Juveniles, Rehabilitation, and Sex Offenses: Changing Laws and Changing Treatment

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ESSAY: JUVENILES, REHABILITATION, AND SEX OFFENSES: CHANGING LAWS AND CHANGING TREATMENT

Janis F. Bremer, Ph.D.†

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I. BEHIND THE SCENES†

A. Joe’s Story

Fifteen-year-old Joe comes into my office for an interview with his parents, Jon and Jill. Joe’s parents speak first. They are confused and upset about the allegation that Joe sexually molested one of the very young children at Jill’s day care. Although the little girl was only three years old, she told her parents that Joe touched her vaginal area and asked her to touch and lick his penis.

Jon speaks to his son’s successes. Joe is an excellent student and plans to attend a good university after high school. He is active

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1. The following stories are true accounts of interviews conducted by the author. Names have been changed to protect confidentiality.
in high school sports and made the roster for both football and baseball. Joe is no trouble at home, and his friends are respectful and well liked in the community. Jon expresses concern that his son may mistakenly be branded as a “sex offender.” Both Jill and Jon ask that Joe be given the opportunity to clear his name. Although they are aware that Joe may have wrongly explored sexual curiosity with this child, they do not believe it to be true. They agree that if Joe did touch the little girl, consequences are in order, but not to the extent of a juvenile record and registration as a sex offender.

Later, Joe speaks alone with me. He is a well-groomed young man who sounds confident. His life story sparkles with good will and success. His plans for himself are well formed and mainstream. Joe tells about his sexual learnings in a more mature way than many youth his age. Joe also talks about his relationship with the little girl. At first, the story is one of misunderstanding on her part. He says that he often helps his mom in the day care, and this girl is one whom he helps with toileting practice. As Joe tells his story of the activities he remembers with her, his tone of voice changes: he becomes softer and more inwardly directed. We start to talk about how adorable little girls can be, with their unswerving attention and affection, and how curious they are as they move through the phase of gender identification (knowing that they are a boy or a girl).

Joe’s tale then shifts. He begins to talk about the little girl’s flirtatiousness with him. He says that he knew she wanted to be his girlfriend by the way she acted with him. For example, she had lifted up her little skirt in front of him. He also talks about sexual touching as a natural progression in his relationship with her. He is entirely unaware of how a three-year-old is unequal to a fifteen-year-old. He is attracted to the child; she is his girlfriend. He admitted that he asked her if he could touch her and have her hold and kiss his penis; he believes that she consented to this adult sexual behavior.

It is hard for Joe’s family and legal supporters to take in and appreciate the serious nature of Joe’s behavior and underlying attitude. All other aspects of his life may warrant leniency on the part of the juvenile court. Without our crucial conversation, Joe may well walk away and carry with him a dangerous sense of permission to engage young girls in sexual activity.
B. Bob’s Story

Bob troops into my office; his stepfather Jim follows behind Bob with a toddler in his arms. Bob admits that he sexually molested a girl on his school bus. Adjudicated on a felony charge, Bob earnestly describes how the lawyers told him that admitting to the charge would be the best thing for him to do. Jim looks disheveled and tired; he talks about the problems with Bob at home and at school. He does not believe Bob wants to hurt girls, but he does not know what happened. Jim wants Bob to learn to “keep his hands to himself.”

At thirteen, Bob is a gangly and poorly groomed youngster. He receives special education services at school and is not sure if he will graduate from high school. He cannot afford to join sports teams or clubs. Bob enjoys playing basketball with friends he grew up with at a local recreation center. Bob talks about his hopes in a limited way; he is a little awkward and defensive.

As Bob talks about what happened on the school bus, he becomes sad and confused. He says that the kids on the bus shout out things about sex every day. On this particular day, he sat next to a girl and suddenly put his hand on her crotch. Bob reddens and looks away from me. He says that she pushed at his hand as he tried to hold on to the top of her pants. He thinks that she thought he was going to try to pull at her pants. Bob says he was feeling “sexy” and was not really paying attention to what was going on and how the girl would feel. He says this happened only once. In her statement, the girl also said that it happened only once. However, she stated that she heard Bob saying things about sex on other occasions.

Bob wants to date a girl in his class. He has had a couple of girlfriends in the past, but he is not sexually active. He tells stories about his daydreams: a famous singer who falls for him, movie stars that he likes to look at, and a high school girl who lives down the street.

It is too easy to move a boy like Bob through our legal system. Unless a qualified professional assesses the level of intervention necessary for Bob, he could slip into long-term treatment and a system that perceives him as a labeled “sex offender.”

II. INTRODUCTION

Youth in Minnesota can be arrested, prosecuted, and placed
under court order beginning at age ten.\(^2\) According to tradition, juvenile court is under a mandate to rehabilitate our children. Instead of simply punishing youths, juvenile court is designed to provide social and mental health services that produce positive behavior changes ultimately reducing delinquent activities.

Sexual offenses raise the bar for rehabilitation efforts. A sexual offense in our society is generally seen as the most heinous of crimes, particularly if the victim is a child. In the late 1970s, adolescent sexual crimes were often dismissed as “boys will be boys” crimes.\(^3\) As public awareness grew in concert with data collected from imprisoned adult sexual offenders, the serious nature of youth sexual offenses grew clearer.\(^4\) The majority of imprisoned adult sexual offenders reported that their sexual offense behaviors began in early adolescence. In response to the research, the juvenile courts shifted their position; specialized sex-offense specific interventions became the norm.\(^5\) During the 1980s, treatment programs grew from a few dozen scattered across the country to about eight hundred in the early 1990s. Currently, there are over two thousand programs providing specialized sex-offense specific interventions and treatment.\(^6\)

During the 1980s, the first decade of sex-offense specific programs, Minnesota laws regarding juvenile sex offenders saw little change. However, during this period, laws regarding adult sexual offenses changed dramatically.\(^7\) In the 1990s, the Legislature responded to societal outcry by stiffening penalties for sex offenses and attempting to strengthen community safety.\(^8\)

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5. These interventions provide treatments that take into account the particular natures of the sex offenses the juvenile has committed rather than using a generalized treatment approach.
8. For example, the legislature increased the maximum prison sentence
Although these statutes primarily focused on adult behavior, their application to juveniles followed a “get tough” approach that was being applied to juvenile delinquency in general.9

III. SEX-OFFENSE SPECIFIC TREATMENT PROGRAMS

Interventions for juveniles, from the initial evaluation to the completion of treatment, traditionally involved the legal system and were designed to complement it.10 In general, evaluations are recommended prior to disposition hearings in order to ensure adequate placement decisions. An evaluation by a qualified therapist identifies in detail the optimal setting for a given juvenile who committed a sex offense.

The continuum of available care and treatment for juvenile sex offenders ideally includes: short-term and standard outpatient treatment with the youth remaining at home; short-term and standard outpatient treatment with placement in a group home or foster home setting; day treatment; placement in an open residential treatment center; and placement in a secure correctional treatment facility.11 Many communities do not have resources that meet all steps of the continuum. However, secondary recommendations can be made to account for local resources. The importance of the intersection of correctional and mental health services at this level is illustrated by decisions putting more supervision in place or considering home electronic monitoring.


9. For example, registration laws enacted for adults are applied with little modification to juveniles. See Minn. Stat. § 243.166 (2002). The certification procedure of juveniles to adult court and extended jurisdictional jurisdiction (EJJ) allow for increased punishment to juvenile delinquents, including sex offenders. See Minn. Stat. § 260B.125 (2002) (outlining the process by which children ages fourteen to seventeen may be prosecuted in adult court); Minn. Stat. § 260B.130 (2002) (allowing courts to impose a stayed adult criminal sentence as a consequence for violating the provisions of the juvenile disposition order or committing a new offense).


the severity of the offense defined by the legal system. As reflected by the stories of Joe and Bob, the legal system’s definition of behavior and the underlying meaning of the behavior to the individual and community can differ widely. Due to the scarcity of valid research in the field, many professionals at an evaluation rely on what is essentially myth in order to predict the dangerousness or risk of re-offense. This is true both in the legal and the mental health arenas. For example, until recently denial of an offense was considered a factor of high risk for re-offense within treatment circles.\textsuperscript{12} However, denial is a multifaceted concept that functions differently for subgroups; from a social development perspective, denial is an expected event when socially unacceptable behavior is involved. As another example, the legal continuum in the Minnesota statutes views contact offenses in a more serious vein than “hands-off” offenses.\textsuperscript{13}

Within all programs along the continuum of care and treatment, there are essential components that work toward accountability, apology, and responsibility.\textsuperscript{14} Accountability involves work that directs the youths to fully admit their offenses. This may mean that youths will modify defensive thoughts (cognitive distortions), recognize their victims’ perspectives, directly address any deviant sexual arousal, and learn to handle their feelings. Apologizing is a way to reinforce accountability and recognize responsibility for future behavior. Most often, apologies are not face-to-face with their victims, although in some instances apologizing can and should be done directly. Learning to apologize sincerely leads youths to learn to change their behaviors.

In order to become responsible for their actions, the youths must understand how they came to commit their offenses. Even when they acted on impulse, this understanding takes the youths to


\textsuperscript{13} For example, indecent exposure and other lewd conduct are typically misdemeanor level offenses, while generally, criminal sexual contact is at least a gross misdemeanor level offense. \textit{See} Minn. Stat. §§ 617.23, 609.3451 (2002).

\textsuperscript{14} \textit{See generally}, Paul Stephen Lundrigan, \textit{Treating Youth Who Sexually Abuse – An Integrated Multi-Component Approach} 108-16 (2001) (listing principal goal areas as promoting reality and responsibility, modifying deviant thought patterns, addressing skills deficits, expanding/developing appropriate emotional responses, understanding the pattern of offending, and breaking offending patterns).
the next step: prevention of future offense behaviors.\textsuperscript{15} It is understood now that adolescents who sexually offend fall into a heterogeneous group.\textsuperscript{16} Obviously, within this brief and general overview of treatment goals, the amount of work, the length of treatment, and the underlying causes of a particular youth’s sexual offense vary widely.

IV. CRIMINAL SEXUAL CONDUCT LAWS AND COMMUNITY SAFETY

Harm done to others by youth are crimes that require a response. Responses differ depending on the attributes of the specific youth and the meaning of the offense itself. A response must be considered in terms of its impact, the efficacy for the preferred direction of effect, and most importantly, as a deterrence to the harming behavior. Here, the sexual offenses are the harmful behavior. A legal response sends an important message to offenders and sets a clear boundary for sexual behaviors.

In Minnesota, criminal sexual conduct statutes that apply to juveniles include four felony level statutes,\textsuperscript{17} one gross misdemeanor level statute,\textsuperscript{18} and one misdemeanor statute.\textsuperscript{19} These laws, which define the severity level of offense behaviors, have remained relatively constant in the last ten years.\textsuperscript{20} However, major

\textsuperscript{15} With impulsivity, medication may be a component of safe behavior. When deviant arousal is a component, a commitment to arousal reconditioning may be a component of safe behavior. For many youth who lack the necessary skills to navigate adolescent development successfully, commitment to social groups and skill acquisition, such as participation in sports teams, is a necessary component of safe behavior.


\textsuperscript{17} Minn. Stat. §§ 609.342 - 609.345 (2002) (involving first-degree through fourth-degree criminal sexual conduct).


\textsuperscript{19} Minn. Stat. § 617.23 (2002) (addressing indecent exposure).

changes in other related statutes have bolstered the consequences for adjudication on a criminal sexual conduct charge. The underlying goal of these laws is to create safer communities. But, do they achieve this goal with respect to juveniles who sexually offend? Do the laws impact the provisions of treatment, which also aim at providing personal and community safety? If so, how?

V. HOW LEGAL CHANGES IMPACT TREATMENT

In theory, there are a number of ways that specific legal changes might affect the course of treatment for juvenile sexual offenders. Given that the majority of therapists operate within the same theoretical umbrella, comparing and contrasting responses to the impact of changes in the law provides a sense of whether and how laws combine with intervention to create a safer society. A field survey of seventeen professionals from across Minnesota who provide the entire continuum of care and treatment for juvenile sex offenders examines exactly how statutory changes have affected treatment.

There are two primary approaches to juvenile sex-offense specific treatment programs in Minnesota. The first approach focuses on the mental health tradition using therapists in ninety percent of the program while using probation and parole officers in an adjunct and supervisory capacity. The second approach is a combined model where groups are co-led by probation and mental health professionals: corrections officers are more involved in supervision and consequences and therapists are more involved in therapeutic responses and resolving underlying issues than in the first approach.

Both approaches use a group and individual/family engagement model. Group therapy for adolescents is supported under a developmental theory, and also under a general group

21. See infra Part V.A.-V.B.
22. Interviews with seventeen probation officers, therapists from inpatient and outpatient facilities, and state correction administrators (Aug. to Oct. 2002). The professionals were selected from a pool of Minnesotans that have worked in the field for at least ten years. Those working in urban, bridge-area, and rural areas were all posed the same questions about the changes to statutes involving juvenile sexual offenders. They were also asked whether they had other concerns about the impact of the statutes on rehabilitating juveniles.
work theory, for socialization. For juvenile sex offenders, it is hypothesized that group work can help by reducing denial, providing direction in defining an individual basis of offending, and supporting movement toward a “do no harm” lifestyle. Individual and family counseling often support work done in the group setting.

A. Registration of Predatory Offenders

1. Summary of Amendments

In 1991, the Minnesota Legislature enacted its first statute requiring the registration of sex offenders. It was not until 1994 that the statute was amended to also apply to juveniles adjudicated delinquent for sexual offenses. One year later, the statute was amended to require courts to inform individuals of their duty to register. In 1996, additional sexual offenses involving minors were added to the list requiring registration. After the amendments in 1999, courts were no longer able to modify a person’s duty to register in a pronounced sentence or dispositional order. Also, courts were required to forward the signed sex offender registration form, the complaint, and the sentencing documents to the Minnesota Bureau of Criminal Apprehension (BCA).

The legislature made several changes to the registration statute in 2000. For example, the revisions required the courts to inform offenders that any failure to comply with registration requirements may result in information about the offender being available to the

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25. While there are situations where the juvenile may only participate in individual or family therapy, these instances are not wide-spread in Minnesota.
31. Id.
public through electronic or other means.\textsuperscript{35} In addition, a new provision detailed the specific information provided when an offender registers, including but not limited to: primary address; any secondary addresses; places of employment; and the year, make, model, license plate number, and color of all motor vehicles owned or driven by the individual.\textsuperscript{34} Further changes required offenders, in certain circumstances, to comply with the registration procedures for the rest of their lives.\textsuperscript{35} More recently, the statute was amended to terminate an offender’s duty to register when that person no longer works or attends school in Minnesota, and the offense took place outside the state of Minnesota.\textsuperscript{36}

2. Effects of the Statute on Treatment and Rehabilitation

According to therapists and probation officers, the duty to register, in general, has a major impact on the juveniles with whom they have worked. For example, probation officers\textsuperscript{37} indicated that the new registration laws have severely impacted youths’ ability to obtain work. Employers are now doing both record checks and BCA checks on employment applications. These checks will likely eliminate job opportunities for offenders that involve contact with vulnerable adults and children, or jobs directly linked to community safety, such as policing. The effect here is negative; youths are limited in developing mainstream life goals that would protect them from continued antisocial behavior.\textsuperscript{38}

Both probation officers and therapists raised concerns about a growing trend whereby attorneys seek to avoid disposition of sex offenses to avoid juvenile registration. This avoidance, which impacts the youths’ treatment, has been accomplished using several different methods. First, many youths now go to trial to avoid adjudication, which indirectly impacts their treatment. For example, where the youth previously may have pled to a lesser offense and received community-based treatment, now, after trial, they may end up with judicial findings of fact on the more severe

\textsuperscript{33} Act of Apr. 3, 2000, ch. 311, art. 2, § 2, 2000 Minn. Laws 190-91.
\textsuperscript{34} Id. at § 5, 2000 Minn. Laws 193.
\textsuperscript{35} Id. at § 7, 2000 Minn. Laws 194-95.
\textsuperscript{37} Therapists did not raise this issue, most likely because probation officers operate more as case managers than therapists do.
\textsuperscript{38} This description of impact was expressed more frequently by professionals in urban areas than those in rural areas.
initial charges and receive more severe consequences. Because
denial is perceived as a risk factor, a not-guilty plea and subsequent
adjudication can result in placement further along the continuum
of care, typically within a correctional treatment facility. Similarly,
where evidence is insufficient to produce judicial findings of fact,
the youth may not receive any intervention at all and thus be a risk
for continued illegal sexual behavior.

A second method used to avoid juvenile registration is a stay of
adjudication, which typically results in treatment without
registration. Many attorneys now attempt to extend the timeframe
of pre-plea investigations and evaluations, or even continue
disposition to allow the youths to finish treatment before
disposition. In some instances, courts will postpone or continue for
disposition for six months and eventually order a stay of
adjudication. Typically, sex-offense specific treatment can be
completed in a year when there are not complicating or
confounding factors.

Therapists are particularly concerned about the increased
vulnerability of a client midway through treatment, when
disposition or adjudication may eventually take place. At this point,
therapy generally creates within the individual feelings of self-
doubt, the first attempt at real change, and a dependence on the
therapeutic process and the therapist. In this period of the
therapeutic process, the individual is at his or her most unstable
stage and is prone to behave most unpredictably. The process from
resistance, to questioning, to a new stability cannot be forced by an
external structure or curriculum. \(^{39}\) In some cases, a stay of
adjudication is given, and the youth and his or her family are
encouraged to complete treatment without further involvement of
the court. This option, however, is only manageable when the
youth and family are sincerely invested in treatment and are

\(^{39}\) Professionals reported continuing instances of the ninety-day stay of
adjudication being applied consecutively for as long as the youth takes to complete
treatment. From a probation perspective, there are problems related to the use of
a stay of adjudication, including the inconsistent application of stays to clients
relating to individual judicial understanding of the law and the range of discretion
allowed. Another concern is that some programs will not accept a youth with a
stay of adjudication, as there is no guarantee that the youth will complete
treatment. From a therapist's perspective, this is also a concern because, again,
there is a point in therapy where the youth becomes more fragile and
unpredictable as a result of lowering their defenses and recognizing their
weaknesses.
financially able to take on the full costs of treatment.\footnote{40}

A final method used to avoid juvenile registration is the repetition of fifth-degree charges of indecent exposure and conduct. Youths in this category were generally described as being more recalcitrant and unwilling to admit to serious misbehavior. They were often found to use the law itself as a mechanism of denial, saying “I was only charged with a fifth, I didn’t really do anything at all to that boy!” A fifth-degree charge also has treatment and rehabilitative implications because the courts cannot send youths adjudicated delinquent of a fifth-degree charge to a residential facility, even when an evaluation recommends such a placement. Juvenile courts operate under a least restrictive placement philosophy considered to parallel the severity of the charge, such that placement in a residential facility is in tandem with multiple or serious felony charges.

Changes made to the duty to register statute have also impacted the treatment of juvenile sex offenders in a variety of ways. The initial changes to the statute in the early 1990s created resistance to treatment. Clients claim they would have gone to trial if they had had a better awareness of the registration law. From one perspective, the registration law adds one more rationalization to the list of excuses individuals make to defend against their own offending behaviors. From another, the reality of photo, fingerprint, and blood draw is frightening and implies a level of dangerousness that is in many cases inaccurate.\footnote{41}

The reaction of youth in placement is more noticeable, as initially only new offenses are registered, leaving peers with prior adjudications out of the registration process. Some therapists commented that resistance increased when those earlier adjudicated youth were required to register. Illustrating the diversity of the population, therapists also noted the opposite: some youth were reported to take treatment more seriously when corrections officers came in to register offenders who were adjudicated prior to 1991. The duty to register is analogized to a “wake-up call” to youth who were languishing in residential and correctional facilities.

\footnote{40. The impact of a stay of adjudication without personal investment can result in a youth leaving treatment without resolving the underlying sexual offense.}

Probation officers and therapists, alike, raised some concern that the registration requirement did not necessarily capture the at-risk population. One example cited was a youth who did not complete residential treatment, looping through the system for years. The young man was considered at-risk because he would not take responsibility for his behavior and would not hold himself accountable. He was petitioned on a fifth-degree charge however, which kept him out of the registration pool.

Probation officers from around the state found registration only increased the diversity of judgments from the bench, with modifications made based on what was perceived as personal preference. In rural areas, probation officers found that public defenders did not want youth to be adjudicated. They stated that many public defenders were concerned that the BCA could not maintain confidentiality while also maintaining changes of address and other specific requirements of registration.

Therapists often had difficulty with families as well as the youths themselves. The parents’ anger and concern for the future of their children frequently compromised their ability to recognize the offense itself, and the need to hold their children accountable. Again, the whole issue of registration created an unwarranted distraction and a concrete way to deter parents and families from facing the nature of the youth’s behavior as a sexual offense. Families often found it difficult to get clear and direct information about the registration statute and its possible impact on their child. Parents brought their questions and concerns into the therapeutic venue. Registration is a concrete correctional response to social concern about sexual offending behaviors. However, many therapists believe the reality of registration should not get confused with the need to take responsibility and accountability in treatment. Registration is generally not viewed as a component of therapy.  

An amendment in 1999 eliminated some of the confusion previously found in the registration requirements, removing the power of courts to modify the duty to register. Prior to this change, judges had to specifically order a “DNA sample and registration.” If, for any reason, the court chose not to add this phrase to the court order, any duty to register was nullified. One of

42. However, because rural areas have different needs, therapists there were more supportive of registration.
44. MINN. STAT. § 243.166, subd. 2 (1996).
the concerns expressed both by therapists and probation officers was ongoing misinterpretation by courts. For every court that is lauded for consistent policy and attempts to apply consequences without bias, there is an equal voice speaking to inconsistency and inaccurate application of law in the courtroom.

Increasing the penalties over the years has created an unexpected convergence. Judges and county attorneys now try to avoid an initial adjudication, because a second offense now requires lifetime registration. Prior to this change, it was primarily defense attorneys who argued for disposition of a case in a way that stopped short of registration. Now, more agreement is found between all parties, resulting in fewer felony petitions and resulting adjudications. In rural programs, the second offense and corresponding lifetime registration change is notable. Rural programs statewide that have always been full are now reporting a significantly lower rate of referral. One juvenile detention center has a significantly reduced population that is believed to be the result of fewer adjudications, rather than fewer youths with sexual offense charges. However, if a second offense is revealed through treatment, the second offense provision makes it difficult to get youth through rehabilitation without life-time registration.

Another amendment to the duty to register statute involves legal consequences for failure to maintain a current address and other demographic data. As of 2000, this failure to comply could result in the public release of information and, on the second failure to comply, a felony charge. According to therapists in residential facilities, youths are not always notified of this requirement when they leave the facilities. Nineteen-year-olds have often been brought into adult court under the failure to register statutes. These individuals are no longer on juvenile probation and have moved to independent living situations. At this age, moving from one apartment to another is often frequent. These youth

45. Programs get pressured to take the youth, so they get the treatment anyway. In rural areas, there is generally no funding for treatment of non-adjudicated youths; they have to be in the corrections system to access Minnesota Department of Corrections monies. Without the backing of the juvenile justice system, non-adjudicative treatment also lacks a structure to engage a resistant youth in treatment. Although there are now more youths who admit to the need for intervention, these youths and their families are still a small minority of the population. Most youths and their families need a clear and present consequence in order to initiate the treatment process.

generally have poor independent living skills and are not typically well organized. These characteristics do not relate to dangerousness, particularly in relation to committing another sexual offense. Yet, the consequences for failing to register are severe, often resulting in jail sentences that significantly interrupt any attempt to develop a functional adult lifestyle. Therapists and probation officers alike are united in their belief that the registration statutes, and corresponding failure to comply revisions, harm youth more than they provide safety to the community.

In summary, changes in the duty to register statute impact individual cases in a wide variety of ways. However, the statute has implications that continue to affect both the treatment and supervision of youth who sexually offend. Furthermore, registration has the potential to make adjudication less frequent because judges are generally reluctant to require youths to register for the rest of their lives.

B. Juvenile Certification

1. Summary of Amendments

Minnesota law provides that juveniles may be certified to continue their case in the adult court system. There have been numerous changes to the original provision allowing certification in the last ten years. In 1992, juveniles between the ages of fourteen and seventeen could be certified for adult court for any crime. However, the prosecutor had to first prove either that the child was not suitable for treatment or that public safety would not be served by retention in the juvenile system. There were eleven factors for a court to consider when deciding whether to certify a juvenile to the adult courts. If the child was at least sixteen years

47. There is literally no empirical evidence for higher risk in this group.
48. In fact, it appears that registration may increase risk in the sense that it creates barriers to developing a safe and functional lifestyle. As mentioned earlier, it is more difficult and sometimes impossible for the youth to find employment, it can create difficulties in finding affordable housing, and it reinforces thinking errors that can lead to criminal (though typically not sexual) behaviors.
49. MINN. STAT. § 260B.125 (2002).
51. Id. at subd. 2(d)(2).
52. MINN. R. JUV. P. 32.05, subd. 2 (1992). The provisions in rule 32 were deleted in 1996, with reference to coverage of juvenile certification in Rules 18.01 to 18.08. Presently, Rule 18.05 provides for presumptive and non-presumptive
old, a prima facie case that public safety was not served or that the child was not suitable for treatment could be established where one of ten factors was shown. In 1992, the legislature also created the Minnesota Task Force on the Juvenile Justice System. The task force recommended significant changes to the statute governing the transfer of juveniles to adult court; almost all of the recommendations were adopted by the legislature.

The legislature revised the statute three years later and created presumptive certification for juveniles who are sixteen or seventeen years old and charged with committing an offense for which the sentencing guidelines presume an executed prison sentence or an offense involving the use of a firearm. In these presumptive cases, the juvenile has the burden to prove that public safety is served by keeping the case in the juvenile system.

In all other cases, the juvenile court must consider six factors when determining whether a transfer of the juvenile to adult court would serve public safety. The six factors are: the seriousness of alleged offense in terms of community protection, the culpability of the child in committing the alleged offense, any prior record of delinquency, the programming history of the child, the adequacy of punishment or programming available in the juvenile justice system, and the dispositional options available. The court is to give more weight to the seriousness of the alleged offense and to the child’s prior programming history than to the other four factors. The legislature also amended the statute to provide that certification of juveniles for anything less than a felony offense was no longer permitted.

certification of juveniles to adult criminal court, along with six listed factors to be considered when determining whether certification of a juvenile serves public safety. See MINN. R. JUV. P. 18.05, subd. 1-3.

53. MINN. STAT. § 260.125, subd. 3 (1992).
56. MINN. STAT. § 260.125, subd. 2a (1995).
57. Id.
58. Id. at subd. 2b.
59. Id. at subd. 4.
60. Id. at subd. 2b.
61. MINN. STAT. § 260.125, subd. 1 (1994).
2. Effects of the Statute on Treatment and Rehabilitation

Certification of juveniles is typically not perceived as impacting the treatment of juveniles because after certification, the youth becomes a part of the adult system. As such, professionals who regularly work with juveniles are unaware of how many teens actually end up with an adult certification. Probation investigators are privy to whether their cases are transferred to adult court. Those probation officers who serve this function commented that there are very few juveniles with sex offenses transferred to adult court. The requirements, even when the case is a presumptive certification, are such that it is difficult to substantiate the need for an adult response to a juvenile sexual offense. Therapists in residential facilities noted that there are fewer referrals of older youth. However, whether this is due to certification as adult cases, fewer adjudications, adjudications tending to be pled to lower offenses, or an absolute reduction of cases, is unknown.

C. Extended Juvenile Jurisdiction

1. Summary of Amendments

Minnesota law provides for the extended jurisdiction of the juvenile justice system over certain individuals. In 1992, the Task Force recommended the creation of a blended sentencing option. Two years later, the legislature created a new category of juvenile offenders: extended jurisdictional juvenile (EJJ), the first provision that provided for jurisdiction over a juvenile until age twenty-one, with a stay of execution for an adult sentence as a consequence for any violations of the juvenile disposition order or the commission of a new crime. In 1995, the Legislature added a provision to provide that upon revocation of the stay of execution of the adult sentence, the offender’s extended jurisdiction status would be terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the commissioner of corrections, falls into the hands of the adult court. Most recently, language was added to prevent credit from being given for time served in

63. Feld, supra note 54, at 1007-09.
64. MN. STAT. § 260.126, subd. 4 (1994).
65. MN. STAT. § 260.126, subd. 5 (Supp. 1995).
66. Id.
juvenile custody prior to a summary hearing.\footnote{MINN. STAT. § 260B.130, subd. 5 (2000).}

2. \textit{Effects of the Statute on Treatment and Rehabilitation}

The EJJ statute is essentially an addendum to the certification law and has been used frequently. Initially, few juveniles with sex offenses were considered as EJJ candidates. When the EJJ presumption of evidence fell to the defense in 1994 for juveniles age sixteen years and older, its use became more widespread. An increased number of youths are continuing to be adjudicated with an EJJ outcome.

Therapists and probation officers alike view the EJJ status as a help more often than a hindrance. The EJJ statute allows for the completion of treatment for older youth. Prior to this classification, a seventeen-year-old charged with a sexual offense was unlikely to move through the legal system and a treatment program before his or her nineteenth birthday. The length of time from arrest, charge, and arraignment to disposition usually takes months, and has been known to take a year or more. The length of treatment programs in Minnesota, including community-based, residential, and correctional secure facilities, averages fifteen to twenty months. Therefore, some seventeen-year-olds simply cannot complete treatment before turning nineteen. Although some teens and their parents make the commitment to finish what they have started, many simply stop attending treatment. At nineteen, youths may have moved to independent living situations, they are more often committed to full-time work, and they and their families often do not have the financial resources to pay for treatment.

EJJ status provides youths with time to complete treatment and the support to become stable young adults in the community. Therapists from community-based programs typically commend the more rigorous approach in EJJ because of the added support for the treatment of the older juveniles. One program, which operates groups in out-state Minnesota areas, puts EJJ youths into their adult program at age eighteen under the philosophy that the transition to adult programming is a natural progression to help move teens into their new adult roles. Another urban program places older EJJ youths into a specialized emancipation group for the same underlying reason: to support the youths as they move into a functional adult lifestyle.
Some treatment providers disagree with the use of an EJJ court proceeding because of the serious penalties that may be imposed in combination with the perceived variability in application. The EJJ status has a significant and severe ramification, which is typically a significant prison term. Returning to court on a probation violation becomes the door to adult sanctions. Probation orders are often individualized and based on court preferences. For example, if sexually explicit materials are prohibited as a condition of probation, courts do not consider the legality or the use of developmentally appropriate materials in analyzing probation violations. As such, situations involving EJJ allow for significant variability in interpretation.

Residential facility therapists and probation officers are more cautious in assessing the impact of EJJ. The youths who are placed in facilities are further along the continuum of care and are more at risk for continued sexual acting out, and other delinquent or impulsive illegal behaviors. The youths often have hidden victims identified only through the treatment process. If the county chooses to prosecute the juvenile on further charges, the youth, who is making good progress in treatment and is predicted to complete treatment successfully, is pulled out of the juvenile system. There is a question as to whether the youths receive sufficient opportunity to change before further sanctions are imposed. There is also the risk that through treatment compliance, a juvenile-status youth could receive severe consequences because of the youth’s participation in the treatment.

One correctional facility therapist gave the following example: A youth was sent to the correctional residential program because he would not take a polygraph test or answer questions about additional victims. He went into treatment and divulged the existence of other victims. He was later prosecuted and put on EJJ with a ten-year adult sentence hanging over him should he violate probation. This was the first time in that particular treatment facility that a youth had received more significant consequences when additional victims were revealed. Such a consequence makes it difficult for therapists to request full disclosure of victimizing events. Therapists feel they can no longer ask youths to stop holding these secrets, for fear that the youths will receive increased punishment. Generally, however, probation officers and therapists agree that EJJ is useful as a way to gain successful completion of
treatment with older youth. They also agree that the potential of an EJJ status or the possibility of revocation of juvenile status should be less open to individual court preference.

In EJJ’s youth, there was a legal gap that created significant difficulties for residential programs. EJJ mandates treatment until age twenty-one, but state law requires separation of eighteen-year-olds from those ages nineteen and above. Facilities licensed for juveniles could not maintain a youth on or after his/her nineteenth birthday. Although the licensing law has now caught up with the EJJ statute, many facilities still cannot keep their clients within the facility. This disturbance in treatment programming can prove difficult for both the therapists to whom the youths are transferred, as well as the youths themselves.

Once facilities obtain licensing to maintain youths after their nineteenth birthdays, they have had to modify programming by essentially adding another component to treatment programs. Although the older youths are separated from the minor youths, they are all able to complete treatment in one program. The EJJ status is especially helpful with severely troubled youths by allowing the facilities to maintain difficult clients for a longer period of time and releasing them based on treatment completion, rather than age.

D. School Notification

Minnesota law requires probation officers to notify school districts of any adjudicated offenses committed by their students that either take place on school property or are one of the specifically listed felony-level crimes. Minnesota also gives probation officers discretion to send a copy of the disposition order to school superintendents if their students are adjudicated delinquent for an unlisted offense that takes place off of school grounds.

The impact of this statute varies widely, especially in the therapeutic arena and more significantly in rural areas. In urban areas, these orders typically are sent to district administration offices, allowing for better control of confidentiality. When the probation officers send the orders to the specific schools that the

70. Id. at subd. 3(b).
juveniles attend, confidentiality cannot be assured, regardless of data privacy laws. Individual school authorities generally make decisions about whether to disclose the orders to teachers, often without substantial knowledge of the offense or actual risk. For example, if a high school youth is adjudicated on a second-degree criminal sexual conduct charge for sexually abusing his or her eight-year-old sibling, the only thing that the youth’s school will learn is that the second-degree charge exists, without the specifics of the offense. Another issue is how a school can maintain confidentiality. In a number of cases where the word of the offense becomes known all over the school, the youth’s acceptance by peers and adults is lost. Although only releasing the adjudicated charges protects the victimized child from other people learning about the specifics of the offense, the limited knowledge can also ostracize the offender because school administrators may make assumptions of unlikely generalization.

The statute also affects the youth’s parents and their reputation, sometimes even more than the youth. Due to embarrassment, parents do not want schools to know about the offense. Families sometimes move out of their communities because of the social stigma resulting from the offense, the adjudication, and the ensuing notification sent to their school. When a family is uprooted because of social stigma and embarrassment, the move often becomes a stressor that can add to the estimated risk of a repeated offense in and of itself. When youths have sufficient support to stay at home while attending outpatient treatment, professionals have evaluated the youths as less likely to re-offend.

The loss of peer relationships, trust of the school system, and community support, all become concerns added to the treatment needs for the youth and family. Often, school authorities raise concerns about the youth that are not related to the sex-offense specific treatment, and then expect that the treatment programs will resolve those additional and unrelated concerns. Sex-offense specific programs are focused, and their limited resources often cannot provide the wrap-around services requested.

Probation officers find this law helpful to their mandate by providing them with another avenue for supervision. One Minnesota county reported that the orders of adjudication are sent to school principals, but there are no issues with information getting out to teachers and school personnel. When probation
officers engage with the schools as intermediaries for the youths, coordination with treatment programs can operate with less stress for the youths, their families, and the school districts.

VI. SUMMARY AND CONCLUSIONS

The professionals in this field are all too aware that there is virtually no research on risk factors for sexual re-offending. There is data that show that sexual offending is primarily discontinuous from childhood to adolescence and adulthood. Many decisions in both the legal and treatment arena are based on limited knowledge and personal beliefs. Policy makers need more facts to provide a consistent basis for decision-making. That is not the case at this time. The limited research with juveniles who sexually offend is not sufficient to determine risk factors or subgroups for specific interventions. What we can glean from the research to date is that this is a heterogeneous population and the re-offense rate is quite low. This information suggests that the legal system needs to be wary of significant penalties for most youths. The inherent difficulties in recovering from over-penalizing may actually increase rather than decrease the estimated risk of re-offense for many youths. The process of developing and maintaining a functional and mainstream lifestyle entails finding and holding full-time work, finding affordable housing, and engaging in positive peer activities. These tasks are increasingly difficult when criminal records prevent employment, limit housing opportunities, and create a sense of self-failure that fosters social isolation.

Effectively, all of the changes in the law regarding juvenile sex offenses over the past ten years have increased penalties and imposed stricter community supervision. Perhaps it is time to consider a more moderate road, with legal changes closing the gap between leniency and stringency. Currently, the result seems to place the youth at one end or the other on this continuum.

Reflect again on the stories of Joe and Bob. What may actually provide for community safety in these situations would be a juvenile mental health court, with the ability to move a delinquent youth with a sex offense into the juvenile criminal court. Among

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72. The re-offense rate for juvenile sex offenders is roughly 8-12%. Trivits & Reppucci, supra note 16 at 697.
correctional and mental health-based professionals, there is agreement that our system is fragmented. With the legal changes made in the past, the system has become even more so.

The development of several programs has moved both sexual offending juveniles and adults into the public health arena.\footnote{73}{One such program is STOP IT NOW!, which specifically targets adult sexual offenders, including those who are currently undetected. See Chaffin et al., supra note 71 at 18. One component of the program is a toll-free hotline that provides confidential assistance to individuals who have actually offended or contemplated offending. \textit{Id.} While critics of the public health programs worry that programs like STOP IT NOW! will minimize the severity, or even decriminalize, criminal sexual conduct, proponents note the ability of comprehensive approaches involving both public health and criminal justice programs to both respond to the current problem of sexual offending and prevent future offenses. \textit{Id.}} Communities need to develop a response system for our youth that recognizes the heterogeneity of the population, operates with potentially stronger (rather than actually stronger) safety mechanisms, and provides a means for openly resolving sexual behavior problems. There must be a concerted effort to allow the type of research that will answer urgent questions about recidivism.

These are our children, and it is our responsibility to create a response that provides for their positive growth and development, in the interests of allowing the majority of today’s youth to become contributing adults in our society.