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Finding Resources of Sexual Offenders
- A new German assessment paradigm -

Dahlnym Yoon **Martin Rettenberger** **Wolfgang Berner** **Peer Briken**

University Medical Center Hamburg-Eppendorf

The aim of this paper is to provide a brief overview on the field of risk assessment in Germany, especially focused on the assessment of adult sex offenders. First, the aim of risk assessment in Germany will be shortly presented. Second, the legal framework and role of risk assessment in the field of German criminal law enforcement will be elaborated. Third, mainstream risk assessment methods in German forensic settings are reviewed. Furthermore, description of the instruments and their validation researches are outlined. Finally, critical aspects and problematic issues on these assessment procedures are discussed. In conclusion, suggestions for future research and optimization of the accuracy and comprehensiveness of forensic assessment are made.

Key words : German sample, protective factors, risk assessment, SAPROF, sexual abuse, sexual offender

† Martinistraße 52, D-20246 Hamburg, Germany, d.yoon@uke.uni-hamburg.de

Rehabilitation programs have been severely criticized by many criminologists. Since Martinson (1974) noted that "the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism," juridical policymakers have tried to restore the fallen reputation of correctional services with the catchphrase, "nothing works." Policing strategies have become more aggressive about fixing broken windows (Wilson & Kelling, 1982) and zero-tolerance policies have been enforced to keep "law and order" in society (Bratton & Knobler, 1998). This tendency has been imported into Germany; Der Spiegel, Germany's largest weekly magazine, titled its 28th issue in 1997, "Against crime, drugs and dirt in German cities: Cleaning up like in New York?"

In January 1998, the German government launched a repressive policy against sex offenders, especially re-offenders. During this punitive turn of criminal justice, new correctional measures for sex offenders were legislated, such as detention for the purpose of incapacitation, in accordance with section 66 in the criminal codes (incapacitation order; Sec. 66 StGB: Sicherungsverwahrung), and relocation into socialtherapeutic institutions, in accordance with section 9 in the penal codes (Sec. 9 StVollzG: Verlegung in eine sozialtherapeutische Anstalt).

Almost two decades after Martinson's declaration, Andrews and his colleagues (1990) published a meta-analysis under the flag of rebellion against these agendas. They suggested that rehabilitation services seemed ineffective because the delivery of the services can be nothing but unproductive if those services do not reflect risk, need, and responsivity of the offenders. The authors pointed out in strong terms that a correctional program can only work when it is appropriate.

The first step in providing an appropriate and successful rehabilitation is, beyond any doubt, an accurate and thorough assessment of the client. Twenty years after the commencement of the punitive turn in Germany, it is time to reevaluate and reinterpret the meaning and the role of offender treatment and to consider more effective, well-balanced, and resource oriented measures pacing the new wave in the field of forensic assessment.

The purpose of this overview is to present the practice of German forensic evaluation, particularly on adult male sex offenders. This overview does not claim to be comprehensive, since it represents mostly the situation and structure of Hamburg. Due to the characteristic of German government as a federal republic, there is a possibility that different models are applied in other federal states, though the legal preconditions apply for the entire German republic.

Aims of risk assessment

The term "risk assessment" is derived from

the economic concept of risk management. Risk assessment is the first step of the whole management process, in which the degree of risk, in this field the risk of future recidivism, in certain situations is determined.

The history of forensic risk assessment as a psychological profession is very short; the American Psychological Association only recognized forensic psychology as a discrete specialization in 2001. Even though psychologists have been offering their opinions in court since the early 20th century, the first official acceptance of such testimony and of the applicability of psychological assessments occurred in 1962, when Judge David L. Bazelon formally so held in the case of Jenkins vs. United States (Marczyk, DeMatteo, Kutinsky, & Heilbrun, 2007).

Heilbrun and colleagues (Heilbrun, et al., 2003; Heilbrun, Marczyk, & DeMatteo, 2002) defined Forensic Mental Health Assessment (FMHA) as a evaluation process performed by mental health professionals of diverse disciplines on a variety of questions in a broader, legal context. The task of a forensic practitioner, as compared to that of a general practitioner, is to address both mental health in general and its legal issues, such as sentencing considerations, process competency, and criminal responsibility. Therefore, a forensic risk assessment requires the use of various resources, such as an extensive institutional file analysis or past psychological history from third parties (such as mental health care professionals who formerly worked with the person, social workers, probation officers, colleagues, and family members) (Hill, Briken, & Berner, 2008).

Risk assessment can be applied in various decision-making contexts in our criminal justice system, from profiling via sentencing to parole supervision. The purposes of risk assessment also vary depending on the setting in which the assessment is conducted.

In the criminal justice system's recent history, the need for risk assessment of offenders by forensic practitioners has been constantly increasing. The related questions started with things such as: Who are they? What do they have? What are they going to do? However, with the improvements in assessments and evaluations, the questions have become more sophisticated, including (Andrade, Kahterine, & Diener, 2009): What needs to be done to decrease the risk? When will the individual be able to be successfully r eintegrated into the society? The field of risk assessment has expanded and progressed, recognizing that the overall picture of risk management includes risk intervention, sample specificity, and maintenance of outcome (Heilbrun, 2002).

Also German forensic psychiatry and psychology have been making a big progress over the past years. Legal and forensic professionals have set minimal requirements for forensic psychiatric/psychological evaluation reports (Boetticher, Nedopil, Bosinski, & Saß, 2005;

Boetticher, Kröber, Müller-Isberner, Böhm, Metz, & Wolf, 2006). These criteria recommend the use of currently well validated reliable examination methods and instruments, and thorough diagnoses especially in case of sex offenders. Moreover, the aim of evaluations should be not only to assess the recidivism risk but also to suggest proper intervention settings and methods.

Risk assessment in German law enforcement system

Within the scope of police investigations and legal proceedings, the focus of risk assessment is to provide the court information concerning the characteristics of the offense and the offender, so that the appropriate type of primary intervention can be applied, e.g. incarceration, compulsory hospitalization, inpatient or outpatient treatment, and even incapacitation order or civil confinement for criminals who have propensity for offending.

A clinical risk assessment by forensic professionals is usually applied after the police have forwarded the case to the Public Prosecution Office. Once the Public Prosecution Office has filed a charge, the case can be processed within different instances. While the local court (Amtsgericht) is responsible for minor crimes of which sanction is less likely to be more than two years of imprisonment, the regional court (Landgericht) has jurisdiction over more serious cases, in which longer imprisonment or forensic mental institutionalization could be considered (Jehle, 2009).

In case of a hands-on and/or more severe sexual crime, either the prosecution office or the court can order a forensic psychiatric/ psychological appraisal report. Hands-off sexual offending or minor child molestation with prison sentences less than two years are usually dealt by the local court. The court can suspend these shorter prison sentences when it assumes a lower recidivism risk of the individual. After the served as well as suspended prison sentences, the court issues various orders including therapeutic intervention with or without a forensic psychiatric/psychological evaluation. The forensic professionals are assigned to examine the following aspects through the evaluation:

1. *Preconditions for impaired or diminished criminal liability (Sec. 20, 21 StGB)*
2. *Social and criminal prognosis in case of individuals who should be confined in/released from a forensic mental institution or incapacitation order (post sentence) (Sec. 63, 64, 67d StGB)*
3. *Criminal prognosis after release in case of individuals with longer imprisonment, e.g. incapacitation order or lifelong sentence (Sec. 57, 57a StGB)*

Particularly in the federal state Hamburg,

forensic psychiatrists and psychologists in the forensic psychiatric court report service (FPG; Forensisch-Psychiatrischer Gutachterdienst) provide their evaluation results to the court. In the context of a so-called liability evaluation procedure (Schuldfähigkeitsgutachten) concerning the first and second aspects, the experts are in charge of assessing the clinical diagnoses and their relevance to the preconditions of diminished responsibility. The defense can be accepted by the court, if the individual was unable to appreciate or judge the consequences of his actions, and/or incapacitated to deliberate or perform the specific intent to harm others due to severe psychiatric disorder, significantly impaired consciousness, mental retardation or dementia, or other severe psychological disorder. The assessment of recidivism risk corresponding with the above mentioned liability is a crucial point influencing the court decision. Especially for inpatient programs in a forensic psychiatric hospital or in prison, risk assessment can be useful for managing the risk of violent behavior within the institution and making decisions concerning the treatment plan. The so-called prognostic evaluation (Prognosegutachten), which relies mainly on a comprehensive risk assessment procedure, is important for decision making concerning a possible extension or termination of the institutionalization.

The court can order an aftercare treatment to the individual who served the sentence to the end or is released from a forensic mental institution (Sec. 68b StGB). Treatment can be also ordered to the individuals with supervision in case of suspended sentences (Sec. 56 StGB) or conditional early release (Sec. 57 StGB). Once law enforcement authorities impose the treatment as a direction, the type and level of the intervention should be decided by both supervision officers and treatment providers. However, it is most important to determine whether certain treatments are suitable for the individual. Outpatient treatment programs are applicable in two different settings. They may either serve as a substitute for incarceration or inpatient treatment or as an aftercare program for inmates/patients who are released from prison or forensic psychiatric hospitals.

The first individual psychotherapeutic treatment for sex offenders was started at mid-1980es as a research project supported by the German Research Foundation and conducted by Eberhard Schorsch, the former director of the Institute for Sex Research and Forensic Psychiatry (ISF) in Hamburg. Based on experiences from this project, Wolfgang Berner combined psychodynamic aspects int o the outpatient treatment based on his research conducted in Vienna (Berner & Bolterauer, 1995). Since then, the ISF has been treating sex offenders released from prison and forensic mental institution. Started in Hamburg in 2003, the first SOTP (Sex Offender Treatment Program; Mann & Thornton, 1998) based group

therapy spread into other federal states: Hesse, Schleswig-Holstein, and Mecklenburg-Western Pomerania. In cooperation with the Hamburg Ministry of Justice, the ISF has established a Forensic Sex Offender Outpatient Program in April 2008, and has been offering treatment for about 100 released sex offenders with parole supervision and probation since then. Many other federal states have been establishing ambulatory aftercare programs for offenders who are released from prison or forensic mental institution.

Mainstream risk assessment in German forensic setting

Methods of forensic assessment

Risk assessment in forensic evaluation settings usually occurs after one or more diagnostic procedures including screening for psychiatric disorders according to the Diagnostic and Statistical Manual of Mental Disorders (DSM; American Psychiatric Association, 1994). In such settings, forensic practitioners can screen for both Axis I clinical disorders (including major mental disorders, as well as developmental and learning disorders) and Axis II personality disorders and mental retardation. There is evidence that the diagnoses of incarcerated and hospitalized offenders show different frequencies and comorbidities than found in the general population, also in offenders whose criminal responsibility was not diminished or impaired because of their mental disorders, Axis II traits play a greater role understanding their criminal behavior (Tengstrom, Hodgins, Grann, Langstrom, & Kullgren, 2004). For this reason, comprehensive personality screening with a structured instrument should be one of the first steps in the whole diagnostic process. Self-report instruments based on interviews or questionnaires, such as the Structured Clinical Interview for DSM-IV Part 2: Personality Disorders (SCID-II; First, Gibbon, Spitzer, Williams, & Bejamin, 1997), the Minnesota Multiphasic Personality Inventory-2, Antisocial Practices Scale (MMPI-2; Butcher, Dahlstron, Grahan, Tellegen, & Kaemmer, 1989), and the revised version of the Psychopathic Personality Inventory (PPI-R; Lilienfeld & Andrews, 1996) are widely used in forensic assessment. However, these tools can be insufficient for use with some manipulative offenders, and some researchers suggest administering the Rorschach test (Exner, 1986, 1991) on antisocial offenders (Meloy & Gacono, 2000).

After the primary diagnostic procedure is completed, factors that might predispose the offender to a higher risk of recidivism can be screened for, weighted, and analyzed according to their implications. The actual risk assessment process can rely on the following three approaches, according to Hanson 's suggestion (Hanson & Bussiere, 1998):

1. *Guided clinical approach (expert judgment based on validated risk factors)*
2. *Pure actuarial approach (predetermined, numerical weighting of predictors)*
3. *Adjusted actuarial approach (an actuarial prediction that can be modified to take into account potentially important factors)*

Until the recent past, as dreadful as it sounds, a judgment of the dangerousness of a person was based on the unstructured, unsupervised opinion of an expert, without any given standards or adequately proved reliability and validity (Grove & Meehl, 1996; Kozol, Boucher, & Garofalo, 1972; Steadman & Cocozza, 1974).

Actuarialism originated from a recent stream of standardized risk assessments based on a variety of meta-analyses. Several violence-risk assessment tools leaning on rigidly actuarial methods have been developed, starting with the Violence Risk Appraisal Guide (VRAG; Harris, Rice, & Quinsey, 1993; Quinsey, Harris, Rice, & Cormier, 1998) for violent recidivism and the Rapid Risk Assessment for Sex Offence Recidivism (RRASOR; Hanson, 1997), the Sex Offender Risk Appraisal Guide (SORAG; Rice & Harris, 1997), and the Static-99 (Hanson & Thorton, 1999) for sexual recidivism. These instruments deliver the "base rate" for recidivism in percentage form. These numbers usually mean the probability that individuals with comparable scores would be expected to commit a new crime within a specific period, which has been criticized for lack of reliability and stability since the emergence of actuarialism (Craig, Browne, & Beech, 2008). Researchers have been trying to ascertain the base rate in diverse subgroups of offenders (Barbaree, 1997; Harris, Phenix, Hanson, & Thornton, 2003; Prentky, Lee, Knight, & Cerce, 1997). However, current developments in actuarial risk assessment provide evaluators additional opportunities to describe the risk of offenders. For instance, for decision making concerning the intervention, assessors are able to report percentiles and relative risk ratios of the person in compare to other sexual offenders (Hanson, Helmus, & Thornton, 2010). Despite great support and enthusiasm for this movement, clinicians did not lose their hold on unstructured clinical judgment but combined both methods, in a unstructured way, by themselves (Hilton, Harris, & Rice, 2006). Recent developments in the area of forensic assessment have been in line with the third option, an adjusted and integrated approach. Hart (1998) designed the Structured Professional Judgment (SPJ) model, embracing an actuarial foundation of identifying risk factors but adding a clinical reviewing process to actually calculate the risk. The new generation of risk assessment tools based on this SPJ model, such as the Historical-Clinical-Risk Management-20 (HCR-20; Webster, Douglas, Eaves, & Hart, 1997), the Sexual Violence Risk - 20 (SVR-20; Boer, Hart, Kropp, & Webster, 1997), and the Risk for

Sexual Violence Protocol (RSVP; Hart, Kropp, Laws, Klaver, & Watt, 2003), therefore combine both actuarial and clinical methods. SPJ instruments usually take the form of a checklist containing items with empirical bases and attempted to bridge the gap between actuarial risk prediction and clinical risk prevention (De Vogel, De Ruiter, Bouman, & De Vries Robbé, 2009).

Each of these processes should rely on thorough, comprehensive individual examination of the offender, neutral sources, reconstruction of the past, and predictable future incidents (Sageman, 2003). Miller (2006) proposed that a risk assessment procedure for an effective intervention in terms of treatment contains three steps: (1) examining the risk of recidivism, (2) identifying those risk factors that can be successfully treated and monitored to reduce the likelihood of re-offense, and (3) identifying those risk factors for supervision and management purposes. As the risk assessment mainstream has been gradually shifting from prediction to prevention in this wise, many researchers have been trying to develop instruments that focus on risk management rather than risk assessment. In other words, the experts have begun paying attention to risk factors of a changeable nature, so-called dynamic risk factors, rather than to static risk factors, of which existence predicts the statistical probability of recidivism. The forensic researchers at the Van der Hoeven Kliniek (De Vogel, De Ruiter, Hildebrand, Bos, & Van de Ven, 2004) also advocate considering which type and level of intervention is required to prevent the person from committing future offenses. An adjusted actuarial approach, which takes into consideration the suggestion of Hanson (1998) about three plausible approaches to risk assessment, has been gaining more support. A useful risk prediction should be modifiable, taking potentially important factors into account.

Risk assessment tools

Most of the leading German forensic institutions are using standardized diagnostic and risk assessment tools which are developed in Anglo-American countries. Numerous researchers have been working on translating and adapting these instruments by validating them in larger German samples.

Psychopathy Checklist-Revised (PCL-R)

The PCL-R (Hare, 1991) is one of the best validated and commonly used instruments for assessing psychopathy as a clinical construct defined by Robert D. Hare. Some clinicians might classify the PCL-R as a diagnostic tool; however, as most risk assessment instruments include the subject's PCL-R score or other measures related to antisocial traits, the PCL-R could be understood as the first step in forensic risk assessment. Similar to other risk assessment instruments, the PCL R takes form of a checklist with 20 items, derived from the

characteristics of psychopathy contrived by Cleckley (1941). Based on documentary information and a semi structured interview, each item can be scored on a three-point scale (from 0-2). The PCL-R measures two psychopathic construct factors: Factor 1, a callous, egocentric, exploitive personality and Factor 2, an impulsive, antisocial behavioral history.

In spite of the debate on in-group differences on psychopathic offenders' probability of recidivism, there is a global consensus in recent research and clinical field data that psychopathy is a strong predictor of violent behavior, and most importantly, sexual recidivism (Douglas & Webster, 1999; Douglas, Yeomans, & Boer, 2005; Grann, Langstrom, Tengstrom, & Kullgren, 1999; Hare, Clark, Grann, & Thornton, 2000; Urbaniok, Endrass, Rossegger, & Noll, 2007).

Sex Offender Risk Appraisal Guide (SORAG)

The researchers in Ontario measured the predictive validity of the VRAG with regard to sexual offenders and distinguished some variables that predicted violent or sexual recidivism but none that predicted recidivism among both index offense types. They developed a 14-item actuarial instrument for assessment of sexual recidivism (Quinsey, et al., 1998). The items include history of alcohol problems, marital status, history of nonviolent offenses, and diagnosis of a personality disorder or schizophrenia. A variety of studies has supported the predictive validity of the SORAG for (sexual) violent recidivism (e.g. Harris & Rice, 2003; Hanson & Morton-Bourgon, 2009). A German version of the instrument has also been found to accurately predict general, violent, and sexual recidivism in a German-speaking sample of sexual offenders (Rettenberger, Matthes, Boer, & Eher, 2010). However, it has been asserted that many investigations on the validity do not yield significant differences between the VRAG and SORAG in predicting recidivism of sexual offenders (Craig, Browne, & Stringer, 2003).

Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR)

To create the RRASOR, Hanson (1997) used seven follow-up studies with cross-validation on over 20,000 sex offenders in different countries and filtered out several factors predicting sexual re-offending. Its 0-6 rating scale considers four factors: number of prior sex offenses, offender's current age, gender of the offender's victims, and offender's familial relationship to the victim. The author acknowledges considering the RRASOR as a screening instrument for the offender's risk level of committing a repeat offense rather than as a comprehensive assessment tool for all factors related to recidivism. Thus, the risk level can be adjusted via consideration of further factors, such as sexual preference disorders and treatment motivation.

In the study by Barbaree, Seto, Langton & Peacock (2001), in which the predictive accuracy of six risk assessment tools were compared, the RRASOR was the best predictor of sexual recidivism. In contrast, the other instruments, such as the SORAG, Static-99, and MnSOST R, which were also specifically developed for predicting sexual recidivism risk, predicted recidivism in general better than they predicted sexual re-offending. There are inconsistent findings concerning the predictive validity of the German RRASOR (Fiedler, 2004).

Static-99

Hanson and Thornton (1999) combined the RRASOR and the Structured Anchored Clinical judgment Scale (SACJ; Grubin, 1998) for better predictive ability than either original scale, which assess related but not identical factors. The ten items compounded from these two instruments are strictly static, requiring file information but not an interview. The summation of each item score is assigned to corresponding risk categories: *Low*, *Moderate－Low*, *Moderate－High*, and *High*.

In the revised manual, the authors point out two major problems in administering the Static-99 (Harris, Phenix, Hanson, & Thornton, 2003). The instrument has produced exaggerated ratings for offenders who are currently apprehended for their index crime but are charged with additional crimes they committed before the current process. This has led users to rate the index crime as a repeated offense. The authors therefore recommend counting these offenses together and to use "index clustering" to avoid this "pseudo-recidivism." Another problem was that the base rate estimated by Hanson & Thornton (2000) did not distinguish offenders who were successfully reintegrated into the community without incurring new sexual offenses from those who were not, whereas the recidivism risk of these "offense-free" cases declines. Thus, they downgraded the risk status of offenders who have not offended again in the community for several years (Harris, et al., 2003).

The Static-99 is the actuarial risk assessment instrument most commonly used and best validated for sexual offenders (e.g. Anderson & Hanson, 2009; Hanson & Morton-Bourgon, 2009. The instrument is absolutely the most commonly used and best validated actuarial risk assessment tool for sexual offenders among forensic practitioners in North America (Archer, Buffington-Vollum, Stredny, & Handel, 2006; Anderson & Hanson, 2009; Hanson & Morton-Bourgon, 2009). Hanson and Thornton (2000) tested the predictive accuracy of the Static-99 using four different, mixed data sets of 1,301 Canadian and British sexual offenders including child molesters and rapists from prison as well as high security forensic psychiatric settings. The Static-99 rendered predictive accuracy values measured by *Area Under Curve* (AUC) resulting from *Receiver Operating Characteristic* (ROC) of AUC=.71 for sexual and

AUC=.69 forany (sexual) violent recidivism. Among others, further results from studies with Canadian (Barbaree et al., 2001), Dutch (de Vogel, de Ruiter, van Beek, & Mead, 2004), Belgian (Ducro & Pham, 2006), German (Stadtland, Hollweg, Kleindienst, Dietl, Reich, & Nedopil, 2005), Austrian (Eher, Rettenberger, & Matthes, 2009; Rettenberger et al., 2010), Switzerland (Endrass, Urbaniok, Held, Vetter, & Rossegger, 2009), and Swedish (Sjöstedt & Långstrom, 2001) samples of sex offenders were published. For sexual recidivism the predictive accuracy values ranged from moderate AUC = .66 (Ducro & Pham, 2006) to good AUC = .76 (Sjöstedt & Långstrom, 2001), which indicates at least fair predictive accuracy.

Minnesota Sex Offender Screening Tool-Revised (MnSOST-R)

The MnSOST-R was developed for use with extrafamilial sex offenders by Epperson and his colleagues (1998). The prototype of the tool (Epperson, Kaul, & Huot, 1995) was for assessment of sexual offenders in general; however, intrafamilial offenders were eliminated from the subject criteria due to their different characteristics.

Clinical prediction was part of the previous version, but this was replaced by an actuarial scoring system in the revision. As in the Static-99, each variable is summed into a total score that indicates the recidivism risk level of an individual. The MnSOST-R contains 16 items in four categories: dynamic variables, early onset/chronicity variables, offense-related variables, and indices of an unstable lifestyle. The items in each variable cluster are primarily historical in nature, e.g., adolescent antisocial behavior, history of substance abuse, and number of sex offense convictions, but dynamic variables such as treatment measures and employment status are also part of the (Craig, et al., 2003). Concurrent validity for this device, with inconsistent coefficient strength, has been reported in only a few studies (Vincent, Maney, & Hart, 2009).

Sexual Violence Risk-20 (SVR-20)

As might be seen from the name, the SVR-20 was devised at the Canadian Institute where the HCR-20 was developed (Boer, et al., 1997). The SVR-20 can be understood as an equivalent instrument to the HCR-20, which assesses the risk of sexual violence in adult sex offenders. However, there is a difference in scoring methods between the HCR-20 and the SVR-20, since in the latter, the user can rate not only the existence of every item but any recent change, in both positive and negative directions. The instrument includes three major sections: psychosocial adjustment, sexual offenses, and future plans.

According to Witt (2000), the SVR-20 might particularly lack predictive validity in the case of child molesters, since some studies have shown that there are differences between characteristics

of sexual offenders convicted of rape or sexual assault and those convicted of child molestation or exhibitionism. One of the evidences for his arguments was found in Hanson and Bussiere's meta-analysis of 61 studies with 28,972 sex offenders (1998). Rapists tended to be at higher risk of violent recidivism in general than child abusers were in this study, showing a substantial difference in the nonsexual violent recidivism rate (22.1%, vs. 9.9% for child molesters). De Vogel et al. (2004), on the contrary, argued that there is no significant difference between the risk judgments based on the SVR-20, between rapists and child molesters in a Dutch sample but, rather, between recidivists and non-recidivists regardless of their offense type.

By all measurements, according to the survey of Archer et al. (2006), the SVR-20 is one of the most widely used instrument for adult sex offender risk assessment in North American countries and Europe. In the German-speaking part of Europe the SVR-20 has been commonly used for many years in different forensic settings and meanwhile there exist cross-validation studies from Germany, Austria, and Switzerland (Dietiker, Dittmann, & Graf, 2007; Stadtland et al., 2005; Rettenberger, Hucker, Boer, & Eher, 2009).

Even though the most commonly used risk assessment tools, such as the HCR-20 and the SVR-20, actually have some dynamic factors as their items, the numbers of these items are few. If some disputable items are excluded, which might also be taken into consideration as dynamic factors, the only dynamic items in both HCR-20 and SVR-20 are relationship and employment instability, lack of realistic plans, and lack of compliance toward intervention.

Thus, the following instruments reflect the efforts of researchers who have been trying to integrate dynamic factors in actuarial assessment of recidivism risk.

Level of Service Inventory-Revised (LSI -R)

The LSI-R was developed by Andrews and Bonta (1995) to assess risks and needs for treatment planning and placement of offenders through semi-structured interviews and file review. The 54 items of the LSI-R incorporate 10 subcomponents, such as *CriminalHistory, Education/Employment, Financial, Family/Marital, Accommodation, Leisure/Recreation, Companions, Alcohol/DrugProblems, Emotional/Personal,* and *Attitudes/Orientation*(see Table 4).

Although the LSI-R is used in large parts of the U.S.A., U.K., Australia, and New Zealand, a validation research in German practice is still lacking. Moreover, the long administration time of approximately one hour and its requirement of extensive training have been criticized (Austin, Coleman, Peyton, & Johnson, 2003), and the existence of each of the factors still does not provide specific information for treatment planning (Miller, 2006).

Sexual Offender Needs Assessment Rating Scale (SONAR)

More recently, Hanson and Harris (2000) developed the SONAR specifically to evaluate changes in risk among sex offenders. This comprehensive tool consists of both dynamic stable factors and dynamic acute factors (see Table 5). Each item can be scored via an interview with the client, which takes about 45 minutes, according to the developers.

Though the shorter administration time is advantageous, the SONAR's generalizability to other types of crimes remains unknown. Additionally, the research of Miller and colleagues (2006) on the SONAR's utility for imprisoned sex offenders did not show convincing evidence for the psychometric properties of the device. This instrument, as with most others, has been criticized for not including protective factors (Hill, et al., 2008).

Three years later, the authors have refined SONAR and developed two following instruments, the STABLE, which measures stable-dynamic factors and the ACUTE, which assesses short-term changes in risk factors. Current empirical research using German-speaking sexual offender samples provides support for the utility of the most recent version of the instrument, the STABLE-2007, in risk prediction of sexual offenders (Eher, Rettenberger, Matthes, & Schilling, 2010).

Aside from the risk factors addressed in other foreign assessment tools, a number of risk assessment tools have been developed and partially validated in German speaking countries.

Integrated List of Risk Variables

Nedopil (1997) took different base rates of recidivism, depending on offense types, as well as situational and motivational factors of index crimes into account as he developed the Integrated List of Risk Variables (Integrierte Liste der Risikovariablen). Also, treatment-related criteria, such as introspection, self-criticism on one's own psychological problem, and coping strategies are included to the checklist.

Risk Criteria of the Swiss Commission of Correctional Services

One year later, Dittmann (1998) introduced the list of risk criteria used in the Swiss Commission of Correctional Services. The list includes factors related to one's index offense, criminal history, psychiatric disorders, treatment, social skills, etc. Each criterion can be simultaneously rated in positive and negative aspects. For instance, a crime committed in a highly specific situation and relationship to the victim can be rated positively, while the same with an unknown victim can be rated negatively. Transient psychological disorders or substance abuse problems and brief reactions to a traumatizing life-event can also contribute a positive rating, while chronic psychoses, personality disorders, or paraphilia would be

rated negatively.

Forensic Operationalized Therapy-Risk-Evaluation-System (FOTRES)

Recently, a web-based comprehensive instrument, FOTRES (Forensisches Operationalis iertes Therapie-Risiko-Evaluations-System; Urbaniok, 2004), has been developed by the Swiss research group Zurich Forensic. FOTRES is composed of two scale groups: Risk-Needs-Assessment and Risk-Management. These scales are evaluated at three different levels (Structural Risk of Recidivism, Mutability, and Dynamic Risk Reduction) and integrated into an overall clinical assessment. One of the strengths of the FOTRES is that the user can choose which scale to use, depending on the purpose of the risk assessment. For example, pre-treatment assessment would be chosen for an intervention plan and post-treatment assessment to evaluate the therapy success, whereas the other above-mentioned devices must be used repetitively. As one of the well-validated German assessment tool with higher predictive validity, the FOTRES is being used in about 30 leading German forensic institutions and 25 facilities in Switzerland, Austria, and The Netherlands.

Recidivism Risk on Sexual Offenders (RRS)

Another risk assessment tool with German origin is the RRS (Rückfallrisiko bei Sexualstraftätern) by Rehder and Suhling (2006). Even if the RRS aims not only to predict sexual recidivism and reconviction but also to suggest a possible therapeutic intervention, the instrument mainly consists of stable variables such as age, depressive personality trait, prior sentencing, and premeditation of the crime. Dynamic factors such as social skills seem to be correlating with recidivism significantly, but there are not sufficient data on predictive validity of the instrument.

Critiques of mainstream risk assesment

Despite the efforts of numerous German researchers, there is still an indisputable lack of instruments developed for a German forensic population in particular. As Webster mentioned in the preface of the German version of the HCR-20, redefinition and reconsideration of each items of an instrument is necessary due to the difficulty of translating Canadian logics into the German practice (Webster, et al., 1997). Though a 'General Theory' of recidivism risk could be applied to crime as a 'general' phenomenon worldwide, there are still cultural, social, and legal aspects which should not be ignored. In this section, the main criticism on actuarial risk assessment measures will be elaborated.

First of all, as Harcourt (2007) criticized, when actuarial methods are followed based on the majority rule of statistics, there is a greater possibility than individual differences in reaction and responsiveness toward the intervention may

be ignored.

According to Harcourt, the whole concept of actuarial risk assessment based on economic arguments of efficiency starts from some incorrect assumptions. First, as with other economic models of crime and justice, actuarial methods originated from the rational-choice theory that individuals make rational decisions if and when to commit a crime, calculating the possibility and degree of expected punishment. This argument also assumes that not only the criminals but also the personnel in the field of law enforcement will react rationally toward the crime, to maximize their success rate. It means that they use risk assessment to predict the future crime accurately so that the crime rate will decrease. Modern actuarial measures assume that offense rates differ among different social clusters but those different clusters react similarly to profiling. This core premise, however, contains a reasoning error in interpreting the relationship of risk and recidivism probabilities, which lead us to a wrong or at least biased attribution that higher risk always predicts more recidivism.

This elasticity, as Harcourt names it, differs among different social groups, since so-called high risk groups are not only at higher risk of recidivism but also at higher risk of being apprehended. Harcourt criticizes the same elasticity premise (p. 24):

> Whether the different offending rates are due to different socioeconomic backgrounds, to different histories, cultures, or education, nonspurious profiling rests on the accurate assumption that members of one group offend more than those of another, holding everything else constant. If their offending rates are different, then why would their elasticity be the same? If, for instance, they offend more because they are socioeconomically more disadvantaged, then it would follow logically that they may also have less elasticity of offending to policing because they have fewer alternative job opportunities.

As long as this similar elasticity is assumed, there can be no significant difference between previous and future events in each group in terms of mathematical analyses, because the correlation coefficient is assumed to be the same within different groups. Higher risk will therefore be naturally linked to higher recidivism, and the effort to randomize the sample will lead to the prophesied result that the overall amount of crime decreases, because the small number of crimes committed by less responsive groups compensates for the large number of crimes committed by the more responsive groups.

This problem can be amplified in a vicious circle of social polarization, e.g., a low-risk first offender with fewer socioeconomic disadvantages, whose sentence is mitigated because of having no criminal record, will be less exposed to social deprivation and therefore at lower risk of recidivism. In case of an ex-convict, on the

contrary, the person is already socially disadvantaged and kept under surveillance by parole institutions because of his incarceration record, possesses poor coping strategies and negative attitudes toward authority. This person therefore has a higher chance of being noticed and apprehended for (usually preemptive) violence.

Second, a typical problem of the researches that the actuarial instruments were validated in is that though they treated the independent variables as if they were independent of each other, these variables are possibly related to each other (Beech, Friendship, Erikson, & Hanson, 2002). Additivity of risk factors could be useful to prove the validity of an instrument, yet it should not be used to demonstrate a predictable recidivism of the person with a specific number. For instance, both the HCR-20 and the SVR-20 provide a comprehensive judgment of the risk of future (sexual) violence as one of three levels: high, moderate, and low. This judgment should not only rely on the total score of the ratings but also on the relationship between risk factors and other considerations. As the developers mentioned, certain combinations of a few items can indicate a far higher risk than would the existence of many risk factors at a moderate level. The assumption, "the more risk factors, the higher the risk," can lead one to overlook undeniable numbers of cases where this rule is not applicable, e.g., in cases of mentally-disorder persons whose risk has a different quality. For example, a person suffering from acoustic hallucinations with sadistic or homicidal contents would be rated with higher scores in items such as major mental illness (Historical item 6 in the HCR-20 and Psychosocial adjustment item 4 in the SVR-20) and its active symptoms (Clinical item 3 in the HCR-20 and Psychosocial adjustment item 6 in the SVR-20). However, the risk of reactive violence in such a case may be much higher than in the case of a pessimistic offender (possible related items: Clinical items 2 and 5 and Risk management items 1 and 4 in the HCR-20; Future plans items 19 and 20 in the SVR-20) with a history of deviant behavior (possible related items: Historical items 1, 2, and 8 in the HCR-20; Psychosocial adjustment items 8 and 9; and any of the Sexual offenses items in the SVR-20). The authors of the HCR-20 and SVR-20 therefore recommend not using a cut-off score, as in the PCL-R (Boer, et al., 1997; Hare, 1991; Webster, et al., 1997).

Another questionable aspect of the actuarial method is its applicability. In particular, the base rate of recidivism is actually applicable only in offender groups with similar characteristics to those of the validation sample. Most importantly, it is valid only for a specific time period in a specific context.

Though the base rate calculation among different analyses shows a narrow band (Harris, et al., 2003; Prentky, et al., 1997), research on

cross-national reliability and even cross-sex offender-subgroup generalizability of the base rate has been insufficient. Bartosh et al. (2003) could not find consistent predictive validity for the Static-99, RRASOR, MnSOST-R, and SORAG across offense categories in 186 sex offenders released from the Arizona Department of Corrections. Above all, the critical loophole in the concept is still open as long as a large number of sexual re-offenses remain undetected as a dark figure and the difference between official reconviction data and police report data is not estimated. Moreover, as Rogers (2000) warned forensic psychologists, risk probabilities can often be misunderstood by other persons involved in the criminal justice system. Any mental health professional who is engaged to conduct a risk assessment bears an ethical responsibility to be clear regarding the meaning when delivering their judgment.

The most severe criticism on actuarial methods is, however, that these can have serious consequences in a person 's life by classifying the individual based on a statistical possibility. Actuarial methods have been criticized as being atheoretical, since they list the factors associated with recidivism based on meta-analyses, without any theoretical basis, in contrast with various treatment programs having a firm base in the therapeutic schools (Craig, et al., 2008). Considering that there has been no theoretical origin for the risk items, it is hard to say whether categorization based simply on empirical finding is legitimate. One should also not forget that a statistical probability is not only based on the hypothetical influence of given evidence on possible consequences but also vice versa. According to Bayes ' theorem (1764), a probability is a summation of the probability of a hypothesis when the evidence is observed and the probability of evidences when the hypothesis is already corroborated.

As a simple analogy, genetic determinism--the determination of phenotype exclusively by genotype--is often criticized for ignoring environmental, non-genetic influences in predicting the expressions of certain phenotypes. If one collects data on certain genotypes and their common expression and on certain phenotypes and their common genotypes, the likelihood of a genotype predicting a specific phenotype will increase. After all, an individual is greater than the sum of its characteristics, which is the reason why even identical twins can show different, "extended" phenotypes. If one assumes that human genes are actually mutable in nature, it is difficult to see how one could deduce a "criminophenotype" from a "criminogenotype," and vice versa. Statistical analyses tend to be more valid when the sample size is large, since exceptional values become less influential. When it comes to these outliers, however, there is no way to know to what extent the phenotype could and would be extended from the generality. Standing in front of the undeniable fact that the greater the

sample size, the more valid an instrument, one might consider another question: what does this validity mean in a clinical setting?

Lastly, there is one more crucial aspect that has been neglected in recent researches. In his article, "The Uncritical Acceptance of Risk Assessment in Forensic Practice," Rogers (2000) pointed out that clearly that common assessment devices and relevant studies are inherently and implicitly biased, since they merely include risk factors but do not comprehend resources of an individual, which can actually counteract the recidivism risk in forensic population. Risk-only evaluations could therefore lead to an inaccurate enumeration of negative factors. Miller (2006) supported this view and argued that this fundamental bias in mainstream assessment could result in adverse outcome for both the offenders and for the society by over-predicting recidivism.

There is no doubt that an adjusted actuarial method, which includes further potentially important factors based on clinical judgments and other information sources, can have advantages over either purely actuarial or purely clinical approaches (Hanson & Bussiere, 1998). Hill and his colleagues (2008) underlined the importance of structured, initial and constant risk assessments. Colorado Department of Public Safety (2008) recommends standard guidelines for assessment and evaluation of sexual offenders, and stresses the need of continuity of the process. Craig et al. (2008) suggested a multiaxial actuarial risk appraisal, in which nomothetic and idiographic features are integrated and which can estimate likelihood of frequency, imminence, and severity of re-offending. There is a growing agreement among numerous experts on the importance of balanced risk appraisal. In other words, rehabilitation, the primary goal of the German penal codes, can only be achieved by taking protective factors into account. For a precise and through examination of recidivism risk, a resource-oriented risk assessment covering broader spectrum of methods from quantitative to qualitative and from actuarial to clinical is necessary. (De Vogel, et al., 2009; DeMatteo, Heilbrun, & Marczyk, 2005; Gagliardi, Lovell, Peterson, & Jemelka, 2004; Hagg ård-Grann, 2005; Salekin & Lochman, 2008).

Discussion & Conclusion

Even though the successful therapeutic effects of diverse offender treatment programs in Germany are frequently reported, different therapeutic approaches repeatedly come under criticism. An effective intervention in sexual offenders is primarily a preventive action against the recurrence of sex crime, since the effects of sexual offences on victims are extensive, long lasting, profoundly damaging to various aspects of a person's life, and can lead to various psychological disturbance. Society cannot afford even one more person becoming the victim of

such a traumatizing event. On the other hand, intervention should aim at successfully rehabilitating offenders to become useful members of society. A successful treatment should lead the client to function in the society, not merely to no longer sexually offend while remaining deviant (Marshall, Marshall, Seran, & Fernandez, 2006).

The task of forensic professionals is to examine the initial conditions, which lead to specific outcomes, as accurately as possible when assessing and predicting human behavior, in the same way the natural order of chaos can be understood by considering the butterfly effect (Prentky, & Burgess 2000). For a successful intervention, it is important to identify and assess recidivism related factors and pay attention to the relationship between those factors. Certain risk factors show significant connections to risk behavior, yet this link does not provide any information on the actually probability that the risk behavior will predict a criminal behavior (Gottfredson and Hirschi, 1990). Though higher statistical significance in the relationship between these variables is shown, the effect size will differ case by case. Some experts supported this argument indicating that the percentage of individuals who commit a crime is relatively small among people who are disposed to criminogenic features. After all, an engagement in criminal behavior will only occur under certain circumstances, when opportunities and situations are given in addition to those predisposed risk elements (Cullen, & Wright, 2002; Pratt, & Cullen, 2000). Moreover, Rogers criticized a problematic assumption that the absence of risk factors would indicate higher protection of an individual from recidivism (2000). "Personality disorder" in the HCR-20 is useful as an example, because its absence can hardly imply that the person has more resources to remain crime-free. Whereas predicting recidivism based on retrospective evaluation of risk factors was challenged, researchers have started to focus on preventing and intervening in modifiable, dynamic factors prospectively. In addition, studies have been increasingly attempting to identify the features, which provide individuals more strength to keep themselves from relapse (Clayton, Leukefeld, Donohew, Bardo, & Harrington, 1995; Gendreau, Little, & Goggin, 1996; Quinsey, Jones, Book, & Barr, 2006; Stouthamer-Loeber, Wei, Loeber, & Mastenb, 2004).

Inspired by this movement, researchers in the diagnostic and research department at the Van der Hoeven Kliniek in Utrecht, The Netherlands, developed a new assessment tool for the assessment of protective factors, as a positive addition to other SPJ-risk assessment devices (De Vogel, et al., 2007). The SAPROF, Assessment of PROtective Factors for violence risk was initially developed to assess adult males with a history of violence and a mental disorder; however, it can be applied in any cases where risk assessment is needed. According to the

definition in the SAPROF, protective factors are personal characteristics, environment or situation of an offender that protect the individual from falling back into violent behavior. These factors could also be classified into two categories, as with risk factors, depending on their stability: static and dynamic (De Vogel, et al., 2009).

The instrument was translated in German at the ISF (De Vogel, et al., 2010), and the first German version of the instrument was used in a pilot study with 30 clients in the Forensic Outpatient Program for Sex Offenders at the ISF, which showed a significantly negative link between the SAPROF and the SVR-20, while no significant correlation was observed between the the SAPROF and the Static-99 (Yoon, 2009). The validation study in a forensic outpatient setting is still ongoing and further institutions in other states have started to implement the SAPROF as well.

According to Douglas and Kropp (2002), the reason why we implement risk assessment in the first place is to minimize the possibility of a negative consequence, regardless of the person an assessor is dealing with.

The assessment paradigm in Hamburg is slowly finding its way to a positive turn. Searching out the clients' weaknesses but also strengths and fostering the strengths is vital to achieve the ultimate goal of all offender treatment measures, the prevention of relapse. In parallel with this tendency, the role of social and community-based therapies has also been adopting rehabilitation rather than repression. Mainstream assessment tools are becoming more comprehensive step by step, embracing dynamic variables; furthermore, they are examining the factors that protect clients from recidivism.

Further researches concerning risk and resources of sexual offenders in larger, international sample are warranted. Besides, cross validation and comparative studies for assessment tools and intervention programs are needed. Resource-oriented risk assessment should be regarded as an ongoing procedure, since both risk and protective factors can vary among individuals as well as within an individual. Even culture specific aspects among these factors need to be taken into consideration; the proper use of well-validated, well-operationalized instruments will be a prerequisite for the international comparability.

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독일 성범죄자에 관한 연구
- 독일의 새로운 평가도구 패러다임 중심으로 -

윤 달 님 Martin Rettenberger Wolfgang Berner Peer Briken

함부르크대학교 의학센터

본 논문은 현재 한국에는 잘 알려지지 않은 독일 성인 성범죄자 재범 위험평가 현황을 소개하고자 한다. 우선 독일의 형법 체제와 형법 집행과정에서 위험평가가 지니는 의의와 역할을 개괄하고, 무엇보다 독일에서 널리 사용되는 위험평가도구들을 요약하고 이에 관련된 연구 결과들을 간략하게 정리해본다. 마지막으로 이러한 절차들이 가지는 한계와 문제점들에 관해 논하고, 앞으로의 연구 방향과 평가도구들의 정확성과 완성도 향상 가능성을 제시한다.

주요어 : 독인인 표본, 보호요인, 위험성 평가, SAPROF, 성학대, 성범죄자