

Juvenile Sex Offenses: Finding Justice

BY A. ANN RATNAYAKE

APPROXIMATELY 30% of all sexual assaults on children are committed by perpetrators under the age of 18.¹ To assist prosecutors in fashioning an effective response to these crimes, this article summarizes current research related to juvenile sexual recidivism, charging options available to prosecutors, and treatment methods and registration requirements imposed at disposition.

DECIPHERING RISK OF SEXUAL RECIDIVISM

When tailoring a response to juvenile sex crimes, an important factor to consider is the likelihood the juvenile perpetrator will commit future sexual offenses. Research shows that for the majority of juveniles who commit a sexual offense, sex offender treatment works.² Only 9–15% has been shown to sexually reoffend in spite of treatment.³ While no magic litmus test exists, the factors outlined below may assist in assessing the risk of recidivism.

Children: Younger Than 12 Years of Age

Children younger than 12 who initiate inappropriate sexual behaviors fall into a special subgroup.⁴ If given appropriate short-term outpatient treatment, the likelihood a child in this subgroup will commit another sex crime is only 2 – 3%.⁵ The younger the child is in age, the more likely he or she is only mimicking behaviors seen or repeating behaviors the child has experienced. For the practitioner working with this subgroup, an initial step should include screening these children and their siblings for sexual abuse.⁶ While each situation should be considered on a case-by-case basis, applying for a child protection

petition to ensure that the child gets treatment may be the best course of action.

Adolescents: 12–18 Years of Age

Potential Risk Assessment Factors

Research connects certain adolescent behaviors to increased rates of sexual recidivism. However, other adolescent behaviors colloquially associated with sexual recidivism have not been validated.

Factors linked to an increased risk of sexual recidivism include:

- reporting deviant sexual fantasies with an interest in prepubescent children and/or sexual violence;⁷
- committing sex crimes despite prior charges or conviction of a sexual offense;⁸
- committing sexual offenses against more than one victim;⁹
- targeting a stranger as a victim;¹⁰
- unwillingness/inability to form peer relationships, or social isolation for other reasons; and¹¹
- unwillingness/inability to participate in treatment.¹²

On the other hand, research indicates the adolescent's own history of sexual victimization, and/or history of nonsexual offending is not predictive of future sex crimes.¹³ To date no relationship has been identified between degree of sexual contact (e.g., penetration), and sexual recidivism in adolescents.¹⁴ Lastly, research has not linked denial of sexual crimes to higher sexual recidivism rates in adolescents.¹⁵ Understanding these factors may prove helpful when structuring a response to these offenses.

Ann Ratnayake is a staff attorney at NDAA's National Center for Prosecution of Child Abuse. The author wishes to thank Dr. Anna Salter, Dr. Barbara Bonner, Mike Johnson, and David Pendle for peer reviewing and offering insightful comments on this article.

Risk Assessment Tools

For adolescents who have a history of sexually delinquent behavior, empirically guided checklists are available to assess risk of sexual recidivism.¹⁶ The checklists are comprised of a set of scaled factors research has linked to sexual re-offending. A trained professional can use the scale to assign a risk level.¹⁷ Currently, JSOAP-II and ERASOR are the most favored empirically guided checklists for adolescents.¹⁸ Both are designed to assess risk of sexual recidivism for approximately six months into the future for adolescents between 12 and 18 years of age.¹⁹ While JSOAP-II is designed to assess risk in adolescent males, ERASOR can be used with females as well as males.²⁰ Structured professional judgments, using empirically guided checklists, are considered more accurate than unstructured clinical judgments.²¹ These assessments should only be used as part of an evaluation conducted by a qualified professional.

Actuarial risk assessment instruments measure the statistical probability of sexual recidivism by comparing a person's assessment score to a large sample size of offenders who were tracked for a period of time.²² It assumes similar outcomes for individuals with similar scores.²³ JSORRAT-II is the only actuarial instrument available for adolescents.²⁴ It assesses the likelihood an adolescent male adjudicated delinquent of at least one sexual offense committed at the time he was 12 years of age or older will commit another sexual offense before reaching the age of 18.²⁵

While research shows these tools to be very promising, none have yet to be fully empirically validated.²⁶ As compared to adult sexual recidivism, research in adolescent sexual recidivism is still in its infancy.²⁷ Estimates for future sexual reoffending in adolescents who display illegal sexual behaviors are limited and qualified.²⁸

TAILORING THE APPROPRIATE RESPONSE THROUGH THE CHARGING DECISION

Prosecutors may find that a multidisciplinary approach to the charging decision beneficial.²⁹ Consulting with the juvenile supervision officer, teachers, and other allied professionals who have exposure to the juvenile when making charging decisions will enhance a prosecutor's knowledge about the juvenile's specific situation. It can lead to a more informed charging decision and likely better results for the community as a whole.

A prosecutor has a range of charging options for juveniles who exhibit illegal sexual behaviors. Prosecutors can request a

prejudicial diversion, a child protection petition, file juvenile delinquency charges, or refer the case to adult court. Inevitably, these options lead to either treatment, detention, or a combination of both. Some potential advantages and disadvantages of charging options are briefly outlined in the charts below.³⁰

Juvenile Diversion — Treatment

Juvenile diversion is designed for first time perpetrators facing relatively minor charges.³¹ Diversion generally involves a written agreement between the juvenile and the prosecutor's office.³² The juvenile makes an admission of guilt and agrees to successfully complete treatment as defined in the agreement in exchange for use immunity for known crimes.³³

Pro(s)

- resolves issue for victim quickly
- victim does not have to testify
- guarantees result prosecutor may not get at trial
- may get offender into treatment quickly

Con(s)

- judge may be unwilling to enforce provisions without prior approval
- prosecutor may be unable to monitor progress of offender
- little paper trail
- insurance/state may not pay for treatment program

Child Protection Petition — Treatment

A child protection petition is a civil action alleging that the juvenile is in need of services.³⁴ A civil child protection petition has the ability to involve the juvenile's family, and it may be especially appropriate for a young child or cases of interfamilial abuse.³⁵ Since such petitions are generally filed by the state attorney general's office, and not the prosecutor contemplating criminal charges, it is important that juvenile prosecutors build and maintain a relationship with their colleagues in child protective services.

Pro(s)

- burden of proof lower than in a delinquency/criminal proceeding
- may be easier for the offender to admit responsibility
- ability to involve juvenile's family

Con(s)

- juvenile will not have to submit blood sample for crime database

- civil action may suggest to offender or victim that conduct was not serious
- fewer punitive dispositions

- record of crime easily accessible
- juvenile will be in adult prison

Juvenile Delinquency Charges — Treatment/Detainment

Juvenile delinquency courts adjudicate criminal matters for youth who display sufficient intellectual and emotional maturity.³⁶ The age a person is considered sufficiently mature to stand trial varies from state to state, and ranges from no lower age limit to an absolute bar from trying children under the age of 12.³⁷ In general, dispositions involving counseling and treatment are preferred to detainment.³⁸

Pro(s)

- more treatment options for offender
- retains goals of privacy and rehabilitation
- possible mandatory registration as sex offender
- depending on jurisdiction victim may not have to testify in open court closed to public
- access to records may be limited in future

Con(s)

- burden of proof higher than a civil action
- constitutional right of double jeopardy
- possible mandatory registration as sex offender
- depending on jurisdiction victim may have to testify in open court, as well as be interviewed by defense prior to trial
- access to records may be limited in future

Referring Case to Adult Court — Treatment/Detainment

The state can prosecute a juvenile as an adult through a variety of mechanisms, most commonly through judicial waiver or filing directly in adult court.³⁹ Referring the case to adult court may be a better approach for treating an older adolescent who repeatedly commits sexual crimes.⁴⁰

Pro(s)

- adult court will not lose jurisdiction of older offender
- incarceration may be better option to protect the public
- possible mandatory registration as sex offender
- record of crime easily accessible

Con(s)

- victims will most likely have to testify in open court
- must convince 12 jurors rather than 1 judge

OTHER CONSIDERATIONS: TREATMENT AND REGISTRATION

If treatment is the appropriate response, prosecutors should ensure the treatment program meets the needs of the individual offender and the community. Residential and community programs both have advantages. Residential facilities have the ability to immerse the juvenile in treatment, provide safety for the community, and ensure accountability.⁴¹ However, if removing the juvenile from the community disrupts positive influences from family or school, or exposes the juvenile to

Sex offender registration has significant consequences for both the offender and the community. Also, whether registration is currently required—or will be so required—is not always as clear. Each state has different criteria for juvenile sex offender registration.

more deviant peers, community based treatment should be considered.⁴² Most treatment programs are based on cognitive behavior therapy and assume that sexually coercive behavior has been learned, and thus new ways of responding to distressing feelings and conditions can also be learned.⁴³ To be most effective, the program should be culturally competent to the offender and take into account the offender's age, family background, gender, spirituality, and possible disabilities.⁴⁴

Sex offender registration has significant consequences for both the offender and the community. Also, whether registration is currently required—or will be so required—is not always as clear. Each state has different criteria for juvenile sex offender registration.⁴⁵ In 2006, the federal government passed the Adam Walsh Child Protection and Safety Act (AWA). AWA requires all states to set uniform minimum standards for sex

offender registration.⁴⁶ The uniform standard requires juveniles 14 years or older who are adjudicated or convicted of what is essentially a forcible penetration offense to register as a sex offender.⁴⁷ As of October 2012, 16 states, 3 territories, and 30 tribes have substantially complied with AWA.⁴⁸ However, many jurisdictions have not yet obtained compliance, and the registration portion of AWA is retroactive.⁴⁹ Consider providing a notice of possible registration to all juveniles who fall within the bounds of the registration requirement.

Juvenile sexual offenses are some of the most complex and challenging cases a prosecutor may face. They also present a unique opportunity for a prosecutor to positively impact and potentially reform the offender. By carefully considering the facts surrounding the case, the concerns of the victim, and community, and the implications of each potential decision, a prosecutor's response has the ability to prevent future sexual crimes and change lives.

¹ David Finklehor, et. al., *Juveniles Who Commit Sex Offenses Against Minors*, 1 (U.S. Dep't of Justice, 2009).

² James R. Worling, et. al., *20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offended Sexually*, 28 *Behav. Sci. L.* 46, 53 (2010).

³ Chi Meng Chu & Stuart D. M. Thomas, *Adolescent Sexual Offenders: The Relationship Between Typology and Recidivism*, 22 *Sexual Abuse* 218, 219 (2010) (citing Ian A. Nisbet, et. al., *A Prospective Longitudinal Study of Sexual Recidivism Among Adolescent Sex Offenders*, 16 *Sexual Abuse: A J. of Research and Treatment*, 223 (2004); Lucinda A. Rasmussen, *Factors Related to Recidivism Among Juvenile Sexual Offenders*, 11 *Sexual Abuse* 69, 69 (1999)).

⁴ Ass'n for the Treatment of Sexual Abusers, *Report of the Task Force on Children with Sexual Behavior Problems* 3 (2006) available at <http://www.atsa.com/pdfs/R-report-TFCSBP.pdf>.

⁵ *Id.* at 2 (citing Melissa Y. Carpentier *Randomized Treatment for Children with Sexual Behavior Problems: Ten-Year Follow-up*, 74 *J. of Consulting & Clinical Psychology* 482, 483 (2006)).

⁶ 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, 54 (2001) (citing William N. Fredrich et al., *Behavioral Manifestations of Child Sexual, 22 Child Abuse and Neglect* 523 (1998)).

⁷ James R. Worling & Tracey Curwen, *Adolescent Sexual Offender Recidivism: Success of Specialized Treatment & Implications for Risk Prediction* 24 *Child Abuse & Neglect* 965, 978 (2000)).

⁸ James R. Worling & Niklas Langstrom, *Sexual Recidivism in Adolescents Who Offend Sexually: Correlates and Assessment in The Juvenile Sex Offender* 219, 225 (Howard E. Barbaree & William L. Marshall eds., 2nd ed. 2006).

⁹ *Id.* at 226.

¹⁰ *Id.*

¹¹ *Id.* at 227.

¹² *Id.* at 238.

¹³ *Id.* at 233.

¹⁴ *Id.* at 234.

¹⁵ *Id.*

¹⁶ Cent. for Sex Offender Mgmt., U.S. Dep't of Justice, *Effective Management of Juvenile Sex Offenders in the Community: A Training Curriculum: Topic 3 Assessment* 35-36 (2010), <http://www.csom.org/train/juvenile/download/download.htm>.

¹⁷ *Id.* at 36.

¹⁸ *Id.* at 39.

¹⁹ *Id.* at 38.

²⁰ Phil Rich, *Juvenile Sex Offenders: A Comprehensive Guide to Risk Evaluation* 263 (2009).

²¹ R. Karl Hanson & Kelly E. Morton-Bourgon, *The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies* 21 *Psychological Assessment* 1,1 (2009).

²² Cent. for Sex Offender Mgmt., *supra* note 17, at 36.

²³ *Id.*

²⁴ *Id.*; Phil Rich, *supra* note 21, at 265 (2009).

²⁵ Phil Rich, at 265.

²⁶ See James R. Worling, et. al., *Prospective Validity of the Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR)*, 24 *Sexual Abuse* 203, 203 (2012); Cent. for Sex Offender Mgmt., U.S. Dep't of Justice, *Effective Management of Juvenile Sex Offenders in the Community: A Training Curriculum: Topic 3 Assessment* 37 (2010), <http://www.csom.org/train/juvenile/download/download.htm>

²⁷ Cent. for Sex Offender Mgmt., at 37.

²⁸ Tom Laversee, *Juvenile Sexual Offending: Causes, Consequences, and Correction* 214 (Gail Ryan, et. al. eds, 3rd ed. 2010).

²⁹ Cent. for Sex Offender Mgmt., U.S. Dep't of Justice, *Enhancing the Management of Juvenile and Adult Sex Offenders: A Handbook for Policymakers and Practitioners* 16 (2007).

³⁰ See 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 (2001).

³¹ See Johnson County Kansas Court Services, http://courts.jocogov.org/cs_jdiv.htm; Harris County Texas Juvenile Diversion Program, http://app.dao.hctx.net/Article/64/DA_Announces_Juvenile_Diversion_Program.aspx.

³² Victor I. Vieth, *supra* note 31, at 62-70, 50 (2001).

³³ *Id.*

³⁴ *Id.* at 63.

³⁵ *Id.*

³⁶ See Earl F. Martin & Marsha Kline Pruett, *The Juvenile Sex Offender and the Juvenile Justice System*, 35 *Am. Crim. L. Rev.* 279, 316 (1998).

³⁷ *Id.*

³⁸ Eg., N.Y. Fam. Ct. Act § 353.4 (2009) (transferring delinquent children with emotion problems to treatment facilities).

³⁹ Coalition for Juvenile Justice, *Trying and Sentencing Youth in Adult Criminal Court*, http://www.juvjustice.org/media/factsheets/factsheet_10.pdf.

⁴⁰ 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, 66 (2001).

⁴¹ Cent. for Sex Offender Mgmt., U.S. Dep't of Justice, *Effective Management of Juvenile Sex Offenders in the Community: A Training Curriculum: Topic 4 Treatment* 4 - 5 (2010).

⁴² *Id.*

⁴³ *Id.* at 72.

⁴⁴ Robert E. Longo & David S. Prescott, *Working with Young People Who Sexually Abuse in Current Perspectives: Working with Sexually Aggressive Youth and Youth with Sexual Behavior Problem* 45, 50 (Robert E. Longo & David S. Prescott eds., 2006).

⁴⁵ American University: Washington College of Law, *50 State Survey of Juvenile Sex Offender Registration Requirements*, http://www.wcl.american.edu/nic/documents/FiftyStateSurveyonJuvenileSexOffenderRegistrationStatutes_FINALSept2009.pdf?rd=1.

⁴⁶ Lori McPherson, *Navigating SORNA: Juvenile Justice, Tribal Jurisdictions and New Guidelines*, Update (Nat'l Cent. For Prosecution of Child Abuse, Alexandria, Va) Vol. 11, No. 9 2010, at 1.

⁴⁷ *Id.*

⁴⁸ See Office of Sex Offender Sentencing, Monitoring, Apprehending, Registration, and Tracking, http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm.

⁴⁹ See Office of Sex Offender Sentencing, Monitoring, Apprehending, Registration, and Tracking, <http://www.ojp.usdoj.gov/smart/faqs/faq-misc.htm>