

2014

# Multidisciplinary Response to Youth with Sexual Behavior Problems

Amy Russell

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

## Recommended Citation

Russell, Amy (2014) "Multidisciplinary Response to Youth with Sexual Behavior Problems," *William Mitchell Law Review*: Vol. 40: Iss. 3, Article 9.

Available at: <http://open.mitchellhamline.edu/wmlr/vol40/iss3/9>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact [sean.felhofer@mitchellhamline.edu](mailto:sean.felhofer@mitchellhamline.edu).

© Mitchell Hamline School of Law

## MULTIDISCIPLINARY RESPONSE TO YOUTH WITH SEXUAL BEHAVIOR PROBLEMS

Amy Russell<sup>†</sup>

I. INTRODUCTION.....	1058
II. NORMAL AND CONCERNING SEXUAL BEHAVIORS.....	1060
III. YOUTH WITH SEXUAL BEHAVIOR PROBLEMS .....	1061
IV. STATISTICS FOR JUVENILES WHO SEXUALLY OFFEND .....	1063
V. EMPIRICAL AND SOCIAL RESEARCH REGARDING JUVENILES WHO SEXUALLY OFFEND.....	1064
A. <i>Characteristics of Juveniles Who Sexually Offend</i> .....	1064
B. <i>Recidivism Rates of Juveniles Who Sexually Offend</i> .....	1067
C. <i>Developmental Consideration of Juveniles</i> .....	1072
VI. STATUTORY GUIDELINES RELATING TO SEX OFFENDER REGISTRATION .....	1074
VII. RECOMMENDATIONS FOR MULTIDISCIPLINARY RESPONSE TO YOUTH WITH SEXUAL BEHAVIOR PROBLEMS.....	1077
A. <i>Criminal Issues</i> .....	1078
B. <i>Juvenile Court Issues</i> .....	1080
C. <i>Civil Child Protection Issues</i> .....	1081
VIII. CONCLUSION .....	1082

### I. INTRODUCTION

As the national ratchet of retribution continues to tighten on offenders of sexual assault, treatment providers and researchers bemoan the fact that America's youth are getting caught in its grip.

---

<sup>†</sup> Executive Director of Gundersen National Child Protection Training Center, located at William Mitchell College of Law. Correspondence to: [ajrussel@gundersenhealth.org](mailto:ajrussel@gundersenhealth.org). Ms. Russell obtained her BA in sociology from Hope College, her MSEd in counseling from Western Illinois University, and her JD magna cum laude from SUNY Buffalo Law School. Ms. Russell is also a nationally certified counselor. Ms. Russell wishes to thank Megan Rowley, William Mitchell College of Law legal intern, for her assistance with research for portions of this paper.

Youth advocates lament the facts that a “seven-year-old child could never return home again after two incidents of genital fondling of a five-year-old sibling”; that a twelve-year-old is perceived as a “predatory pedophile for life” after experimental sexual contact with another child; and ten-year-old children are being forced to register as sex offenders across the country.<sup>1</sup>

Recent public policy and legislation has increased the severity of sentences approved for juvenile offenders of sex crimes, and society has demonstrated its approval of criminally prosecuting juveniles as adults for some of these particularly violent crimes.<sup>2</sup> However, current empirical research supports the position that juvenile sex offenders differ from adult sex offenders in a variety of ways, and subsequently should not be subjected to the same punishment or treatment modalities as adults.<sup>3</sup>

Furthermore, a lack of understanding of normative sexual development in the child welfare, mental health, and juvenile justice arenas leads professionals to inappropriately classify and subsequently stigmatize youth who are not sexually aggressive. When youth display sexualized behaviors as a result of their own sexual development, family norms, cultural practices, or their own victimization, this normative sexual play or sexual reactivity is often mislabeled and leads to inappropriate diagnoses and treatment.<sup>4</sup> A lack of understanding of normal sexual development may also lead to the premature dismissal of inappropriate sexual behaviors as cases of “children being children” by child protection workers and law enforcement officers. A more informed response is required.

---

1. Mark Chaffin & Barbara Bonner, “Don’t Shoot, We’re Your Children”: *Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?*, 3 CHILD MALTREATMENT 314, 315 (1998).

2. See I.M. Schwartz et al., *The Impact of Demographic Variables on Public Opinion Regarding Juvenile Justice: Implications for Public Policy*, 39 CRIME & DELINQ. 5, 28 (1993).

3. See Mark Chaffin et al., *Report of the ATSA Task Force on Children with Sexual Behavior Problems*, 13 CHILD MALTREATMENT 199, 200 (2008); John A. Hunter, Jr. & Lenard J. Lexier, *Ethical and Legal Issues in the Assessment and Treatment of Juvenile Sex Offenders*, 3 CHILD MALTREATMENT 339, 340–41 (1998).

4. See generally Jeffrey W. Thigpen & J. Dennis Fortenberry, *Understanding Variation in Normative Childhood Sexual Behavior: The Significance of Family Context*, 83 SOC. SERV. REV. 611 (2009) (explaining that sexual behavior of children is understudied and not well understood and advocating for a social constructionist perspective).

## II. NORMAL AND CONCERNING SEXUAL BEHAVIORS

It is imperative that professionals who work with youth understand sexual behaviors of children. It is not uncommon for adults to attach “adult” meanings and motivations to children’s behaviors.<sup>5</sup> Due to adults’ life experiences, normative sexual play for children is often identified as concerning behaviors. In order to appropriately and accurately assess children’s behaviors, adults should be familiar with what is generally considered developmentally appropriate play and exploration as well as behaviors that may be indicative of maltreatment or exposure to inappropriate materials or acts.

Somewhere between forty and eighty-five percent of children will engage in some sexual behaviors with other children before they turn eighteen.<sup>6</sup> When assessing these behaviors, professionals should pay attention to the context of the behaviors. Of particular importance is to determine whether the children engaged in the behaviors are of similar age, size, and developmental levels.<sup>7</sup> If there are no power differentials between the children, and if the participation of the children is mutual and voluntary, it may be considered normative developmental behavior. When limited in type and frequency, when the activities are spontaneous, and when the children participate for information-gathering and exploration, it may be normative play.<sup>8</sup> The age of the child and the child’s culture impact the behaviors in which children may engage.<sup>9</sup>

Some examples of normal, common sexual behaviors in children ages two through six years include masturbation or self-touching; showing their genitals to and looking at the genitals of their peers; and attempts to view adults in the nude.<sup>10</sup> Non-aggressive kissing between similar-aged children and self-

---

5. Susanne Vosmer et al., “Normal” and “Inappropriate” Childhood Sexual Behaviours: Findings from a Delphi Study of Professionals in the United Kingdom, 15 J. SEXUAL AGGRESSION 275, 282 (2009).

6. TONI CAVANAGH JOHNSON, UNDERSTANDING CHILDREN’S SEXUAL BEHAVIORS: WHAT’S NATURAL AND HEALTHY 1 (1996).

7. *Id.*; Chaffin et al., *supra* note 3, at 201.

8. JOHNSON, *supra* note 6, at 1–2; Chaffin et al., *supra* note 3, at 201.

9. Chaffin et al., *supra* note 3, at 201.

10. *Preventing Sexual Violence: An Educational Toolkit for Health Care Professionals: Sexual Behaviors in Children*, AM. ACAD. PEDIATRICS, <http://www2.aap.org/pubserv/PSVpreview/pages/behaviorchart.html> (last visited Mar. 4, 2014) [hereinafter *Preventing Sexual Violence*].

stimulation that occurs in private are also generally acceptable and natural sexual behaviors for children under ten years of age.<sup>11</sup> These normative behaviors are ephemeral in nature, occur occasionally, and are easily redirected.<sup>12</sup>

When children are approaching early adolescence, masturbation becomes more common, as does a youth's interest in sex. They begin to demonstrate an interest in sexual activities, and may talk and ask questions about sexual parts and acts. Youth of this age are also likely to look at nude pictures of people and draw sexual parts.<sup>13</sup>

Sexualized behaviors that are less common, but are not necessarily problematic, in children with "normal" emotional, cognitive, and physical development include attempts to touch the genitals of adults or to use a tongue while kissing, rubbing body parts against others, and behaviors that naïvely imitate adult sexual acts.<sup>14</sup> When these behaviors are present, an assessment of the child who demonstrates them and his or her family and environment may be warranted, but would not necessarily warrant a report to the authorities.<sup>15</sup>

### III. YOUTH WITH SEXUAL BEHAVIOR PROBLEMS

Several decades ago, professionals were taught to look for "the big three" to identify children who may have been sexually abused. Children who set fires, wet their beds, and were cruel to animals were often labeled as victims of sexual contact; children who exhibited sexualized behaviors were often regarded as youth who were reenacting their own victimization.<sup>16</sup> While sexual victimization is a hypothesis to be considered, children who display such problematic sexual behaviors should be assessed not only for possible victimization, but also for medical issues, exposure to

---

11. Vosmer et al., *supra* note 5, at 281.

12. *Preventing Sexual Violence*, *supra* note 10; see Toni Cavanagh Johnson, *Some Considerations About Sexual Abuse and Children with Sexual Behavior Problems*, in *TRAUMA AND SEXUALITY: THE EFFECTS OF CHILDHOOD SEXUAL, PHYSICAL, AND EMOTIONAL ABUSE ON SEXUALITY IDENTITY AND BEHAVIOR* 92 (James A. Chu & Elizabeth S. Bowman eds., 2002).

13. Gail Hornor, *Sexual Behavior in Children: Normal or Not?*, 18 J. PEDIATRIC HEALTH CARE 57, 59 (2004).

14. *See id.* at 62; *Preventing Sexual Violence*, *supra* note 10.

15. Chaffin et al., *supra* note 3, at 213.

16. Vosmer et al., *supra* note 5, at 276.

domestic or community violence, and inadvertent exposure to sexualized materials.<sup>17</sup> Cultural norms, family practices, and the context of the behaviors should also be considered and evaluated.<sup>18</sup>

Just as professionals need to understand what sexual behaviors are natural and healthy for children, they similarly need to understand behaviors that are inappropriate. While curiosity about sexuality develops as youth mature, even young children are curious about their bodies.<sup>19</sup> Self-exploration and interest in others need not be red flags about maltreatment. However, inappropriate sexual behaviors in children may be indicative of medical or mental health issues for children, and maladaptive behaviors should be identified and assessed.

Some of the most concerning sexual behaviors youth may exhibit are those that include violence, threats, bribery, or coercion.<sup>20</sup> In a study conducted of experts on children who display sexually inappropriate behaviors, the following behaviors were of particular concern when exhibited by children under ten years of age: children who engage in sexual acts beyond their physical or cognitive age, children who insert objects into the privates of other children, children who watch or download pornography, and children who prompt complaints from other children due to their behaviors.<sup>21</sup> Additional behaviors not common for children to engage in include placement of a child's mouth on the genital area of dolls, sexual behaviors between youth with more than four years age difference, and children who request sexual stimulation from others.<sup>22</sup> Problematic sexual behaviors preoccupy these children for inappropriate amounts of time and often are not abandoned even after multiple attempts to redirect the child.<sup>23</sup>

While professionals need to be able to understand sexual behaviors that may be problematic, there is consensus in the field that children under the age of ten who exhibit these behaviors

---

17. Chaffin et al., *supra* note 3, at 201.

18. See Vosmer et al., *supra* note 5, at 276.

19. *Id.*; see SEXUALITY INFO. & EDUC. COUNCIL OF THE U.S., GUIDELINES FOR COMPREHENSIVE SEXUALITY EDUCATION 50–51 (3d ed. 2004), available at [http://www.siecus.org/\\_data/global/images/guidelines.pdf](http://www.siecus.org/_data/global/images/guidelines.pdf).

20. Chaffin et al., *supra* note 3, at 201; Vosmer et al., *supra* note 5, at 280.

21. Vosmer et al., *supra* note 5, at 275, 280.

22. Hornor, *supra* note 13, at 60, 62.

23. *Id.*

should not be labeled “sex offenders” or “sexual abusers.”<sup>24</sup> Language such as this should be rejected because

[it] implies that children are similar to adult sex offenders and engage in sexual activities for gratification of their own sexual needs. Most young children who display [sexually inappropriate behaviors] do not follow these patterns, do not normally engage in such behaviours for own sexual gratification or grow up to become juvenile or adult sex offenders. By using terminology derived from adults, the potential threat such children pose to society may be overemphasized, increasing demands for protection from such children. Hence, these children could become stigmatized and any interest they show in sexuality be seen as a form of pathology.<sup>25</sup>

#### IV. STATISTICS FOR JUVENILES WHO SEXUALLY OFFEND

In 2007, juveniles under eighteen years of age were arrested for 15.4% of the total number of rapes in the United States, and children under fifteen years of age were culpable for 5.3% of the total number of rapes.<sup>26</sup> In addition, youth younger than eighteen years were responsible for 18.4% of sex offenses (excluding forcible rape and prostitution) and youth under fifteen were arrested for nearly 9% of these sex offenses.<sup>27</sup> More than 35% of sex offenses committed against juvenile victims known to law enforcement were committed by juvenile offenders.<sup>28</sup> It must be noted here that rape and sexual assaults are highly underreported crimes. According to the U.S. Department of Justice, a mere 27% of these victimizations are reported to police.<sup>29</sup>

24. Vosmer et al., *supra* note 5, at 280; *see also* Chaffin et al., *supra* note 3, at 212 (“[A]pplying labels such as *sex offender*, *predator*, *perpetrator*, or variants of these terms are injudicious.”).

25. Vosmer et al., *supra* note 5, at 283 (citations omitted).

26. *See* FED. BUREAU OF INVESTIGATION, TABLE 38: ARRESTS 2007 (2008), *available at* <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2007> (stating that out of a total of 17,132 forcible rapes in 2007, children ages eighteen and under accounted for 2633 rapes and children ages fifteen and under accounted for 914 rapes).

27. *See id.*

28. David Finkelhor et al., *Juveniles Who Commit Sex Offenses Against Minors*, OJJDP JUVENILE JUSTICE BULLETIN, Dec. 2009, at 1–2 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/227763.pdf>.

29. JENNIFER L. TRUMAN & MICHAEL PLANTY, U.S. DEPT. OF JUSTICE, CRIMINAL

Between 1998 and 2007, there was a 31.6% decrease in arrests of juveniles seventeen years of age and younger for forcible rape, a 15% decrease in arrests of juveniles for sex offenses other than forcible rape and prostitution, and a 46% decrease in juvenile arrests for criminal offenses committed against the family and children.<sup>30</sup> While juvenile arrest rates appear to be decreasing, Congress, in passing the Second Chance Act of 2007 Community Safety Through Recidivism Prevention, estimates that “100,000 juveniles (ages 17 years and under) leave juvenile correctional facilities, State prison, or Federal prison each year. . . . Juveniles released from secure confinement have a recidivism rate ranging from 55 to 75 percent.”<sup>31</sup>

#### V. EMPIRICAL AND SOCIAL RESEARCH REGARDING JUVENILES WHO SEXUALLY OFFEND

##### A. *Characteristics of Juveniles Who Sexually Offend*

Letourneau and Miner suggest that there are three assumptions upon which current legal and therapeutic interventions rely:

- (1) There is an epidemic of juvenile offending that includes juvenile sexual offending;
- (2) Juvenile sex offenders have more in common with adult sex offenders than with other juvenile delinquents; and
- (3) In the absence of intensive interventions, juvenile sex offenders are at exceptionally high risk of reoffending.<sup>32</sup>

There is a great deal of dissonance in the field regarding identification of common characteristics of juveniles who sexually offend. While there appears to be a generally common acknowledgment that juveniles who sexually offend are a

---

VICTIMIZATION, 2011, at 8 (2012), *available at* <http://www.bjs.gov/content/pub/pdf/cv11.pdf>.

30. FED. BUREAU OF INVESTIGATION, TABLE 32: TEN-YEAR ARREST TRENDS (2008), *available at* <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2007>.

31. Second Chance Act of 2007 Community Safety Through Recidivism Prevention, 42 U.S.C. § 17501(b)(8) (Supp. 2011).

32. Elizabeth J. Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 SEXUAL ABUSE: J. RES. & TREATMENT 293, 294 (2005); *see also* Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 SEXUAL ABUSE: J. RES. & TREATMENT 107, 108 (2007) (describing similar assumptions).



heterogeneous group,<sup>33</sup> there is some argument as to whether these youth are distinguishable from adolescents with general juvenile delinquent behaviors.<sup>34</sup> Furthermore, there is a distinct group of researchers and mental health practitioners who vociferously argue that not all juveniles who display sexualized behaviors should be categorized as sex offenders or perpetrators, or incarcerated or treated as such.<sup>35</sup>

Generally, serious male juvenile offenders with victim contact—although not necessarily perpetrators of sexual violence—are characterized with high impulsivity, low neuroticism, and a conscience that is not developed.<sup>36</sup> In addition, these male juvenile delinquents are commonly considered to exhibit extreme levels of deviant behavior that may develop into antisocial personality disorder.<sup>37</sup>

Hunter et al. described two categories of juvenile sex offenders: those who abuse children and those who victimize their peers or adults.<sup>38</sup> Reviewing the police records of the sex offense investigations of 126 adolescent males, Hunter et al. concluded that adolescents who assaulted peers or adults generally targeted strangers or acquaintances and were more likely to assault their victims concurrent to the commission of another crime.<sup>39</sup> Those juveniles who abused children were more likely to offend a sibling or other relative and were demonstratively less likely to utilize force to gain victim compliance.<sup>40</sup> Hunter et al. concluded, “[P]eer/adult offenders display behaviors that suggest that they have greater

---

33. See, e.g., William N. Friedrich et al., *Youth with Problematic Sexualized Behaviors in the Child Welfare System: A One-Year Longitudinal Study*, 17 *SEXUAL ABUSE: J. RES. & TREATMENT* 391, 393 (2005); John A. Hunter et al., *Juvenile-Perpetrated Sex Crimes: Patterns of Offending and Predictors of Violence*, 15 *J. FAM. VIOLENCE* 81, 82 (2000); Hunter & Lexier, *supra* note 3, at 341.

34. See, e.g., Letourneau & Miner, *supra* note 32, at 297; Michael Miner, *The Fallacy of Juvenile Sex Offender Risk*, 6 *CRIMINOLOGY & PUB. POL'Y* 565, 566–69 (2007).

35. See, e.g., Chaffin et al., *supra* note 3, at 200; Chaffin & Bonner, *supra* note 1, at 315.

36. Catrien C.J.H. Bijleveld et al., *Contact Crimes in Relation to Neuroticism, Impulsiveness, Conscience Formation and Intelligence: An Exploratory Discriminant Analysis in Juvenile Delinquents*, 4 *PSYCHOL. CRIME & L.* 341, 357 (1998).

37. *Id.*

38. Hunter et al., *supra* note 33, at 82.

39. *Id.* at 89.

40. *Id.* at 89–90.

antisocial tendencies than child molesters do and appear to be more prone to violence.”<sup>41</sup>

A study of 114 male adolescent sex offenders in Canada concluded that there was a valid typological distinction between sex offenders who perpetrated only sex crimes and those who committed sex crimes in addition to other types of criminal offenses.<sup>42</sup> Furthermore, the sex-plus group had more childhood conduct problems and was more likely to victimize acquaintances and strangers than their sex-only cohorts.<sup>43</sup>

Group differences were likewise found in a study of 156 juvenile sex offenders committed to secure correctional facilities for sex offenses involving physical victim contact.<sup>44</sup> The study supported distinctions between juvenile sex offenders of child victims, juvenile sex offenders with peer/adult victims, and mixed-type offenders.<sup>45</sup> The mixed-type offenders were less likely to successfully complete sex offender treatment and were more likely to have traits associated with psychopathy.<sup>46</sup> This group was also more likely to have a history of nonsexual delinquent behaviors.<sup>47</sup> The peer/adult offenders were more opportunistic in their victimization, with lower levels of sexual preoccupation, and the offenders against children demonstrated increased levels of deviant arousal.<sup>48</sup>

A 2003 study attempted to identify distinguishing characteristics between juveniles who sexually perpetrated against prepubescent children and juveniles who sexually targeted pubescent and postpubescent females.<sup>49</sup> The findings suggest that sex offenders against children demonstrated lower psychosocial functioning than their cohorts who abused older victims, they

---

41. *Id.* at 91.

42. Stephen M. Butler & Michael C. Seto, *Distinguishing Two Types of Adolescent Sex Offenders*, 41 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 83 (2002).

43. *Id.* at 88.

44. Gregory A. Parks & David E. Bard, *Risk Factors for Adolescent Sex Offender Recidivism: Evaluation of Predictive Factors and Comparison of Three Groups Based upon Victim Type*, 18 SEXUAL ABUSE: J. RES. & TREATMENT 319 (2006).

45. *Id.* at 332.

46. *Id.*

47. *Id.* at 334.

48. *Id.*

49. See John Hunter et al., *Juvenile Sex Offenders: Toward the Development of a Typology*, 15 SEXUAL ABUSE: J. RES. & TREATMENT 27 (2003).

employed less violence and aggression in their victimizations, and they were more likely to be related to their victims.<sup>50</sup>

An extensive review of the literature on juveniles who sexually offend from 1995 to 2005 resulted in identification of several differences between juvenile sex offenders and non-sex offenders.<sup>51</sup> First, sex offenders were more likely to internalize problems.<sup>52</sup> Second, sex offenders typically displayed fewer antisocial behaviors than non-sex offenders and engaged in fewer non-sex offenses than the non-sex offenders committed.<sup>53</sup> Third, sex offenders displayed more problems in developing and maintaining intimate peer relationships than non-sex offenders.<sup>54</sup> Finally, sex offenders displayed a higher incidence of sexual victimization than non-sex offenders, although Anton van Wijk et al. admonish against imprudently overgeneralizing this finding to mean that those whom are sexually abused will inevitably become sex offenders.<sup>55</sup> The majority of the samples utilized in this study were derived from detention facilities, and van Wijk et al. consequently caution against attempts to generalize the characteristics found common to juvenile sex offenders to adolescents not confined to detention centers.<sup>56</sup> Due to the general inability to broadly apply these risk factors to youth in general, van Wijk et al. conclude that the factors discussed are too ambiguous and inconsistent to reliably make predictions of which youth are more at risk of sexually victimizing others.<sup>57</sup>

#### *B. Recidivism Rates of Juveniles Who Sexually Offend*

Similar to the research on characteristics of juveniles who sexually offend, there is also disagreement on recidivism rates for these youth.<sup>58</sup> The empirical evidence to date does not convincingly

---

50. *Id.* at 41–42.

51. Anton van Wijk et al., *Juvenile Sex Offenders Compared to Non-Sex Offenders: A Review of the Literature 1995–2005*, 7 *TRAUMA VIOLENCE & ABUSE* 227 (2006).

52. *Id.* at 238.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 237.

57. *Id.* at 239.

58. See, e.g., Chaffin & Bonner, *supra* note 1, at 316 (indicating that detected recidivism rates for teenagers' sex offending range from five to fifteen percent); Letourneau & Miner, *supra* note 32, at 297 (finding that juvenile sex offenders and

demonstrate that most juveniles who sexually offend victimize others for reasons similar to adults or will necessarily become sexual perpetrators as adults.<sup>59</sup>

An early study of 306 youth offenders comparing juvenile males who had committed nonviolent sex offenses against youth ages fifteen and younger to juvenile males adjudicated for non-sex crimes concluded that juvenile sex offenders continued to sexually victimize others into their adulthood.<sup>60</sup> Sipe et al. found that after a period averaging six years after the subject's eighteenth birthday, three percent of non-sex offenders were arrested as adults for sex offenses while nearly ten percent of the juvenile sex offenders were arrested for at least one sex crime as an adult.<sup>61</sup> However, the research did not support the idea that juveniles who committed more than one sex crime in their youth were more likely to sexually recidivate as an adult.<sup>62</sup> The results further suggest that juvenile non-sex offenders were arrested as adults for non-sex crimes at twice the rate of juvenile sex offenders who reach majority.<sup>63</sup> Finally, Sipe et al. concluded that a criminal history as a juvenile for other types of violent crimes, property offenses, or general criminal activity does not predict whether someone will commit sex crimes as an adult.<sup>64</sup>

In spite of the distinction between the comparison groups, Sipe et al. caution that criminal sanctions are often overly punitive

---

juvenile non-sex offenders are more likely to commit non-sex crimes in the future than sex offenses); Ron Sipe et al., *Adolescent Sexual Offenders Grown Up: Recidivism in Young Adulthood*, 25 CRIM. JUST. & BEHAV. 109, 111–14 (1998) (noting that retrospective clinical and self-report studies found recidivism rates ranging from forty to sixty-one percent, whereas retrospective studies that utilize official records estimated recidivism rates ranging from two to fourteen percent); James R. Worling & Niklas Långström, *Assessment of Criminal Recidivism Risk with Adolescents Who Have Offended Sexually: A Review*, 4 TRAUMA, VIOLENCE & ABUSE 341, 342–43 (2003) (noting that methodological differences including length of follow-up, recidivism measurement tools, impact of treatment measures, and population characteristics account for recidivism rates ranging from zero to thirty percent).

59. ASS'N FOR THE TREATMENT OF SEXUAL ABUSERS, THE EFFECTIVE LEGAL MANAGEMENT OF JUVENILE SEXUAL OFFENDERS 1–2 (2000), available at <http://www.calcasa.org/wp-content/uploads/2007/11/the-effective-legal-management-of-jvenile-sexual-offenders.doc>.

60. See Sipe et al., *supra* note 58, at 115, 118.

61. *Id.* at 116–17.

62. *Id.* at 119.

63. *Id.* at 117.

64. *Id.* at 119.

and that their research supports dispositions based on a case-by-case analysis of the offender and his presenting offense.<sup>65</sup> In contrast, Butler and Seto's assessment of juvenile sex-only and sex-plus offenders found that offenders committing only sex crimes had a lower risk for sexual recidivism than their sex-plus counterparts, and they advocate for discrimination between these subgroups of offenders when determining appropriate interventions.<sup>66</sup>

Miner studied eighty-six residents of a juvenile sex offender program and concluded that the following factors reduced the risk of sexual recidivism: offense against a male victim, having diagnoses for paraphilias, having been a victim of sexual abuse, and increased time spent in treatment.<sup>67</sup> Juvenile sex offenders who were preoccupied with children and had high impulsivity were found to have an increased risk for reoffending, as did youth who were younger when they initially offended.<sup>68</sup> Surprisingly, Miner concluded that antisocial behavior was not related to sexual recidivism.<sup>69</sup>

A meta-analysis conducted in 2003 of recidivism studies found that there were several risk factors with strong empirical support to predict sexual reoffending.<sup>70</sup> An increased risk of subsequent sex offenses was associated with juveniles who are sexually interested in prepubescent children or who use violence or force to offend.<sup>71</sup> Similarly, juveniles who have received criminal sanctions for prior sex offenses, yet continue to sexually offend, are at increased risk to continue sexually victimizing others.<sup>72</sup> Worling and Långström also found support for increased recidivism in juveniles who victimize multiple victims at more than double the rate at which single-victim offenders recidivate.<sup>73</sup>

Juveniles who target strangers for sexual assault are also at higher risk of continued sexual aggression toward others, as are adolescents who are socially isolated and unable or unwilling to

---

65. *Id.* at 122.

66. Butler & Seto, *supra* note 42, at 86–89.

67. Michael H. Miner, *Factors Associated with Recidivism in Juveniles: An Analysis of Serious Juvenile Sex Offenders*, 39 J. RES. CRIME & DELINQ. 421, 429–30 (2002).

68. *Id.*

69. *Id.* at 432.

70. Worling & Långström, *supra* note 58, at 345–47.

71. *Id.* at 345.

72. *Id.* at 345–46.

73. *Id.* at 346.

form emotionally intimate peer relationships.<sup>74</sup> An incomplete sexual abuse treatment program is an additional risk factor for continued sex offenses.<sup>75</sup> Interestingly, Worling and Långström identify each of the aforementioned risk factors, with the exception of the multiple victim predictor, as risk factors to reoffend for adult sex offenders, as well.<sup>76</sup>

Worling and Långström identified the following risk factors as “possible” or speculative risk factors, indicating that the empirical support for each factor has not been reproduced or is contradictory in the research: a family environment with elevated levels of distress; a preoccupation with sexual thoughts, images, and behaviors; high levels of impulsivity; targeting a male child victim; associations with and influences from a peer group who engages in antisocial or criminal activities; environments that support sexual reoffending; juveniles who sexually abuse young children; use of excessive violence, threats, or weapons during a sex offense; indiscriminate choice of victims; resistance to treatment or unwilling to alter deviant sexual interests or attitudes; a pattern of aggressive or antisocial behaviors; and recent escalations of negative affect.<sup>77</sup>

Parks and Bard found support for increased rates of sex offense recidivism for peer/adult offenders of sexual abuse at twice the rate of sex offenders of children.<sup>78</sup> Nonetheless, Parks and Bard found a lack of definitive support for the proposition that adolescents who commit sex offenses will continue to perpetrate sex offenses as adults.<sup>79</sup> The results did suggest, however, that generalized delinquent behaviors in youth are more closely associated with both sexual and nonsexual recidivism than instances of juvenile sex offenses.<sup>80</sup>

In a 2006 meta-analysis of recidivism rates, Reitzel and Carbonell identified a lower averaged recidivism rate for sex offenders than for non-sexual violent offenders, non-sexual non-violent offenders, and unspecified non-sexual offenders

---

74. *Id.*

75. *Id.* at 347.

76. *Id.* at 345–47.

77. *Id.* at 348–53.

78. Parks & Bard, *supra* note 44, at 335.

79. *Id.* at 337.

80. *Id.*

(at 12.53%, 24.73%, 28.51% and 20.40%, respectively).<sup>81</sup> Where juvenile offenders received sexual offender treatment, they recidivated at a rate of 7.37%, whereas those who did not receive treatment experienced a recidivism rate of 18.93%.<sup>82</sup> Interestingly, prior research suggests that offenders who complete treatment and those who completely refuse to participate in sex offender treatment both experience lower recidivism rates than offenders who initiate, but do not complete, treatment.<sup>83</sup> However, the results of this meta-analysis fail to find a significant difference for those who do not complete sex offender treatment.<sup>84</sup>

A 2007 study consisting of 249 juvenile sex offenders and 1780 non-sex offending delinquents likewise failed to support early findings that juvenile sex offenders will continue to offend as adults.<sup>85</sup> During the five-year follow-up period, 5.7% of the non-sex offenders were likely to commit a sex offense, as compared to 6.8% of the sex offenders who recidivated with a sex offense.<sup>86</sup> Furthermore, the sex offenders were considerably less likely than the non-sex offenders to commit a felony offense, as well as any general offense, during the follow-up period.<sup>87</sup>

There were three major conclusions resulting from a study analyzing data collected on three cohorts of youth born in 1942, 1949, and 1955 in Racine, Wisconsin.<sup>88</sup> First, juvenile male sex offenders commit crimes at a mere fraction of the rate of juvenile males engaged in general delinquency—1.5% and 37%, respectively.<sup>89</sup> Second, it is uncommon for juvenile sex offenders to continue criminal sex acts as adults.<sup>90</sup> Finally, the frequency of

---

81. Lorraine R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-Analysis*, 18 *SEXUAL ABUSE: J. RES. & TREATMENT* 401, 408 (2006).

82. *Id.* at 408–09.

83. *Id.* at 417.

84. *See id.*

85. Caldwell, *supra* note 32, at 111–12.

86. *Id.* at 110.

87. *Id.*

88. Franklin Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 *CRIMINOLOGY & PUB. POL'Y* 507, 511 (2007).

89. *Id.* at 515.

90. *Id.* at 529.

police contacts as a juvenile is a more reliable predictor for adult sex offending than is juvenile sex offending.<sup>91</sup>

A recent study conducted in South Carolina with 222 adolescent males convicted of index offenses compared recidivism rates of those required to register on the South Carolina sex offender registry to those who committed crimes where registration is mandated but where the criminal justice system failed to order registration.<sup>92</sup> The results of this study found that registered youth were 85% more likely to recidivate than nonregistered youth, and were likely to do so within two and a half years.<sup>93</sup> Moreover, minority youth were 130% more likely than white youth to recidivate.<sup>94</sup> However, recidivism in this study was broadly defined as any new guilty disposition in either juvenile or adult court for any sex offense or any nonsexual person or nonperson offense during the follow-up period.<sup>95</sup> Sexual recidivism only occurred twice in this study.<sup>96</sup> Another study conducted in South Carolina found that its child protection professionals believed that the “sex offender registry, at least with respect to juveniles, is too harsh and may be *increasing* the risk these children will not be able to function in society as adults and may, as a result, offend again.”<sup>97</sup>

### C. *Developmental Consideration of Juveniles*

Particularly concerning to some researchers is the negative impact mandatory registration laws will have on the cognitive, emotional, and social development of adolescents. Juveniles have a normal, developmental need to interact with mainstream society and to develop a positive self-identity.<sup>98</sup> Actualization of this need is impeded when juveniles are openly labeled and stigmatized as

---

91. *Id.*

92. Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *SEXUAL ABUSE: J. RES. & TREATMENT* 393, 394–403 (2008).

93. *Id.* at 401.

94. *Id.*

95. *Id.* at 399.

96. *Id.* at 403.

97. VICTOR I. VIETH, *THE VIEW FROM THE TRENCHES: RECOMMENDATIONS FOR IMPROVING SOUTH CAROLINA’S RESPONSE TO CHILD SEXUAL ABUSE BASED ON INSIGHT FROM FRONTLINE CHILD PROTECTION PROFESSIONALS* 85 (2013), *available at* <http://www.gundersenhealth.org/upload/docs/NCPTC/other/Silent-Tears-Final-Report.pdf>.

98. Letourneau & Miner, *supra* note 32, at 307.



sexual predators or sex offenders, which in turn paradoxically increases the likelihood of future criminal activity.<sup>99</sup> Miner's research suggests that adolescent sex offenders are generally more socially isolated than other youth, and therefore may tend to associate with younger children.<sup>100</sup> This may explain the correlation between sex offenders and their preoccupation with children.<sup>101</sup> However, the negative impact of mandatory sex offender registration for sexually offending youth only serves to further subject juveniles to ostracism from peer groups and decrease social bonds, which subsequently increases deleterious social interactions with younger or delinquent peers and maladaptive behaviors.<sup>102</sup>

Some empirical research demonstrates that juvenile sex offenders differ significantly from adult sex offenders in a variety of ways. Juvenile sex offenders are considered to be more responsive to appropriate sex offender treatment than adults who offend.<sup>103</sup> Juvenile sex offenders have fewer victims than adult offenders and generally engage in less serious and aggressive behaviors.<sup>104</sup> In addition, most juveniles lack the deviant sexual arousal or deviant sexual fantasies present in many adult sex offenders.<sup>105</sup> Furthermore, most juveniles are not sexual predators and they do not meet the accepted criteria for pedophilia.<sup>106</sup> What might be an additional significant distinguishing factor is that personalities are not yet fully developed during adolescence, and attempts to identify static personality traits at this stage of social and moral development are likely to be futile.<sup>107</sup>

---

99. Sipe et al., *supra* note 58, at 123.

100. Miner, *supra* note 67, at 431.

101. *Id.*

102. Letourneau & Miner, *supra* note 32, at 302; Parks & Bard, *supra* note 44, at 337.

103. ASS'N FOR THE TREATMENT OF SEXUAL ABUSERS, *supra* note 59, at 2.

104. Alexis O. Miranda & Colette L. Corcoran, *Comparison of Perpetration Characteristics Between Male Juvenile and Adult Sexual Offenders: Preliminary Results*, 12 SEXUAL ABUSE: J. RES. & TREATMENT 179, 184-85 (2000).

105. See Judith V. Becker et al., *Factors Associated with Erection in Adolescent Sex Offenders*, 11 J. PSYCHOPATHOLOGY & BEHAV. ASSESSMENT 353, 357 (1989); John A. Hunter, Jr. et al., *The Relationship Between Phallometrically Measured Deviant Sexual Arousal and Clinical Characteristics in Juvenile Sexual Offenders*, 32 BEHAV. RES. & THERAPY 533, 535-36 (1994); Letourneau & Miner, *supra* note 32, at 297.

106. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 687 (5th ed. 1994) (noting a minimum age of eighteen for the diagnosis).

107. Parks & Bard, *supra* note 44, at 336.

In addition to the aforementioned distinctions between juvenile sex offenders and adult sex offenders, additional concerns have been raised regarding the legal implications of trying adolescents as adults in court.<sup>108</sup> In the Supreme Court case of *Dusky v. United States*, the Court held that the test to determine competency of a defendant to stand trial is “[w]hether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.”<sup>109</sup> Since a person’s cognitive, moral, and personality development is not complete until adulthood, there is some question about whether adolescents should be held to the same standard of conduct as adults.<sup>110</sup>

#### VI. STATUTORY GUIDELINES RELATING TO SEX OFFENDER REGISTRATION

The 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was the first federal statute that required convicted sex offenders to register with their home state.<sup>111</sup> The law was enacted by President Clinton on May 17, 1996, as part of Megan’s Law, and was described as a means “to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety.”<sup>112</sup>

Megan’s Law included two requirements: Sex Offender Registration and Community Notification.<sup>113</sup> The 1994 Jacob Wetterling Act requires individuals convicted of sex crimes against children to register in their home states. Congress enacted sex offender registration laws on the beliefs that: sex offenders pose a high risk of re-offending after release from custody, a primary governmental interest is to protect the public from sex offenders,

---

108. See, e.g., Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCHOL. PUB. POL’Y & L. 3, 20–21 (1997); Hunter & Lexier, *supra* note 3.

109. *Dusky v. United States*, 362 U.S. 402, 402 (1960).

110. Hunter & Lexier, *supra* note 3, at 341.

111. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, §§ 170101–170201, 108 Stat. 1796, 2040–42 (1994).

112. H.R. Res. 526, 103d Cong. (1994).

113. Jacob Wetterling Act §§ 170101–170201, 108 Stat. at 2040–42.

the government's interest in public safety overrides the privacy interests of convicted sex offenders, and release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety.<sup>114</sup>

Megan's Law affords discretion to the states to establish standards for notification but requires states to provide the public, private, and personal information regarding registered sex offenders.<sup>115</sup> Community notification is believed to assist law enforcement officers in their investigations, provide a legal ground to hold a known offender, deter new offenses by convicted sex offenders, and enable community members to protect children from victimization through information sharing.<sup>116</sup>

President Bush signed into law the Adam Walsh Child Protection and Safety Act of 2006 on July 27, 2006.<sup>117</sup> The Declaration of Purpose of this Act states: "In order to protect the public from sex offenders and offenders against children . . . Congress in this Act establishes a comprehensive national system for the registration of those offenders."<sup>118</sup> One component of the statute, listed under Title I of the Sex Offender Registration and Notification Act, mandates the U.S. Department of Justice to create an Internet-based national sex offender database accessible to the public that allows users to specify a search radius across state lines.<sup>119</sup> The result is the Dru Sjodin National Sex Offender Public Website.<sup>120</sup>

The Association for the Treatment of Sexual Abusers (ATSA) submitted comments to the Office of Sex Offender Sentencing, Monitoring, Apprehension, Registration, and Tracking (SMART) in response to the Attorney General's recommended guidelines for the administration of the Sex Offender Registry and Notification Act (SORNA).<sup>121</sup> In its comments regarding SORNA, ATSA asserted that "all available data indicate that registration and notification

---

114. *Id.*

115. *See id.*

116. *Id.*

117. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 120, 120 Stat. 587.

118. *Id.* § 120, 120 Stat. at 590.

119. *Id.* § 120, 120 Stat. at 596; *see* 42 U.S.C. § 16918 (2006).

120. Adam Walsh Act § 120, 120 Stat. at 597.

121. Letter from the Ass'n for the Treatment of Sexual Abusers to the SMART Office, Dep't of Justice (July 30, 2007), *available at* <http://www.atsa.com/sites/default/files/SORNA.pdf>.

have had little to no impact on the rates of sex crimes in general or recidivism rates more specifically” and that “the overwhelming numbers of cases that reach the attention of the authorities each year involve offenders with *no prior involvement* in the criminal justice system. The numbers of cases involving already registered offenders are quite small.”<sup>122</sup>

ATSA further opposed the proposed SORNA rules, arguing that public disclosure of perpetrator identity and location is unwarranted and ineffective since the majority of victims already know their perpetrators.<sup>123</sup> Furthermore, ATSA contended that registration is contrary to the goals of treatment and rehabilitation of juvenile offenders, and that parents will be less likely to seek assistance for sexual behavior problems demonstrated by their children due to fear of lifetime registration requirements.<sup>124</sup> ATSA recommended that judicial discretion should be permitted when determining who should be required to register and suggested that when a child is adjudicated in the juvenile court system, community notification should be waived.<sup>125</sup>

In furtherance of its concerns expressed regarding the effectiveness and impact SORNA may have, ATSA reasoned that plea bargains to non-sex offenses will increase and more juveniles will choose to proceed to trial in attempts to avoid registration requirements if convicted of index offenses.<sup>126</sup> The secondary effects would be lack of treatment and accountability for unadjudicated juvenile sex offenders.<sup>127</sup>

Research regarding prosecution rates of child abuse cases indicates that approximately half of child abuse investigations are referred to prosecuting attorneys.<sup>128</sup> Generally, more than half of these cases are accepted for prosecution, and more than eighty percent of these cases were pled out if carried forward (less than thirty percent of these cases were dismissed, diverted or transferred if accepted for charging).<sup>129</sup> Current research suggests that for every

---

122. *Id.* at 2.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 3.

127. *Id.*

128. Theodore Cross et al., *Prosecution of Child Abuse: A Meta-Analysis of Rates of Criminal Justice Decisions*, 4 TRAUMA, VIOLENCE & ABUSE 323, 330 (2003).

129. *Id.*

one hundred cases referred for prosecution, forty-three cases result in guilty pleas and nine cases proceed to trial.<sup>130</sup> ATSA suggests that both of these figures could rise substantially with the implementation of the new SORNA rules.<sup>131</sup>

#### VII. RECOMMENDATIONS FOR MULTIDISCIPLINARY RESPONSE TO YOUTH WITH SEXUAL BEHAVIOR PROBLEMS

All instances of concerning sexual behaviors exhibited by children should be fully investigated by a multidisciplinary team.<sup>132</sup> Team members should include law enforcement officers, child protection workers, forensic interviewers, child protection attorneys, prosecutors, victim advocates, and medical and mental health professionals. Law enforcement officers have the responsibility of fully investigating the sexual contact between youth, including the identification of corroborating evidence of victimization. Child protection workers need to be able to assess the risk factors of leaving the child in an environment that may be exposing the child to inappropriate materials or incidences. Forensic interviewers, familiar with development, linguistic, cultural, and legal issues, are able to facilitate reports by children who may have experienced abuse or witnessed violence in their homes or communities. Attorneys need to fully understand and take advantage of prosecutorial discretion when considering charging and petition options to assist child victims, offenders, and sexually reactive youth. Advocates, medical providers, and mental health professionals should be involved in supporting the child and family through the investigative process and completing a full assessment to identify the health, welfare, and safety of the child. For example, some youth who are not easily redirected for touching their genitals in public may need to be evaluated for health concerns or anxiety problems.

Sexual development does not occur in a vacuum. When assessing sexualized behaviors observed in children and youth, professionals must take multiple factors into consideration. The age of the child displaying concerning sexual behaviors must be

---

130. *Id.* at 326.

131. Letter from the Ass'n for the Treatment of Sexual Abusers to the SMART Office, *supra* note 121, at 3.

132. Chaffin et al., *supra* note 3, at 216.

considered.<sup>133</sup> As children age, their sexual knowledge increases, and the sexual behaviors in which they engage may normally increase and become more secret. Family norms and traditions should also be considered, including practices regarding family nudity, siblings to whom the youth has exposure, and whether a child attends day care or is around other children.<sup>134</sup> Environmental characteristics and factors should be considered as well, including educational level of the parents and caretakers, exposure to community and family violence, and victimization from other forms of maltreatment.<sup>135</sup> While a clinical assessment may provide helpful information for diagnosing and treating children and youth who display inappropriate sexual behaviors, this assessment should not take the place of a complete child protection or criminal investigation.<sup>136</sup>

#### A. *Criminal Issues*

The age at which youth can be criminally charged for sex offenses varies by state. Some states automatically charge juveniles ages sixteen and older as an adult if the offense committed is of a “serious” nature as delineated in their statutes, including but not limited to sex offenses such as first degree rape, sexual abuse of a child, lewd or lascivious acts upon the person of a child under fourteen, or sodomy.<sup>137</sup> In some states, this mandatory transfer to adult criminal court for these sex offenses occurs at ages as young as fourteen.<sup>138</sup> These mandatory transfers of juvenile offenders to adult criminal court do not take into consideration any prior status offenses or background of the youth. In the alternative, some states permit waiver to adult court for youth who commit sex offenses;<sup>139</sup>

---

133. *Id.* at 201; Thigpen & Fortenberry, *supra* note 4, at 625.

134. Chaffin et al., *supra* note 3, at 202–03; Thigpen & Fortenberry, *supra* note 4, at 626–27. *See generally* AM. PSYCHIATRIC ASS’N, *supra* note 106, at 423–24 (suggesting physicians consider certain social factors when diagnosing sexual dysfunctions).

135. Chaffin et al., *supra* note 3, at 202–03; Thigpen & Fortenberry, *supra* note 4, at 626–27; *see also* AM. PSYCHIATRIC ASS’N, *supra* note 106, at 423–24.

136. Chaffin et al., *supra* note 3, at 202.

137. *E.g.*, ALA. CODE § 12-15-102 (West, Westlaw through 2013 Reg. Sess.); ALASKA STAT. ANN. § 47.12.030 (West, Westlaw through 2013 1st Reg. Sess. of 28th Leg.).

138. *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 8-302, 13-501 (West, Westlaw through 1st Reg. and 1st Spec. Sess. of 51st Leg.).

139. *See, e.g.*, COLO. REV. STAT. ANN. §§ 18-1.3-406, 18-1.3-407.5, 19-2-517,

some as young as twelve years of age, for offenses such as “gross sexual imposition” or crimes of violence,<sup>140</sup> or if the youth has previously been adjudicated as delinquent.<sup>141</sup> Some states employ concurrent jurisdiction for sex offenses committed by youth, and transfer from juvenile court to adult criminal court is by prosecutorial discretion.<sup>142</sup> Vermont permits waiver from juvenile court to adult criminal court in cases of sexual assault and aggravated sexual assault for youth as young as ten years of age;<sup>143</sup> at least five states decree that a youth of any age can be tried as an adult if the sex offense is serious enough and the child is competent to stand trial.<sup>144</sup>

Once convicted of a sex crime—or other violent acts—juveniles are often required to register as a sex offender in compliance with SORNA. Several states require registration only if the youth is convicted of sexual acts in adult criminal court.<sup>145</sup> Other states require registration for juveniles only if they have attained the age of fourteen years.<sup>146</sup> In two states—Maryland and Virginia—youth as young as thirteen years of age must register for certain sex offenses;<sup>147</sup> North Carolina permits registration of youth as young as eleven years of age.<sup>148</sup>

---

19-2-518(1)(I)(A) (West, Westlaw through 2013 1st Reg. Sess. of 69th Gen. Assemb.).

140. See, e.g., CONN. GEN. STAT. ANN. § 46B-133C (West, Westlaw through 2014 Supp.); KAN. STAT. ANN. §§ 38-2302(n), -2347 (West, Westlaw through 2013 Reg. and Spec. Sess.).

141. E.g., ARK. CODE ANN. § 9-27-501 (West, Westlaw through 2013 Reg. and 1st Extraordinary Sess.).

142. See NEB. REV. STAT. ANN. §§ 43-247, -276 (West, Westlaw through 2013 Reg. Sess.).

143. VT. STAT. ANN. tit. 33, § 5204(10)–(11) (West, Westlaw through 2013 1st Sess. of Gen. Assemb.).

144. DEL. CODE ANN. tit. 10, §§ 928, 1010 (West, Westlaw through 2013); ME. REV. STAT. ANN. tit. 15, §§ 3101(4)(D)–(E), 3103 (West, Westlaw through 2013 Reg. and Spec. Sess.); N.H. REV. STAT. ANN. § 169-B:24(I) (West, Westlaw through 2013 Reg. Sess.); OKLA. STAT. ANN. tit. 10A, §§ 2-2-403, 2-5-101 (West, Westlaw through 2013 1st Extraordinary and Spec. Sess.); OR. REV. STAT. ANN. § 419C.352 (West, Westlaw through 2013 Reg. and Spec. Sess.).

145. See, e.g., ALASKA STAT. ANN. § 12.63.100(3) (West, Westlaw through 2013 1st Reg. Sess. of 28th Leg.).

146. E.g., ALA. CODE §§ 15-20A-1 to -20A-48 (West, Westlaw through 2013 Reg. Sess.) (“[A] juvenile . . . who was 14 years or older . . . shall be subject to the registration requirements.”).

147. MD. CODE ANN., CRIM. PROC. § 11-704(c)(1)(i) (West, Westlaw through 2013 Reg. Sess. of Gen. Assemb.); VA. CODE ANN. §§ 9.1-902(G) (West, Westlaw

Prosecutors are encouraged to use their discretion in charging out sex offenses against juveniles. Such discretion can be used to ensure appropriate treatment for the offender while still holding the offender accountable for his or her actions and addressing the needs of the victim and his or her family. One such discretionary tactic is a diversion program. In diverting a case, a prosecutor can have the youth evaluated for his or her offenses and move forward with prosecution only if the youth does not comply with recommendations for offender treatment.<sup>149</sup>

Due to the multiple and varied origins of inappropriate sexual behaviors demonstrated by youth, as well as the amenability to treatment and low frequency of identified sexual recidivism of these offenders, distinguishing sex crimes committed by youth from other types of criminal offenses may not be the most appropriate policy.<sup>150</sup> A careful assessment of the child's developmental level, personal and family history, motives behind the acts, and risk for recidivism should be conducted in each case. Mandatory, draconian policies that group adolescents, who are still engaged in moral and cognitive development, with serious adult offenders are not in the best interests of our youth. A more appropriate balance can and must be struck between protecting society and managing youth who display sexually inappropriate behaviors.

### B. *Juvenile Court Issues*

Juvenile court, sometimes called youth or family court, has original jurisdiction in most proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child, or a dependent child. Exceptions and waivers to adult criminal court are outlined above.<sup>151</sup> Youth who commit certain less serious sex crimes may be more effectively served by the filing of

---

through 2013 Reg. Sess. and 2013 Spec. Sess.).

148. N.C. GEN. STAT. ANN. § 14-208.26(a) (West, Westlaw through 2013 Reg. Sess. of Gen. Assemb.).

149. See A. Ann Ratnayake, *Juvenile Sex Offenses: Finding Justice*, 23 NAT'L CENTER FOR PROSECUTION OF CHILD ABUSE UPDATE, no. 9, 2013, at 2, available at [http://www.ndaa.org/pdf/Update%20Vol23\\_No9.pdf](http://www.ndaa.org/pdf/Update%20Vol23_No9.pdf); Victor I. Vieth, *When the Child Abuser Is a Child: Investigating, Prosecuting and Treating Juvenile Sex Offenders in the New Millennium*, 25 HAMLINE L. REV. 47, 62-63 (2001).

150. See Chaffin et al., *supra* note 3, at 211-12.

151. See *supra* Part VII.A.



juvenile delinquency charges, as opposed to prosecution in adult criminal court. With a juvenile court conviction, a history of offenses is tracked, but the information is often not available to the public, thus reducing stigma and shame for youth.<sup>152</sup>

C. *Civil Child Protection Issues*

A holistic assessment should be completed when allegations of sexual behaviors between youth arise. This is particularly important when the sex “offender,” the child alleged to have initiated the sexual contact, is under ten years of age. Both the “target” child and the “offender” should be assessed as possible victims. While not diagnostic, youth with sexual behavior problems may themselves have been victimized or exposed to violence or inappropriate materials.<sup>153</sup> Forensic interviews should be conducted with the “target” child to identify the extent of the sexual behaviors, and whether the contact was mutual or if any force, coercion, or secrecy was involved. The “offender” child should be assessed as well to identify the source of the sexualized behaviors. The family environment impacts how a child develops sexually;<sup>154</sup> therefore, a careful assessment of the “offender” child’s family should also be conducted.

It is not uncommon to hear of instances where the parents of the “offender” child will not allow child protective services or law enforcement officers access to interview the child. In these instances, it may be appropriate to initiate an investigation of the uncooperative parents for neglect. The sexual health of a child is an important mental health consideration, and when parents ignore the mental health needs of their child, it may be considered neglect.<sup>155</sup> In cases where youth who display maladaptive sexual behaviors are not eligible for criminal or juvenile sanctions, or such sanctions are not appropriate, alternative services should be provided. Youth who display inappropriate sexualized behaviors are

---

152. See, e.g., MINN. STAT. § 260B.171, subdiv. 4 (2012) (restricting access to juvenile court records); see also Ratnayake, *supra* note 149, at 2 (“[A]ccess to records may be limited in [the] future.”); Vieth, *supra* note 149, at 65–66 (discussing the pros and cons of filing delinquency petitions against juvenile sex offenders).

153. Chaffin et al., *supra* note 3, at 203.

154. *Id.*; see generally Thigpen & Fortenberry, *supra* note 4 (studying familial factors that influence sexual behavior).

155. See, e.g., MINN. STAT. § 626.556, subdiv. 2(f).

themselves at future risk for sexual victimization.<sup>156</sup> Youth should receive appropriate sexual education, counseling, and support services to mediate these behaviors, and caretakers should receive support and parenting education to more effectively respond to such behaviors.<sup>157</sup> When addressed through a child protection petition, states or counties can provide services not only to the youthful offender, but also to the family, who have the best capacity to monitor the youth's treatment and provide adequate supervision.<sup>158</sup>

### VIII. CONCLUSION

Due to the lack of strong empirical support for unequivocal offender character traits and sex offense recidivism rates, law enforcement interventions targeting known juvenile sex offenders and providing intensive and restrictive treatment services may be draining precious and limited resources.<sup>159</sup> Furthermore, mandatory juvenile sex offender registration and increased incarceration rates find little support in research and therapy modalities as successful sexual abuse prevention efforts, and are more likely to exacerbate criminal behavior.<sup>160</sup>

While legislators are admirably seeking to respond to the heinous crimes of sexual abuse that are being committed against this country's children, they are sweeping in adolescents whose behavior may be demonstrative of their own victimization. Such a harsh response may only further victimize children in our country and perpetuate the violence and harm to others. Such a response cannot be tolerated.

---

156. Chaffin et al., *supra* note 3, at 200.

157. *Id.* at 207–08.

158. For more information on the pros and cons of the use of child protection petitions with juvenile offenders, see Ratnayake, *supra* note 149; Vieth, *supra* note 149, at 64–65.

159. See, e.g., Caldwell, *supra* note 32, at 109; Parks & Bard, *supra* note 44, at 321.

160. Miner, *supra* note 34, at 567.