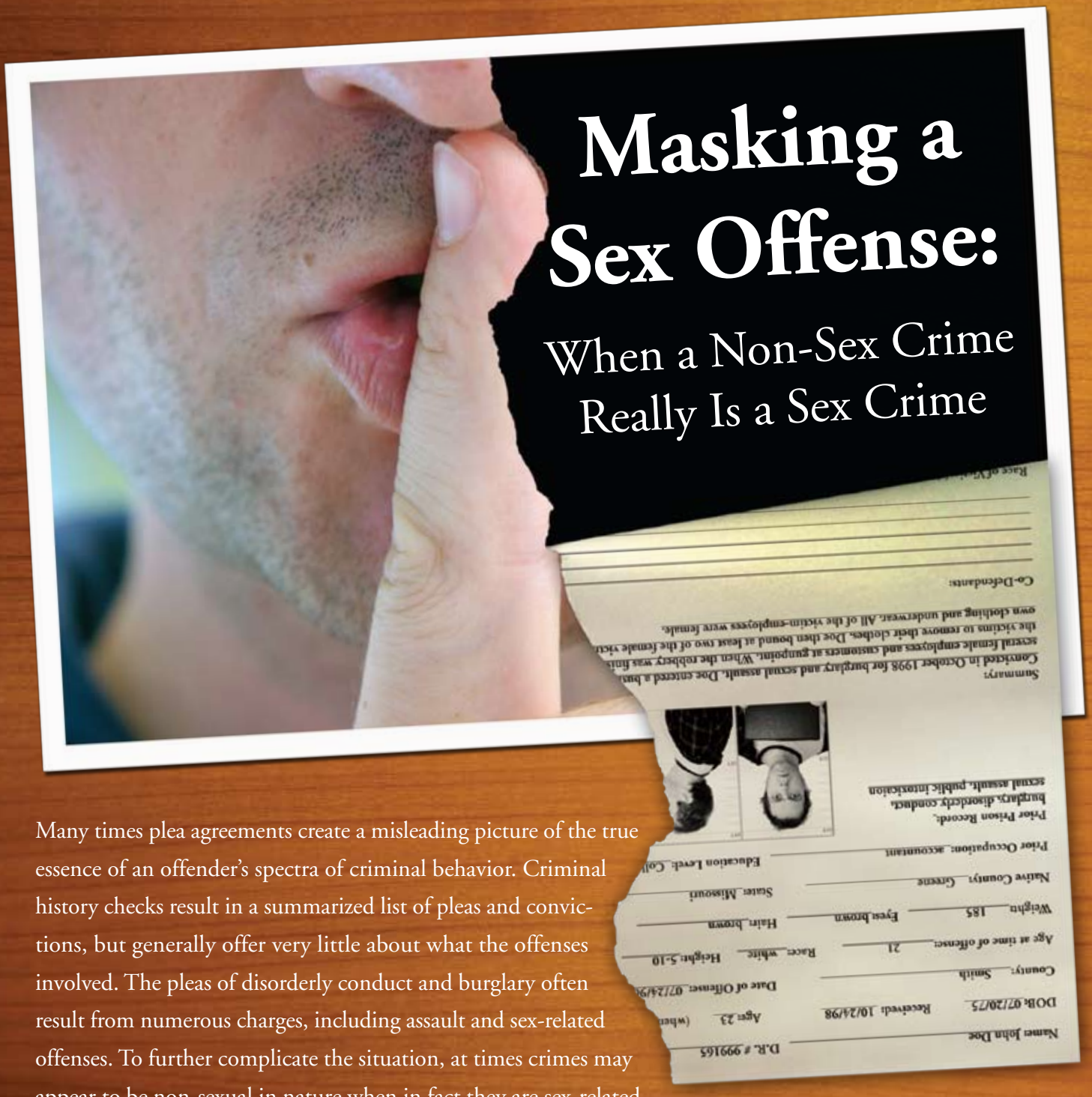
By Scott A. Johnson, MA, LP, DABPS

Masking a Sex Offense:

When a Non-Sex Crime Really Is a Sex Crime



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After studying this article, participants should be better able to do the following:

1. Illustrate the importance of obtaining and utilizing official criminal records and police reports.
2. Explain the benefits and outcome of labeling and charging sex and sex-related offenses.
3. Identify how sex offenders slip through the radar.

KEY WORDS: sex offense, investigation of sex crimes, sex-related offenses, burglary sex crime, robbery sex crime
TARGET AUDIENCE: Social workers and therapists
PROGRAM LEVEL: Basic
DISCLOSURE: The author has nothing to disclose.
PREREQUISITES: None

Problem

Cases arise when a crime was committed along with a sexual offense, but the primary motive was not sexual. Imagine a crime that involved some type of sexual act, but was not directly sexual in nature, a crime when the offender denies any sexual intent or sexual behavior. It can be difficult to determine whether the sexual behavior was incidental, accidental, or in fact deliberate. The ramification is serious: If the offender engaged in a sex or sex-related crime and is not convicted of a sex offense, then the offender slips through the legal system and may continue to sexually offend without being on anyone's radar. The result: The sex offender is not convicted as a sexual offender. Several case examples will help to illustrate the complexities that are involved in making such a determination.

Robbery, Assault, and Rape Example

A young offender was incarcerated for his only known sex offense. His criminal history included numerous convictions and plea agreements involving burglary and other general offenses. His criminal conviction history began at age 14. His most recent offense involved breaking into a home and raping the female resident. After reviewing his lengthy juvenile and adult criminal history, I obtained copies of the criminal complaints of his prior convictions, most of which involved burglaries. No one expected to hear what I had found.

Ten years prior he had received his first juvenile conviction for burglary (age 14), which involved breaking into the home of an elderly couple with three accomplices. After he and his accomplices severely beat the male victim, he took the elderly female victim upstairs and attempted to rape her. He was stopped by his accomplices after he began digital penetration. No one suspected that this "burglary" conviction was sex-related, nor did anyone have any idea of the severity of the assaultive behavior exhibited upon the victims. **Records then indicated that several more burglary convictions involved rape or attempted rape as well.**

This is an excellent case to illustrate the importance and necessity of obtaining detailed information concerning all significant offenses any sex offender has (see Johnson, 2005; Johnson, 2007). After interviews and a careful review of this offender's criminal records, this offender was deemed **not a primary sexual offender, but an impulsive criminal**. He was a predator when it came to selecting his victims and engaging in violent crime. But he offended sexually simply when the opportunity presented itself. The sexual offenses occurred as part of and after completing the primary crimes of robbery and burglary. He was a generally violent criminal. It would be imperative to charge and convict him with sex offenses in addition to the other crimes he commits, so as not to allow his sexual behavior to go unnoticed.

Robbery Example

A middle-aged man was convicted of several counts of robbery. The offenses involved the same general theme and pattern of behavior. He entered a business and robbed several female employees and customers at gunpoint. When the robbery was finished, he forced the victims to remove their clothes. He bound at least two of the female victims with their own clothing and underwear. All of the victim-employees were female, and only a couple of the customers were male. **The offender denies that he had any sexual intent. Was this a sex offense?** If so, was the sexual component of having the victims remove their clothing a primary or secondary function of the offense?

Admittedly the offense was primarily robbery, not so much a sex offense. The offender clearly wanted the money. On the other hand, the offense involved sexual dynamics and therefore was a sex-related offense. He may well have forced the victims to remove their clothing to prevent them from escaping until he was gone. Certainly the offender's thinking has some possible merit. The victims would not likely attempt to escape as quickly if they are naked. Or would they? If someone fears for his or her safety or fears for his or her life, whether he/she is naked or clothed may play little if any role in an attempt to escape and to find help. However, even in the midst of a life and death crisis, pride and embarrassment can be powerful emotions and need to be factored into the victim's judgment and decision. To flee immediately or to wait and re-dress may be a struggle for the victim. In general, the offender's decision to have the victims remove their clothing appears to be an effective and integral part of the modus operandi, allowing the offender to successfully escape.

Sorting Through the Details

How should one go about determining the truth? Many offenders provide detailed con-

The Gray Area: What Constitutes a Sex Offense?

A sex offense is ambiguous by definition. Though specifics can vary from state to state, the term itself can refer to anyone convicted of crimes involving sex, including rape, molestation, sexual harassment, and pornography production or distribution (Peterson, 2009). But what should constitute a sex offense?

A new addition to the file of questionable or controversial sex offenses is the issue of "sexting," or sending nude or semi-nude pictures or videos. Text messages are now a common method of communication among teens, but the ease of such new technology also opens teens up to potentially devastating ramifications of impulsive behavior. Suggestive text messages expose youths to psychological and legal repercussions. The seriousness of sexting was most recently illustrated by Cincinnati teen Jessica Logan's suicide after the accidental forward of sexually explicit photos she sent to her boyfriend (Bassett, 2009). With this case forefront in the news, Philip Alpert, an 18-year-old Florida resident, was labeled a sex offender for forwarding a text message containing a nude photo of his then 16-year-old girlfriend. His girlfriend sent him the provacative photo, and Alpert forwarded it after the couple had a fight. Alpert is now a registered sex offender for distributing child pornography; he has since been expelled from college, has been unable to find a job, and will have this record until he is 43 (Bassett, 2009). While some assert that sexting is not serious enough to warrant the same punishments as other sexual predators, others argue that sexting is just as damaging and could be a stepping stone to other sexual offenses.

Many states are tightening up holes in sex offense laws, hoping to deter these "gray area" sexual deviants before their offenses become more serious. But where is the line drawn? A Tennessee man, then 19, was charged with statutory rape when the parents of his 15-year-old girlfriend reported him. The man was added to Tennessee's list of registered sex offenders. Nine years later, this man is an upstanding citizen, happily married to his girlfriend, and the couple has two children (Peterson, 2009). Despite their family's—including the girl's parents who originally filed the report—efforts, he is still a registered sex offender. Public urination and streaking are also sexual offenses in some states, but these offenses may not come from an intent to do harm. Intent cannot be reliably documented, however, and such actions could still offend or frighten those around.

But do such intermediary offenses warrant the same label as child molestation or rape, when an individual's reputation and record might never recover from such a black mark? "When we lump the technicalities in with the dangerous and predatory, it takes away from the seriousness of many crimes. It is also responsible for making members of the registry a target for scorn and ridicule. Some may say the offenders should have known better . . . but hindsight is 20/20" (Peterson, 2008). The question remains, however—what truly constitutes a harmless technicality from an innocent individual and what is a warning sign from an emerging sexual predator?

References

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Peterson, S. (2009, Feb. 3). Definition of a sex offender. *The All State.* Retrieved June 29, 2009, from http://www.theallstate.com/2.10101/definition-of-a-sex-offender-1.1341319 ■

fessions, and with proper and consistent questioning will admit that they had some degree of sexual intent in their offense. However, there are offenders who refuse to cooperate with questioning, or who provide only those details that allow them to save face. For our robbery example, the offender has little to lose to admit that he robbed the victims. He pled guilty, and the behavior involved in the robbery was not horrific in and of itself. The offender's ego sustains little insult admitting to his robbery behavior. But the ramifications of admitting that he was sexually attracted to or aroused by any of the victims, or that his motives for having the victims remove their clothing was in any way sexually gratifying, carries more severe consequences. It is not as settling on one's ego to admit that he had sexual intent, that he was sexually aroused, or that he may have committed a sexual offense. The offender may fear that he would be charged with a sexual offense if he admitted the sexual interest or intent. In addition, in many states, he would have been labeled a sexual offender, undergone a sex offender assessment (which he indeed was ordered to do), face possible recommendations of having to participate in sex offender treatment, and lastly, be assigned a risk level so as to warn the community of his impending release and face other community notification procedures. So as you can see, the offender has little to gain by admitting any sexual intent or sexual behavior in his offense.

But how could he force the victims to remove their clothing and not have at least a small degree of sexual intent? I argue that would be highly unlikely.

An important fact here is that after examining several of the robber's previous crimes, the pattern of having the victims remove their clothing was escalated to using the clothing to bind the victims. All of the primary victims (store clerks) were female. The escalation involved having the females bound with their own underwear. **Clearly the offender's behavior is escalating into direct sexual intent and sexual behavior.**

The other side of this dilemma is the victim's perception. In fact, the victim's perception is an important factor determining what type of crime was committed. For example, consider sexual and nonsexual harassment, or even exposing one's genitals in public. It does not matter what the offender's intentions were. **What the victim perceived to have occurred and how the victim was impacted or harmed is significant when determining if the crime was sex-related.** Other crimes, including domestic abuse and sexual offenses, rely heavily on the victim's perception rather than on the accused offender's

explanation. One of the reasons why the offender's explanation is less credible than the victim's is that at times the accused has little to gain by being honest. The accused would certainly be prosecuted much easier if they confess, and if they do not cooperate by providing a confession, they hope to make a plea that lessens the punishment or perhaps even results in pleading guilty to a much less serious crime.

Consider the victim's perception and experience of the offense. If the victim believes that he or she is being harassed or abused, it is likely that in some way he or she is. For the man who was accused of exposing, he may claim that he was simply urinating in public. But what is the difference? Whether he intended for anyone to see his penis may be an important question to determine whether the offense was primarily sexual in nature or simply a functional component to urinating. The bottom line is that regardless of whether he intended to expose to anyone, he was aware that someone might see him. And it is no accident if someone does see him. If he urinates outdoors, there is a high likelihood that someone may see him. If he chooses to urinate outdoors in the city, the chances of being seen are greatly increased. Regardless of his motives, however, anyone seeing him may have been victimized, and the scope of the victimization varies widely depending on numerous factors including the victim's perceptions, personalities, experiences, and general psychological well being. The victims have no way to know whether the man will rape or assault them, whether he is simply exposing himself, or whether he was in fact simply urinating in public. Regardless, the victims were affected; they saw the man's penis, and therefore the offense was sexual in nature. The bottom line is that the offender chose to expose his penis regardless of his intent to be seen, and he was seen. In this case he should be charged with a sex offense in addition to the public urination.

Also, many offenders do not consider their criminal behavior to be criminal or wrong. Many justify their actions and blame the victim or circumstance, such as being under the influence of drugs or alcohol, for "causing" them to behave as they did. But the reality is that they engaged in behavior that caused someone to feel victimized and/or to have experienced psychological, physical, or sexual harm. I do not believe that anyone would disagree that if someone forced you to remove your clothes, that you may experience at least some sense of having been sexually violated. Even worse, you also may fear being raped in that situation. In the robbery case example, at least one of the female victims believed that she was, in fact, going to be raped. Given she was forced to remove her clothing and was bound, why would she not think that she might be raped? Imagine the impact the victims experienced of not knowing if they were to be raped.

In summary, it appears highly likely that the robbery example involved sex offense intent and behavior. The next question is identifying the role that the sexual behavior played in the offense and for the offender. **Was the sexual behavior secondary to the crime of robbery or was it functional for a separate sex crime?**

The secondary role of the sexual behavior (having the victims remove their clothing and being bound) does, in fact, appear to play a functional role for the modus operandi to facilitate successful escape as I have already mentioned. But considering the offender's selection of only female victims (all of the employees robbed were female) increases the likelihood that the offense involved at least some degree of sexual fantasy or sexual intent. Although the apparent primary offense was robbery, the offense behavior still had sexual intent.

Opportunistic or Predatory

Professionals tend to agree on the basic definitions of predatory and opportunistic when applying the terms to sex offenders. However, even when examining what appears to be a clear case of opportunistic or predatory behavior, questions can remain about what degree of premeditation occurred as part of the offense.

Opportunistic sex offenders select their victims more as a lucky find than a preplanned selection process. While these offenders may have been on the lookout for a place to offend, or waiting for the "right time," it is merely chance that they selected the particular victim or situation. They may be out in the community shopping, with no intention of offending, and then see a particular victim type and decide to offend. Their offense is not premeditated; they did not set out that day to rape, but circumstances occurred that this offender type chose to act upon.

Opportunistic does not in any way mean that the offender is not dangerous, but rather the offender may act more on impulse and react to situations rather than plan the offense. **These offenders are still fully responsible for their offense behavior.**

The following example best illustrates this point. A burglar who enters a home with the intention of only stealing, but finds a victim sleeping and then decides to sexually assault the victim, was likely an opportunistic offender. However, if the offender was aware that the victim was home, and if he or she was in any way sexually interested or aroused by the victim, a decision to sexually assault the victim may have come before the offender entered the house. In this case, it would not be opportunistic because the offense situation already included the forethought of rape.

The offender may have intended only to steal, but was aware that he or she was sexually interested in the victim. The line becomes gray here as to whether the intent was to commit a predatory sex offense or whether the primary goal involved theft, and that the sexual behavior occurred as an afterthought. The offender found that his or her situation allowed an easy opportunity to sexually offend. However, one must be careful not to base a decision on whether a crime was predatory or opportunistic solely based on the offender's statements. As mentioned earlier, the offender may have personal and legal reasons not to be honest. Regardless of whether the crime was primarily motivated by robbery or by sex, the crime is both a non-sex and sex-related offense, and the offender should be charged with both the robbery and sex offense.

A predatory sexual offense involves planning on the part of the offender. They plan the offense, select their victim, and perpetrate the crime. This can be much more clear and easy to determine.

Confusion

Other examples of cases that are difficult to determine whether an offender is opportunistic or predatory in nature involve incest and intra-familial sexual offending. Some offenders are both predatory and opportunistic sexual offenders, even when the same victims are molested over a period of time.

Consider a case where a young male sexually abused his younger sister over at least a ten-year period. The sexual abuse involved psychological coercion and at times violent force. He would even have others sexually

molest the victim at the same time he was molesting or raping her. He appears to be an opportunistic sexual offender in that the initial selection of his sister as a victim was likely out of the ease of access he had to her. On the other hand, he reported that he was angry with her because she was spared most of the physical and emotional abuse from their mother, while he and his other siblings would get physically and emotionally beaten regularly. With anger and revenge entering the clinical picture, his offense also becomes one of a predatory nature. This offender is **both an opportunistic and predatory offender**.

Consider another example. The offender breaks into a home and, while stealing items, sees the homeowner naked in the tub or in bed. Now if the offense occurred when the offender did not believe that anyone was home or believed that the owners were sleeping and not likely to have contact with them, then sexual offense was not likely the motive; if sexual contact occurs, it would more likely be opportunistic in nature. On the other hand, it is difficult to prove that the offender was not considering raping the homeowner from the beginning of the offense, knowing that the offense occurred when the offender was aware that the owner was present. Most burglars case the home before entering it to ensure that no one is, in fact, home. At the point the offender deliberately engaged the victim, then the intent becomes more deliberately sexual in nature even if upon entering the home no thought of rape occurred. Consider again that the robber who forces the victims to remove their clothes may well have not intended to sexually assault them, and it is certainly possible that he had no sexual motivation. He may simply have wanted to slow the victims down to increase his chance to escape. **However, it does not imply that the offender should not be charged with a sexual offense.** He should be. His case is no different than when a drunk driver causes an accident—the drunk driver may not have intended to cause an accident, but chose to drive while under the influence, knowingly taking significant risks with the safety of others, and therefore should also be charged with assault or manslaughter.

Conclusion

Many offenses appear to be primarily nonsexual in intent when, in fact, they are highly sexually motivated. Did the robber experience any sexual interest or arousal towards the victims that he bound naked? The victims were clearly sexually violated. One even feared that she would be raped. The offender has nothing to gain by being honest. On the other hand, the veracity of anything that the offender claims has to remain suspect. His behavior in the current offense, as well as his criminal history, suggests that he is not an honest, trustworthy person. His word has to be carefully scrutinized. Criminals take what they want when they want to. Not all are psychopaths; in fact some are capable of rehabilitation and of change. But the criminal who lacks remorse, who is cunning and conning, who appears to be able to talk his way out of anything, and especially those who have psychopathic traits, are extremely challenging to work with. They may successfully con even the most experienced police officer or psychologist. They are masters of deception. At times it is even difficult to determine which offenders are psychopaths, or regardless of whether they are psychopaths, to determine when they are being truthful. Numerous authors have written about the complex difficulties experienced when attempting to determine the veracity of an offender's claims. The victim's statements, the police description of the offense, and the offense situation often provide the most reliable information concerning the offender's behavior and motive. **The offender's version of the offense should never be taken as being totally truthful.**

It is imperative to examine the offender's behavior, motives, victim statements, circumstances, and situation to determine the true motive behind a crime involving any incidental or direct sexual conduct. The sexual behavior may have the appearance of happenstance, or appear that the sexual conduct occurred only to facilitate escape. But the real meaning lies within the offender. **Careful examination of the evidence and careful interviewing strategies help discern the offender's true motives.** It has been this author's experience that any sexual contact or sexual behavior has sexual meaning to the offender, and therefore justifies labeling the behavior as sex-related and labeling the offender as a sex offender.

Many sexual offenders can be both predatory and opportunistic, depending on the circumstances and offense situation. Both the opportunistic and predatory sexual offender are equally dangerous. The predatory offender is more organized and premeditated. The opportunistic offender is more impulsive and responsive to circumstances. However, both make a conscious decision to offend.

It is important to charge offenders with all relevant charges based on the offender's behavior and statements. If any sexual behavior or statements are made, then the appropriate sexual charges should be applied. Whether the sexual behavior occurred as a primary or incidental behavior, it still occurred.

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LEARNING OBJECTIVES

After studying this article, participants should be better able to do the following:

1. Illustrate the importance of obtaining and utilizing official criminal records and police reports.
2. Explain the benefits and outcome of labeling and charging sex and sex-related offenses.
3. Identify how sex offenders slip through the radar.

KEYWORDS: sex offense, investigation of sex crimes, sex-related offenses, burglary sex crime, robbery sex crime

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ABSTRACT

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POST CE TEST QUESTIONS (Answer the following questions after reading the article)

1 The criminal history check
a. always provides an accurate picture of the offender's criminal history.
b. often underestimates the offender's violent criminal history.
c. may disguise an offender's violent history as a result of plea agreements.
d. should never be challenged.
e. Answers b & c

2 The benefits of charging an offender with all apparently relevant sex-related charges include which of the following:
a. The offender slips under the radar.
b. The offender's criminal history more accurately reflects the offender's sex and non-sex-related behavior and motives.
c. Offenses that do not appear as sex-related but in fact are sex-related will be identified.
d. Answers b & c.
e. Answers a & c.

3 A burglar who fondled the victim during the course of the burglary is not a true sex offender and should not be charged with a separate sex offense.
a. True
b. False

4 Sex offenders slip through the radar by
a. concealing their sexual behavior or motives.
b. blaming alcohol or the victim's perceptions.
c. denying any sexual arousal to their victims.
d. offering explanations to justify non-sexual intent for forcing their victim to remove clothing.
e. Answers b & c.
f. Answers a, b, c, & d.
g. Answers b & d.

5 Having the victims remove their clothing to allow the perpetrator to escape has no sexual component.
a. True
b. False

6 Charging offenders with all of the crimes involved in their offense (e.g., assault, DWI, sex assault) helps ensure that the offender's span of criminal interest and activity are documented.
a. True
b. False

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