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**Intellectual Disability, Risk, and Recidivism in an
American Sample of Incarcerated Sexual Offenders**

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts in Forensic Psychology

John Jay College of Criminal Justice

City University of New York

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Abstract

Research suggests that intellectual disabilities (ID) are prevalent among people who sexually offend. Those with ID may differ from their non-disabled counterparts with regard to risk factors associated with recidivism. Additionally, actuarial measures of risk, which are used to make determinations on sentencing and civil commitment, appear to differ in their predictive accuracy among individuals with and without ID. Despite this, little data exists on recidivism in this population, particularly among incarcerated individuals in the United States. The present study sought to compare individuals with and without ID on rates of re-offense, actuarial risk scores, and rates of civil commitment. Data were obtained via archival records for 3,066 individuals who were either released from one of New Jersey's state prisons or selected for civil commitment as sexually violent predators between 1996 and 2007. Police records were used to examine overall recidivism as well as reincarceration for different types of offenses. Individuals with ID did not differ on rates of recidivism or reincarceration but received higher scores on actuarial risk assessments and were more likely to be placed under civil commitment. These results raise important ethical questions about the use of actuarial tools for this population and suggest that risk factors associated with recidivism may differ for those with and without ID.

Keywords: Sexual offending, intellectual disability, risk assessment, recidivism

Intellectual Disability, Risk, and Recidivism in an American Sample of Incarcerated Sexual Offenders

Research indicates that sexual offending is more prevalent among individuals with intellectual disabilities (ID) than it is among those without ID. Studies have reported lower mean intelligence quotient (IQ) scores for sexual offenders compared to nonsexual offenders and non-offenders (Cantor et al., 2005), as well as increased rates of sexual offending relative to other types of offending among people with ID (Barron et al., 2004). Studies examining the rate of ID among individuals who sexually offend have utilized diverse sample sources (e.g., clinical, community, forensic) as well as methods of determining ID (e.g., clinical diagnoses, IQ cutoffs; Lindsay, 2002), and have thus produced varying estimates. A survey of adults with ID who were known to health and social services found that 36% percent had exhibited sexual behaviors that could be construed as a sexual offense, with 9.7% coming into contact with the criminal justice system (McBrien, et al., 2003). Though few studies have examined the prevalence of ID among incarcerated sexual offenders, a recent study utilizing the present sample of individuals incarcerated for sexual offenses found that 19.1% of subjects had ID (Callahan et al., 2021). Several theories exist as to why people with ID sexually offend at higher rates than people without ID, including gaps in sexual knowledge, comorbid mental illnesses, increased rates of childhood sexual abuse, and deviant sexual interests (Craig & Lindsay, 2010).

Despite the prevalence of ID among individuals who sexually offend, little is known about recidivism in this population. This gap in knowledge is consequential for both offenders and the public, as practitioners, judges, and law enforcement officers use predictions of recidivism as the basis for numerous high-stakes decisions, such as sentencing and civil commitment as sexually violent predators (SVP; Baldwin, 2015; Levenson & Morin, 2006). In recent years, researchers

have developed empirically-derived tools, or actuarial risk assessment measures, that tend to outperform clinical judgment in their prediction of recidivism (Hanson & Morton-Bourgon, 2004). However, empirical research in this area has rarely focused on individuals with ID, and some studies have suggested that risk assessment measures may differ in their predictive accuracy among those with and without ID (Blacker et al., 2011; Lofthouse et al., 2013). Moreover, those with ID may differ from their non-ID counterparts in terms of characteristics that have been implicated in recidivism, such as unemployment, a history of child sexual abuse, and romantic relationships (Butterworth et al., 2011; Wissink et al., 2015). Consequently, more research is needed to understand how ID may influence recidivism rates and risk determinations. As such, the present study will explore how individuals with and without ID may differ with regard to risk and recidivism. In addition, this study will examine outcomes regarding civil commitment.

Background: Risk Factors

While research regarding recidivism among individuals with ID who sexually offend is scant, there is evidence that several factors associated with risk for recidivism are more common among those with ID. Intellectual disability is characterized by intellectual and adaptive deficits with onset before age 18 (American Psychiatric Association, 2013). A diagnosis of ID is used to describe individuals with a wide range of abilities. Deficits span several domains and can include differing levels of impairment in judgment, planning, academic learning, independent living, and communication. As a result of these deficits, people with ID are more vulnerable to various adverse conditions, such as poverty and unemployment, a lack of romantic relationships (Emerson, 2007), and abuse (Wissink et al., 2015). These features, in turn, have been linked to recidivism in the non-ID population (Hanson & Bussière, 1998).

Poverty & Employment

Research has demonstrated a link between poverty, unemployment, and intellectual disability (Emerson, 2007). While there is a paucity of research concerning employment among adults with ID, the existing evidence suggests that people with ID face long-term financial difficulties and exclusion from the workforce (Butterworth et al., 2011; Emerson et al., 2005; Larson & Anderson, 2003). In turn, unemployment has been implicated as a risk factor for sexual recidivism among the general population of sexual offenders. Research suggests that there is a negative relationship between post-release employment and re-incarceration among sex offenders (Nally et al., 2014). Furthermore, unstable employment prior to incarceration has been included in several sexual recidivism risk assessment tools (Craig et al., 2005) such as the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R; Epperson et al., 2000). Studies supporting the idea that unemployment is predictive of recidivism, however, have seldom considered the high base rate of unemployment among people with ID. While a pattern of unemployment is prevalent among this population (regardless of offending status), it is unclear whether a relationship exists between unemployment and sexual recidivism for those with ID.

Relationships

Maladaptive social and psychological characteristics associated with recidivism may also be more prevalent among individuals with ID. People with ID may struggle with social and romantic relationships, as this group is less likely to be married or have a romantic partner (Emerson et al., 2005). A lack of romantic relationships, in turn, may be associated with an elevated risk for sexual re-offense. Stability in romantic relationships, as well as living with a partner for an extended period, serve as protective factors against recidivism and are included in

some empirically-derived measures aimed at determining risk (Mann et al., 2010; Hanson & Thornton, 1999). However, the relationship between these characteristics and re-offense among individuals with ID remains unclear.

Abuse & Victim Selection

In addition to lifelong issues with unemployment and relationships, people with ID are more vulnerable to sexual abuse across the lifespan when compared to their non-ID peers (Byrne, 2018; Wissink et al., 2015). Studies have found that compared to people without ID, both children and adults with ID report higher rates of sexual abuse (Byrne, 2018; Wissink et al., 2015). This trend extends to individuals with ID who sexually offend, who report higher rates of sexual abuse compared to both non-offenders with ID and sexual offenders without ID (Hayes, 2009; Lindsay et al., 2012). In addition, a recent study utilizing the current sample found increased rates of childhood sexual abuse for individuals with ID compared to those without ID (Callahan et al., 2021). While childhood sexual abuse does not cause sexual offending, it is considered a risk factor for committing offenses in the future (e.g., Jespersen et al., 2009) as well as recidivism. Offenders who are victims of childhood sexual abuse show a stronger pedophilic preference and re-offend at higher rates (Nunes et al., 2013). A history of abuse has also emerged as a risk factor for recidivism among those with ID (Lindsay et al., 2004). However, it is still unknown whether a history of childhood sexual abuse is equally predictive of recidivism for those with and without ID, as no studies to date have compared the influence of childhood sexual abuse on recidivism among these two populations.

While relatively few studies have compared the offenses of individuals with and without ID, among those that have, some meaningful patterns have emerged. While individuals who

sexually offend in general have lower IQ scores than non-offenders and non-sexual offenders, those with child victims demonstrate the lowest mean IQ relative to these sub-groups (Cantor et al., 2005). Further, using phallometric testing Blanchard and colleagues (2007) found that IQ was negatively correlated with pedophilic preference. Pedophilic preference, in turn, has been linked to recidivism (Proulx et al., 1997). A previous study utilized the present sample to examine offense type and found no relationship between ID and offending against children; however, this study examined the nature of offense rather than the strength of pedophilic preference (Callahan et al., 2021). The study also found that those with ID more often offended against male victims, a finding supported by previous research (Brown & Stein, 1997; Rice et al., 2008). Individuals who offend against males have displayed higher recidivism rates (Harris & Hanson, 2004), and the presence of male victims has been included in risk assessment measures such as the Static-99 (Hanson & Thornton, 1999). While individuals with ID are more likely to have male victims and may display stronger pedophilic preference, a clearer picture of the relationship between ID and victim selection is needed to determine whether these factors are indeed predictive of recidivism for this population.

Risk Assessment

The elevated base rates of demographic, social, and offense-based risk factors among individuals with ID casts doubt on their utility as predictors of recidivism for this population. However, commonly used risk assessment tools often focus on these historical, or static, characteristics of individuals in determining risk (Craig et al., 2005). Actuarial, or empirically-derived, risk assessment measures are used by clinicians and legal professionals to determine sentencing and civil commitment decisions (Baldwin, 2015; Levenson & Morin, 2006). While these tools generally outperform clinical judgment in their prediction of recidivism (Hanson &

Morton-Bourgon, 2004), the validity of these tools in individuals with ID is unclear. Some studies have demonstrated adequate predictive validity for individuals with ID (Rice et al., 2008; Stephens et al., 2018), while others have found that historical/static tools are less accurate for those with ID and have advocated for the consideration of institutional, or dynamic, factors (e.g., successful completion of treatment) for this population (Blacker et al., 2011; Lofthouse et al., 2013). Notably, Stephens and colleagues (2018) found that the Static-99 (Hanson & Thornton, 1999), which uses only historical/static risk factors, produced higher recidivism estimates for individuals with ID compared to those without, despite no increase in re-offense rates for this group. As such, actuarial risk assessment tools that emphasize historical/static variables may overestimate risk for those with ID. While institutional/dynamic risk assessment tools have produced more promising results (Blacker et al., 2011; Lofthouse et al., 2013), a better understanding of recidivism among individuals with ID is needed in order to more accurately predict and prevent re-offense.

Recidivism

There is currently no consensus about whether individuals with ID are more likely to recidivate compared to those without ID. The inclusion of ID itself as a risk factor for recidivism does not appear to improve the predictive accuracy of risk assessment tools (Stephens et al., 2018). A 2005 review found that the reconviction rate for individuals with ID who sexually offend is 6.8 times higher after two years and 3.5 times higher after four years than for those without ID (Craig & Hutchinson, 2005). In contrast, Rice and colleagues (2008) found that participants with ID were less likely to recidivate sexually or violently than those without ID. However, the authors note that the sample of individuals with ID had a shorter follow-up time (12.5 years) on average compared to offenders without ID (20.8 years), and that those with ID may be subject to closer supervision which may have limited their opportunity to re-offend.

In addition to the possibility of closer supervision, other characteristics of individuals with ID who sexually offend, such as victim selection and prosecution patterns, may influence the extent to which recidivism can be accurately measured for this group. Craig and Hutchinson (2005) point out that victim characteristics can be particularly influential in the decision of whether to prosecute offenders with ID, which may impact both rates of re-conviction and characterizations of offending patterns. Sexually inappropriate behavior that does not result in a conviction may also be prevalent among people with ID; a study of adults with ID found that while a significant proportion had exhibited problematic sexual behavior, few had contact with the criminal justice system (McBrien et al., 2003). However, studies regarding both prosecution patterns and recidivism have largely focused on clinical and community referrals from the United Kingdom, Europe, and Canada, where there may be a greater emphasis on treatment within the community or in psychiatric facilities for those with ID (Hogue et al., 2006; Lindsay et al., 2010). As such, it is unclear how individuals with ID might be treated differently within the U.S. justice system, where policies regarding the treatment of sexual offenders may be stricter.

In addition to higher levels of incarceration in the U.S. overall (Walmsley, 2015), several U.S. states have enacted sexually violent predator (SVP) statutes, which allow for post-sentence civil confinement of individuals deemed dangerous or likely to recidivate. In order to be civilly committed, an individual in the State of New Jersey must “suffer from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility” (New Jersey Sexually Violent Predator Act, 2009). As few studies have used U.S. samples to examine risk or recidivism among those with ID, the impact of ID on civil commitment remains unclear. However, evaluators use the results of risk assessment tools as

well as other data on risk factors for recidivism to make determinations, which may differ for those with ID.

Current Study

While historical variables associated with recidivism may be higher among people with ID, it is unclear whether these increase risk to recidivate. Research regarding risk assessment tools and sexual recidivism in those with ID has produced mixed results. In addition, few studies have examined these issues using incarcerated samples in the U.S., where perceptions regarding recidivism may be particularly consequential. Access to alternatives to incarceration may be lower in the U.S., while the overall rates of incarceration are among the highest (Walmsley, 2015). Moreover, several states have enacted statutes that allow for the indefinite post-sentence civil commitment of sexual offenders (Cohen & Jeglic, 2007). Clinicians and legal authorities utilize data regarding recidivism as well as actuarial assessment tools to help determine both sentencing and civil commitment of SVP (Baldwin, 2015; Levenson & Morin, 2006). Individuals who are perceived as high risk or who receive high scores on actuarial risk measures may therefore receive additional prison time and harsher prosecution. A better understanding of risk and recidivism for individuals with ID is crucial in order to avoid over-prosecution and discrimination. As such, the present study sought to add to the existing literature regarding individuals with ID who sexually offend, and to expand previous research to a sample of incarcerated U.S. individuals.

The specific goals of the present study were threefold. The first was to examine whether individuals with ID incarcerated for sexual offenses were more likely to recidivate than those without ID. The second was to compare those with and without ID with regard to actuarial risk assessment measures. Finally, the present study sought to explore whether individuals with ID

were more likely than those without ID to be civilly committed following completion of their sentence. Due to existing evidence regarding elevated risk factors in people with ID, it was hypothesized that those with ID would recidivate at higher rates, receive higher scores on actuarial risk measures, and be civilly committed at higher rates than those without ID.

Methods

Procedures

Data for this study were originally collected as part of a larger study examining sex offender placement decisions within the criminal justice system (Mercado et al., 2013). All data were gathered via archival records from the New Jersey Department of Corrections and the New Jersey State Police criminal records database. IRB approval was obtained from all participating organizations.

Data were gathered for all sexual offenders released from the Adult Diagnostic Treatment Center, a prison-based sex offender treatment facility in New Jersey, between 1996 and 2007 ($n = 833$). In addition, the study collected data for all New Jersey sex offenders committed as SVPs during this period ($n = 366$), as well as a random sample of approximately 45% of all sex offenders released from non-treatment New Jersey State prisons ($n = 1,866$).

Archival records included demographic information, results from risk assessments performed during the subjects' incarceration, and recidivism data. Ten trained research assistants from John Jay College of Criminal Justice were credentialed as NJ Department of Corrections researchers and were responsible for transcribing data from physical records.

The present study also examined the results of evaluations for civil commitment under SVP laws. Offenders in New Jersey are referred for evaluation by a district attorney. Following an evaluation and recommendation by a clinician, the final determination regarding commitment is

made by the court. Archival records were used to compare the proportion of individuals with and without ID who were referred for initial evaluation and ultimately designated SVP.

Participants

The original study had a sample of 3,168 offenders, but for the purpose of this study, only those who had a clear determination of their intellectual status in archival records were included ($N = 3,066$). The current study includes two groups: those with ID ($n = 603$) and those without ID ($n = 2,463$). However, sample size differs significantly for each of the variables tested based on the availability of data for certain measures, and the valid sample size for each variable is included when applicable (valid N). An analysis of missing data by the authors of the original study found that missing values were randomly distributed and consistent with other large-scale archival studies (Mercado et al., 2013).

Subjects averaged 33.38 ($SD = 11.97$) years of age at the time of index offense. Most of the individuals in this sample were White (41.9%, $n = 1,286$) or Black (36.4%, $n = 1,144$), with the remainder being of Latino origin (20.1%; $n = 624$), Asian/Pacific Islander (0.8%, $n = 26$), or of other/unknown race or ethnicity (0.8%, $n = 24$). Most individuals (72.5%; $n = 2,224$) were incarcerated for molestation of a minor child or adult sexual assault (17.8%; $n = 547$), with the remaining 9.6% ($n = 209$) being incarcerated for various non-contact offenses (such as computer-related crimes) or a combination of multiple offenses. The demographics of the sample are similar to those reported by the Bureau of Justice Statistics (2003) on United States sexual offenders as a whole.

Measures

Intellectual Disability

Previous studies have used various criteria to determine ID, including clinical diagnoses and a range of IQ score cutoffs, resulting in significant variability in the estimates of prevalence (Lindsay, 2002). For the present study, eligibility for inclusion in the ID group was determined based on available records. Subjects were categorized as having ID (yes/no) if 1) clinical or institutional records included a diagnosis of ID or mental retardation¹ or 2) scores from intelligence testing indicated an IQ below 80. Individuals labeled as “low-average” intelligence in records were not categorized as having ID unless the term was accompanied by IQ scores or other qualifiers, as some definitions of “low-average” intelligence include individuals who score less than one standard deviation below the mean.

Prior to the publication of the DSM-5, diagnostic criteria for ID specified an IQ score of 70 or below. However, the current definition of ID has been updated to reflect a shift in focus toward adaptive deficits, and no longer includes an IQ cutoff (American Psychiatric Association, 2013). Though many studies continue to use a conservative IQ score of 70 or below to determine limited intellectual functioning (Schalock et al., 2010), others have advocated for the inclusion of subjects with borderline intellectual functioning (Wieland & Zitman, 2016) who fall between 1 and 2 standard deviations below the mean IQ score and display significant neurocognitive, social, and mental health limitations (Peltopuro et al., 2014). The current study uses an IQ score of 80 and includes those with borderline ID in the ID group, as the records for many individuals did not contain enough information to determine the level of disability.

Recidivism

To examine whether rates of re-offense differ for those with and without ID, the present study used New Jersey State Police records to determine recidivism. To fully capture this variable,

¹ The term “mental retardation” is no longer used in clinical practice nor considered appropriate; however, it was used to mean ID at the time of diagnosis for many subjects.

data were collected for each subject regarding a) new charges after release for any crime (total recidivism; yes/no), b) re-incarceration for any crime (yes/no), c) re-incarceration for a sexual offense (yes/no), d) re-incarceration for a violent offense (yes/no), and e) re-incarceration for a non-violent offense (yes/no). The follow-up time ranged from two to 13 years ($M = 6.5$, $SD = 2.76$); follow-up time did not differ for those with and without ID, $t(2,697) = -0.69$, $p = 0.489$. As the majority of those committed as SVP were not released from custody at the time of the study, recidivism data were not collected for this subset. As such, SVP subjects ($n = 366$) are excluded from any analyses regarding recidivism.

Actuarial Risk Assessment Tools

To determine whether individuals with and without ID differ in terms of risk assessment, the present study examined scores from two commonly used measures. In addition to comparing scores for the sample as a whole, a second set of analyses examined differences among individuals who were released (i.e., not civilly committed) in order to better contextualize risk assessment with recidivism.

Static-99. The Static-99 (Hanson & Thornton, 1999) and its variants are the most commonly used actuarial sex offending risk measures in the world (Archer et al., 2006). The measure includes 10 items related to historical/static predictors (shown in Appendix A), which are each assigned a 0, indicating absence, or a 1, indicating presence (with the exception of one item, which is assigned a 0, 1, 2, or 3). Final scores range from 0 to 12. These scores are then translated into four risk levels: “low” (0-1), “moderate-low” (2-3), “moderate-high” (4-5), and “high” (6+). Several studies have demonstrated the predictive accuracy of the Static-99 for both sexual and violent recidivism (Hanson & Morton-Bourgon, 2004; Langton et al., 2007; Nunes et al., 2002). Studies have also reported moderate to excellent interrater reliability, with intraclass correlation

coefficients ranging from .78 (Miller et al., 2012) to .87 (Harris et al., 2003). Total scores, as well as the number of individuals in each risk category, were examined for this study.

Minnesota Sex Offender Screening Tool-Revised. The MnSOST-R (Epperson et al., 2000) is an actuarial risk assessment measure consisting of 16 items, shown in Appendix B. These include 12 items that pertain to sex offending history (historical/static scale) and four that pertain to institutional history (institutional/dynamic scale). Each item is assigned a weighted score between -3 and 4, with total scores ranging from -14 to 30. Research results have suggested that the MnSOST-R is a valid predictor of sexual recidivism (Hanson & Morton-Bourgon, 2004). Studies have reported moderate to excellent interrater reliability, with intraclass correlation coefficients ranging from .74 (Miller et al., 2012) to .87 (Epperson et al., 2003). Results from the historical/static scale, institutional/dynamic scale, and total scale were compared for the present study.

Civil Commitment

Archival records included information regarding SVP evaluation, as well as whether individuals were released or ultimately housed in a unit for SVPs. The present study examined the influence of ID on both a) whether or not an individual underwent an initial evaluation (yes/no) and b) whether or not the evaluation resulted in civil commitment (yes/no).

Results

T-tests were used to compare mean total scores from the Static-99 and MnSOST-R, as well as subscale scores from the MnSOST-R, between individuals with and without ID. Chi-square tests were used to determine group differences in categorical variables, which included Static-99 risk level, all SVP determination variables, and all recidivism variables. As the sample includes individuals ultimately placed under civil commitment, for whom recidivism data is not available,

the present study also performed a second set of analyses using only offenders who were released (“released offenders”; $N = 2,699$) for each variable related to actuarial risk assessment.

Demographics

Of the total sample, 587 (19.1%) individuals met the study’s criteria for the ID group. As depicted in Table 1, ID and non-ID groups differed significantly in terms of race and socioeconomic status. Age at the time of index offense did not differ between the two groups, $t(3,045) = 0.62, p = 0.535$, nor did the nature of index offense, $\chi^2(2, \text{valid } N = 3,048) = 1.13, p = 0.568$. Analyses of categorical variables within the sample as a whole (Table 2) found that 934 (33.4%; valid $N = 2,796$) individuals were recommended for civil commitment by a district attorney and underwent evaluations, while 366 (11.9%; valid $N = 3,065$) were ultimately designated as SVP by a clinician and committed by the court. As a whole, subjects were most often categorized as a “moderate-low” risk for re-offense by the Static-99 (39.3%, valid $N = 2,251$). Of offenders who were released, 903 (42.6%, valid $N = 2,121$) were charged with a new crime, though reincarceration for sex crimes and violent crimes were low (Table 2). Risk assessment scores for the sample as a whole are presented in Table 3.

Recidivism

Individuals with and without ID did not significantly differ with regard to any recidivism variable tested using chi-square (Table 4). Only 13 individuals with ID (4.0%) were reincarcerated for a sexual offense during the follow-up period. The low sexual recidivism rate for the sample as a whole (presented in Table 2) was consistent with previous findings (Hanson & Bussière, 1998; Hanson & Burgon, 2004).

Risk Assessment

Scores on the Static-99 were compared between individuals with and without ID. Overall, those with ID received higher scores on the Static-99 compared to those without ID (Table 5). This was true of both the sample as a whole as well as released individuals. Based on these scores, those with ID were placed into higher risk categories (Table 6). In the sample as a whole, those with ID were more frequently categorized as moderate-high or high risk, and less likely to be categorized as low risk, but did not differ significantly within the moderate-low risk category. Among released individuals, only differences within the low and high categories were significant.

With regard to the MnSOST-R, individuals with ID received higher total scores in both the sample as a whole as well as released individuals (Table 5). Analysis of each subscale found that within both the sample as a whole and among those released, individuals with ID received significantly higher scores on the historical/static scale but did not differ significantly from those without ID with respect to the dynamic/institutional scale.

Civil Commitment

Individuals with ID were more likely to be referred for SVP evaluation (Table 7). With regard to ultimate designation as SVP, the gap between individuals with and without ID was even wider. Individuals with ID comprised 34.7% ($n = 127$) of those civilly committed (valid $N = 366$), compared to 17.0% ($n = 459$) of those not committed (valid $N = 2,699$). Of all individuals with ID 21.7% ($n = 127$) were selected for civil commitment compared to 9.6% ($n = 239$) of individuals without ID.

Discussion

The present study was among the first to examine the relationship between ID, risk, and recidivism in a large, incarcerated sample of U.S. sexual offenders. Previous research has provided conflicting data on recidivism rates, as well as the use of actuarial risk assessments among incarcerated individuals with ID (Craig & Hutchinson, 2005; Rice et al., 2008). Consistent with the study's hypotheses, individuals with ID received higher scores on actuarial risk assessment measures and were referred for civil commitment at higher rates than those without ID. However, individuals with and without ID showed comparable rates of recidivism. Overall, results underscore the need to consider how characteristics associated with ID may influence perceptions of risk, as well as the importance of additional research to determine how risk factors may differ for this population.

Results regarding actuarial assessment were consistent with prior research indicating that those with ID may display elevated historical or static risk factors. In addition to differences on items related to criminal history, those with ID in the present study were less likely to have lived with a partner, as measured by the Static-99, and more likely to have a significant history of unemployment, as measured by the MnSOST-R. These static risk factors, which are elevated in the general population of those with ID, may be partially responsible for the discrepancy in mean static scores between individuals with and without ID. While these factors have been linked to recidivism in those without ID, additional context should be considered for those with ID. Factors unrelated to criminality, such as a lack of ability or opportunity for employment (Butterworth et al., 2011), romantic relationships (Emerson et al., 2005), and education (Cosier et al., 2018), may be responsible for these characteristics in individuals with ID.

The present study hypothesized that individuals with ID would recidivate at higher rates than those without ID due to elevated risk factors, including employment and relationship

instability (Hanson & Bussière, 1998), childhood sexual abuse (Nunes et al., 2013; Lindsay et al., 2004), and having male victims (Harris & Hanson, 2004). Contrary to this hypothesis, individuals with ID were no more likely to recidivate sexually or be reincarcerated for any type of offense. The recidivism rate for the sample as a whole is consistent with prior research (Hanson & Bussière, 1998; Hanson & Burgon, 2004). Previous studies comparing recidivism in individuals with and without ID produced mixed results (Craig & Hutchinson, 2005; Rice et al., 2008). However, these studies utilized non-U.S. samples and have used differing definitions of recidivism (e.g., accusations, reconviction; Craig & Hutchinson, 2005). Considering the present study's finding of elevated risk assessment scores for those with ID, these results provide tentative support for the idea that the presence of static risk factors may be a misleading or biased indicator of the potential for recidivism in this population. Moreover, the factors that influence recidivism may differ for those with and without ID.

While no studies to date examined the relationship between ID and civil commitment, the present study hypothesized that individuals with ID would be committed as SVP at higher rates than those without ID. Results showed that individuals with ID were more than twice as likely to be civilly committed following SVP evaluations. Elevated risk assessment scores in those with ID may be partially responsible for this disparity. However, other factors can contribute to SVP determination, and risk scores differed even among those released. Previous research has indicated that Black individuals constitute a disproportionate number of those who are civilly committed (Hoppe et al., 2020; Mercado et al., 2013). In the present study's sample (Callahan et al., 2021), as well as in the general population (Zablotsky et al., 2017), Black individuals are at increased risk for ID. Individuals with a psychiatric history are also committed more often (Mercado et al., 2013) and those with ID are at an increased risk for comorbid psychiatric conditions (White et al., 2005).

In addition to empirically-supported static risk factors, these characteristics of individuals with ID may influence perceptions of dangerousness and increase the likelihood of civil commitment. Biases regarding these overlapping characteristics may contribute to the overrepresentation of individuals with ID among those selected for civil commitment and should thus be considered when determining policies regarding SVP evaluations.

Limitations

The present study has several limitations which should be considered when interpreting results. While using archival records allowed for the analysis of a large sample, this method has drawbacks. First, the study was unable to administer a uniform assessment of ID via IQ test or clinical diagnosis, limiting the extent to which results can be compared to other studies as well as the ability to examine how differing levels of symptom severity may influence risk or recidivism. The sample was also dated, as some individuals were released from prison or civilly committed as early as 1996. Notably, subjects who received a diagnosis of ID did so prior to the publication of the DSM-5 in 2013, when diagnostic criteria included a conservative IQ cutoff of 70 and placed less emphasis on adaptive deficits. The present study included subjects with IQ scores between 70 and 80 in the ID group when testing data were available. However, only a diagnostic label was available for some cases, possibly leading to inconsistency regarding which subjects were included. Furthermore, policies related to sexual offending, as well as resources available to those with ID, have evolved in the intervening years, and the risk assessment measures used in the present study have since been updated.

Recidivism data were available only for individuals who were released from custody, thus effectively excluding those determined to be at the highest risk for re-offense. While individuals with and without ID did not differ significantly with regard to recidivism, it is unknown whether

those committed would follow this pattern if released. Moreover, the significant proportion of individuals with ID who were civilly committed, as well as the low rate of sexual recidivism in the sample as a whole, meant that only 13 individuals with ID were reincarcerated for a sexual offense; as such, the present study lacked sufficient data to assess the accuracy of the Static-99 or MnSOST-R for this group. The present study examined risk in both the sample as a whole and in released offenders in order to mitigate this issue. However, future research conducted in states without SVP statutes will help to better contextualize these findings, as well as determine the predictive accuracy of actuarial risk assessment tools in individuals with ID.

While the present study examined overall recidivism, which includes any new charges regardless of whether or not the individual was convicted, only reincarceration data were available for specific types of offenses. As such, the present results are a conservative estimate of sexual and violent recidivism, and the possibility of undetected or uncharged offenses should be considered. This limitation should also be considered when comparing the results of the present study to other findings from studies that used more liberal definitions of recidivism.

Finally, this study was intended as exploratory, and as such, results are insufficient to demonstrate causal relationships. Characteristics related to ID, such as race, are also related to civil commitment rates (Hoppe et al., 2020; Mercado et al., 2013) and risk assessment scores (Leguizamo et al., 2017). Sophisticated analysis of these relationships is needed in order to determine the true impact of ID. More research is also needed to disentangle the relationship between ID, risk assessment, and other variables such as poverty or comorbid psychiatric conditions.

Implications and Future Research

While individuals with ID do not appear more likely to recidivate, they are deemed higher-risk and are more likely to be civilly committed compared to those without ID. This finding presents an obvious ethical concern, especially when considering that individuals with ID face poverty (Emerson, 2007) and wrongful conviction (Johnson et al., 2009) at higher rates and are more likely to be people of color (Zablotsky et al., 2017). People who are civilly committed face indefinite incarceration and as such, it is imperative that the process of who is determined an SVP is free from discrimination.

In addition to potential bias regarding placement, the types of treatment administered during civil commitment may not be as effective for individuals with ID. Research indicates that mainstream treatment options have limited or indeterminate efficacy for individuals with ID who sexually offend (Barron et al., 2004), perhaps due to differences in comprehension or psychopathology (Craig & Hutchinson, 2005). A 2017 review identified 18 studies regarding treatment efficacy for this population, but found that most utilized small samples, no control groups, and short follow-up times (Marotta, 2017). A review of medication-based therapies (Ashman & Duggan, 2008) was also unable to identify randomized control trials for individuals with ID. The results of the present study demonstrate that individuals with ID are subject to civil commitment at a disproportionate rate. While the purpose of civil commitment is to provide additional treatment for high-risk individuals, the efficacy of current treatments for those with ID remains unproven. Additional research is thus needed in order to develop and implement more specialized options for this population.

The Static-99 and its variants are the most commonly used risk assessment tools for sexual offenders (Archer et al., 2006). However, risk assessment tools like the Static-99 that rely solely on historical/static factors may bias risk evaluations against those with ID, and should therefore be

reconsidered for this population. Individuals with and without ID did not differ significantly with regard to the dynamic subscale of the MnSOST-R. While it is unclear whether this measure more accurately predicts recidivism among those with ID, it may represent a less biased indicator. A previous study on the present sample found that scores on the dynamic scale of the MnSOST-R were not predictive of civil commitment (Mercado et al., 2013). However, dynamic tools may warrant greater consideration for those with ID. Moreover, previous studies have demonstrated the potential of specialized, dynamic tools for this group (e.g., ARMIDILO-S; Cookman, 2010). Future research focused on the development and validation of these tools may help to mitigate the risk of bias posed by static assessments.

Additional research is needed in order to better understand how ID and its associated characteristics impact risk assessment and civil commitment. Race, in particular, may play a significant role. The prevalence of ID is highest among Black children and lowest among White children (Patrick et al., 2021). Black and Hispanic/Latino individuals, in turn, are overrepresented among all incarcerated Americans, with Black men representing a disproportionate number of those civilly committed as SVP (Hoppe et al., 2020). In addition, race and ethnicity may influence scores on risk assessment measures. Studies have demonstrated that the Static-99 and its variants may be less accurate for Hispanic/Latino individuals, and others have found differences between U.S.-born and Puerto Rican individuals compared to other Hispanic/Latino individuals (Leguízamo et al., 2017; Varela et al., 2013). Both non-White individuals and individuals with ID may be vulnerable to overlapping adverse experiences, which makes it difficult to determine how race or ID may independently influence outcomes. Future research should thus examine the interplay between race and ID as it relates to risk assessment and civil commitment, as well as the relative impact of other characteristics such as poverty and comorbid psychiatric conditions.

Future research should also address the limitations of the present study by using a more current sample with a uniform measure of ID. Furthermore, research on recidivism in states that do not utilize civil commitment may help to capture the true recidivism rates of individuals with ID and elucidate the factors that contribute to sexual re-offense in this population. Finally, perceptions regarding risk in those with ID should be examined within the context of prosecution and sentencing for both sexual and non-sexual offenses, as data suggest that the overrepresentation of people with ID in prison is not specific to sexual offenders (Maruschak et al., 2021).

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Tables**Table 1**
Demographics by ID Status

	ID	Non-ID	χ^2	<i>df</i>	<i>v</i>	Valid <i>N</i>	<i>p</i>
	<i>n</i> (%)	<i>n</i> (%)					
Race	-	-	29.33	4	0.10	3,060	<.001
White	208 (35.4)	1,075 (43.5)					
Black	263 (44.8)	851 (34.3)					
Hispanic/Latino	114 (19.4)	500 (20.2)					
Asian/Pacific Islander*	0 (0)	26 (1.1)					.005
Other*	2 (0.3)	21 (0.8)					.288
SES	-	-	33.28	2	0.16	1,251	<.001
Low	200 (88.1)	713 (69.6)					
Middle	18 (7.9)	246 (24.0)					
High	9 (4.0)	65 (6.3)					

Note. SES = Socioeconomic Status. **p* for Fisher's exact test is displayed.

Table 2
Sample Frequencies

	Frequency <i>n</i> (%)	Valid <i>N</i>
Total Recidivism	903 (42.6)	2,121
Reincarceration	-	-
Any	683 (33.3)	2,049
Sexual	95 (5.1)	1,874
Violent	107 (5.7)	1,872
Non-Violent	604 (32.7)	1,849
Static-99 Level (All)	-	2,251
Low	610 (27.1)	
Moderate-Low	885 (39.3)	
Moderate-High	485 (21.5)	
High	271 (12.0)	
Static-99 Level (Released)	-	1,885
Low	595 (31.6)	
Moderate-Low	816 (43.3)	
Moderate-High	370 (19.6)	
High	104 (5.5)	
Civil Commitment	-	-
Evaluated	934 (33.4)	2,796
Committed	366 (11.9)	3,065

Note. Total recidivism refers to any new charges following the index offense, regardless prosecution outcomes; reincarceration variables include only offenses for which an individual was incarcerated.

Table 3
Sample Risk Assessment Scores

	<i>M</i>	<i>SD</i>	Valid <i>N</i>
All Participants			
Static-99	2.94	2.03	2,260
MnSOST-R	-	-	-
Total	1.18	5.80	2,445
Historical	1.54	5.28	2,311
Dynamic	0.81	1.73	2,314
Released Participants			
Static-99	2.52	1.71	1,894
MnSOST-R	-	-	-
Total	0.08	5.01	2,148
Historical	0.84	4.75	2,119
Dynamic	-0.83	1.69	2,120

Table 4
Recidivism

	ID <i>n</i> (%)	Non-ID <i>n</i> (%)	χ^2	<i>df</i>	<i>v</i>	Valid <i>N</i>	<i>p</i>
Total Recidivism	150 (41.3)	753 (42.8)	0.28	1	0.01	2,121	.596
Reincarceration							
Any	127 (35.7)	32.8 (556)	1.06	1	0.02	2,049	.303
Sexual	13 (4.0)	82 (5.3)	1.01	1	0.02	1,874	.315
Violent	22 (6.7)	85 (5.5)	0.70	1	0.02	1,872	.403
Non-Violent	108 (33.9)	496 (32.4)	0.25	1	0.01	1,849	.618

Note. Total recidivism refers to any new charges following the index offense, regardless prosecution outcomes; reincarceration variables include only offenses for which an individual was incarcerated.

Table 5
Risk Assessment Scores

	ID <i>M (SD)</i>	Non-ID <i>M (SD)</i>	<i>t</i>	<i>df</i>	<i>d</i>	Valid <i>N</i>	<i>p</i>
All Participants							
Static-99	3.47 (2.18)	2.81 (1.97)	-5.82	626.94	2.01	2,260	<.001
MnSOST-R							
Total	2.70 (6.39)	0.83 (5.60)	-5.83	646.93	5.76	2,445	<.001
Historical	2.80 (5.88)	1.26 (5.10)	-4.91	585.22	5.25	2,311	<.001
Dynamic	-0.74 (1.81)	-0.82 (1.71)	-0.95	2,312	1.73	2,314	.344
Released Participants							
Static-99	2.79 (1.82)	2.47 (1.69)	-3.07	1,892	1.71	1,894	.002
MnSOST-R							
Total	0.73 (5.33)	-0.05 (4.93)	-2.73	2,146	5.00	2,148	.006
Historical	1.42 (5.03)	0.72 (4.69)	-2.57	2,117	4.75	2,119	.010
Dynamic	-0.82 (1.70)	-0.83 (1.69)	-0.50	2,118	1.69	2,120	.960

Table 6
Static-99 Risk Categories

Item	ID <i>n</i> (%)	Non-ID <i>n</i> (%)	χ^2	<i>df</i>	<i>v</i>	Valid <i>N</i>	<i>p</i>
All Participants	-	-	39.62	3	0.13	2,251	<.001
Low	78 (17.7)	532 (29.4)					
Moderate-Low	168 (38.1)	717 (39.6)					
Moderate-High	116 (26.3)	369 (20.4)					
High	79 (17.9)	192 (10.6)					
Released Participants	-	-	13.57	3	0.09	1,885	.004
Low	75 (24.0)	520 (33.1)					
Moderate-Low	145 (46.3)	671 (42.7)					
Moderate-High	67 (21.4)	303 (19.3)					
High	26 (8.3)	78 (5.0)					

Table 7
Civil Commitment

	ID <i>n</i> (%)	Non-ID <i>n</i> (%)	χ^2	<i>df</i>	<i>v</i>	Valid <i>N</i>	<i>p</i>
Evaluated	204 (38.3)	690 (31.5)	9.20	1	0.06	2,725	.002
Committed	127 (21.7)	239 (9.6)	65.25	1	0.15	3,065	<.001

Appendix A

Static-99 Scoring Guide (Hanson & Thornton, 1999).

STATIC-99 – TALLY SHEET

Subject Name: _____

Place of Scoring: _____

Date of Scoring: _____ **Name of Assessor:** _____

Question Number	Risk Factor	Codes	Score	
1	Young	Aged 25 or older	0	
		Aged 18 – 24.99	1	
2	Ever Lived With	Ever lived with lover for at least two years?		
		Yes	0	
		No	1	
3	Index non-sexual violence - Any Convictions?	No	0	
		Yes	1	
4	Prior non-sexual violence - Any Convictions?	No	0	
		Yes	1	
5	Prior Sex Offences	Charges	Convictions	
		None	None	0
		1-2	1	1
		3-5	2-3	2
		6+	4+	3
6	Prior sentencing dates (excluding index)	3 or less	0	
		4 or more	1	
7	Any convictions for non-contact sex offences	No	0	
		Yes	1	
8	Any Unrelated Victims	No	0	
		Yes	1	
9	Any Stranger Victims	No	0	
		Yes	1	
10	Any Male Victims	No	0	
		Yes	1	
	Total Score	Add up scores from individual risk factors		

	POINTS	Risk Category
Suggested Nominal Risk Categories	0,1	Low
	2,3	Moderate-Low
	4,5	Moderate-High
	6+	High

Appendix B

MnSOST-R Scoring Guide (Epperson et al., 2000).

MnSOST-R Score Recording Sheet	
Offender Name: _____	DOC#: _____ Date: █
Historical/Static Variables	
<p>1. Number of sex/sex-related convictions (including current conviction): One0 Two or more+2</p> <p>2. Length of sexual offending history: Less than one year-1 One to six years+3 More than six years0</p> <p>3. Was the offender under any form of supervision when they committed any sex offense for which they were eventually charged or convicted? No0 Yes+2 IF yes, please describe:</p> <p>4. Was any sex offense (charged or convicted) committed in a public place? No0 Yes+2</p> <p>5. Was force or the threat of force ever used to achieve compliance in any sex offense (charged or convicted)? No force in any offense-3 Force present in at least one offense0</p> <p>6. Has any sex offense (charged or convicted) involved multiple acts on a single victim within any single contact event? No-1 Probable but not fully documented0 Yes+1</p> <p>7. Number of different age groups victimized across all sex/sex-related offenses (charged or convicted): Age group of victims: (check all that apply) <input type="checkbox"/> Age 6 or younger <input type="checkbox"/> Age 7 to 12 years <input type="checkbox"/> Age 13 to 15 years and the offender is more than five years older than the victim <input type="checkbox"/> Age 16 or older No age group or only one age group checked0 Two or more age groups checked+3</p> <p>8. Offended against a 13- to 15-year-old victim and the offender was more than five years older than the victim at the time of the offense (charged or convicted): No0 Yes+2</p> <p>9. Was the victim a stranger in any sex/sex-related offense (charged or convicted)? No victims were strangers-1 At least one victim was a stranger+3 Uncertain due to missing information0</p>	<p>10. Is there evidence of adolescent antisocial behavior in the file? No indication-1 Some relatively isolated antisocial acts0 Persistent, repetitive pattern+2</p> <p>11. Pattern of substantial drug or alcohol abuse (12 months prior to arrest for instant offense or revocation): No-1 Yes+1</p> <p>12. Employment history (12 months prior to arrest for instant offense): Stable employment for one year or longer-2 Homemaker, retired, full-time student, or disabled/ unable to work-2 Part-time, seasonal, unstable employment0 Unemployed or significant history of unemployment ... +1 File contains no information0</p> <p style="text-align: right;">..... <u>Historical/Static Subtotal:</u> _____</p>
Institutional/Dynamic Variables	
	<p>13. Discipline history while incarcerated (does not include discipline for failure to follow treatment directives): No major discipline reports or infractions0 One or more major discipline reports+1</p> <p>14. Chemical dependency treatment while incarcerated: No treatment recommended / Not enough time / No opportunity0 Treatment recommended and successfully completed or in program at time of release-2 Treatment recommended but offender refused, quit, or did not pursue+1 Treatment recommended but terminated by staff+4</p> <p>15. Sex offender treatment history while incarcerated: No treatment recommended / Not enough time / No opportunity0 Treatment recommended and successfully completed or in program at time of release-1 Treatment recommended but offender refused, quit, or did not pursue0 Treatment recommended but terminated+3</p> <p>16. Age of offender at time of release: Age 30 or younger+1 Age 31 or older-1</p> <p style="text-align: right;">..... <u>Institutional/Dynamic Subtotal:</u> _____</p>
TOTAL SCORE (static+dynamic): _____	