##### SENTENCING MEMORANDUM IN CHILD SEXUAL ABUSE CASE

##### State of Wisconsin

The State of Wisconsin provides the court with the following sentencing memorandum and supporting scientific articles in support of the conclusions set forth by the presentence author, Agent B. J., and in response to several statements made by the defendant to the presentence author. The State submits that at the time of sentencing, there are four principal considerations for the court. First is the rehabilitative potential of the defendant. Second is the deterrent message to the community resulting from the court's sentence. Third is the punitive sanction for the defendant's conduct, and fourth is protection of the community.

DEFENDANT has little, if any, rehabilitative potential. It is axiomatic within the treatment community that offenders who are in denial of their offense are not appropriate candidates for rehabilitation. While there are some sex offender treatment programs which are designed to break through denial, virtually every sex offender treatment provider recognizes and understands that the first step in any effective treatment program is acceptance of responsibility on the part of the defendant. In the present case, DEFENDANT completely denies his sexual offenses against VICTIMS. DEFENDANT has made no statements admitting culpability or acknowledging responsibility for his sexual assaults. Neither has DEFENDANT admitted any deviant sexual fantasies, or arousal with respect to children. Additionally, DEFENDANT provides no statements of remorse or empathy towards the victims of his offenses.

Enclosed for the court's review is a chapter from a book authored by Dr. Anna Salter entitled *Treating Child Sex Offenders and Victims*. The chapter focusing on offender denial reflects many of the aspects of DEFENDANT’s current statements to the probation agent through the presentence report. As Dr. Salter notes, denial should be considered more of a spectrum than a single state, having numerous components including: (1) denial of the acts themselves (type and period of time the abuse occurred); (2) denial of fantasy and planning; (3) denial of responsibility for the acts; (4) denial of the seriousness of the behavior; (5) denial of internal guilt for the behavior; and (6) denial of the difficulty in changing abusive patterns. As Dr. Salter's materials suggest, only when the defendant moves through this continuum from admission with justification to admission with guilt is the defendant's pathology effectively treated, and the offender made less of a threat to potential victims.

DEFENDANT reflects many of these aspects of denial including denial of the acts themselves, denial of fantasy and planning, denial of responsibility for the acts, denial of internal guilt for the behavior, and denial of difficulty in changing abusive patterns. DEFENDANT’s denial patterns are additionally reinforced through supportive family members who offer their own denial. As Dr. Salter notes, this puts DEFENDANT at greater risk, and makes the likelihood of effective treatment more remote. Dr. Salter notes that frequently these denial patterns are coupled with alibis for time periods of the alleged offenses, which are supported through the testimony of family and friends. This was reflected by the defendant’s testimony and the testimony of other witnesses at trial.

Such offenders do not accept responsibility for the offense, as they either contend it never happened or did not involve them. Since they were not involved in the offense, they neither admit to fantasy nor to planning. As there was no behavior, there were no adverse consequences to the behavior. Their response to discovery is neither guilt nor shame, but frequently outrage and righteous indignation. They insist the victim and/or the system is “out to get” them and they are the real victims. They admit to no reasons to change their behavior, since they deny any wrongdoing.

When family members support physical denial, the offender is much more difficult to treat, as he is likely to feel pressure from family members to continue in denial, in addition to his own internal tendency to deny. If the family refuses to cooperate with treatment, then the family's collusion with physical denials suggests that the offender should not be allowed to continue living at home. Such offenders must be removed from the source of the support for their deviancy for treatment to be effective. *Id*. at 101-102.

Dr. Salter also notes that offenders will also participate in “psychological denial” which in effect represents a position by the defendant that says “I am not the sort of person who would do that sort of thing. I am not a child molester. Therefore I did not molest this particular child.” DEFENDANT clearly represents this form of denial mechanism through his testimony and his statements to the presentence author as well. As Dr. Salter notes, such offenders do not admit their behavior has harmed the child and deny that they fantasized and planned the offenses. These offenders show little evidence of shame or guilt and are often indignant and outraged by the accusations. They see no reason to change an abusive pattern which they deny exists. *Id*. at 102.

Dr. Salter also notes that it is common for offenders to minimize their behavior, not only with respect to the offenses themselves, but also with respect to other deviant sexual behaviors. Dr. Salter notes Dr. Abel’s 1985 study which found a huge cross-over rate for other paraphilias and sexually deviant conduct in convicted offenders. DEFENDANT, conversely, acknowledges no such behaviors and portrays himself as “puritanical” in his sexual conduct. Such representations in light of the testimony received at this trial suggest that DEFENDANT’s denial mechanisms are extensive, and go far beyond simple denial of commission of the offenses. What we *know* from this testimony indicates that DEFENDANT is deceitful in his self-representations. However, this “known” offense history and sexual deviancy most likely greatly understates the true extent of defendant’s past, and correspondingly his risk to reoffend. Accordingly, DEFENDANT is not an appropriate candidate for treatment, either through in-patient or out-patient programs. Additionally, his denial, as will be seen later, makes DEFENDANT more of a risk for reoffending. Simply put, DEFENDANT is not an appropriate candidate for treatment or rehabilitation.

Closely related to the rehabilitative prospects of the defendant is the defendant’s degree of dangerousness, and the need for protection of the community from the defendant’s conduct. As Agent B.J. correctly points out, we are aware from the testimony VICTIMS that the defendant has engaged in a long history of offenses with them, including dozens of acts of sexual assault. However, as Agent B.J. points out, it is very likely that the defendant has other victims and a much greater spectrum of deviant behavior.

Attached hereto and incorporated is an article entitled *Self-Report of Crimes Committed by Sex Offenders* authored by M.W. and M.S. That article summarizes numerous scientific studies documenting self-reports of deviant sexual behavior, and comparing that to known offense data prepared from arrest reports and criminal convictions.

It is a foregone conclusion that in the realm of sexual aggression, the number of offenses committed by most perpetrators exceeds those documented in law enforcement files. Indeed it has been shown that many rapists and child molesters are chronic perpetrators and have avoided apprehension for dozens--and in some cases, hundreds--of sex crimes.  *Id*. at 286.

Three self-report studies of adult sex offenders have all shown a much higher frequency of sex crimes than might ordinarily be predicted on the basis of official records. Groth, et. al.'s study in 1982 revealed that the average child molester had been convicted only once, yet self-reported a mean of 4.7 sexual assaults per individual. A subsequent study conducted by Freeman-Longo (1985) revealed that child molesters averaged about 1.5 arrests per individual while their self-reports yielded over 20,000 sex offenses acknowledged by only 30 offenders. Similarly, Dr. Abel’s 1987 study involving self-reports by 371 self-avowed child molesters revealed over one-quarter million sex offenses, including 23.5 percent involving direct physical contact with the victim. By far the greatest offenders were non-incest homosexual pedophiles who had a mean number of victims of 150.2 per offender. Weinrott’s own study involving 67 men who had been arrested for sexually abusing a child indicated that 136 different victims had been molested. These same 67 men admitted to over 8,000 acts of sexual contact with 959 different children. The number of victims ranged from one to 200 with a median of seven. As Weinrott noted:

Interpreting the data pertaining to offenses against children is more difficult because there is little relationship between the number of sexual contacts with children, the number of victims, and the number of arrests. Unlike rape, where each act often involves a different victim, sexual exploitation of a child often spans many years and involves literally hundreds of contacts with the same victim. For example, one incest perpetrator (who also had victims outside the household) admitted to over 1,000 sexual encounters with his two daughters. This resulted in a single arrest on two counts of indecent liberties. On the other hand, another man admitted to only one sexual contact with each of 200 victims. He too was arrested only once. Id. at 291.

Weinrott's study also reflected that arrest records for offenders were poor indicators of sexual deviancy in other areas, noting that only a few individuals had been arrested for other deviant behaviors, yet a high percentage self-admitted to such participation in other deviant behaviors. Dr. Abel’s 1990 studies found a high incidence of multiple paraphilias in child molesters. Specifically, 17.6 percent of those who had molested boys had six or more different paraphilias and the conclusion reached from the study was that “individuals with only one paraphilia are rather uncommon.”

Dr. Marshall, et al. attempted to replicate data produced by Dr. Abel’s studies. While Dr. Marshall's findings (attached) did not reflect the degree of deviancy reported by Abel, his studies confirmed that large percentages of male offenders who offended against young male victims engaged in other acts of paraphilia. Additionally, Dr. Marshall's study corroborated findings by Dr. Abel and several other researchers, noting that the onset of deviant behavior patterns for such offenders, as well as the onset of sexual fantasies involving children occurred prior to age 20 in large percentages of offenders. Forty-one percent of male offenders against male victims admitted to fantasizing about having sex with children prior to age 20 and 47 percent had offended against their victims prior to the age of 20. In the present case, DEFENDANT’s offenses involving victim fall within this category of early onset of sexual deviancy. As will be noted subsequently, this factor is an important criteria in predicting risk factors for recidivism.

As these studies reflect, sex offenders who present themselves for sentencing before the courts frequently have arrest records which grossly underreport their prior offense history, their degree of sexual deviancy, and their risk for reoffending in the community. As Robert McGrath notes (attached), “in reality, however, many offenders have multiple paraphilias and those who do so are at increased risk to reoffend.” McGrath also notes that the type of offense is frequently a strong predictor of recidivism. Numerous studies have documented that offenders who molest underage males have the highest reoffense rate ranging between 13 to 40 percent. However, as McGrath quickly points out:

While these studies may provide helpful comparative information about the differential risk of recidivism according to the type of offense, the true reoffense rates for the subjects in each of the previous studies are likely to be much higher. In general, the skill with which most offenders avoid detection seriously compromises our ability to assess actual recidivism rates.

The validity of this conclusion is underscored dramatically by the studies involving self-reporting of prior offense history which reveals an overall pattern of few arrests compared to dozens of offenses.

Nevertheless, recidivism studies provide insight into predicting dangerousness of offenders for sentencing purposes, and the likelihood that offenders will reoffend. Dr. Quincy summarized several of these recidivism studies in a chapter from a recent publication entitled *Assessing Dangerousness*. That chapter is also included for the court’s reference. Those studies all reveal that adult male offenders who victimize male children, have significantly higher rates of recidivism than other sex offenders. Several variables were statistically related to recidivism including alcohol abuse, unorthodox ethical values, and problems in establishing meaningful relationships with adult females. DEFENDANT satisfies all three of these statistical criteria based upon his own admission to the presentence author, and collateral information.

Dr. Quincy notes several potential methodological variables which may account for the differences in rates of recidivism across different studies. Additionally, differences in legislation, police investigative techniques and prosecutorial perspectives may likewise impact on recidivist rates. Nevertheless, all of these studies document substantial rates of recidivism for offenders similarly situated to DEFENDANT.

From these studies, several categories and variables related to offender recidivism have been drawn up. From the perspective of a sentencing court, these factors should be equated with the sentencing criteria for protection of the community and the dangerousness of the offender. Included for the court's review are a series of variables prepared by Lloyd Sinclair, one of the foremost sexual therapists in the state, the Sex Offender Risk Instrument (SORI) utilized by the Wisconsin Department of Corrections, and the risk factors considered by the Victim Restitution Treatment Program in this county. On all three of these indexes, DEFENDANT scores high, representing a high risk to the community and a danger for reoffense. Accordingly, the court should view the risk that DEFENDANT will reoffend as being extremely high, and correspondingly the need for protection of the public is great, necessitating lengthy incarceration. Correspondingly, the likelihood of successful treatment of DEFENDANT is low, making the risk for reoffense even greater.

Although DEFENDANT does not have an extensive prior criminal lifestyle, he does have a past history of anti-social conduct, specifically related to alcohol abuse. Since many of DEFENDANT’s sexual offenses occurred while he was under the influence of alcohol, and are also of a repetitive and compulsive nature, this criminal lifestyle involving alcohol abuse takes on added significance. DEFENDANT’s three prior drunk driving arrests/ convictions, as well as numerous other traffic violations, all reflect repetitive patterns of behavior. These patterns continue despite the arrests and convictions, and despite his being removed from the military for similar types of behavior. His sporadic work history is also reflective of his problems with substance abuse. He also acknowledges extensive drug usage. DEFENDANT’s addictive and compulsive behavior in this area of his life parallels and reflects the same addictive and compulsive nature of his sexual conduct.

Most significant in terms of the risk factors are the nature and type of offenses, and the characteristics of the victims. In all of these areas, DEFENDANT scores highest on the risk criteria. All of his known victims are young pre-adolescent males with whom he has engaged in various acts of sexual contact and intercourse. Virtually all of these victims were vulnerable, having come from broken homes. DEFENDANT’s grooming patterns are reflected by the testimony of several of these youths who all indicate that DEFENDANT spent considerable time with them in efforts to win their confidence, gain their trust, and preserve the secrecy of his behaviors with them. The ritualistic-repeated nature of his assaultive behavior with them is also well documented.

As noted previously, DEFENDANT displays numerous cognitive distortions with respect to his own sexual conduct and predilections. The fact that his family members support these distortion and denial mechanisms, and allow their children to continue to be around him based upon their own denial of his offense history, makes the risk for reoffense even greater. Simply put, DEFENDANT’s family members will continue to provide him with access to their children because they do not believe that DEFENDANT is a pedophile.

What we do know about DEFENDANT is that by the age of 28, he has already impacted two generations worth of victims. He has a long period of sexual deviancy and extensive prior sexual offense history. Child molesters, especially those involved in acts against adolescent and pre-adolescent males, offend across their lifetime, especially when they are involved in offenses at a young age. DEFENDANT has no known rehabilitative potential and has demonstrated that he is an extreme risk in the community.

Dated:

Respectfully submitted,

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Assistant District Attorney