



Slow justice

Presentencing evaluations that determine the mental state of accused sex offenders drag out the judicial process

Justice should be swift, but the modern American court system is anything but. In the midst of an already lengthy trial, some people convicted of sexual assault in Illinois must submit to a state-mandated mental evaluation before any sentencing can begin. As limited providers and substantial caseloads have resulted in delays in some counties, convicted offenders await a final sentence and victims await closure.

“If someone is found guilty today, we’re not going to have that sex offender evaluation for six months,” says McLean County State’s Attorney Jason Chambers.

The evaluations, begun in 2004, determine the level of risk that a convicted rapist may commit the same crime again and are mandatory in any case

where a court may rule to place an offender on probation. Dr. Kirk Witherspoon, a clinical and forensic psychologist in Moline, is the only doctor licensed to provide the evaluations in Rock Island County.

“The evaluations I do are to gauge evidence of pathology or likelihood to reoffend,” says Witherspoon, who has served on defense teams throughout the state to assess the mental status of those accused of sex offenses. “How important is it to do these evaluations? What I think it does do is let the courts have information that lets them have a realistic determination of risk. In terms of determining how useful it all is, it’s hard to determine when the overall recidivism rates are so low now.”

The evaluations came about in light of testing done on those convicted of driving under the influence, and after hearing concerns from members of the community about offenders who had been released and committed more sex crimes, says Mary K. O'Brien, now an appellate judge in Illinois' Third Appellate District. O'Brien, a former member of the Illinois House, spearheaded the successful legislative effort behind the evaluations before she departed in 2003.

"That is the idea behind some of this legislation: Let's determine at the outset someone's level of risk so circuit judges and prosecutors would know what they're dealing with before sentencing someone, before giving them the mandatory supervised release term," O'Brien says.

That does provide a view of a convict's potential to reoffend, says Norma Kauzlarich, Rock Island County's first assistant state's attorney, but the red tape necessary to proceed to sentencing has also pushed back the process. The county can see about 100 such cases in a year, and while Kauzlarich praised Witherspoon's expedience in administering the evaluations, many times sentencing needs to be pushed back to accommodate the work.

"A normal sentencing is usually set out about six weeks, and these we set about eight weeks out with the thought that we're going to show up and [make a motion to] continue it [to] another two to four weeks," Kauzlarich says.

Going outside the county for an evaluation is possible, Kauzlarich says, but requires the court to determine that the county hasn't complied with the regulation before it can be done. Large caseloads and not enough evaluators are causing the delays in McLean County, Chambers says.

"There's a long list of people who will provide sex offender evaluations in McLean County, but if you look at the list, none of them are here," Chambers says. "They're all booked up in their own counties, too. They're doing them as fast as they can do them competently, but ... there's a demand that the market isn't able to meet. It's already a painful thing for the victims, and it becomes more so when it's dragged out."

The testing itself is an involved process that requires reviewing the case and often delving into past documentation on the convicted person, Witherspoon says. That means opening juvenile records and determining whether the convict has cognitive, social or behavioral deficits that need to be addressed.

"Any salient background information I try to get my hands on and review," Witherspoon says. "A lot of the time, people are doing this because they don't have the courtship or cognitive skills. I'll also give testing for personality when needed, and for sexual offending pathology."

The process needs the proper time investment if it is to be done right, says Lynn Willard, executive director of ABC Counseling. The group has six clinics throughout central Illinois, including the only clinic that serves juvenile convicts in McLean County. For juveniles, a complete evaluation can take as long as three months, but many times, ABC Counseling tries to accomplish the five to 10 hours of clinical work needed in "marathon" sessions, Willard says. Too often, juveniles are waiting in a detention center before they receive sentencing, and ABC Counseling's staff visit them there to finish the evaluations.

Three-hour cram sessions are not an ideal setting for such sensitive clinical work, Willard says. The seven- to 15-page reports generated by the evaluation bring together information from

interviews with school personnel or past psychiatrists who have personal knowledge of the offender, as well as 20 different assessment tools.

"These kids are scared. They're worried, and we have to develop some kind of therapeutic relationship with them before they talk about this very personal stuff," Willard says. "Typically, they would come in once a week for five to 10 weeks."

Organizations with the clinical ability to perform the evaluations still face difficulties. The necessary license, available through the State of Illinois' Sex Offender Management Board, costs \$300 per year per professional. For ABC Counseling, it's a significant expenditure, Willard says.

On top of the need for sensitive pacing is the fact that offenders typically don't start the process prior to their conviction on the advice of their attorneys, Willard says. The situation puts convicts who plan to appeal in a double bind, says John Rekowski, Madison County public defender. Furthermore, Rekowski says, the mandatory nature of the proceeding marks it as a substantial step in the process, an event that legal counsel is usually allowed to attend.

"If you go through a trial where your [defendant] has maintained his innocence throughout, now we go through the evaluations, and the evaluations are not unlike your first time at Alcoholics Anonymous," Rekowski said. "If he's planning on appealing the case, he's going to get a bad evaluation because he's going to say he didn't do it. It's a problem, from a legal point of view."

Madison County doesn't experience the sort of lengthy delays others have reported, according to Assistant State's Attorney Amy Gabriel. All the same, Rekowski questioned the usefulness of the mandate, calling it "feel-good legislation."

"It does not provide any beneficial information in the sentencing process," Rekowski says. "It adds nothing to the mix; it slows down the process; it's expensive. I don't get it."

But in Macon County, where the majority of such cases go through only one evaluator, that step is important for prosecutors, says Elizabeth Dobson, assistant state's attorney and supervisor of the office's sex crimes unit. The roughly six-week delay is not idle time for prosecutors, she says, citing the opportunity to gather victim impact statements as one example.

"It's typically a good time for me to make sure we've made contact with the victim and given them the opportunity to say what they want to," Dobson says. "I don't see six weeks as a waste of time at all. There are things we get done in that time frame."

Any negative effect on victims is hard to gauge in a system that already drags so slowly, says Kaethe Morris Hoffer, deputy executive and legal director of the Chicago Alliance Against Sexual Exploitation. That's when victims decide to hazard the process at all. Those who do face an invasive investigation that, in Illinois, rarely results in conviction. An estimated 11 percent of reported rapes result in an arrest in Illinois, according to 2010 data from the Federal Bureau of Investigation.

"The process itself, there's just no getting around it, is cumbersome, time-consuming and stressful," Morris Hoffer says. "The overwhelming majority of victims of rape choose not even to go to the criminal justice system in the first place because there is at some level an awareness of the challenges of dealing with it."

As traumatic and ineffectual as the process remains for victims, the vast majority of perpetrators are unlikely ever to reoffend, Witherspoon says.

Research on sex offender recidivism rates are scattered throughout years and different states, but many of the piecemeal studies take the same general disposition: A 2000 study from Vermont found sex offenders who received treatment had a 3.8 percent rate of recidivism over 10 years, compared with a 27 percent rate for those who didn't receive treatment. A less rigorously scientific study conducted jointly by Colorado and New Hampshire found New Hampshire sex offenders had 6.2 percent sex-crime re-arrest rate after completing an intensive treatment program, while the recidivism rate was 12.4 percent for those with no treatment. A 2003 Colorado study conducted over the previous decade, cataloging more than 3,000 convicted sex offenders, found the recidivism rate to be 5.3 percent, with a 1 percentage point decrease among those who completed a treatment program.

For comparison, more than 70 percent of armed robbers were re-arrested within three years of incarceration, according to 1994 data, the latest recidivism data available from the Bureau of Justice Statistics.

"Within the last 20 years, there's been what I would call 'moral panic' regarding sex offenses," Witherspoon says. "Recidivism rates for sexual offenses are not only very low, but they're actually getting lower. They've dropped, and they've stayed extremely low, interestingly, since the advent of the Internet."

While Witherspoon maintains that the evaluations do provide useful information to the court, in the case of crimes with such low rates of recidivism, it may be better to rely on cold, impersonal actuarial data in determining risk than even on a clinical assessment, he says.

"Gut feelings aren't worth much, frankly," Witherspoon says. "It's just like a policeman who says, 'I can tell you're lying because you're nervous.'"

If the hand of the law is falling heavily on convicts — even as so few actually get arrested, tried and convicted — it may be because the truths of rape are hard to reconcile. In most cases, victims don't suffer a violent assault in a dark alleyway; Morris Hoffer says most rapes are committed by family, friends or trusted acquaintances. For many victims, it can be difficult to reconcile the perpetrator's character with what he or she has done.

"Typically, a sexual assault is accomplished without the kind of violence that leaves significant, or really any, bodily injury," Morris Hoffer says. "Because our culture still expects that rape is committed by total strangers and with extreme force, many times the victim doesn't think the word 'rape' in her head at the time it's happening." ■

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