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## Examining the Relationship Between Prison Sexual Misconduct and Sexual Recidivism among Federal Sex Offenders

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### ABSTRACT AND ARTICLE INFORMATION

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This study examines how sex offenders who engage in prison sexual misconduct (PSM) compare to other sex offenders who do not offend in prison in terms of sexual, violent, and nonviolent rearrest rates upon their release. Differences in the connection between PSM and recidivism between two groups were also examined: offenders with a history of adult victims (ASO) and offenders with a history of child victims (CSO). The findings reveal that for the sample as a whole, PSM is associated with overall recidivism, but it is not associated specifically with sexual, violent, or nonviolent offending. For ASO, PSM was significantly associated with sexual rearrest but not violent rearrest, while for CSO, PSM was significantly associated with violent rearrest but not sexual rearrest. Implications of these findings and directions for future research are discussed.

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The relationship between prison sexual misconduct (PSM) and sexual recidivism risk is an understudied phenomenon in the sex offender risk assessment literature. To date, there have been only two published studies (Heil et al., 2009; Hsieh et al., 2016) and one unpublished doctoral dissertation (Fleck, 2011) investigating this relationship. Although intuition and the established dynamic risk factor of 'resistance to rules and supervision' (Mann et al., 2010, pp. 202) suggest that prison sexual misconduct may be relevant in the assessment of sexual recidivism risk, it is as yet not on its own a universally accepted empirically supported risk factor.

Despite this, some courts and forensic evaluators have placed significant weight on the presence or absence of PSM as an exacerbating or protective factor in making judgments in sexually violent predator proceedings. In *U.S. v. Villegas* (2012), the US District court of North Carolina found the government did not prove by clear and convincing evidence that the respondent would have serious difficulty refraining from sexually violent conduct or child molestation and stated the following in partial support of its opinion: "However, none of his disciplinary infractions related to conduct of a sexual nature, nor did they involve possession of sexually explicit or sexually prohibited materials." In another civil commitment case, the court also found the lack of institutional misconduct to be significant: "[The court] finds significant that [he] has demonstrated significant volitional control in remaining virtually infraction-free in the BOP, with the exception of one non-sexual citation" (*US v. Shea*, 2012).

Conversely, courts have also used PSM as a partial basis for ruling in favor of sexually violent predator civil commitment, as in this case: "He has received over forty incident reports since 1999 for behavior including making sexual proposals or threats, engaging in sexual acts, and indecent exposure. Despite repeated sanctions, [he] has continued to engage in this behavior" (*US v. Offarit-Figueroa*, 2012). Given the serious issues of public safety and personal liberty involved in such proceedings, more research is needed to support the use of PSM in evaluating risk of sexual recidivism.

## Literature Review

### General Prison Misconduct and Recidivism

Research on the relationship between overall prison misconduct and general recidivism is generally sparse (Trulson et al., 2011), although it has been studied more than the connection between PSM and

sexual recidivism. Some researchers have found a link between misconduct and recidivism (Brown et al., 2009; Cochran et al., 2014; Gottfredson & Adams, 1982; Hill, 1985; Lattimore et al., 1995; Trulson et al., 2005) while others have found less support for this association (Trulson et al., 2011). On balance, the literature so far tends to support a link between institutional misconduct and general recidivism (Mooney & Daffern, 2011).

### Prison Sexual Misconduct and Sexual Recidivism

Heil and colleagues (2009) published the first study specifically examining the relationship between PSM and sexual recidivism. The period of follow-up for offenders in their study ranged from 4 months to just over 9 years. Slightly more than 40% of offenders with PSM (both with and without prior sex offense histories) were arrested for a new sexual crime over the study period. This compared to 16.7% for offenders with a community sex crime conviction history but no PSM and 24.8% for offenders with a history of a nonsexual conviction that contained sexual criminality in the factual basis, but no PSM. The authors concluded PSM in an institutional setting was a significant risk factor for later sexual recidivism in the community.

Hsieh and colleagues (2016) examined the effect of prison term length, institutional treatment, and institutional disciplinary infractions on recidivism. They found that sex offenders who had been disciplined for PSM were 4.5 times more likely to return to prison with a major parole violation than offenders who were not disciplined. In a logistic regression model focused specifically on sexual recidivism, the presence of any type of institutional disciplinary infractions was the only significant variable. Offenders with any institutional disciplinary infraction were 1.5 times more likely to engage in sexual reoffending compared to those with no disciplinary infractions.

Fleck (2011) also examined whether PSM is predictive of sexual recidivism (as indicated by a new conviction rather than arrest) in her unpublished doctoral dissertation. She found that offenders with a sex offense history but no PSM reoffended at a *higher* rate of reconviction for a sexual offense than sex offenders with PSM. She concluded that her results did not support any significant association between PSM and sexual recidivism in the community. There were tentative findings in her study that multiple instances of PSM were associated with a higher rate of sexual recidivism than expected, but she noted that care should be exercised in interpreting the finding as the number of subjects in that group was small. She also

noted that her subjects were a higher risk group due to the availability of complete file information on these offenders. Therefore, the generalizability of the findings to a group of average-risk offenders was not known.

The limited number and contradictory findings of studies in this nascent area of research leaves the question open as to the nature of the relationship between PSM and subsequent sexual offending in the community. The present study seeks to add to the emerging literature through an examination of how offenders who engage in PSM compare to other sex offenders who do not offend in prison in terms of sexual rearrest rates upon their release. It also seeks to examine whether the link between PSM and sexual recidivism differs for those convicted of an ASO versus those convicted of a CSO. To study this question, two groups of sex offenders will be compared: 1) offenders who have been convicted of a sex offense or other offense that contained sexual misconduct in the factual basis and committed acts of sexual misconduct in a prison setting and 2) offenders who have been convicted of a sex offense or other offense that contained sexual misconduct in the factual basis but did not commit acts of sexual misconduct in a prison setting. These groups will be further separated into those who offended against children (CSO) and those who offended against adults (ASO) as the misconduct-recidivism relationship differences between these two types of sex offenders have yet to be studied in the literature.

## Methods

### Sample

The Adam Walsh Act of 2006 stipulated that all sex offenders in federal custody must be reviewed for possible civil commitment prior to being released. Since then, over 60,000 offenders have been through some level of review. The initial stage of sampling examined all offenders who were reviewed and subsequently released between 2007 and 2009. This yielded a total sample of 3,274 sex offenders.

In order to obtain a sample of inmates most likely to be civilly committed, only those with a history of convictions for sexual assault against an adult or a child were selected from the universe of offenders reviewed and released from custody. As PSM was a relatively rare event within this group, a propensity score analysis was conducted to match released sex offenders with at least one instance of PSM with those who had none. Each previously incarcerated person with PSM was then matched with three with no PSM to obtain the final sample of 1,267 sex offenders. Under the assumption that sex offenders

were not a homogeneous group, the full sample was further broken down into ASOs and CSOs. Only 11 offenders were both ASOs and CSOs and were removed from the analysis.

As over 80% of the sample had been out of custody for at least 5 years, the decision was made to limit the analysis to this time period. The 182 offenders who had been out of custody for less than five years were removed from the analysis. Those with greater than 5 years remained in the sample, but their rearrest observations were censored at the date corresponding to 60 months from their initial release. A centralized database was utilized to collect information on demographics such as race, ethnicity, age, prior criminal history (measured as the presence or absence of criminal convictions), and history of violence.

### Data

#### *Prison Sexual Misconduct*

Any instances of a person convicted of a sexual offense being charged with PSM while incarcerated were collected, save for those that were expunged from their central file. PSM was defined as the following types of infractions: Engaging in Sexual Acts, Assault with Serious Injury, Making Sexual Proposal or Threat, Indecent Exposure, Sexual Assault with force, and Sexual Assault with no force. As the frequency of these events within the sample was skewed, this variable was dichotomized where 0 = No PSM, and 1 = One or more PSM.

#### *Recidivism*

Recidivism was defined as any rearrest occurring between the date the offender was released from federal custody and the date the National Crime Information Center (NCIC) report was generated. Multi-state record checks were run on all offenders, as not all states report arrest information to the FBI clearinghouse. Arrests described as technical violations of supervised release and those listed as failure to register were all coded as supervised release violations. Supervised release violations that were the result of a criminal arrest were coded as new arrests for criminal behavior.

Offenses coded as new crimes were broken down into five categories. Arrests with no evidence of sexual assault or violence were categorized as non-sexual/non-violent (e.g., DWI, burglary, property crimes). Those lacking a sexual element but that contained violence were categorized as violent/non-sexual (e.g., assault, robbery, domestic violence). Sexual offenses were defined as those containing a sexual element, whether due to direct contact with a victim (sexual assault), attempted or no-direct contact

(e.g., exposure), or the possession or distribution of child pornography<sup>i</sup>.

### Analysis

Initially, the association between PSM and recidivism was explored by examining the differences in rates of failure for various types of recidivism between those that had PSM and those that did not. Phase two of the analysis utilized logistic regression to examine the effect of PSM on recidivism while controlling for this effect with other known criminogenically significant variables. In addition to looking at these effects for the entire sample, a further separate logistic regression analysis was performed on those identified as ASO and CSO.

With regard to demographics, approximately 20% of the full sample was non-minority or White. The percentage of non-minority offenders was significantly lower for those identified as ASOs than for CSOs,  $\chi^2(1, N = 1085) = 22.34, p < .001$ . Offenders' mean age at release was 40 for the entire sample. CSOs were significantly younger at release than ASOs,  $t(1083) = 5.85, p < .001$ . Roughly 40% of the full sample had a prior criminal history, and a little over 40% had a history of violence. A significantly higher percentage of ASOs had a prior criminal history than did CSOs,  $\chi^2(1, N = 998) = 8.28, p < .01$ . Similarly, ASOs were more likely to have a history of violence than CSOs,  $\chi^2(1, N = 998) = 25.21, p < .001$ .

**Table 1: Sample Descriptive Statistics**

	All Sex Offenders ( <i>N</i> = 1085)	ASOs ( <i>N</i> = 489)	CSOs ( <i>N</i> = 596)
	Freq/Mean (%)	Freq/Mean (%)	Freq/Mean (%)
<b>Recidivism</b>			
Any	732 (67.5)	342 (70.0)	390 (65.4)
Non-Violent	312 (28.8)	159 (32.5)	153 (25.8) *
Violent	214 (19.7)	103 (21.1)	111 (18.6)
Sexual	60 (5.5)	27 (5.5)	33 (5.5)
<b>Independent Variable of Interest</b>			
Prison Sexual Misconduct	280 (25.8)	126 (25.8)	154 (25.8)
<b>Independent Controls</b>			
Race (1 = Non-Minority)	235 (21.7)	74 (15.1)	161 (27.0) *
Prior Criminal History	392 (39.3)	204 (44.1)	188 (35.1) *
History of Violence	419 (42.0)	233 (50.4)	186 (34.7) *
Age at Release	40.5	42.6	38.8*

Note: \* Indicates Statistical Significance at  $p < .05$

## Results

### Sample Description

Table 1 describes the degree to which offenders recidivated in the five years after release from custody, along with descriptions of various independent variables used in the logistic regression models. The majority of sex offenders were rearrested during this period (67%), with the largest percentage of these for non-violent offenses (28.8%). Violent offenses were the next most frequent type of rearrest (19.7%), followed by sex offenses at 5.5%. These trends were also observed when the sample was split between ASOs and CSOs. Approximately one quarter of the full sample had any charges for PSM. This percentage remained consistent across both adult and child sex offenders samples.

### Analytical Results

Table 2 shows the results of the chi-square analysis of rates of recidivism by sex offender type and the presence or absence of PSM. For all sex offenders, and sex offender types, those who had any PSM were more likely to recidivate generally than those who did not (ALL:  $\chi^2(1, N = 999) = 18.16, p < .001$ , ASO:  $\chi^2(1, N = 463) = 5.60, p < .01$ , CSO:  $\chi^2(1, N = 536) = 13.23, p < .001$ ). No significant differences emerged when examining non-violent offending across all sex offender types and PSM. The proportion of those who had PSM and violent recidivism was significantly higher for all sex offenders ( $\chi^2(1, N = 999) = 8.57, p < .01$ ) and CSOs ( $\chi^2(1, N = 536) = 13.89, p < .001$ ), respectively. Finally, only ASOs showed any difference with regard to sexual recidivism: those with PSM had a significantly higher rate of sexual recidivism than those who did not ( $\chi^2(1, N = 463) = 4.63, p < .05$ ).

**Table 2: Comparison between with and without Instances of PSM**

	All Sex Offenders (N = 1085)		ASOs (N = 489)		CSOs (N = 596)	
	PSM Yes	PSM No	PSM Yes	PSM No	PSM Yes	PSM No
Any Recidivism	77.27**	62.86	78.15**	66.57	76.55**	60.00
Non-Violent	31.06	26.80	36.97	30.23	26.21	23.79
Violent	25.76**	17.41	22.69	20.93	28.28**	14.32
Sexual	6.82	4.90	9.24*	4.07	4.83	5.63

Note: \*\* Indicates Statistical Significance at  $p < .01$

Table 3 represents the results from the logistic regression analysis of the full sample. With regard to the effects of PSM on various types of recidivism for the full sample, we found that PSM was significantly related to any recidivism – those offenders who had at least one instance of PSM had a 1.7 times increase in the odds of reoffending after release than those who did not ( $p < .01$ ,  $OR = 1.701$ ). The presence of PSM was not significant, however, for non-violent, violent, or sexual recidivism for the full sample.

In terms of offender characteristics, age at release was significantly associated with a decrease in all types of re-offending except for sexual recidivism (Any:  $p < .01$ ,  $OR = 0.962$ ; non-violent:  $p < .05$ ,  $OR = 0.983$ ; violent:  $p < .01$ ,  $OR = 0.967$ ). The minority status of released sex offenders showed that non-minority offenders had decreased odds of having any episodes of recidivism ( $p < .01$ ,  $OR = 0.438$ ) or any non-violent recidivism ( $p < .01$ ,  $OR = 0.563$ ) by 56% and 44% respectively. A history of violence was associated with a 1.8 times increase in the odds of any recidivism ( $p < .01$ ,  $OR = 1.835$ ) and an increase of 1.9 times in the odds of violent recidivism ( $p < .01$ ,  $OR = 1.967$ ) for the full sample. Finally, having a prior criminal history contributed to a 1.8 times increase in the odds of any recidivism event ( $p < .01$ ,  $OR = 1.822$ ) as compared to those with no prior criminal history.

Table 4 presents the same logistic regression analysis but for the ASO sample. In this analysis, PSM was a significant predictor of sexual re-offending, where the presence of this form of misconduct was responsible for an almost 2.5 times increase in the odds of sexually re-offending ( $p < .05$ ,  $OR = 2.453$ ).

Age at release contributed to a decrease in the odds of any recidivism ( $p < .01$ ,  $OR = 0.991$ ) and violent recidivism ( $p < .05$ ,  $OR = 0.969$ ) for the ASO sample. Minority status was not significant for any type of reoffending in this model. Having a history of violence was a significant predictor for any recidivism ( $p < .05$ ,  $OR = 1.637$ ) and violent recidivism ( $p < .01$ ,  $OR = 1.756$ ) where both increased the odds of being rearrested by 1.6 and 1.7 times, respectively. Having a history of prior criminality was not associated with any type of recidivism.

The logistic regression results for CSO are presented in Table 5. Unlike the ASO sample, PSM had no relationship with sexual recidivism for CSO. PSM was a significant predictor of any recidivism ( $p < .05$ ,  $OR = 1.779$ ), increasing the odds of re-arrest 1.8 times for those offenders with a history of PSM. PSM was also associated with an almost 2 times increase in the odds of violent recidivism ( $p < .01$ ,  $OR = 1.902$ ).

**Table 3: Logistic Regression with Controls: PSM & Recidivism with Full Sample**

	Any Recidivism (N = 732)		Non-Violent (N = 312)		Violent (N = 214)		Sexual (N = 60)	
	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$
PSM (1=Yes)	0.531	1.701**	0.113	1.120	0.178	1.378	0.310	1.364
Age at Release	-0.039	0.962**	-0.017	0.983*	0.008	0.967**	-0.025	0.975
Race (1=Non-Minority)	-0.728	0.483**	-0.575	0.563**	0.229	0.713	-0.002	0.998
Hx of Violence	0.060	1.835**	0.221	1.248	0.189	1.967**	-0.122	0.885
Prior Criminal Hx	0.600	1.822**	0.320	1.378	0.188	1.336	-0.032	0.968

Note: \*\* Indicates Statistical Significance at  $p < .01$

**Table 4: Logistic Regression with Controls: PSM & Recidivism with ASOs**

	Any Recidivism (N = 332)		Non-Violent (N = 148)		Violent (N = 99)		Sexual (N = 25)	
	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$
PSM (1=Yes)	0.499	1.647	0.279	1.322	-0.002	0.998	0.897	2.453*
Age at Release	-0.419	0.959**	-0.009	0.991	-0.310	0.969*	-0.031	0.969
Race (1=Non-Minority)	-0.408	0.665	-0.339	0.712	-0.133	0.875	0.023	1.023
Hx of Violence	0.489	1.637*	-0.011	0.989	0.563	1.756*	-0.587	0.556
Prior Criminal Hx	0.334	1.397	0.256	1.292	-0.102	0.902	0.516	1.676
<i>Note:</i> ** Indicates Statistical Significance at $p < .01$ . * Indicates Statistical Significance at $p < .05$								

How old the offender was when released was significantly associated with a decrease in the odds of any recidivism ( $p < .01$ ,  $OR = 0.962$ ), non-violent ( $p < .05$ ,  $OR = 0.968$ ) and violent ( $p < .05$ ,  $OR = 0.977$ ). Minority status was only significantly associated with having any recidivism, whereas non-minority offenders had a 57% decrease in the likelihood of being rearrested ( $p < .01$ ,  $OR = 0.427$ ) compared to minority offenders. Those CSOs with a history of violence were more likely to be re-arrested ( $p < .01$ ,  $OR = 2.058$ ) and to be re-arrested for a violent offense ( $p < .01$ ,  $OR = 2.039$ ) than those without such a history. Similarly, for those with a prior criminal history, the odds of being rearrested for any offense, or for a violent offense, increased by a factor of 2 ( $p < .01$ ,  $OR = 2.295$ , and  $p < .05$ ,  $OR = 2.054$ , respectively).

## Discussion

This study attempted to answer the question of whether PSM is associated with a higher risk of sexual recidivism in the community. In addition, it aimed to determine if the potential link between PSM and sexual recidivism differed between sex offenders with a history of ASO and those with a history of CSO. When all sex offenders were grouped together, we found no significant association between PSM and rearrest for sexual offenses. Differences emerged when ASO and CSO were examined separately – PSM was a significant predictor of sexual rearrest for ASO, but it was not for CSO. The opposite finding was observed with respect to violent rearrest – PSM was not significantly associated with violent rearrest for ASOs, but it was for CSOs. Finally, PSM was significantly associated with any rearrest for the sample as a whole, as well as for ASO and CSO.

Our findings demonstrate a clear connection between PSM and general recidivism. However, the relationship between PSM and sexual recidivism is more complicated. If we had simply grouped all sex offenders together, we would have found no significant connection between PSM and sexual recidivism. However, when we analyzed ASO and CSO separately, we found that PSM is associated with sexual recidivism for ASO but not for CSO. CSO with no PSM are just as likely to sexually reoffend as those with PSM, while ASO with PSM are more likely to sexually reoffend than those without PSM.

Sex offenders with child victims are not a homogenous group. One of the most important distinctions among this group is whether the offender has pedophilic tendencies or has been diagnosed as a pedophile. This is especially important as pedophilia is a robust predictor of sexual recidivism (Hanson & Busierre, 1998). As we did not have data on the diagnostic status of our CSO group, it is unknown whether there were differences between those CSO with PSM and without PSM in terms of pedophilia diagnosis. One possibility is that pedophilic CSOs do not have access to their preferred victim pool in prison and are therefore less likely to engage in PSM, while non-pedophilic CSO are more diffuse in their sexual preferences and therefore possibly more likely to engage in PSM. This is one possible explanation for our findings that CSO with PSM are no more likely to reoffend than those without, since once back in the community the risk would be reversed, with pedophilic (and presumably low PSM) CSO at increased risk of sexual recidivism as compared to non-pedophilic (and presumably higher PSM) CSO. If this theory is true, it would also explain our findings that CSOs with PSM were more likely to commit violent offenses than those without PSM, since non-pedophilic CSOs were less specialized in their offending and possibly higher in antisocial markers.

**Table 5: Logistic Regression with Controls: PSM & Recidivism with CSOs**

	Any Recidivism (N = 344)		Non-Violent (N = 131)		Violent (N = 97)		Sexual (N = 29)	
	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$	$\beta$	Exp $\beta$
PSM (1=Yes)	0.576	1.779*	-0.062	0.939	0.643	1.902**	-0.234	0.791
Age at Release	-0.386	0.962**	-0.032	0.968*	-0.041	0.959*	-0.023	0.977
Race (1=Non-Minority)	-0.852	0.427**	-0.563	0.569	-0.344	0.708	-0.067	0.935
Hx of Violence	0.721	2.058*	0.391	1.479	0.712	2.039*	0.338	1.403
Prior Criminal Hx	0.830	2.295**	0.369	1.447	0.720	2.054*	-0.694	0.499

*Note:* \*\* Indicates Statistical Significance at  $p < .01$ . \* Indicates Statistical Significance at  $p < .05$

We also note that although there was no significant difference between PSM and no PSM for sexual recidivism of CSO, the direction of the non-significant difference was toward CSO with PSM having a slightly *lower* rate of sexual recidivism, which would be consistent with the above-stated theory.

### Limitations

One of the main limitations of the work presented here is the reliance on official documentation as the source of both prison misconduct and recidivism. As these events are subject to detection and official interpretation, the probability exists that both of these items might be undercounted. Another issue relates to the problem of generalization to non-federal sex offenders. Those in the federal system charged with child molestation or adult rape are largely comprised of individuals from the District of Columbia, tribal lands, military bases and national parks. This is due, in large part, to the fact that U.S. based sex offenses that contain an element of contact fall under the jurisdiction of the state. It is possible then, that the sexual offenders presented in this paper would not be representative of those found in a state facility.

### Conclusion

With respect to the question of using PSM in risk assessment for sex offenders, the results of our study suggest that evaluators and legal decision-makers should exercise caution in relying too heavily on this factor, particularly with CSOs. While our results suggest that PSM is a risk factor for sexual recidivism in ASOs and not CSOs, it should be emphasized that this study is the first to identify this pattern. Replication will be needed to demonstrate this as a robust finding.

Further, the reasons for the differences between CSO and ASO in the PSM-recidivism link are unclear. Numerous studies, however, have identified differences between ASOs and CSOs. For example, they have been found to differ on such dimensions as criminal versatility (Simon, 2000), impulsivity (Bard et al., 1987), type of recidivism (Hansen & Bussiere, 1998), psychopathy (Seto & Barbaree, 1999), sexual compulsivity, drug charges, and physical force used during sex offending (Ryan et al., 2016). How any of these or other factors might affect the link between PSM and recidivism for ASO is unknown and is an area for exploration in future research.

Finally, it is also worth noting that the absence of PSM is not a protective factor, particularly for CSOs, which is consistent with the general idea in risk assessment that the absence of an aggravating factor is not, in itself, a protective factor. In combination with the previous two peer-reviewed studies in this area (Heil et al., 2009; Hsieh et al., 2016), evidence is emerging that indicates that PSM is a possible risk factor for sexual re-offense, but our findings suggest the extent to which it is predictive may depend on the type of offender being considered.

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### *About the Authors*

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### Endnotes

- <sup>i</sup> Offenses involving the production of child pornography were coded as contact offenses.