factor related to sex offense recidivism in extra-familial child molesters (Prentky, Knight, & Lee, 1997). Additional factors most associated with sexual reoffending of included fixation on children (Knight & Thornton, 2007), emotional identification and congruence with children, child preference and child oriented lifestyles for child molesters and sexualized violence and sexual preoccupation for rapists (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005, 2007; Knight & Thornton, 2007).

*Relationship status.*

An offender's relationship status can reflect intimacy deficits that are a risk factor for reoffending. Dynamic risk factors include relationship conflict, inability to form or maintain satisfying

relationships (Hanson & Harris, 2000), absence of intimate partners, relationships primarily with inappropriate partners (e.g. children), and lack of emotionally intimate relationships with adults (Hanson, 2003; Knight & Thornton, 2007; Hanson & Harris, 2000).

*Unstable lifestyle.*

Lifestyle instability (e.g., unstable employment, housing, or lifestyle) is another primary factor creating a greater risk of sexual recidivism (Hanson, 2003; Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005; McGrath et al., 2011; Quinsey et al., 1995; Roberts et al., 2002).

*Employment history.*

Those who committed subsequent sex offenses were more likely to be unemployed (Hanson and Harris, 1998; Hanson & Morton-Bourgon, 2005; McGrath et al., 2011) or have unstable employment (Hanson & Harris, 2000). Stable employment can be a contributor to increased desistance (Kruttschnitt et al., 2000; Levenson, 2009).

*Antisocial lifestyle orientation.*

An unstable, antisocial orientation is another consistently identified dynamic factor for reoffending (Hanson & Harris, 1998). Similarly, antisocial behavior, in all its myriad guises, has consistently been associated with sexually aggressive behavior (Knight & Guay, 2006). Along with unstable employment and rule violations, it is an important factor that speaks to an offender's criminality, criminogenic needs, and instability (Hanson, 2003; Hanson & Harris, 2000). Antisocial and unstable risk factors include: reckless impulsive behavior, frequent moves, fights, unsafe work practices, substance use and societal and supervisory rule violations (Hanson & Morton-Bourgon, 2005).

*Substance abuse problems.*

Whether its role is facilitative or causative, research indicates alcohol use and abuse often plays a significant role in sexually aggressive behavior (Abbey, 2008). Substance abuse problems can be associated with criminogenic risk factors (Hanson, 2003; Hanson & Harris, 1998; Hanson & Morton-Bourgon, 2005), and that of an antisocial, unstable and disregulated lifestyle.

*Attitudes.*

Distorted attitudes supportive of sexual offending and criminality are also criminogenic risks for reoffending. These include: attitudes that tolerate or justify sexual assault, support and condone sexual interest in children, and attitudes and values that support or condone crime (Hanson, 2003; Hanson & Morton-Bourgon, 2004, 2005; Knight & Thornton, 2007; Mann et al., 2010; McGrath et al., 2011). Such information *may* be noted in the case file, in law enforcement interviews, psychological or treatment reports, for example.

*Association with criminal lifestyle and criminal peers.*

Other antisocial and criminogenic risk factors include criminality and pro-criminal associations and attitudes (Hanson & Morton-Bourgon, 2004, 2005; Mann et al., 2010; McGrath et al., 2011). Negative peer influences can reinforce deviant lifestyles or support negative coping strategies (Hanson, 2003). Information regarding known criminal associates and other criminality data may be noted in criminal records, probation and parole reports, etc.

*Social support.*

Community, familial, and social supports are important to community integration. Poor relationships and conflicts with coworkers, friends, family, partner are associated with increased risk (Hanson & Harris, 2000). However, positive social influences (McGrath et al., 2011) and supportive relationships are associated with reducing reoffending (Hanson & Harris, 1998; Kruttschnitt et al., 2000; Levenson, 2009). Records from sources such as probation and parole, psychological reports, treatment records, and corroborating statements from reliable personal and professional references may assist in identifying known supports.

*Non-compliance with community supervision (probation, parole).*

Compliance with probation, parole, or conditions of supervised release is a federal requirement in order to be considered for a reduction in registration term under SORNA. Although it is not a specific condition of the NC petition for termination of registration, it is a likely factor to be considered when determining a petitioner's threat to public safety. Resistance to rules and supervision is a dynamic factor

associated with sexual recidivism (Hanson & Harris, 2000; Hanson, 2003) as part of an overall picture of anti-social and unstable behavior. Research by Hanson and Harris (1998) indicated offenders' attitudes and behavior during supervision were strongly associated with recidivism even after controlling for pre-existing differences in static risk factors (overall  $R = .60$ ,  $p < .001$ ). Knowing an offender's ongoing history of compliance with probation or parole is important to identify likely risk factors. This speaks to criminality and criminogenic needs when viewed as part of a history of prior criminal and rule breaking behavior (Gray et al., 2001; Letourneau et al., 2010; Williams, McShane, & Dolny, 2000), and current behavior such as compliance and cooperation with community supervision (Hanson & Morton-Bourgon, 2004, 2005; Mann et al., 2010; McGrath, et al., 2011).

*Sexual and emotional self-regulation.*

Self-regulation has been identified as an important dynamic factor for recidivism. Information pertaining to self-regulation may be available from arrest records, psychological reports, treatment records, etc. Sexual self-regulation is associated with increased risk of sexual recidivism. Sexual self-regulation factors include feelings of sexual entitlement, using sex as a coping mechanism, engaging in excessive or compulsive sexual behaviors, failing to manage sexual urges, and being unable to refrain from sexually explicit materials or situations. Additional risks include indulgence in sexual fantasy, increased high-risk behavior or sexual imagery triggered by negative moods or stress, urge to act upon impulses, frequent feelings of sexual frustration, and being unable or unwilling to delay gratification (Hanson, 2003). Lack of general and emotional self-regulation is also a risk factor for reoffending. Examples of risks include emotional dysregulation, poor impulse control, violation of societal rules and convention, alcohol or drug abuse, rule violations, treatment drop-out (Bynum, 2001; Hanson & Morton-Bourgon, 2005; Knight & Thornton, 2007), dysfunctional coping (Hanson, 2003; Knight & Thornton, 2007), poor problem solving and emotion management, (McGrath et al., 2011) and unlikelihood of avoiding high-risk situations (Hanson & Harris, 1998).

*Acute dynamic factors.*

Acute dynamic factors are closely associated with identifying when an offender is most at risk. Acute risk factors are often immediate and contextual. Sudden, escalating or acute changes in dynamic or criminogenic factors such as emotional dysregulation, loss of community or social supports, intoxication, hostility, and fixation can put an offender at increased risk for reoffending (Harris & Hanson, 2003; Hanson & Harris, 2000). Certain dynamic characteristics can provide fertile ground for sexual recidivism, particularly in the case of short-term recidivism and acute risks. For example, offenders who lack effective self-regulation strategies, engage in impulsive or rule breaking behavior, fail to avoid high-risk situations, or disengage from treatment, are likely to have the most difficulty inhibiting acute recidivism risks (Hanson, 2003; Hanson & Harris, 2000). Offenders are also at increased risk of sexual recidivism during discrete periods of stress. Sexual recidivists are more likely to respond to stress with sexual acts or fantasies (Hanson & Harris, 2000; Hanson & Morton-Bourgon, 2005). Research suggests that offenders are most at risk for reoffending when they become fixated or sexually preoccupied, have access to victims, fail to acknowledge their recidivism risk, and show sharp increases in negative moods, particularly anger (Hanson & Harris 1998). Acute dynamic factors include:

*Available access to victims.*

Risk increases for those who seek opportunities for contact with children or other vulnerable individuals or access to victims or potential victims (Hanson 2003; Hanson & Harris, 1998, 2000).

*Acute worsening of mood.*

Acute anger, frustration, hostility (Hanson, 2003, 2000; Hanson & Harris, 1998, 2000), sharp mood increases, and pervasive anger (Hanson & Harris, 1998; Knight & Thornton, 2007) increase susceptibility to risk.

*Intoxication and/or drug use.*

Substance use is a risk factor (Hanson, 2003; Hanson & Harris 1998, 2000) that can acutely increase the influence of other risk factors. For example, alcohol's relation to sexually aggressive behavior is tied directly to its impairment of inhibition, exacerbation of communication

misinterpretations, disruption of cognitive processes, and interaction with pre-existing personality traits (Abbey, Zawacki, Buck, Clinton, & McAuslan, 2004).

### **Federal Offense Based Tiering and the Determinate of Risk**

The Sex Offender Registration and Notification Act (SORNA) of 2006 set federal standards for the categorization of sexual offenders into a hierarchy of tiers. Whereas established risk assessment procedures evaluate known risk factors and screen offenders into relative risk categories, offense-based schemes such as required by the Adam Walsh Act classify offenders based solely on the severity of the offense of conviction. Because they are not based on empirically derived risk assessment, offense-based schemes may inflate risk in some cases, and underestimate the risk in others where the offender may plead down to lesser offenses (Freeman & Sandler, 2010; Harris, Lobanov-Rostovsky, & Levenson, 2010). It is the conviction offense (despite underlying details, or plea-bargaining), and not the underlying conduct, that is the mandated basis for tier determination. Thus, it is highly plausible that a conviction offense may be of lesser severity than the actual commission. This presents the serious possibility that AWA tier levels could erroneously assign potentially high risk offenders to a lower offense tier, based on a misleadingly lesser offense of conviction and for a potentially shorter duration of time. Simply by obtaining more favorable court outcomes, offenders may be categorized as lower risk for the purpose of restrictions and scrutiny. “The SMART office staff have claimed that the purpose of SORNA was never to prevent recidivism, but to provide a monitoring tool for law enforcement and to increase public awareness” (Levenson, 2011, July 21). Although SORNA does not technically require states to discontinue the use of pre-existing evidence-based risk management systems, it does require that registration decisions and requirements “be based on the federal guidelines rather than the state's risk assessment” (Levenson, 2011, July 21). So, although the SORNA guidelines do not explicitly refer to “risk levels,” there is a clear implication based on the associated stricter registration requirements that higher tier assignments are for more dangerous offenders. Research on the effectiveness of SORNA on reducing recidivism determined the federally enacted offense-based classification system is not empirically grounded, does not predict recidivism risk, and is unlikely to correctly classify offenders

(Levenson, 2009; Zgoba et al., 2012). Findings report that actuarial risk assessment scores consistently outperformed AWA tiers. Many states that continue to resist the adoption of AWA (and SORNA tiers) argue that pre-existing risk-based approaches function more effectively in identifying high-risk sex offenders and can outperform AWA's offense-based system in identifying recidivists and assessing relative risk of sexual reoffending (Zgoba et al., 2012).

### **Approaches to Risk Assessment**

The majority of risk assessment theory and measures are based on the assumption that the risk of sexual recidivism is linear, additive, and relatively stable over time (Lussier & Davies, 2011). Thus the majority of risk measures are heavily based on static, historical factors. Relying only on a static-factor assessment can risk failing to account for the influences of dynamic aspects of offending behavior patterns and risk factors. Assessments of risk should consider two distinct concepts: enduring potential to reoffend and factors that may indicate the onset of new offences (Hanson, 2003). The different approaches to risk assessment can be divided into two broad categories: purely *clinical judgment* and *actuarial* procedures. In practice, these procedures occupy ends of a continuum, with unstructured, experience-based clinical judgment at one end, and research-derived fully-structured actuarial procedures at the other. Between these categories lie variations combining aspects of the two. One of these alternative procedures is *structured clinical judgment*. This method incorporates a combination of techniques with a primary emphasis on professional judgment based on structured guidelines that could include an actuarial basis.

### **Clinical Judgment Assessments**

Prior to the development of formal risk assessment tools, professionals relied on purely unstructured clinical judgment; using their professional judgment such as their clinical experience in the field and their independent assumptions and beliefs about what makes a person more apt to re-offend, to assess for the risk posed by sex offenders. The failings of this method as a discriminating or predictive tool are well-established (Grove & Meehl, 1996), indicating the accuracy of unstructured clinical judgment is little better than chance ( $r = .10$ ; Hanson & Bussiere, 1998). In the legal arena, most judges

attempt to reach their decisions in a deliberative, rule-governed process utilizing facts, evidence, and highly constrained legal criteria. However, they are often relied upon to use their own professional judgment when objective information for a sole deliberation of the facts is insufficient. Automaticity of intuitive responses can emerge from the repetition of deliberative procedure as an important characteristic of experience, and can have a powerful effect on judicial decision making (Guthrie, Rachlinski, & Wistrich, 2007; Viscusi, 1999). Cumulative research suggests that when presented with certain stimuli judges may be inclined to make intuitive decisions, but have the capacity to override intuition with deliberative thinking (Guthrie, Rachlinski, & Wistrich, 2007). When available, structured approaches to decision-making can aid deliberation.

### **Actuarial Assessments**

The more contemporary approach to risk assessment is the use of structured research-based risk assessment tools based on the standardization of factors found to be significantly associated with recidivism across research studies. Despite the present inability to predict recidivism risk with unequivocal accuracy, there exist a number of empirically validated risk assessment tools that have unquestionably improved predictive assessment over the judgments made by clinical evaluation alone. Using these measures (often referred to as actuarials) provides a more structured, objective, and consistent way of placing offenders into categories of risk. Actuarial assessments combine individual risk factors into summary scores as an objective estimate of a sexual offender's recidivism risk. There has been strong research evidence to support that well-validated actuarial assessments of sexual recidivism significantly outperform unstructured clinical judgment (e.g., Ægisdóttir et al., 2006; Grove & Meehl, 1996; Hanson, 2000; Hanson & Bussière, 1998; Skeem et al., 2009) or empirically guided assessments (Hanson & Morton-Bourgon, 2004) in predictive accuracy. In recent meta-analysis results structured risk assessment instruments based on static historical factors remained the best validated choices to date for predicting sexual recidivism (Knight & Thornton, 2007). However, a small number of instruments have also been developed and validated to consider stable dynamic factors and mutable social circumstances empirically associated with risks for reoffending. Of the empirically derived actuarial scales intended for

use with sexual offenders, some of the more notable, and repeatedly cross-validated, include the Static-99 (Hanson & Thornton, 2000), the Static-2002 (Hanson & Thornton, 2003), the Sexual Offender Violence Risk Appraisal Guide (SORAG; Quinsey, Harris, Rice, & Cormier, 1998), the Rapid Risk Assessment for Sex Offense Recidivism (RRASOR; Hanson, 1997), the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R; Epperson et al., 1998), and the Static-2002R (Helmus, Thornton, Hanson, & Babchishin, 2012). According to its developers, the Static-99 is “the most widely used sex offender risk assessment instrument in the world” (or arguably the Western World), as it is reported to be “extensively used in the United States, Canada, the United Kingdom, Australia, and many European nations” ([www.static99.org](http://www.static99.org)) in its original form. It is the most commonly used actuarial scale for sexual recidivism in the United States and Canada (Babchishin, Hanson, & Helmus, 2011). The North Carolina Department of Corrections uses the Static -99 as one of the main risk assessment tools for mandated assessment of offender risk, such as required for satellite-based monitoring determinations under G.S. 14-208.40B (Markham, 2009). The Static-2002, which was designed for use with certain sexual offenders, follows in the tradition of Static-99, but is intended to be considered a separate instrument (Phenix, et al., 2008). The Static-99R, Static-2002, and Static-2002R contain items related to both sexual criminality and general criminality (Barbaree, Langston, & Peacock, 2006; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012). The number of actuarial assessment tools is growing, but it has been suggested that there is still insufficient research of risk-assessment instruments to declare definitively that any one instrument has the best predictive validity (Hemphill & Hare, 2004).

Risk assessment tools predict varying levels of risk among discrete population subgroups. These risk assessment tools do not predict the actual behavior of any one individual but rather the probability or likelihood that individuals with a certain configuration of risk factors will engage in a target behavior, such as reoffending. They provide statistical information about the behavior of large groups of individuals sharing specified characteristics; *not* a determination of what a particular *individual* will do. To be placed in a particular risk category is to meet the appropriate threshold of combined characteristics identified as risk markers. A problem that may exist with acceptance of purely actuarial evidence in the

judicial setting is that decision-making practices and case processing within criminal courts revolve largely around factors related to the instant offense and current charges. In contrast, actuarial risk assessments uses group characteristics that extend beyond a particular individual's current offense. Such factors may be presented for consideration, but are typically given less weight than the present characteristics of the individual offense (Silver & Miller, 2002). There are, however, combined approaches to risk assessment that can prove to be a viable option for a North Carolina Trier of Fact faced with a deliberation of widely varied evidence toward the question of a petitioner's threat to public safety under G.S. 14-208.12A(a1)(3).

### **Structured Clinical Assessment (Structured Professional Judgment)**

No assessment scale is inclusive of all relevant risk factors, nor can any one measure incorporate all the information relevant to a petitioner's individual case presented before the court. Therefore, judicial professional judgment, extending beyond a deliberation of purely objective facts, will always apply to the determination of Finding of Fact 6, as the standard is currently written. The actuarial method of assessment uses statistical procedures consistently shown to improve the accuracy of predictions by setting thresholds for decision-making. When these assessments are available to the court, they may provide a useful launching point for the examining other static and historical factors (e.g., criminal history, patterns of prior sexual offending) available in the court file. There are circumstances, however, where due to feasibility, a different structured approach may be more prudent. In the court setting, for example, access to actuarial measures or scores may be lacking, actuarial measures may not be particularly useful or appropriate to the purpose or setting, or information available to make a determination may have wide case to case variability in type, comprehensiveness, and source. Thus, as in the case of Superior Court Judges, circumstances arising from the specifics of the assessment, setting, and availability or nature of the information with which they are provided, would require that the consideration of risk factors be incorporated into a deliberative process appropriate to the legal setting.

Structured (or guided) clinical assessment (also called structured professional judgment) is an alternative, though less researched, method for structuring the clinical judgment process by the creation of

professional guidelines for structured decision-making. This method is most similar to the judicial deliberative process, an example of which can be seen in the Finding of Fact checklist of the Petition and Order for Termination of Sex Offender Registration (AOC-CR-262 (IV)). This method often employs the use of checklists or other guidelines, allowing clinicians to consider a number of person-specific empirical variables, yet leaves the overall decision of risk based on the integration of the factors, at the discretion of professional judgment. In the context of deliberating Finding of Fact 6 of the termination hearing, use of this method to create guidelines could provide the judge with a reference of static and dynamic factors empirically associated with reoffense risk, that might be identified from the case information. The judge might then take the influence of these factors into account with the specific details of the case and the individual, on a case-by-case basis. The use of structured scripts or checklists can help provide a means to proceed methodically through each step in the decision-making process. Providing judges with an empirically informed list may assist them to consider all factors relevant to the individual case, and allowing them the professional judgment to weigh each factor expressly in their deliberations.

## STATEMENT OF THE PROBLEM

Judges are apt to see a steady increase in the number of petition hearings calendared for court. The first registered offenders have only just recently begun to meet the 10-15 year registration thresholds required for eligibility to petition for removal. There are approximately 18,390 registered sex offenders on the North Carolina registry, representing a heterogeneous population, whose risks to the public vary tremendously. Of these 16,344 are not currently incarcerated, and of those, lifetime registration under N.C.G.S. §14-208.23<sup>9</sup> is currently required for 656<sup>10</sup>. This leaves approximately 15,688 registered sex offenders who may<sup>11</sup> become eligible to petition for removal from the North Carolina sex offender registry after 10 years of registration. A dataset consisting of the number of offenders removed from the North Carolina sex offender registry (NCSOR) was obtained (2012) from the North Carolina State Bureau of Investigation (SBI). Data obtained from this source revealed that, (after Attorney General denials), a total of 206 petitions for removal were granted by North Carolina Judges between January and November of 2012. What was unable to be obtained from this data set are the numbers of petitions filed or denied for any given period. Correspondence with a State Bureau of Investigation (SBI) Assistant Special Agent in Charge (ASAC) revealed there is no available data kept on this information with any State agency. This was also verified with other State offices. Thus, while the number of petitions initially granted was documented at 276, the actual number of petitions filed, hearings, or number denied (in total or for any district) remains unknown.

Findings of a 1999 survey (Bumby & Maddox) of judges presiding over sexual offense cases revealed that for judges, “Sex offense trials are “more difficult...to preside [over] from a legal and technical standpoint, a personal and emotional viewpoint, and a public scrutiny and public pressure perspective” (quoted in National Judicial Education Program, Legal Momentum; 2011, p.3). Determining

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<sup>9</sup> Applicable to recidivists, aggravated offenders, and sexually violent predators

<sup>10</sup> Total computed from the North Carolina Sex Offender Registry database, retrieved April 3, 2013  
[www.sexoffender.ncdoj.gov/](http://www.sexoffender.ncdoj.gov/)

<sup>11</sup> Upon meeting the minimum duration requirements and conditions under G.S. §14-208.12A

the risk posed to public safety during removal hearings has the potential to impact the presiding judge with similar potency as other sexual offense proceedings. The decisions made by Superior Court Judges during these hearings can seriously impact the lives of both the offender and the general public. Although registration is determined at sentencing, it is *not* a sentence of punishment. Once registered, unlike a durational sentence, a minimum durational threshold may be set, but the eventual termination of even a non-lifetime registration requirement is not a certain. An offender must petition the Superior Court, and be granted removal from the sex offender registry even if their minimum registration requirement has elapsed. Otherwise, the requirement to register may continue indefinitely.

NC Superior Court Judges are required to make a determination of the potential risk posed by offenders petitioning the Court for removal from NC sex offender registry. To grant removal, these Judges are required by the standards of the petition and statutes to find that “the petitioner is not a current or potential threat to public safety” (AOC-CR-262, IV, (6); N.C.G.S. 14-208.12A). This criterion is presented as a Finding of Fact checkbox on the Petition and Order for Termination (AOC-CR-262, side two, IV(6.)). With this checking of fact that “the petitioner is not a current or potential threat to public safety” the Judge must make a decision that balances the right to quality of life of an offender who has already served his sentence, with the public’s right to information that could affect their safety.

In this researcher’s previous survey several Judges expressed uncertainty and discomfort with the process and the responsibility of this determination. Concerns were raised regarding case by case variances in case presentation and offender specific information relevant to determining potential risks. This study seeks to identify what kinds of information Judges consider important, and have available, for making an informed decision about an offender’s risk for reoffending, comparative to empirically identified factors associated with sexual recidivism.

### **Research Questions**

How do NC Superior Court Judges presiding over petition hearings of sex offenders for removal from the NC sex offender registry, make the required determination that “the petitioner is not a current or

potential threat to public safety” (AOC-CR-262, IV(6))? Specifically, we are interested in knowing the types of information Superior Court Judges factor into this determination.

1. What information is routinely available to the Judges on which to base this determination?
2. What kind of evidentiary information do the Judges consider relevant and rate most important to their deliberation of Finding of Fact 6 of the petition and order for termination of sex offender registration? and
3. As evidenced by their ratings of importance and qualitative comments, do the Judges demonstrate a practical awareness of the different empirical factors associated with the risk of sexual reoffending and the relevance of these factors to the information they considered important to determining an offender’s threat to public safety?

### **Method**

#### **Participants**

Participants of this study were 35 North Carolina Superior Court Judges. This sample consists of 30% of the state’s 112 presiding Superior Court Judges. Each of North Carolina’s Superior Court Judges was contacted by mail to participate in a survey about hearings of petitions for termination of sex offender registration. At the time of this study, there were 112 active North Carolina Superior Court Judges (including Resident, Senior Resident and Special Judges). This number represented the entire population of the State’s Superior Court Judges, of which there were 97 Resident and Senior Resident Judges and 15 Special Superior Court Judges. The state’s districts are divided into eight divisions across the state. Judges are assigned a district, and depending on the size of the district there may be approximately one to seven judges presiding. The judges move regularly among the counties within the district and may thus occupy any of the offices within their district any given week. Every six months the judges are rotated to a different district within their division, to help assure impartiality. Special Superior Court Judges are assigned to certain types of cases depending on the district’s size, needs, and budget. The offices of the Superior Court Judges were first contacted by phone, and each Judge was then mailed a survey. A total of 35 Superior Court Judges returned replies; however, one declined to complete the survey. This yielded a

total of 34 participants. These 34 participants represented greater than one quarter (30%) of the state's presiding Superior Court Judges. Participants reported their years of experience on the Superior Court bench as ranging from one to 24 years ( $M= 8.33$ ,  $SD= 6.10$ ). The Judges were asked to provide information pertaining to their number of years on the Superior Court bench and the approximate number of termination hearings they had presided over, but in order to maintain anonymity no further demographics were collected.

### **Materials**

An original researcher-created survey was used for data collection. The literature was reviewed to determine the most important questions on this topic. The survey was designed to be short and direct, addressing the content of the Research Questions listed above. The created survey (see Appendix B) contained a total of 12 items, including two demographic items. The survey items consisted of: two Likert-type questions regarding how judges define *threat* in the context of determining Finding of Fact 6, and rating the importance of different factors relative to Judicial determination of risk to public safety; one question with a No/Only Sometimes/Yes rating scale pertaining to the availability of specific information available to the court; six Likert-type questions regarding individual judicial opinions and perspectives on sex offender registration, satisfaction with amount of available information, and comfort with determining of potential threat to public safety; one Yes/No question about the status of petitioner's legal representation; two demographic questions regarding Judicial experience; and one free-response item regarding additional comments or concerns. Survey completion was estimated to take approximately 15 minutes.

### **Procedure**

Surveys were mailed to all of the currently presiding Superior Court Judges ( $N=112$ ) for the 46 judicial districts of the State of North Carolina. Contact information was obtained from the North Carolina Administration of Courts (NC AOC) website, from contact information obtained during prior research with this population (2012), and verified by phone calls to the judicial offices. Mailings to each participant included the following materials: a cover letter describing the research and requesting

participation, the consent form, the printed 12-item survey (see Appendix B), and a postage –paid return envelope. The letter of informed consent was attached to the survey, which the Judges were instructed to detach and keep prior to returning the survey. They were instructed that if they did not choose to participate, to simply not return the survey. The Judges were informed that all responses were anonymous and that participation was entirely voluntary. Surveys were completed anonymously and returned by mail without return addresses to preserve anonymity. Surveys were returned over a two month period between October and December 2013. All survey results were collected by December 13, 2013.

Survey responses and comment themes were organized and framed in comparison to a literature review on relevant State and Federal sex offender legislature, and empirical research on factors associated with sexual recidivism. Results were analyzed in the context of this literature. Results of survey responses were largely reported as basic descriptive statistics. Some judicial responses were analyzed both as a group and in comparison to each other. This study had a component of mixed quantitative and qualitative design due to survey items which included some qualitative information (from one free-response item, and the provision of space for writing in additional information or optional comments). These qualitative items and comments were examined in a qualitative analysis of keywords, themes and patterns, to identify common responses. Content analysis is an accepted method of analyzing qualitative research data by coding and classifying data to highlight the important themes, features or findings. Qualitative responses were coded for themes and grouping variables as appropriate and analyzed accordingly, similar to qualitative methods described by Beck (2003) and Jones (2002). As a part of content analysis, emergent themes in responses were compared to those identified in research literature. Survey results are discussed within the context of the research questions raised herein, the nature and intent of Finding of Fact 6 of the petition (AOC-CR-262, (IV); N.C.G.S. 14-208.12A(a1)(3)), and the concerns of judges presiding over hearings for termination of sex offender registration.

## RESULTS

Participants were 34 North Carolina Superior Court Judges. Participants reported an average of 8.33 combined years ( $SD= 6.10$ ) serving as a Superior Court Judge, spanning a range of one to 24 years. The number of removal hearings Judges in this sample reported to have presided over in the previous year (2012) ranged from none (0) to 50 ( $M= 12.90$ ,  $SD= 12.70$ ).

Judges were asked about the status of legal representation of most offenders petitioning the Court for termination of sex offender registration. The majority of Superior Court Judges responding (68%,  $N=23$ ) indicated most petitioners (half or more of their cases) did not have legal representation at hearings for termination of sex offender registration. Only 21% ( $N=7$ ) responded *yes*, petitioners had legal counsel at the hearings.

In the context of the determination of Finding of Fact 6 on the petition, we sought to determine how the Judges operationally defined “threat” by asking what “a current or potential threat to public safety” refers to in the context of this Finding. Judges were given six choices with which to complete the statement: “In your interpretation, this finding includes the petitioner’s risk for: \_\_\_\_.” Options were: Committing another *registerable* sexual offense; Committing another sexual offense of *any kind*; Committing a violent (non-sexual) offense; Committing any felony criminal offense; Engaging in disorderly, disruptive, or nuisance behavior (i.e., trespass, loitering, disorderly conduct, public disturbance); or Committing any criminal offense of any kind. For each option, Judges were asked to endorse one of: *Strongly Disagree*, *Disagree*, *Agree*, or *Strongly Agree*. Participants were also provided a place to write in any comments or other options they wished to include. One Judge used this option in addition to agreeing with each of the other options, adding that they would also consider the risk for a domestic violence or child abuse violation a threat under this Finding. One respondent to this question endorsed *Strongly Disagree* for all item choices, but offered no further comment or explanation.

Results indicated the Judges defined “threat” as follows: 91% ( $N=31$ ) endorsed agreement or strong agreement with commission of another registerable sex offense. Of 34 subjects, two did not

respond to the item. A *threat* was defined as risk of committing another sexual offense of any kind by 94% ( $N=32$ ) of respondents. The risk of committing a violent non-sexual offense was agreed or strongly agreed with as defining a threat by 76% ( $N=26$ ) of respondents, and just over half (56%,  $N=19$ ) agreed or strongly agreed that the risk of committing a felony was a threat. Very few judges agreed or strongly agreed that the risk to public safety in Finding 6 included that for committing a criminal offense of any kind (26%,  $N=9$ ) or engaging in disorderly, disruptive, or nuisance behavior (such as trespassing, loitering, disorderly conduct, or public disturbance) (24%,  $N=8$ ). Paired samples t-tests were conducted on differences in level of agreement for the range of responses. When the levels of endorsement were dichotomized to indicate agreement or strong agreement versus disagreement or strong disagreement, there was significantly more agreement among Judges' endorsements of the potential risks for more serious crimes. Specifically, on a scale where 4.0 was the highest level of agreement, more Judges defined risk as committing another registerable sexual offense ( $M=3.81$ ,  $SD=.592$ ) and another sexual offense of any kind ( $M=3.76$ ,  $SD=.614$ ) than all other options combined. The difference between means of combined sexual offense endorsements from other offense endorsements was statistically significant ( $t(31)= 10.219$ ,  $p <.0005$ ,  $r^2 = 0.77$ ). There was also a statistically significant difference between means of the Judges' combined endorsements of sexual and violent non-sexual offenses compared to all other offenses as indicators of a *threat to public safety* ( $t(31)= 10.039$ ,  $p <.0005$ ,  $r^2 = 0.76$ ). Finally, the difference between Judges' mean endorsements of any criminal offenses and any criminal nuisance-type behavior as a definition of *threat to public safety* compared to mean endorsements of sexual, violent or felony criminal offenses was statistically different ( $t(31)= 10.294$ ,  $p <.0005$ ,  $r^2 = 0.77$ ). Though true consensus cannot be determined due to the range of variation and the confounds of a very small sample size, differences in group means indicate Judges were more likely to agree on defining the risk for committing serious offenses (e.g., sexual, violent) as a "threat," than they were likely to agree on what is *not* inclusive under Finding 6. They were also less likely to agree on whether the risk for committing less severe offenses were considered part of the definition of "threat" (for the determining of Finding 6).

Judges were asked to rate the importance of different types of information to their deliberation of Finding of Fact 6. This question was designed to obtain the degree of the Judges' awareness of the differing relevance such items have to the risk of sexual reoffending (as evidenced by their identification of information perceived as critical or important for making this determination). A list of items that might potentially be considered when determining a petitioner's possible threat to public safety was compiled from judicial responses to questions on a previous survey (Love & Malesky, 2012) and research literature on factors found to be most likely associated with sexual recidivism. Judges were asked to rate the importance of each of 33 categorical items (e.g., overall criminal history, petitioner's age, residential stability etc., plus one free-response space marked "other") relevant to their deliberation of Finding of Fact 6, using a five-point scale ranging from *Irrelevant* (0) to *Critical* (4).

The Judges' ratings of the 33 items were averaged, and the list was ordered from the highest to lowest average rating score. The list ranks each type of information in order of importance (according to the Judge's averaged ratings) relative to their deliberation of Finding of Fact 6 (See Table 2). The maximum possible rating was a 4.0 (*Critical*), and the lowest possible rating was a 0 (*Irrelevant*). Average scores closest to 1.0 represent a rating of *Not Very Important*; nearest a 2.0 represent *Sometimes Helpful*; and nearest a 3.0 represent a rating of *Important* to judicial deliberation. The first 16 items on the ranked list represent the highest averaged ratings, ranging from 3.94 ( $SD= 0.246$ ) to 2.94 ( $SD= 0.892$ ) (see Table 2). The four highest rated items are as follows: History of sexual offense arrests/convictions (3.94); History of violence (3.69); Registered offense (of the petition) (3.56); and History of compliance with registration requirements (3.53). Judicial ratings of importance of the types of information used for determining Finding 6 are specified in Table 6.

These ratings yielded some interesting observations. History of compliance with registration requirements was rated *Critical* by 53% ( $N=18$ ) and *Important* by 38% ( $N=13$ ), totaling 91% of Judges. History of compliance with registration requirements ranked fourth in importance ratings ( $M= 3.53$ ,  $SD= 0.567$ ) compared to probation/parole records, which ranked 21<sup>st</sup> ( $M= 2.81$ ,  $SD= 0.654$ ). *Completion* of a sex offender treatment was rated critical or important by 88% ( $N=30$ ) of Judges. It was ranked sixth (of

33 items) in importance. Having sex offender treatment records was rated critical or important by 65% ( $N=22$ ) of Judges. Judges were divided in their perspectives of how important the federal tier of the registered offense was to their deliberations. This information was equally *Somewhat Helpful* to 21% of Judges, *Important* to 21%, and *Critical* to another 21% (each  $N=7$ ). Fifteen percent ( $N=5$ ) rated the tier *Not Very Important*, and five Judges considered the federal tier *Irrelevant* to their deliberation. On the list, *Federal Tier of the Petitioner's Offense* was ranked 32 of the 33 in importance (followed only by *public opinion*), with an average rating of 2.34 ( $SD= 1.317$ ). The importance of public opinion to deliberation was rated lowest and ranked last ( $M=1.94$ ,  $SD= 1.134$ ). Finally, with regard to legal representation, 56% ( $N=19$ ) rated defense counsel case presentation (when available) important or critical. An additional 26% ( $N=9$ ) indicated that defense counsel was *Sometimes Helpful* to their decision-making. Three Judges (9%) rated defense case presentation *Not Very Important*. It ranked 27<sup>th</sup> of 33 in importance to judicial deliberation ( $M= 2.59$ ,  $SD=0.798$ ).

Specific factors generally accepted and identified in research literature as associated with sexual recidivism were ranked by strength of association using their empirically identified correlational coefficients (Hanson, 2000; Hanson & Bussière, 1996, 1998; Hanson & Harris, 1998; Hanson & Morton-Bourgon; 2005). These factors were then matched with corresponding items that are potentially considered during hearings for removal from the North Carolina sex offender registry. The 33 items potentially considered during these hearings consisted of types of information (e.g., demographics, time durations, behavioral compliance) and information sources (e.g., court file, records, testimony, reports) identified by judges and review of legal procedure as evidentiary material conceivably presentable to the judge. Average judicial ratings of each item's importance to deliberation (on a 5-point scale) and ranking of the perceived importance of each amongst the 33 possible items were compared side-by-side with factors identified in the research literature (See Table 3).

Results indicate that Judges rate as crucial or important many of the information items or sources that could lead to identifying key risk or desistance factors for sexual recidivism (e.g., history of sexual offending, victim age, relationship to victim, completion of sex offender treatment). However, an

individual judge's ability to recognize and appreciate factors of risk or desistance within information sources, and apply them with appropriate weight to an individual case, is unable to be determined with any certainty. Judges were in less agreement about the importance of several sources of information (e.g., records) that might be useful for identifying key risk or desistance factors. For example, 65% rated having sex offender treatment records crucial or important, but the remaining 29% said they were only sometimes helpful. Probation records were rated as crucial or important by 62%, but the remaining 29% said these were only sometimes helpful. Mental health records, psychological tests and psychological reports and testimony were rated critical or important to 66%, and sometimes helpful to 27%.

Victim gender and employment status were two risk factors which Judges rated lower in importance, with much variation. Victim gender was rated: *Important* by 32%, *Critical* by 18%, *Sometimes Helpful* by 18%, *Not Very Important* by 18%, and *Irrelevant* by 9% of Judges. Employment status was rated: *Critical* by 9%, *Important* by 41%, *Sometimes Helpful* by 38%, and *Not Very Important* by 6% of Judges. What is unable to be determined from the information gathered is the degree to which individual Judges are able to recognize and extract information pertaining to accepted risk factors from within the sources of information.

Availability of the differing types of evidentiary information was explored as a potential factor affecting utilization. The Judges reports of availability of information compared to their ratings of importance can be viewed in Table 4. There is certain information (e.g., criminal records, petitioner age, registered offense) for which the availability to Judges is always expected. This information should be readily available from the petition and court file. When missing data (from blank responses) was excluded, Judges responding to a question regarding availability of these items ( $n=32$ ) indicated the following:

- The *Full criminal history and record* was routinely available to 75% of respondents ( $N=24$ ) and only sometimes available to 25% ( $N=8$ );

- *Underlying details of the registered offense and victim information* was routinely available to 47% ( $N=15$ ) of respondents, only sometimes available to another 47% ( $N=15$ ), and not available to 6% ( $N=2$ );
- The *Age of the victim* was routinely available to 63% ( $N=20$ ) of respondents, only sometimes to 31% ( $N=10$ ), and not available to 6% ( $N=2$ ); and
- The *Petitioner's age at the time of the offense* was routinely available to 78% ( $N=25$ ) of respondents, only sometimes available to 13% ( $N=4$ ), and not available to 9% ( $N=3$ ).

Patterns in Judges' ratings yielded other interesting results. Only 21% ( $N=7$ ) indicated petitioners had legal representation at these hearings. The majority (68%,  $N=23$ ) said half or more of their petition hearings has no defense counsel. Information regarding the federal tier of the offense was reported as not available by 50% ( $N=17$ ) of the Judges. Twenty-four percent ( $N=8$ ) said it was *Only Sometimes* available and 16% ( $N=5$ ) reported tier information to be routinely available.

Certain sources of information (i.e., history of drug and alcohol related arrests, mental health records and tests, sex offender treatment records, and probation/parole records) had low availability reported. Probation or parole records were reported to be routinely available by 21% ( $N=7$ ), *Only Sometimes* available by 44% ( $N=15$ ), and not available by 29% ( $N=10$ ) of the Judges. Half of the Judges (50%,  $N=17$ ) indicated sex offender treatment records were generally not available. Another 29% ( $N=10$ ) said sex offender treatment records were only sometimes available. Only 12% ( $N=4$ ) of Judges reported they routinely received information about sex offender treatment during the hearings. Averaged together, almost half (47%,  $N=16$ ) of the Judges reported mental health diagnosis and treatment records and psychological test results, reports, and testimony were not routinely available. This combined psychological information was available to 10% ( $N=3.33$ ), and *Only Sometimes* available to 37% ( $N=12.7$ ) of the Judges. Judges responses on the five-point scale rating importance of information were collapsed into two dichotomous categories due to the small sample size. This allowed a better picture of the responses organized by those who rated items as *Important* or *Critical*, compared to those assigning

lower ratings (i.e., *Sometimes Helpful*, *Not Very Important*, or *Irrelevant*). A series of chi-square tests of independence were conducted to determine if significant relationships exist between the types of information routinely available to the court and the types of information Judges rated to be important or critical to their deliberations. Though several items approached significance, the small sample size yielded some cell counts of less than 5, which affected determination of statistical significance. The one exception was a statistically significant relationship between availability of an offender's full criminal history and judges' indication of importance of drug and alcohol related arrests,  $\chi^2(1, N=32) = 10.30, p = .005$ .

Judges were asked to rate whether they were generally confident that the types of *information routinely available* at removal hearings are enough to aid them in making a determination of Finding of Fact 6. Using a 5-point Likert-type scale from Strongly Disagree to Strongly Agree, 32% ( $N= 11$ ) *agreed*, and 24% ( $N= 8$ ) *somewhat agreed* that they were confident in receiving enough information. Thirty-four percent ( $N= 12$ ) *disagreed*, indicating a lack of confidence that the information generally available to them is enough assist them in their decision. Over half of the judges (59%,  $N= 20$ ) indicated they would like other kinds of information to be routinely available for making the determination of a petitioner's threat to public safety. Judges provided written responses indicating they would like more psychological information (particularly reports and evaluation), probation and presentencing reports, sex offender treatment information, details of the original offense, a history of petitioner's employment, residential and family stability, and objective facts of offender's current situation presented by the State to be routinely available. Victim input and any Department of Social Services or domestic violence records were also indicated.

Judges were also asked to rate their general comfort with the responsibility of determining a "petitioner is not a current or potential threat to public safety." The majority of judges (56%,  $N= 19$ ) agreed or strongly agreed that they were generally comfortable with making this determination. Only 15% ( $N= 5$ ) disagreed or strongly disagreed, indicating they were not generally comfortable with making this determination. The remainder indicated they were somewhat comfortable with this task (26%,  $N= 9$ ).

A Pearson correlation of the Judges' general comfort with the responsibility of determining a petitioner's potential threat, and their confidence in the availability of information to assist them in this determination yielded a statistically significant correlation,  $r(31) = .514, p = .002$  at the 0.01 level. Judges' comfort with making the determination is significantly correlated with their confidence in the information available to make it with.

Finally, the judges were asked to rate their agreement (using a 5-point Likert type scale) with statements regarding sex offender registration and the public sex offender registry (see Table 5). Results indicated the majority of Judges agreed or strongly agreed that sex offender registration is a necessary and beneficial tool for law enforcement as well as necessary to protect the public (68%,  $N= 23$ ). However, the overwhelming majority also indicated agreement or strong agreement that terminating registration for low-risk offenders increases the resources available for monitoring high-risk offenders (71%,  $N= 24$ ), that registration is required for too many offenses (65%,  $N= 22$ ). The majority were undecided as to whether sex offender registration is a deterrent to reoffending (44%,  $N= 15$ ), with 38% ( $N= 13$ ) agreeing or strongly agreeing that it is. Most judges disagreed or strongly disagreed that registration requirements and violation penalties should be increased for all offenders (62%,  $N= 21$ ).

With regard to public access to the registry, there was less strength in overall opinions. The majority (71%,  $N= 24$ ) agreed or strongly agreed that public access to the sex offender registry can potentially hinder societal reintegration, and create detrimental hardships for offenders and their families. However, just over half (53%,  $N= 18$ ) agreed or strongly agreed that public access to the registry increases the public's caution and measures taken to protect themselves. Thirty-eight percent ( $N= 13$ ) also agreed or strongly agreed that public access to all levels of information is necessary for public safety; though 32% ( $N= 11$ ) were undecided. The majority were also undecided as to whether public access to the registry can foster a false sense of security (47%,  $N= 16$ ), and whether public access to low-risk offender information should be restricted (38%,  $N= 13$ ). An equal number of Judges agreed or strongly agreed (29%  $N= 10$ ) that public access to low-risk offender information should be limited, and disagreed or strongly disagreed (29%,  $N= 10$ ) with this statement.

Judges were provided an opportunity to respond to an optional open-ended question with any additional input, issues, or concerns. Comments were organized into themes. Most reflected concerns that there is rarely enough information provided, that the burden of proof should be shared, that lack of counsel affects case presentation, and that the legislative standards for granting removal can be both vague and complicated.

## DISCUSSION AND CONCLUSIONS

### Discussion of Results

This thesis surveyed judicial perspectives on hearings of petitions for termination of NC sex offender registration and related sex offender registration laws. It examined judicial perceptions of the types of information that may be available for determining a petitioner's potential risk to public safety, and judicial perspectives on making this determination when presiding over these hearings. Participants responding to our survey were 30% of the North Carolina's Superior Court Judges. These judges reported a mean of 8.33 years of Superior Court experience ( $SD= 6.10$ ). The number of removal hearings each Judge presided over in 2012 varied considerably, ranging from 0 to 50 ( $M= 12.90$ ,  $SD= 12.70$ ). Six Judges reported hearings in the 25-50 case range. Participants' perspectives and experiences presiding over hearings of petitions for termination of sex offender registration were reflected in their survey responses.

Judges were asked to operationalize the definition of "threat to public safety" in terms of criminal behavioral outcome, as they interpreted it for Finding of Fact 6. As might be expected, the majority of Judges (93%) endorsed agreement or strong agreement with both statements indicating the risk for committing any sexual offenses, registerable or otherwise, was definable as a threat to public safety. This is interesting to note in terms of the legislative requirements. The State requires there be no subsequent arrest or convictions for an offense that would require *registration* (registerable) under North Carolina law. The Federal standards, however, require there be no subsequent convictions for *any* sexual offense, regardless of whether or not registration is required. Thus, for sexual offenses, the Judges' interpretation leaned towards the stricter standard. However, only 56% agreed or strongly agreed with both statements that the risk for felony offenses and the risk for any sexual offenses were threats to public safety that could disqualify an offender's petition under Finding of Fact 6. Federal requirements for a "clean record" of registration (under 42 USC 16915(b)(2)) mandate that there be no subsequent convictions for either. This difference is noteworthy in its illustration that the Judges were not wholly

prone to embracing all of the federal standards.

Results indicated statistically significant differences in the agreement of Judges who endorsed the risk for more serious reoffenses (e.g., sexual, violent) than more general criminal recidivism as determiners of Finding 6. As might be expected, Judges were most likely to agree on defining a potential “threat” to public safety as the petitioner’s risk for committing any sexual, violent, or registerable offense. However, there was still enough variation to indicate a lack of strong consensus as to whether a risk for felony and general criminal reoffending would be considered a “threat” for the purposes of Finding 6. Only five judges (15%) took a wide-net approach and endorsed every option of behavior as a potential threat to public safety as intended by Finding of Fact 6.

The operational defining of the parameters of what constitutes a “threat” in the language of Finding of Fact 6 is important, at the very least, for continued questions of consistency in the standards of interpretation for this evaluation of offender risk. As noted *In re Borden* (2011): “When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute, and judicial construction of legislative intent is not required. However, when the language of a statute is ambiguous, (the) Court will determine the purpose of the statute and the intent of the legislature in its enactment.” This intent is not wholly clear for this determination, and was described in the survey comments as appearing to require a mere “more likely than not” statement of proof. The purpose of the petitions Findings of Fact are to determine if a petitioner qualifies for removal from North Carolina’s sex offender registry. Thus, it might be suggested that a definition of “threat,” framed in the context of Finding 6 of the Petition and Order for Termination of Sex Offender Registration (and G.S.14-208.12A(a1)(3)), might refer to the threat of committing a subsequent offense of the type that would warrant continued identification and monitoring as a sex offender (e.g., primarily a sexual offense or registerable offense under Chapter 14, Article 27A of the North Carolina General Statutes). The majority of Judges’ responses appeared to endorse this view, despite the range of other non-sexual offenses that were also endorsed as being indicative of a potential threat to public safety.

This study presented a baseline of the types of information Judges might consider to make a determination of threat posed to public safety and examined the Judges' perceptions of the importance and reported availability of this information. Judges were asked to rate the importance of various types of information (that might be presented as evidence) in terms of importance to their deliberation of a petitioner's potential threat to the public. They were also asked to indicate with what consistency each of these items might be available to them during removal hearings.

Judges' ratings indicated that despite current research evidence suggesting that acts of noncompliance such as failure to register are not typically associated with sexual recidivism (Grey, Fields & Maxwell 2001; Letourneau et al., 2010; Zgoba & Levenson, 2008), Judges responded similarly to those on the 2012 survey, and viewed history of compliance with registration requirements as important to determining a petitioner's potential threat to public safety. It was unclear, however, whether judges considered this threat a risk for sexual reoffending or general criminal rule-breaking behavior.

Research has identified failure to complete sex offender treatment to be associated with the risk of sexual reoffending. *Completion* of a sex offender treatment program was rated as critical or important by the vast majority (88%) of Judges, ranking *program completion* sixth on the list of most important evidentiary information to have. However, half (50%) of the Judges reported they did not routinely receive sex offender treatment records, and ranked treatment records 20<sup>th</sup> in importance on the list of information. It is unclear if records were generally unavailable because the offender did not receive sex offender treatment or due to difficulty obtaining existing records. In either case, responses suggest that if given the opportunity, judges would tend to align with the federal requirement for completion of a certified sex offender treatment program, although such a condition is not currently a mandate of the State's General Statutes.

The overall applicability of federal (SORNA) guidelines to North Carolina removal hearings has been debated. However, when it comes to *availability* of information regarding the Federal Tier of the petitioner's offense, 50% ( $N=17$ ) of the Judges responded this is not information routinely available to them. Some comments expressed that the impact of the determination of Federal tier issue is

underappreciated in the context of these hearings. The indication is that the federal tier requirement could be interpreted to be preemptive of State standards (under Finding of Fact 7). Thus, if the issue of tier is decided against the petitioner, determining Finding of Fact 6 “becomes irrelevant.” Survey comments also indicate ongoing concerns that the implications and impact of the complicated interaction between Federal and State legislative requirements is not uniformly recognized nor understood across all involved parties: judicial, prosecutorial, defense, or petitioner.

An atmosphere has been created by the State and the public in which legislators, prosecutors, and judges experience increasing pressure from the community regarding the ominous responsibility of protecting the public from sexual offenders. There is always the risk that public and politicized misperceptions and influential, often misleading, media portrayals can have the potential to adversely influence decision-makers opinions, possibly resulting in reactionary and perhaps ineffectual policy and determinations (Bumby & Maddox, 1999). Judges surveyed appeared to be aware and cautious regarding these influences. Judges rated the input from the District Attorney and the State’s case as important ( $M=3.13$ ,  $SD = 0.554$ ; 11<sup>th</sup> of 33). However, the comments provided indicated strong acknowledgements and concerns that the State is least likely to concede on the issue of Finding 6. Judges ranked public input and opinion last in importance to their deliberation of Finding 6. It had the lowest averaged rating (1.94,  $SD = 1.134$ ) corresponding to a rating of generally *Not Very Important*.

Comments provided by the Judges indicated responsibility for the amount and type of information presented to the court falls almost squarely on the petitioner. That the burden of proof is on the petitioner to present evidence meriting relief from the registry, merely underscores the importance of legal counsel to the quality of the petitioner’s case. Over half (56%) of the Judges indicated that defense counsel presentation (when available) was important or critical to their deliberation. However, 68% of these same judges indicated that most petitioners appear without counsel. This result is consistent with previous survey findings which indicated most petitioners at hearings of petitions for removal from the North Carolina sex offender registry do not have legal representation, *and* are not generally afforded a right to counsel for these hearings (Malesky & Love, 2012). Thus, despite judicial acknowledgement that

having defense counsel aids in bringing the best possible defense case to court, the vast majority of petitioners appear at hearings for termination of sex offender registration without legal representation. Survey comments also indicated that the general position held by most District Attorney's offices was perceived to be in strict opposition to deregistration in general, and endorsing of a very high bar for considering the potential threat posed by an offender. In light of these facts, it is has been strongly suggested that even in the event that a petitioner is not appointed legal representation, it remains in the petitioner's best interests to at least obtain legal consultation for presenting their case prior to appearing at the hearing.

Results indicated that certain sources of information (e.g., complete criminal history, mental health records, sex offender treatment records, probation/parole records, and information related to current lifestyle stability) may be low in availability and potentially underutilized in these hearings. These items have the potential to provide relevant information such as a petitioner's substance abuse history, stability of current lifestyle, antisocial orientation, and ongoing compliance with legal and treatment requirements. Several judges voiced comments indicating a desire for more comprehensive access to more complete and detailed information in these areas.

Many of the items having empirical associations with sexual reoffending were rated as crucial or important to judicial deliberations (e.g., history of sexual offending, victim age, relationship to victim, completion of sex offender treatment). However, there was less agreement regarding the importance of several sources of information (e.g., sex offender treatment, probation, psychological or mental health records) that could lead to identifying key risk or desistance factors. Many of these record items, that might serve as useful sources of information, had average ratings between *Somewhat Helpful* and *Important*, but were mostly reported to be: only sometimes or not routinely available. Information contained within these sources, for example, may be necessary for determining the existence of several other risk factors, including: an offender's ability to avoid high-risk situations, deviance and diversity of sexual interests, attitudes towards offending and criminality, antisocial lifestyle, substance abuse, treatment and supervision compliance, personality disorder or paraphilias, emotional and self-regulation,

etc. Thus, the overall significance of certain items such as these is multi-faceted. Sex offender treatment records, psychological reports, and probation reports were also named as types of information Judges would like to have routinely available at the hearings.

There were some items, identified as risk factors in the research literature, which received somewhat lower ratings by the Judges (i.e., victim gender, employment). What the Judges may not appreciate is the larger implication to which these items may also infer. Victim gender, particularly a history of male child victims, speaks to an offender's sexual deviancy and potential diversity of offending (as do factors relating to relationship to victim, victim age, or paraphilias). Employment history, (like residential stability, relationship status, and substance abuse) can inform of an offender's stable antisocial orientation, or acutely diminishing stability.

What is unable to be determined from the information gathered is the degree to which individual Judges are able to recognize and extract information pertaining to accepted risk factors from within the sources of information available to them (e.g., from the history of offending, psychological records, current social and contextual circumstances, etc.). Judges' ratings indicated an adequate grasp of the relative importance of certain types of information to the evaluation of an offender's risk. However, the ability of any individual Judge to identify the empirical risk factors pertinent to a specific case from within the information available is unable to be determined without further study.

Many of these findings illustrate how it is all the more imperative that judicial decision-makers receive valid and relevant information pertaining to risk factors and have reliable availability of case evidence with which to make a confidently informed decision. Comments indicated that certain information (e.g., registered offense, length of registration, criminal records, date of birth, age of victim, and petitioner's age at the time of the offense) can typically "be accessed on (the judge's) own" or (be) determined from the court file." Nonetheless, a fraction of judges indicated they did not routinely receive complete records of this information, or did so "only sometimes." This indicates a fluctuation in the availability of even the types of information one would expect to be reliably and consistently available for all cases. For example, one quarter (25%,  $N=8$ ) of those who answered the question ( $n=32$ ) indicated the

petitioner's full criminal history records were *Only Sometimes* available.

The Judges specified some of the information they would like to be more available. These included: psychological reports; sex offender treatment status, compliance and completion; greater detail and circumstances of the registered offense; probation or presentencing reports; and history of residential and lifestyle stability. Presentencing reports is an interesting suggestion in that oftentimes these reports can contain one or more risk assessments conducted by the NC Department of Corrections. One comment specifically indicated that in addition to full criminal records, knowledge of DSS and domestic violence violations would be considered helpful to deliberating on the question of a petitioner's threat to public safety. A history of DSS reports may be important in light of the fact that many of these types of cases remain uncharged, unprosecutable, or unconvicted, even if substantiated by DSS. Better overall presentation of the case was also a chief concern in many comments, expressing the need for legal representation for petitioners, objective sources of information about facts of petitioner's current lifestyle, and a shared burden of proof for the State to show an indication of the potential threat posed.

The belief in the public's "right to know" and in public access to the sex offender registry as a measure of public safety, is central to the issue of terminating the registration requirement for certain offenders. Thus, the survey also examined Judges' opinions about sex offender registration relative to concepts expressed in the sex offender research literature. (Judges' percentage of agreement with specific statements can be seen in Table 5). Some of the Judges strongest endorsements are supported by the following research statements:

- Sex offender registration is a necessary and useful tool for law enforcement (68%) and public protection (68%) (Letourneau, et al., 2010);
- (71%) Ample evidence suggests that public identification as a sex offender can result in serious financial & social consequences impacting offenders and their families (Levenson & Cotter, 2005a; 2005b; Levenson, D'Amora, & Hern, 2007; Levenson & Hern, 2007; Levenson & Tewksbury, 2009; Zevitz & Farkas, 2000); and
- (71%) Removing low-risk offenders from the registry can increase resources available for

monitoring higher-risk offenders. Doing so might help alleviate concerns that the needs of monitoring a growing registered sexual offender population can further tax already stressed fiscal and personnel resources, potentially compromising law enforcement's capacity to target monitoring toward the highest risk offenders (Levenson, 2009; Malcolm, Levenson & Harris, 2012).

Twenty-nine percent of Judges agreed or strongly agreed that misplaced public perceptions about sex offender registries may result in a false sense of security, although exactly half (50%) were undecided. Research indicates citizens may rely too heavily on the registry, unaware of the myriad circumstances (e.g., underreporting, non-conviction, dismissal, plea-bargaining, lack of retroactivity, age, offense type, noncompliance with registration) under which many sex offenders may never appear on registration lists (Herman & Malesky, 2009; Levenson, 2009; Malcolm, Levenson & Harris, 2012; Matson & Lieb, 1996). In addition, the public may overlook the fact that an offender does not have to live in an area to offend there; thus searching specific proximities for offenders is not an indication or assurance of safety. Judges were also divided (38% in agreement, 15% disagreeing, and 44% undecided) as to the functionality and effectiveness of registration as a deterrent or preventive measure; results were consistent with research literature, in which this is also highly debated (Letourneau et al., 2010; Levenson, 2009; Matson & Lieb, 1996; Schram & Milloy, 1995).

Just over half (56%) of our sample of Judges *Agreed* and another 26% *Somewhat Agreed* they were generally comfortable with making the determination of a petitioner's potential risk to public safety. When it comes to individual case circumstances however, the case presentation and information available to the Judges for making a determination regarding a petitioner's potential threat to public safety can be less than ideal. Judges' degree of comfort with making this determination was found to be significantly correlated ( $r = .514$ ) with their reported confidence in having enough information available to them with which to deliberate the case. As is common for psychological evaluators to routinely collect diverse information to inform their assessments, so too may a Superior Court Judge benefit from having reliable, relevant, and comprehensive sources of information for their deliberation of case facts and evidence

informing their decisions about potential offender risk.

### **Conclusion**

Survey results have suggested the perceived level of importance and availability of certain types of information, relative to judicial decision-making during hearings of petitions for termination of sex offender registration. Research literature has shown certain factors to have empirically validated associations with sexual reoffending. When tasked with making a determination of an offender's potential risk to the public, Judges might benefit from existing and ongoing empirical research on factors associated with sexual recidivism in order to request and review the most pertinent information and information sources (e.g., records) from which they might determine the presence of static and dynamic risk factors applicable to the case before them. Thus, for the purposes of North Carolina Superior Court Judges deliberating the question of potential threat posed by an offender petitioning for removal from the NCSOR, knowledge of the static and dynamic risk associations relevant to the individual case information available to them may prove beneficial to assist in the difficult determination with which they are tasked.

### **Limitations and Future Directions**

This study began with immediate limitations on the scope of information and preliminary data available on petitions to terminate registration. Subsequent investigation and confirmation by the State Bureau of Investigation, Administration of Courts, and Attorney General's offices found no system or official database anywhere in the State that collectively tracks or maintains further information regarding petitions for removal from the NCSOR (i.e. documenting the numbers of petitions that are *filed* and their outcomes, dismissals, withdrawals or denials, or any details thereof). When court personnel calendar petition hearings, they are generally not assigned a unique data-entry code, and are therefore not electronically identifiable or searchable. Likewise, any petition denials or withdrawals are not compiled or tracked other than a date of denial noted somewhere within the offender's individual record, as is needed in the event they should re-petition the court. The lack of available data encountered regarding petitions filed for termination of NC sex offender registration mirrors the pervasive difficulty noted by

researchers throughout the literature in accessing and collecting accurate and comprehensive recidivism data in the United States, particularly in comparison with the quality of national conviction databases accessible from the UK, Canada or Sweden (Knight & Thornton, 2007; Levenson, 2009).

Although sex offender research is increasing overall, the vast majority of existing research has concentrated on adult males. Thus, another limitation of this paper is that factors discussed also primarily generalize to adult male sex offenders. As is a typical concern with research involving professional samples (Skeem et al., 2009), another limitation is that findings may have been influenced by a self-selection bias in respondents. Limitations of this study also include a low response rate and very small sample size ( $N=34$ ), potentially affecting the ability to recognize statistical significance in results. However, given that the participants of this study are a sample of the actual Superior Court Judges who preside over these hearings for termination of sex offender registration in North Carolina, are directly responsible for the determination of Finding of Fact 6 regarding a petitioner's potential threat to public safety, and are solely responsible for the decision to grant or deny a petition of termination, this researcher feels confident that despite the small sample size, the findings of this study are not only relevant but important to discussions of these hearings and the issue at hand. For future projects targeting this population as subjects, other options for soliciting a higher response rate (e.g., presentation and solicitation of participation at a judicial conference or education seminar) might need to be sought.

Future research and policy-makers might benefit from procedures that delineate a clear system for the collection and maintenance of thorough, accurate, and current information on petitions and hearings for termination of North Carolina sex offender registration. Regarding additional research, one survey response also offered a suggestion that research of this kind also be conducted on: "determinations of capacity and competence to proceed." There exists a recognized need to extend research efforts to greater identification of factors associated with sexual recidivism and development of effective risk measures appropriate for use with non-incarcerated, female, and culturally-diverse populations of sex offenders. There is also a need for research to identify and target the factors most problematic for an offender's community reintegration, with the most potential to contribute to recidivism risks and resistance

(desistance). Such efforts are necessary not only to better inform in such specific legal proceedings as North Carolina's termination of sex offender registration petition hearings, but would be of benefit at all levels of efforts targeted at sex offender management and treatment.

From a legal perspective, there is an apparent need for clear and consistent legislative standards, policies and procedures detailing the petitioning process for offenders, the requirements for removal from the registry, and the potential roles of the involved agencies. Legislation and policies might ideally encourage collaboration and coordination of efforts among all of the agencies involved in the registration and removal process. In a national summit on sexual offender management sponsored by the U.S. Department of Justice, Office of Justice Programs (1996), a primary recommendation was for the provision of team-based training to local jurisdictions regarding the collaborative approach to sexual offender management, and thus underscoring the importance of judges' and legislators' involvement (Center for Effective Public Policy). North Carolina might benefit from expanding its already well-established and highly regarded judicial education programs implemented through the University of North Carolina at Chapel Hill School of Government, to a statewide program with satellite support centers for wider access across all jurisdictions. So long as this critical standard of determination (that a petitioner is not a current or potential threat to public safety) is retained by the General Assembly, a call for further judicial education on the relevance of federal standards to North Carolina conditions for removal from the NCSOR (i.e., Finding of Fact 7), and on evidence-based factors relevant to sexual recidivism (pertinent to Finding of Fact 6), seems especially warranted. Such judicial education for hearings of petitions to terminate NC sex offender registration might strive to provide our Superior Court Judges with: 1) a more consistent, less ambiguous, decision-tree for navigating the interplay of federal and state legislative requirements; and 2) a resource for valid, reliable information on static and dynamic factors related to sexual recidivism, in a structured format suitable for practical use and reference.

### **Proposal**

“Risk assessments (can) occur within a legal context, where societal expectations, personal

responsibility, and judicial decisions intersect” (Kroner, et al., 2007, p. 915). Further research and development of effective, static and dynamic measures that are empirically based and explanatory, and procedures for effective communication to decision makers is essential. Various aids (e.g., scientific advisors, court-appointed experts, specialized training) for judges in dealing with scientific and psychological types of evidence have been suggested (Skeem et al., 2009). Another alternative is to make available to judges information on empirical facts and methods in the form of specially tailored databases or guides for judges to use as the need arises (e.g., the extensive treatise on scientific evidence coauthored by David Faigman (2008)). The creation of structured guidelines for decision-making is another alternative approach already familiar to the legal system.

Based on the results of this research, the creation of a practical strategic approach for judicial use in assessment of offender risk (required under N.C.G.S. 14-208.12A(1)(3)) is recommended. The creation of guidelines can be used to inform a structured professional judgment method such as described by Knight & Thornton (2007). These guidelines might be informed by empirical research in order to focus the judicial assessor on factors relevant to sexual recidivism. The integration of the factors into an overall judgment would be left to the individual Judge’s discretion. Such an approach may allow Judges the opportunity to consider a wide range of factors alongside an understanding of their empirical relevance to reoffending. When the Judge does have access to scores from actuarial risk assessment instruments, a structured guide can also provide supplemental clarity as to how those scores are derived. In addition, having a structured guide for professional judgment would continue to allow Judges the flexibility to take into account factors that may be relevant in the individual case, even if they are not generally considered relevant (Knight & Thornton, 2007).

Using a method of structured professional judgment for judicial assessment of risk is proposed based on its similarity to the method of decision-making stemming from the U.S. federal sentencing guidelines. Under those guidelines sentencing requirements follow prescribed ranges, but may depart from such in cases where atypical circumstances are present. In such cases, there exists a judicial tendency to incorporate extralegal factors as indicators of such conditions (e.g., future dangerousness)

into judicial deliberations and related decisions (Silver & Miller, 2002). One of the tenets of evidenced-based sentencing described by The National Judicial College (2010) states that judges should be provided with information that is essential to understanding the level of risk and the risk factors (both dynamic and criminogenic factors) of each offender, in order to apply offender assessment data on an individual case basis. Similar to the information considered by Judges during removal hearings, pre-sentence investigations provide information regarding index offense, prior criminal history, social supports, health/mental health, and employment, financial, and residential stability. Thus judges' familiarity with this type of information may have an effect on the importance attributed to each when taken into consideration. Having a structured guideline pertaining to relevant risk factors may be an important reference tool for judges faced with such a wide array of evidentiary information.

The purpose of this suggestion is not to assign definitive risk levels but rather to promote awareness and recognition of the differing degrees of specific risk factors associated with sexual recidivism to be considered relevant to the characteristics of the individual offender and the circumstances of the individual case. In 2009, the North Carolina Sentencing and Policy Advisory Commission found that:

...a risk assessment instrument is a valuable informational tool for understanding the risks posed by defendants at various stages of the criminal justice system. By providing an objective measure of an individual's likelihood of engaging in certain behaviors, a risk assessment allows officials to make better-informed and more consistent decisions. (p.24)

The 2009 Committee concluded that "after a decade of analyzing offender recidivism data, the Commission is well positioned to construct objective, easily-scored risk assessment tools for use at...pre-sentencing decision points" using certain "risk factors" identified as "strongly and consistently correlated with recidivism" by the Commission's recidivism reports (p.24). Results of this thesis suggest that Superior Court Judges might benefit from a structured guide to recidivism risk factors that could provide a procedure for reviewing information presented to the Court for consideration of a petitioner's potential threat to public safety.

The case presentation and evidentiary information from file could be organized according to a structured guide of its relationship to reoffending and associative risk factors, beginning logically with the historical factors related to the registered offense, its underlying details, and the offender's records of criminal history. This could be supplemented by any existing results of actuarial measures and risk assessments (when appropriate and available for the petitioning offender). The final prong of the guide could account for the influences of stable and acute dynamic risk factors. The basic format of the guide might ultimately be a checklist created by using the State Commission identified risk factors for criminal recidivism, (which include demographic and social characteristics of the offender, current offense and criminal history) combined with factors specific to sexual reoffending, as informed by empirical psychological literature. After addressing pertinent historical factors, groupings of risk factors could assist the judge in identifying relevant information from within an offender's records. For example, static and stable risk factors might include: history of compliance with supervision, registration, sex offender and mental health treatment; and diagnoses relevant to sexual disorders, multiple paraphilias, personality disorders, and psychological considerations. Other groupings might take into consideration the effects of additional dynamic risk factors and criminogenic needs. This could be followed by acute and contextual circumstances related to community adjustment or immediate precipitants to reoffending (e.g., changes in lifestyle stability, self-regulation, etc.). Structured guidelines can aid professional judgment in considering an offender's typical offense pattern and stable factors in conjunction with current or potential situational factors. Additional information and evidence such as testimony might add clarification in proportion to its relevance to sexual recidivism and the individual case.

Ultimately, the final decision still resides with the professional judgment of the Trier of Fact of the Court as intended. The optimal approach to risk assessment depends, to large extent, on the quality of the available information. Given valid risk factors, evaluators can then consider how best to combine the factors into an overall individualized assessment of risk; and given a viable procedure for combining factors, can then consider which of an empirically supported pool of mitigating risk factors are relevant to the case. In many contexts, the best analysis can only be guided by a sound knowledge of the particular

case, accuracy, availability and relevance of the supporting information, and ongoing knowledge of the current research and literature on risk factors and recidivism specific to sexual offenders. Although there are certainly gaps in current knowledge regarding the determinants and characteristics of recidivism, the body of research is ever-growing; and what is known has significant implications for informing both policy and intervention. As research grows, the development of empirically validated measures for the practical purpose of assessing risk from the case history, static factors, and current dynamic conditions of a community-residing offender can serve as an invaluable tool to assist judges and others in the determination of offender's potential threat to the safety of the public. In the short-term, creating a resource such as a structured guide to risk factors could enhance judges' knowledge of supplemental information they might request for consideration and their ability to identify the types of information most empirically significant to evaluating the potential risk posed by a sex offender. Having such references and guidelines might thereby assist the professional judgment of Superior Court Judges in making an informed decision regarding petitioner risk, for Finding of Fact 6 of the petition and hearing for removal from the North Carolina Sex Offender Registry.

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Table 1.

*Comparison of Federal and North Carolina Standards for Required Length and Possible Reduction of Sex Offender Registration Period*

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Federal Tier Levels and  
Minimum Registration Periods:

North Carolina Registration Program  
Minimum Registration Periods:

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The Full Registration Period Is:

(1) 15 years, if the offender is a tier I sex offender;

(1) 30 years, if the offender is a Part 2 offender (registered on or after December 1, 2008\*);  
\* (Lifetime registration, if the offender is a Part 2 offender registered before December 1, 2008)

(2) 25 years, if the offender is a tier II sex offender;

(3) the life of the offender, if the offender is a tier III sex offender

2) the life of the offender, if the offender is registered under Part 3 (aggravated offender, recidivist or sexually violent predator)

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Federal Reduced Period for Clean Record

North Carolina Termination of Registration Requirement

Full Registration Period May Be Reduced By 5 Years

Allows for Termination Of The 30-Year Registration Requirement After a Minimum of 10 Years

Eligibility Requirements

Tier I Sex Offender

Offender Required To Register Under Part 2

The period during which the clean record shall be maintained is 10 years

Subject to Part 2 registration requirements for at least 10 years from the date of initial county registration

Not being convicted of *any offense* for which imprisonment for more than 1 year *may* be imposed;

Not having been *convicted* of a subsequent offense requiring registration;

Not being convicted of any sex offense;

Has not been *arrested* for any crime that would require registration under this Article since completing the sentence;

Successfully completing any periods of supervised release, probation, and parole;

The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State;

Successfully completing of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

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The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety;

District Attorney given notice of the petition at least three weeks before the hearing;

If conviction occurred in another state, petitioner provided written notice of petition to sheriff of that county

One year or more has passed since the denial date of a previous petition

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*Public Law 109-248 July 27, 2006*  
*120 STAT. 595 SEC. 115*

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*N.C.G.S. §14-208.12A; AOC-CR-262, IV(1-9)*

Table 2

*Ranking of Judicial Ratings of Importance  
of Types of Information Used for Determining Finding 6*

Information Item	Rating Mean	SD
History of sexual offense arrests/convictions	3.94	(0.246)
History of violence	3.69	(0.535)
Registered offense (of petition)	3.56	(0.619)
History of compliance with registration requirements	3.53	(0.567)
Overall criminal history	3.41	(0.56)
<i>Completion</i> of certified sex offender treatment program	3.25	(0.568)
Underlying details of the registered offense	3.19	(0.821)
Petitioner's age at offense	3.16	(0.574)
Age of victim	3.16	(0.677)
Length of time registered in the community and level of Supervision	3.13	(0.833)
District Attorney input & State's case	3.13	(0.554)
Completion/ongoing compliance with, <i>other</i> mental health treatment/ programs (group, counseling, medication, etc.)	3.09	(0.689)
Relationship to victim (known or stranger)	3.06	(0.716)
Current age of petitioner	3.00	(0.672)
Professional opinion/reports/testimony of psychologists/psychiatrists	3.00	(0.672)
Risk assessment score (i.e. Static 99)	2.94	(0.892)
History of drug and alcohol related arrests	2.88	(0.793)
Mental health records and standardized psychological test results	2.88	(0.793)

Petitioner's self-presentation (e.g., appearance, demeanor)	2.84	(0.574)
Sex offender treatment records/ reports of sex offender treatment provider	2.84	(0.677)
Probation/parole records, officer testimony	2.81	(0.654)
Petitioner's testimony	2.78	(0.792)
Family/community supports	2.75	(0.718)
First-hand testimony (victim, witnesses, law enforcement)	2.74	(0.773)
Character references from <i>business</i> relationships (employers, landlords, co-workers, teachers, caseworkers, etc.)	2.63	(0.609)
Residential status/history/stability	2.62	(0.707)
Defense Counsel's case presentation ( <i>when available</i> )	2.59	(0.798)
Household: relationship/marital status	2.59	(0.798)
Employment status	2.56	(0.759)
Character references stemming from personal relationships (family, friends, neighbors, clergy, sponsors, etc.)	2.50	(0.718)
Gender of victim	2.34	(1.26)
Federal tier of the registered offense	2.34	(1.317)
Public input, opinion	1.94	(1.134)

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*Note.* Scores range from a possible maximum of 4 (Critical) to a minimum of 0 (Irrelevant). Scores closest to 1.0 = a rating of *Not Very Important*, nearest a 2.0 = *Sometimes Helpful*, nearest a 3.0 = *Important* to judicial deliberation, Nearest a 4.0 = *Critical*; Nearest to 0 is considered most *Irrelevant* to deliberation. SD = standard deviation

Table 3

*Research Identified Predictors of Sexual Offense Recidivism  
Compared to Perceived Importance to Judicial Deliberations*

<b>Risk Factor as Identified in Research Literature</b> <b>[Categorical Label]</b>	<b>Recidivism correlation <i>r</i></b>	<b>Corresponding Items Potentially Considered During Removal Hearings</b>	<b>Possible Sources of Information for Determining Risk Factors, &amp; Judges' Ranking of Importance</b>	<b>Average Judicial Rating of Importance to Deliberation (0-4 scale)</b>
Non-effort to avoid high-risk situations, including access to victims  [Self-regulation/self-management]	.38**	History of sexual offense, probation/parole records, compliance with registration, treatment records, arrest records, psychological reports, character reference testimony	1 History of sexual offense	3.94
Increased access to victims	.24**		4 History of compliance with registration	3.53
			6 Completion of certified sex offender treatment program	3.25
11 District Attorney input & State's case			3.13	
12 Compliance with mental health treatment			3.09	
15 Professional opinion of psychologist/psychiatrist			3.00	
20 Sex offender treatment records			2.84	
21 Probation/parole records			2.81	
25 Character references (business)			2.63	
30 Personal references			2.50	

Sexual interest in children (as measured by PPG)  [Sexual Deviance]	.32	Sex offender treatment records, psychological records, law enforcement case file	9 Age of victim 7 Underlying details of the registered offense 15 Professional opinion of psychologist/psychiatrist 18 Mental health records/psychological tests 20 Sex offender treatment records	3.16 3.19  3.00 2.88 2.84
Expresses justification for sexual offending  [Attitudes]	.28**	Treatment records, law enforcement interview, psychological reports, character reference testimony, compliance with legal and treatment requirements	4 History of compliance with registration 15 Professional opinion of psychologist/psychiatrist 20 Sex offender treatment records 21 Probation/parole records 30 Personal references	3.53 3.00 2.84 2.81 2.50

Antisocial lifestyle, lifestyle instability; identifies with antisocial attitudes/associations  [Criminogenic Needs]	.26**	Probation/parole records, treatment records, arrest records, psychological reports, character reference testimony; PCL-R information	2 History of violence	3.69
			4 History of compliance with registration	3.53
			5 Full criminal history	3.41
			11 District Attorney input & State's case	3.13
			12 Compliance with mental health treatment	3.09
			15 Professional opinion of psychologist/psychiatrist	3.00
			17 History of drug & alcohol related arrests	2.88
			20 Sex offender treatment records	2.84
			21 Probation/parole records	2.81
			23 Family/community supports	2.75
			25 Character references (business)	2.63
			26 Residential stability	2.62
			29 Employment status	2.56
			30 Personal references	2.50

<p>Non-cooperation with supervision</p> <p>[Compliance]</p>	.25**	<p>Probation/parole records, other law enforcement records</p>	<p>4 History of compliance with registration</p> <p>6 Completion of certified sex offender treatment program (if court ordered)</p> <p>10 Length of time registered in the community &amp; level of supervision</p> <p>11 District Attorney input &amp; State's case</p> <p>12 Compliance with mental health treatment (if court ordered)</p> <p>20 Sex offender treatment records (if court ordered)</p> <p>21 Probation/parole records</p>	<p>3.53</p> <p>3.25</p> <p>3.13</p> <p>3.13</p> <p>3.09</p> <p>2.84</p> <p>2.81</p>
<p>Any deviant sexual preference</p> <p>[Sexual Deviance]</p>	.22	<p>Sex offender treatment records</p>	<p>1 Sexual offense records</p> <p>7 Underlying details of the registered offense</p> <p>9 Age of victim</p> <p>15 Professional opinion of psychologist/psychiatrist</p> <p>20 Sex offender treatment records</p> <p>31 Victim gender</p>	<p>3.19</p> <p>3.16</p> <p>3.00</p> <p>3.00</p> <p>2.84</p> <p>2.34</p>
<p>Prior sexual offenses</p> <p>[Sexual Deviance, Criminal History]</p>	.19	<p>History of sexual offense arrests /convictions</p>	<p>1 History of sexual offense</p> <p>11 District Attorney input &amp; State's case</p>	<p>3.94</p> <p>3.13</p>

Sex offender treatment drop-out [Treatment History]	.17	Completion of sex offender treatment program	6 Completion of certified sex offender treatment program 20 Sex offender treatment records	3.25  2.84
Substance abuse problems [Self-regulation; Criminogenic Needs]	.17**	Criminal/arrest records, Probation/parole records, treatment records, psychological reports, character reference testimony	5 Full criminal history 12 Compliance with mental health (substance abuse) treatment 15 Professional opinion & reports of psychologist/psychiatrist 17 History of drug & alcohol related arrests 18 Mental health records/psychological tests 20 Sex offender treatment records 21 Probation/parole records 25 Character references (business) 30 Personal references	3.41  3.13  3.00  2.88  2.88  2.84  2.81  2.63  2.50

<p>Acute increases in negative mood; [Emotional Regulation]</p> <p>Acute increases in Anger [Emotional Regulation]</p>	<p>.16**</p> <p>.20**</p>	<p>Probation/parole records, treatment records, psychological reports, character reference testimony</p>	<p>2 History of violence 15 Professional opinion &amp; reports of psychologist/psychiatrist 20 Sex offender treatment records 21 Probation/parole records 25 Character references (business) 30 Personal references</p>	<p>3.69</p> <p>3.00</p> <p>2.84</p> <p>2.81</p> <p>2.63</p> <p>2.50</p>
<p>Any personality disorder [Personality Disorder]</p>	<p>.16</p>	<p>Mental health records and standardized psychological tests, Professional psychological testimony/reports</p>	<p>12 Compliance with mental health treatment (if applicable) 15 Professional opinion &amp; reports of psychologist/psychiatrist 18 Mental health records/psychological tests</p>	<p>3.09</p> <p>3.00</p> <p>2.88</p>
<p>Any stranger victims [Sexual Deviance]</p>	<p>.15 - .22</p>	<p>Relationship to victim; underlying details of offense</p>	<p>3 Registered offense 7 Underlying details of the registered offense 13 Relationship to victim</p>	<p>3.56</p> <p>3.19</p> <p>3.06</p>
<p>Antisocial Personality Disorder [Personality Disorder]</p>	<p>.14 - .21*</p>	<p>Mental health records and standardized psychological tests Professional psychological testimony/reports</p>	<p>12 Compliance with mental health treatment (if applicable) 15 Professional opinion &amp; reports of psychologist/psychiatrist 18 Mental health records/psychological tests</p>	<p>3.09</p> <p>3.00</p> <p>2.88</p>

Any prior criminal offenses  [Criminal history]	.13	Overall criminal history	2 History of violence 5 Full criminal history 11 District Attorney input & State's case 17 History of drug & alcohol related arrests	3.69 3.41 3.13 2.88
Offender age (negative correlation; younger = higher risk)  (risk diminishes with age accrued while living freely in the community)	-.13	Current age; (DOB in file)	14 Current age of petitioner	3.00
Anger Problems  [Emotional Regulation]	.13	Possibly indicated in reports or records, e.g., psychological, offense, probation, treatment or employment, or by testimony	2 History of violence 5 Full criminal history 15 Professional opinion & reports of psychologist/psychiatrist 18 Mental health records/psychological tests 20 Sex offender treatment records 21 Probation/parole records 25 Character references (business) 30 Personal references	3.69 3.41 3.00 2.88 2.84 2.84 2.63 2.50

Early onset sexual offending [Sexual Deviance]	.12	Age at offense Overall criminal history	1 History of sexual offense 3 Registered offense 5 Full criminal history 8 Petitioner's age at offense 20 Sex offender treatment records	3.94 3.56 3.41 3.19 2.84
Single (never married) [Intimacy Issues; Unstable Lifestyle]	.11	Relationship/ marital status Psychological records; testimony of references	23 Family/ community supports 28 Household relationships /marital status	2.75 2.59
Any unrelated acquaintance victims  Any related child victims [Sexual Deviance]	.11  .11	Relationship to victim; Victim age [Underlying offense details]	1 History of sexual offense 3 Registered offense 7 Underlying details of the registered offense 9 Age of victim 13 Relationship to victim 20 Sex offender treatment records	3.94 3.56 3.19 3.16 3.06 2.84
Any male child victims [Sexual Deviance]	.11	Gender of victim; Victim age [Underlying offense details]	1 History of sexual offense 3 Registered offense 7 Underlying details of the registered offense 9 Age of victim 20 Sex offender treatment records 31 Victim gender	3.94 3.56 3.19 3.16 2.84 2.34

Diverse sexual crimes [Sexual Deviance]	.10	History of sexual offense arrests/convictions [Underlying offense details]; Sex offender treatment records;	1 History of sexual offense 3 Registered offense 5 Full criminal history 7 Underlying details of the registered offense 9 Age of victim 13 Relationship to victim 20 Sex offender treatment records 31 Victim gender	3.94 3.56 3.41 3.19 3.16 3.06 2.84 2.34
Frequently unemployed (particularly for rapists) [Unstable lifestyle]	.10**	Employment records	21 Probation/parole records 25 Character references (business) 29 Employment status	2.81 2.63 2.56
Problems sustaining intimate relationships; interpersonal conflict [Intimacy Issues; Unstable Lifestyle]	.10-.11**	Relationship/marital status; Psychological records; testimony of references	2 History of violence (i.e., domestic violence reports) 15 Professional opinion & reports of psychologist/psychiatrist 21 Probation/parole records 23 Family/community supports 28 Household relationships /marital status 30 Personal references	3.69 3.00 2.81 2.75 2.59 2.50

PPG = penile plethysmography

Note:  $r$  is the average correlation coefficient for established factors reported in Hanson & Bussière (1996, 1998), Hanson (2000), \*Hanson & Morton-Bourgon (2005), and \*\*Hanson & Harris (1998).

Table 4

*Availability of Types of Information for Determining Finding 6*

Information Item In rank order of importance	% Reporting Availability			Average Rating of Importance
	Routinely Available (Yes)	Only Sometimes	(No) Not Routinely Available	
History of compliance with registration requirements	59%	26%	9%	3.53
Full criminal history and record	71%	24%	0%	3.41
Underlying details of registered offense & victim information	44%	44%	6%	3.19
Petitioner's age at time of offense	74%	12%	9%	3.16
Age of victim	59%	29%	6%	3.16
DA opinion/input	76%	18%	0%	3.13
*State's case presentation	41%	35%	15%	
Risk assessment tool results/scores	32%	41%	21%	2.94
Mental health records of petitioner (diagnosis, treatment)	15%	35%	44%	2.88
*Psychological assessment results	3%	35%	56%	*
Sex offender treatment records (if existing)	12%	29%	50%	2.84
Probation/parole records	21%	44%	29%	2.81
Residential records of petitioner	9%	47%	38%	2.62
Case presentation by defense counsel	35%	38%	18%	2.59
**Information of petitioner's household/ family support	12%	68%	15%	2.59
	**	**	**	2.75**
Employment records	12%	41%	41%	2.56

**Character references for petitioner	12%	71%	15%	**
Business relationship references	**	**	**	2.63
Personal relationship references	**	**	**	2.50
Federal tier of petitioner's offense	15%	24%	50%	2.34
Public input/opinion	6%	21%	68%	1.94

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\* These items were rated in combination with another item on the list of 33 (DA input & States case; Mental health records & Standardized psychological tests).

\*\* Character references were rated more specifically as two separate items (those from business relationships and from personal relationships); Household/family support was rated as two separate items (household relationships and family/community supports).

Table 5

*Agreement of Judicial Opinions with Statements Pertaining to Sex Offender Registration and Public Access to the Registry*

In Judges' opinions and experience, <b>Sex Offender Registration...</b>	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
...is a necessary & beneficial tool for law enforcement.	0%	3%	26%	35%	32%
...is a deterrent to reoffending.	0%	15%	44%	26%	12%
...is necessary to protect the public.	0%	6%	24%	38%	29%
...is overly required for too many offenses.	6%	12%	12%	47%	18%
... requirements and violation penalties should be increased for all sex offenders.	15%	47%	29%	3%	0%
Terminating registration for low-risk offenders increases resources available for monitoring higher-risk offenders.	0%	0%	24%	44%	29%
<b>Public access</b> to the sex offender registry increases the public's caution & measures to protect themselves.	3%	12%	29%	47%	6%
<b>Public access</b> to the sex offender registry can foster a false sense of security.	0%	18%	50%	24%	6%
<b>Public access</b> to all levels of sex offender's information is necessary for public safety.	3%	35%	32%	21%	6%
<b>Public access</b> to registration information of low-risk sex offenders should be restricted.	6%	24%	38%	24%	6%
<b>Public access</b> to the sex offender registry can potentially hinder societal reintegration, & create detrimental hardships for offenders and their families.	0%	9%	18%	53%	18%

Table 6

*Judicial Ratings of Importance of Types of Information Used for Determining Finding 6*

Information Item	Ratings					Average Rating
	Irrelevant	Not Very Important	Sometimes Helpful	Important	Critical	
History of sexual offense arrests/convictions	0%	0%	0%	6%	88%	3.94
History of violence	0%	0%	3%	24%	68%	3.69
Registered offense (of petition)	0%	0%	6%	29%	59%	3.56
History of compliance with registration requirements	0%	0%	3%	38%	53%	3.53
Overall criminal history	0%	0%	3%	50%	41%	3.41
Completion of certified sex offender treatment program	0%	0%	6%	59%	29%	3.25
Underlying details of the registered offense	0%	3%	15%	38%	38%	3.19
Petitioner's age at offense	0%	0%	9%	62%	24%	3.16
Age of victim	0%	0%	15%	50%	29%	3.16
Length of time registered in the community and level of supervision	3%	0%	9%	53%	29%	3.13
District Attorney input & State's case	0%	0%	9%	65%	21%	3.13
Completion/ongoing compliance with <i>other</i> mental health treatment, programs (e.g., group, counseling, medication)	0%	0%	18%	50%	26%	3.09
Relationship to victim (known or stranger)	0%	3%	12%	56%	24%	3.06
Current age of petitioner	0%	0%	21%	53%	21%	3.00

Professional opinion /reports or testimony of psychologist/psychiatrist	0%	0%	21%	53%	21%	3.00
Risk assessment score (i.e. Static-99)	0%	6%	21%	38%	26%	2.94
History of drug and alcohol related arrests	0%	6%	18%	53%	18%	2.88
Mental health records and standardized psychological tests	0%	0%	35%	35%	24%	2.88
Petitioner's self- presentation (e.g., appearance, demeanor)	0%	0%	24%	62%	9%	2.84
Sex offender treatment records/ reports of sex offender treatment provider	0%	0%	29%	50%	15%	2.84
Probation/parole records, officer testimony	0%	0%	29%	50%	12%	2.81
Petitioner's testimony	0%	9%	15%	59%	12%	2.78
Family/community supports	0%	3%	29%	50%	12%	2.75
First-hand testimony (victim, witnesses, law enforcement)	0%	3%	32%	41%	15%	2.74
Character references from <i>business</i> relationships (e.g., employers, landlords, co-workers, teachers)	0%	6%	24%	65%	0%	2.63
Residential status/history/stability	0%	3%	38%	44%	9%	2.62
Defense Counsel's case presentation ( <i>when available</i> )	0%	9%	26%	47%	9%	2.59
Household: relationship/marital status	0%	6%	38%	38%	12%	2.59

Employment status	0%	6%	38%	41%	9%	2.56
Character references from personal relationships (family, friends, neighbors, clergy, etc.)	0%	12%	24%	59%	0%	2.50
Gender of victim	9%	18%	18%	32%	18%	2.34
Federal tier of the registered offense	9%	15%	21%	21%	21%	2.34
Public input & opinion	12%	21%	29%	26%	6%	1.94

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## Appendix A

*Side Two of Form AOC-CR-262: Petition and Order for Termination of Sex Offender Registration*

III. DISTRICT ATTORNEY PRESENT AT HEARING		
The Office of the District Attorney was represented in this matter by (name) _____		
IV. FINDINGS OF FACT		
After a hearing on this petition, the Court finds the following:		
<input type="checkbox"/> 1. The petitioner was required to register as a sex offender under Part 2 of Article 27A of Chapter 14 of the General Statutes for the offense(s) set out above.		
<input type="checkbox"/> 2. The petitioner has been subject to the North Carolina registration requirements of Part 2 of Article 27A for at least ten (10) years beginning with the Date Of Initial NC Registration above.		
<input type="checkbox"/> 3. Since the Date Of Conviction above, the petitioner has not been convicted of any subsequent offense requiring registration under Article 27A of Chapter 14.		
<input type="checkbox"/> 4. Since the completion of his/her sentence for the offense(s) set out above, the petitioner has not been arrested for any offense that would require registration under Article 27A of Chapter 14.		
<input type="checkbox"/> 5. The petitioner served this petition on the Office of the District Attorney at least three (3) weeks prior to the hearing held on this matter.		
<input type="checkbox"/> 6. The petitioner is not a current or potential threat to public safety.		
<input type="checkbox"/> 7. The relief requested by the petitioner complies with the provisions of the federal Jacob Wetterling Act, 42 U.S.C. § 14071, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State.		
<input type="checkbox"/> 8. If the petitioner filed a previous petition for termination under G.S. 14-208.12A that was denied, one year or more has passed since the date of the denial.		
<input type="checkbox"/> 9. If the conviction requiring the petitioner's registration occurred in another state, the petitioner (i) provided written notice to the sheriff of the county where the petitioner was convicted that the petitioner is petitioning the court to terminate the registration requirement and (ii) included with the petition an affidavit, signed by the petitioner, that verifies that the petitioner notified the sheriff of the county where the petitioner was convicted of the petition and that provides the mailing address and contact information for that sheriff.		
V. CONCLUSIONS OF LAW		
After a hearing on this petition, and based on the foregoing findings, the Court concludes as follows: (check one)		
<input type="checkbox"/> 1. The petitioner is entitled to the relief requested. (All of the findings of fact above must be found.)		
<input type="checkbox"/> 2. The petitioner is <b>NOT</b> entitled to the relief requested.		
VI. ORDER		
(check one)		
<input type="checkbox"/> 1. The relief requested by the petitioner is granted and the petitioner's registration under Part 2 of Article 27A of Chapter 14 is hereby ordered terminated. The clerk shall forward a certified copy of this Order to the State Bureau of Investigation, Attn: Criminal Information and Identification Section, Sex Offender Coordination Unit, Building 16B, Post Office Box 29500, Raleigh, NC 27626-0500.		
<input type="checkbox"/> 2. The relief requested by the petitioner is <b>NOT</b> granted and the petitioner shall continue to maintain registration under Part 2 of Article 27A of Chapter 14.		
Date	Name Of Judge (Type Or Print)	Signature Of Judge
<b>NOTE TO CLERK:</b> If the order is granted, mail a certified copy to State Bureau of Investigation, Attn: Criminal Information and Identification Section, Sex Offender Coordination Unit, Building 16B, Post Office Box 29500, Raleigh, NC 27626-0500.		
AOC-CR-262, Side Two, Rev. 12/11 © 2011 Administrative Office of the Courts		

Appendix B

Survey Questionnaire

Please answer the following questions about hearings of petitions for termination of NC sex offender registration. The majority of the questions refer to Finding of Fact #6, of the Petition and Order for Termination of Sex Offender Registration (AOC-CR-262, pg. 2), which is referenced below for your convenience.

IV. FINDINGS OF FACT	
After a hearing on this petition, the Court finds the following:	
<input type="checkbox"/>	1. The petitioner was required to register as a sex offender under Part 2 of Article 27A of Chapter 14 of the General Statutes for the offense(s) set out above.
<input type="checkbox"/>	2. The petitioner has been subject to the North Carolina registration requirements of Part 2 of Article 27A for at least ten (10) years beginning with the Date Of Initial NC Registration above.
<input type="checkbox"/>	3. Since the Date Of Conviction above, the petitioner has not been convicted of any subsequent offense requiring registration under Article 27A of Chapter 14.
<input type="checkbox"/>	4. Since the completion of his/her sentence for the offense(s) set out above, the petitioner has not been arrested for any offense that would require registration under Article 27A of Chapter 14.
<input type="checkbox"/>	5. The petitioner served this petition on the Office of the District Attorney at least three (3) weeks prior to the hearing held on this matter.
<input type="checkbox"/>	6. The petitioner is not a current or potential threat to public safety.
<input type="checkbox"/>	7. The relief requested by the petitioner complies with the provisions of the federal Jacob Wetterling Act, 42 U.S.C. § 14071, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State.
<input type="checkbox"/>	8. If the petitioner filed a previous petition for termination under G.S. 14-208.12A that was denied, one year or more has passed since the date of the denial.
<input type="checkbox"/>	9. If the conviction requiring the petitioner's registration occurred in another state, the petitioner (i) provided written notice to the sheriff of the county where the petitioner was convicted that the petitioner is petitioning the court to terminate the registration requirement and (ii) included with the petition an affidavit, signed by the petitioner, that verifies that the petitioner notified the sheriff of the county where the petitioner was convicted of the petition and that provides the mailing address and contact information for that sheriff.
V. CONCLUSIONS OF LAW	
After a hearing on this petition, and based on the foregoing findings, the Court concludes as follows: (check one)	
<input type="checkbox"/>	1. The petitioner is entitled to the relief requested. (All of the findings of fact above must be found.)
<input type="checkbox"/>	2. The petitioner is NOT entitled to the relief requested.
VI. ORDER	

1. How long have you served as a North Carolina Superior Court Judge? \_\_\_\_\_

2. In all locations combined, approximately how many hearings for termination of sex offender registration have you presided over in the last year (2012)? \_\_\_\_\_

3. For finding of fact # 6, what does "a current or potential threat to public safety" refer to? In your interpretation, this finding includes the petitioner's risk for : \_\_\_\_\_ (Choose all that apply.)

	Strongly Disagree	Disagree	Agree	Strongly Agree
Committing another registerable sexual offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Committing another sexual offense of any kind	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Committing a violent (non-sexual) offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Committing any felony criminal offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Engaging in disorderly, disruptive or nuisance behavior (ie: trespass, loitering, disorderly conduct, public disturbance)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Committing any criminal offense of any kind	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other(specify) or Comment:				

4. Is any of the following information routinely available to you, for making your decision concerning Finding of Fact 6?

	No	Only Sometimes	Yes
Full criminal history & record(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Underlying details of the registered offense & victim information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Age of victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Petitioner's age at time of offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Federal Tier of petitioner's offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
State's case presentation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
District Attorney's opinion/input	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Case presentation by defense counsel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public input, opinion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Probation/parole records	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
History of compliance with registration requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Results/scores from risk assessment test (i.e. Static 99/Static 2000)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mental health records of petitioner (diagnosis, treatment, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Psychological assessment/test results (MMPI, PCL-R, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Psychologist/psychiatrist reports/testimony	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex offender treatment records (if existing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employment records	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Residential records (of petitioner)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Character references (for petitioner)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information about petitioner's household/family support (optional) Comment:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5. Please rate the importance of the following, as would be relevant to your deliberation regarding a petitioner's current or potential threat to public safety. (continues on next pg.)

	Irrelevant	Not Very Important	Sometimes Helpful	Important	Critical
Overall criminal history	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
History of violence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
History of sexual offense arrests/convictions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
History of drug and alcohol related arrests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Registered offense (of petition)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Federal tier of the registered offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Underlying details of the registered offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Age of victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Gender of victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Relationship to victim (known or stranger)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Petitioner's age at offense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Current age of petitioner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Length of time registered in the community & level of supervision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5b. (continued) Please rate the importance of the following, relevant to your deliberation of finding of Fact 6

	Irrelevant	Not Very Important	Sometimes Helpful	Important	Critical
District Attorney input & State's case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
First-hand testimony (victim, witnesses, law enforcement)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Defense Counsel's case presentation ( <i>when available</i> )	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Petitioner's testimony	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Petitioner's self-presentation (appearance, demeanor, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public input, opinion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Probation/parole records, officer testimony	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
History of compliance with registration requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk assessment score (i.e. Static 99)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mental health records & standardized psychological test results	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Professional opinion/reports/testimony of psychologists/psychiatrists	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex offender treatment records/ reports of sex offender treatment provider	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Completion of certified sex offender treatment program	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Completion/ongoing compliance with, <i>other</i> mental health treatment/ programs (group, counseling, medication, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employment status	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Residential status/history/stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Household: relationship/marital status	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Family/community supports	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Character references from <i>business</i> relationships (employers, landlords, co-workers, teachers, caseworkers, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Character references stemming from personal relationships (family, friends, neighbors, clergy, sponsors, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other			<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

For the finding of fact #6., the Superior Court Judge determines "*the petitioner is not a current or potential threat to public safety.*" **With that in mind, please respond to the following:**

	Strongly Disagree	Disagree	Somewhat Agree	Agree	Strongly Agree
6. I am generally comfortable with the responsibility of making this determination.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please respond, about determining a petitioner "*is not a current or potential threat to public safety*"

	Strongly Disagree	Disagree	Somewhat Agree	Agree	Strongly Agree
7. I am generally confident that the types of information routinely available to me at these hearings are enough to aid me in making this determination.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8. There are often other kinds of information that I would like to have routinely available to me, for determining any threat to public safety (Finding of Fact 6.).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Such as: \_\_\_\_\_

9. In your experience, are **most** petitioners at hearings for termination of sex offender registration represented by legal counsel?  Yes  No

10. In your opinion and experience, Sex Offender Registration...	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
...is a necessary & beneficial tool for law enforcement.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...is a deterrent to reoffending.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...is necessary to protect the public.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...is overly required for too many offenses.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
... requirements and violation penalties should be increased for all sex offenders.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Terminating registration for low-risk offenders increases resources available for monitoring higher-risk offenders.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11. In your opinion and experience, <b>Public access</b> to the sex offender registry increases the public's caution & measures to protect themselves.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Public access</b> to the sex offender registry can foster a false sense of security.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Public access</b> to all levels of sex offender's information is necessary for public safety.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Public access</b> to registration information of low-risk sex offenders should be restricted.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Public access</b> to the sex offender registry can potentially hinder societal reintegration, & create detrimental hardships for offenders and their families.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

12. Finally, If you have *any* additional **input, issues or concerns** regarding the finding of Fact 6. assessing a petitioner's current or potential threat to public safety in particular, or hearings for termination of sex offender registration in general, we invite you to please share them here:

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*We sincerely Thank You for your time & participation!*

## Appendix C

## ADDITIONAL RESOURCES

- Ackerman, A., Harris, A., Levenson, J. & Zgoba, K. (2011). "Who are the people in your neighborhood? A descriptive analysis of individuals on public sex offender registries." *International Journal of Law & Psychiatry*, 34(3), 149-159.
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