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# BEYOND INCARCERATION: JUVENILE SEX OFFENDER TREATMENT PROGRAMS OFFER YOUTHS A SECOND CHANCE

*Sander N. Rothchild\**

*Evidence that adults physically abuse children first jolted the national consciousness about [thirty] years ago. A new shock followed in the 1970s—that adults sexually abuse children. Then, in the early 1980s, child-protection workers recognized that adolescents were engaging in sexually abusive behavior. Another shock wave hit in the late 1980s, when therapists first described cases of sexual abuse by preadolescents.<sup>1</sup>*

## INTRODUCTION

The “portrait” of the American sex offender increasingly “bears the face” of a juvenile.<sup>2</sup> Four boys, ages eleven to fourteen, accosted a thirteen-year-old girl on her way home from school, “locked her into an outdoor shower stall and sexually assaulted her.”<sup>3</sup> A twelve-year-old boy lured a twenty-two-year-old mentally retarded girl to a secluded area where he tied her to a fence, beat her with a stick and then raped her.<sup>4</sup> Two seven-year-olds from

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\* Brooklyn Law School Class of 1997. The author expresses gratitude to Brooklyn Law School Professor Mary R. Falk for her inspiration, encouragement and valuable assistance in the preparation of this Note. A final note of thanks to my family for their love and continual support.

<sup>1</sup> Claudia Morain, *When Children Molest Children*, S.F. CHRON., May 4, 1994, at F7.

<sup>2</sup> Avis LaVelle, *Should Children Be Tried As Adults?*, ESSENCE, Sept. 1994, at 85.

<sup>3</sup> Geeta Anand, *Teens Perpetuate Many Sex Attacks, Figures Show*, ORANGE COUNTY REG., Mar. 18, 1995, at A19.

<sup>4</sup> Beth Weinhouse, *The Number of Rapes Committed by Youths Has Increased*, in YOUTH VIOLENCE 37, 37-38 (David L. Bender et al. eds., 1992).

Indianapolis raped a first-grade girl in a restroom.<sup>5</sup> Twin sisters, aged six, bit their infant cousin's "penis until it was nearly severed."<sup>6</sup>

For the past several decades, society has paid little attention, if any, to children who sexually abuse other children.<sup>7</sup> Many commentators explained the perverse conduct of such children as "misguided youthful experimentation."<sup>8</sup> This deviant behavior, once viewed with a "boys-will-be-boys" mentality,<sup>9</sup> is now a serious problem.<sup>10</sup>

Statistics indicate that the occurrence of sexual abuse by children against children has risen dramatically in recent years.<sup>11</sup> A 1992 study conducted by the University of New Hampshire's Family Research Laboratory concluded that "[f]orty-one percent of sexual assaults on children ages [ten] to [sixteen] were done by other children . . . ."<sup>12</sup> Growing concerns over this group of offenders has led to the creation of facilities, such as the Intermountain Specialized Abuse Treatment Center ("ISAT"), in

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<sup>5</sup> LaVelle, *supra* note 2, at 85.

<sup>6</sup> David Gelman et al., *When Kids Molest Kids*, NEWSWEEK, Mar. 30, 1992, at 68.

<sup>7</sup> Kathryn Casey, *When Children Rape*, LADIES' HOME J., June 1995, at 112.

<sup>8</sup> *Id.*

<sup>9</sup> Howard E. Barbaree et al., *Sexual Assault in Society: The Role of the Juvenile Offender*, in *THE JUVENILE SEX OFFENDER* 1, 10 (Howard E. Barbaree et al. eds., 1993).

<sup>10</sup> *Id.*

<sup>11</sup> Anand, *supra* note 3, at A19. Between 1983 and 1987, Federal Bureau of Investigation ("FBI") statistics show a 14.6% increase in the number of juveniles under the age of 18 arrested and charged with rape. Anastasia Toufexis, *Our Violent Kids*, TIME, June 12, 1989, at 52. Although these "figures may not seem dramatic . . . they should be seen in the context of a [two percent] decline in the total number of teenagers in the U.S. since 1983." *Id.* A study prepared by the National Center for Juvenile Justice indicates that between 1983 and 1992, forcible rape arrest rates for juveniles under the age of 18 increased by 20%. HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE OFFENDERS AND VICTIMS: A FOCUS ON VIOLENCE* 8 (1995).

<sup>12</sup> Anand, *supra* note 3, at A19.

Salt Lake City, Utah, which specialize in the rehabilitation of juvenile sex offenders.<sup>13</sup>

States traditionally follow *parens patriae* juvenile justice,<sup>14</sup> which refers to the state's protective role as "sovereign and guardian of persons under legal disability . . ."<sup>15</sup> Widespread panic and the decline of support for treatment in the 1970s, however, caused dramatic departures from *parens patriae* juvenile rehabilitation.<sup>16</sup> Many states now scramble for "lock-'em-up-and-

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<sup>13</sup> Casey, *supra* note 7, at 114. At the Intermountain Specialized Abuse Treatment Center ("ISAT"), 10% of the 150 patients currently undergoing treatment are under 18-years-old. Casey, *supra* note 7, at 114. Seventy-four percent of all the first and second degree felonies committed by juveniles in Utah against other people were sex offenses. Casey, *supra* note 7, at 114. Utah's overall rape rate, however, exceeds the national average—44.6 rapes per 100,000 people, whereas the nation averages 42.9 rapes per 100,000 people. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE U.S. 1993 60-67 (1994) [hereinafter UNIFORM CRIME REPORTS]. According to the FBI Index of Crime, "a person is more likely to be sexually assaulted in Utah than in either New York or California." Casey, *supra* note 7, at 114; *see also* UNIFORM CRIME REPORTS, *supra*, at 60-67. Furthermore, "the number of juveniles [in Utah] committing sex[ual] offenses has more than tripled in the past decade." Casey, *supra* note 7, at 114.

<sup>14</sup> "*Parens patriae*" literally means "parent of the country." BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).

It was originally used in the 1500s in England in connection with children whose parents had died, leaving an estate. In such cases, a special court (called Chancery Court) would manage the estate until it could be turned over to the child at the age of 21. This was done on the theory that, when the child's natural parents were dead, the state, as parent of the country ("*parens patriae*"), would take over the role of the child's parent.

THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 69 (1992).

<sup>15</sup> In this instance, age is a legal disability. Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 852 (1988).

<sup>16</sup> *Id.* The public's outcry for the imprisonment of sex offenders hinders rehabilitative efforts, which are more efficient in the long run.

The intensity of the public's moral outrage over sex crimes, some experts argue, has impeded scientists' efforts to gain a full understanding of sexual disorders and to develop effective treatments for them—in the long run, a more cost-efficient solution than incarcerating

throw-away-the-key" measures to deal with juvenile sex offenders, rather than channel their resources toward effective rehabilitation programs.<sup>17</sup> In fact, many states have passed laws that broaden the category of juveniles subject to criminal court jurisdiction.<sup>18</sup> Increasing punitive penalties against juveniles, however, does not help break their cycle of sexual abuse.<sup>19</sup> For example, "experts estimate that [sixty] to [eighty] percent of adult sex offenders start as juveniles."<sup>20</sup> Thus, without effective rehabilitation, a majority of juvenile sex offenders will inevitably become adult sex offenders.<sup>21</sup>

This Note provides an overview of the rise in juvenile sex crimes and discusses appropriate measures designed to comport with the tradition of rehabilitative juvenile justice. Part I profiles the juvenile sex offender and details the factors that are causally related to juvenile sexual assault. Part II examines the rehabilitative history of the American juvenile justice system and the current dispositions afforded to juvenile sex offenders who are fortunate enough to be sentenced in juvenile court. Part III focuses on the punitive response to a wave of increased juvenile violence; specifically, it deals with notions of deterrence and accountability, and the treatment of juveniles as adult criminals rather than

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offenders for long periods.

Erica Goode, *Battling Deviant Behavior*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 74.

<sup>17</sup> Mary Ann Roser, *Youths Need Aid, Not Jail, Therapists Say*, FT. WORTH STAR-TELEGRAM, July 15, 1995, at A21; see also Elliot Pinsley, *Kids Commit More Sex Crimes*, MANHATTAN LAW., June 6, 1989, at 8.

<sup>18</sup> GENERAL ACCOUNTING OFFICE, JUVENILE JUSTICE-JUVENILES PROCESSED IN CRIMINAL COURT AND CASE DISPOSITIONS 2 (1995) [hereinafter GAO REPORT]. See *infra* note 78 (listing the 24 states that have generally increased the population of juveniles subject to criminal court jurisdiction).

<sup>19</sup> Gardiner Harris, *Teen Held in Slaying Had Raped 7-Year-Old*, COURIER J., Apr. 4, 1995, at 1A; see also Joseph Heinz et al., *The System's Response to Juvenile Sex Offenders*, in JUVENILE SEXUAL OFFENDING 185, 185-87 (Gail D. Ryan & Sandy L. Lane eds., 1991).

<sup>20</sup> Harris, *supra* note 19, at 1A; see also Heinz et al., *supra* note 19, at 185-87.

<sup>21</sup> Harris, *supra* note 19, at 1A; see also Heinz et al., *supra* note 19, at 185-87.

treatable youths. Part IV discusses alternatives to punishment that are available for the treatment of juvenile sex offenders, in light of the rehabilitative origins of juvenile justice. Part V suggests a strategy for state planning and judicial adherence to the treatment of juvenile sex offenders. This Note concludes that incarceration alone does not change sexual offending behavior. Only treatment, in concert with the criminal justice system, can reduce the risk that these children pose to society, as well as prevent them from developing into offending adults.

## I. JUVENILE SEX OFFENDER PROFILE

A juvenile sex offender is an "individual at or below the maximum age of juvenile court jurisdiction" who commits a sex offense against another individual.<sup>22</sup> The maximum age is determined by state statute and "is the oldest age at which an individual can be processed in juvenile court."<sup>23</sup> Traditionally, the law considered juvenile status as a transitory phase and seldomly held children under the age of thirteen accountable for their criminal behavior.<sup>24</sup> Today, however, in eleven states the

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<sup>22</sup> GAO REPORT, *supra* note 18, at 4. "Sex offenses" include rape, exhibitionism, any form of penetration, intercourse, oral-genital contact and genital fondling. Barbaree et al., *supra* note 9, at 12.

New York's Penal Law enumerates sex offenses in § 130.00. They include: § 130.20 (sexual misconduct); § 130.25 (rape in the third degree); § 130.30 (rape in the second degree); § 130.35 (rape in the first degree); § 130.38 (consensual sodomy); § 130.40 (sodomy in the third degree); § 130.45 (sodomy in the second degree); § 130.50 (sodomy in the first degree); § 130.55 (sexual abuse in the third degree); § 130.60 (sexual abuse in the second degree); § 130.65 (sexual abuse in the first degree); § 130.67 (aggravated sexual abuse in the second degree) and § 130.70 (aggravated sexual abuse in the first degree). N.Y. PENAL LAW §§ 130.00-130.70 (McKinney 1987).

<sup>23</sup> GAO REPORT, *supra* note 18, at 4. The District of Columbia and 39 states process individuals in their juvenile courts until the age of 17. GAO REPORT, *supra* note 18, at 4. New York juvenile courts can process individuals until the age of 15. N.Y. FAM. CT. ACT § 301.2 (McKinney 1983 & Supp. 1996).

<sup>24</sup> Barbaree et al., *supra* note 9, at 11-12. The earlier permissive view of juvenile sex offenders promoted the decriminalization of sexual offenses among adolescents. Howard E. Barbaree & Franca A. Cortoni, *Treatment of the Juvenile Sex Offender Within the Criminal Justice and Mental Health Systems*, in THE

maximum age of juvenile court jurisdiction is fifteen or sixteen; it is seventeen in the remaining thirty-nine states and the District of Columbia.<sup>25</sup>

*A. Who Are Juvenile Sex Offenders?*

A profile of the juvenile sex offender has emerged from a combination of studies and data on 1600 youths referred to specialized treatment programs.<sup>26</sup> The studies conclude that in ninety percent of all cases, the juvenile sex offender is a male with a median age of fourteen to fifteen.<sup>27</sup> Although females comprise five percent of all under eighteen-year-old arrests, they constitute only one percent of sex offenders (excluding prostitution) and less

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JUVENILE SEX OFFENDER, *supra* note 9, at 243, 249. Offenders were investigated and adjudicated by mental health professionals who provided the appropriate nonprosecutorial response. Barbaree & Cortoni, *supra*, at 249.

<sup>25</sup> GAO REPORT, *supra* note 18, at 4. Connecticut, New York and North Carolina have a maximum age of 15. GAO REPORT, *supra* note 18, at 4 n.5. Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina and Texas have a maximum age of 16. GAO REPORT, *supra* note 18, at 4 n.5.

<sup>26</sup> Morain, *supra* note 1, at F7.

<sup>27</sup> Morain, *supra* note 1, at F7. According to the FBI, juveniles under the age of 18 account for nearly 17% (4052 in 1993) of all rape arrests in urban America, and approximately seven percent (1622 in 1993) are boys ages 15 and under. UNIFORM CRIME REPORTS, *supra* note 13, at 242. Over the past decade, the rate of juveniles ages 13 to 14 arrested for forcible rape has almost doubled. Weinhouse, *supra* note 4, at 38.

Additionally, race studies indicate that there is an overrepresentation of African American juvenile sex offenders, particularly with regard to forcible rape. Raymond A. Knight & Robert A. Prentky, *Exploring Characteristics for Classifying Juvenile Sex Offenders*, in THE JUVENILE SEX OFFENDER, *supra* note 9, at 45, 52. However, there is considerable debate about whether arrest rates are biased against African Americans. Knight & Prentky, *supra*. For a discussion of bias in arrest rates and the criminal justice system, see Alfred Blumstein, *Racial Disproportionality of U.S. Prison Populations Revisited*, 64 U. COLO. L. REV. 743 (1993); David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy's "Politics of Distinction"*, 83 GEO. L.J. 2547 (1995); Diane Ridley Gatewood, *The High Cost of Juvenile Justice*, 20 FORDHAM URB. L.J. 659 (1993); Elizabeth A. Gaynes, *Urban Criminal Justice System: Where Young + Black + Male = Probable Cause*, 20 FORDHAM URB. L.J. 621 (1993).

than one percent of rapists.<sup>28</sup> However, clinicians report an increase in the number of female sex offenders receiving treatment.<sup>29</sup>

Juvenile sex offenders are characterized by varied symptoms of organic impairment, an intelligence quotient below eighty<sup>30</sup> and

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<sup>28</sup> SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS: 1983, BUREAU OF JUSTICE STATISTICS 430 (Edward J. Brown et al. eds., 1984). A 1987 survey of "[44] treatment providers who work with female [sex offenders, 15] females below age [11], and [35] females aged [11] to [17] were identified as currently receiving treatment services. . . ." Sandy Lane, *Special Offender Populations, in JUVENILE SEXUAL OFFENDING*, *supra* note 19, at 299, 324.

In a 1988 study, 13 female sex offenders aged four to 13, comprised 21.6% of the patients treated by the Support Program for Abuse Reactive Kids ("SPARK"). Lane, *supra*, at 324-26. The SPARK program is part of the Children's Institute International in Los Angeles, California, and specializes in the treatment of juvenile sex offenders who are under the age of 12. Gelman et al., *supra* note 6, at 68.

A 1989 "Utah report on Juvenile Sex Offenders indicated that seven percent of the juveniles referred to the juvenile court for sex offenses during a five-year period were female." Lane, *supra*, at 326.

<sup>29</sup> Gelman et al., *supra* note 6, at 69. For example, as of March 30, 1992, the SPARK program consisted of nearly 50% female juvenile sex offenders. Gelman et al., *supra* note 6, at 69. "It is speculated that the number of adolescent female offenders receiving treatment or who are involved with the legal system do not reflect the actual incidence and prevalence of offenses committed by this population." Lane, *supra* note 28, at 326-27. This is often due to "[u]nderreporting, societal denial, or normalization of female-initiated offense behaviors . . . ." Lane, *supra* note 28, at 327. Although there has been an increase in sexual offenses by females, "[g]irl sex offenders are cut from a different cloth than their boy counterparts . . . ." Diedra Henderson, *Cut from a Different Cloth*, SEATTLE TIMES, Jan. 2, 1996, at E1. Approximately 80% of females convicted of sex crimes had been victimized themselves, compared with less than half of male sex offenders. *Id.* Female sex offenders report that their offending episodes "have more to do with wielding power or sating curiosity than satisfying sexual arousal." *Id.* at E2. Generally, girls who commit sex offenses are a small percentage of the children who "wend their way through [the juvenile court] each year." *Id.* at E1. However, in 1994, 29 girls were referred to juvenile court for sexually deviant crimes including rape, child molestation, incest and sexual misconduct with a minor. *Id.*

<sup>30</sup> Intelligence quotient ("IQ") is defined as "a number arrived at by intelligence tests and intended to denote the ratio of a person's intelligence to the normal or average." THE NEW SHORTER OXFORD ENGLISH DICTIONARY 1387



a high incidence of aggressive behavior.<sup>31</sup> There is also evidence that juvenile sex offenders have difficulties in school.<sup>32</sup> Studies indicate that only fifty-seven percent of juvenile sex offenders had achieved their "appropriate or superior grade placement," and more than eighty percent of the juveniles surveyed had learning or behavioral problems during some portion of their schooling.<sup>33</sup>

A juvenile sex offender's victim is usually a seven- or eight-year-old female "who is not related to the offender by blood or marriage."<sup>34</sup> The age of a juvenile sex offender's first sexual offense ranges from seven to thirteen, and the mean number of victims attacked during adolescence is fewer than seven.<sup>35</sup> The juvenile offender exhibits "all of the same variations of sexually abusive behavior as do [adult] offenders," including fondling, rape and exhibitionism,<sup>36</sup> except that adolescent rape often occurs

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(4th ed. 1993). People who score between 60 and 80 on IQ tests are considered "educably mentally retarded." Marjory Roberts, *IQ: Beyond the Limits*, PSYCHOL. TODAY, Aug. 1986, at 65.

<sup>31</sup> Knight & Prentky, *supra* note 27, at 51.

<sup>32</sup> Jonathon Ross & Peter Loss, *Assessment of the Juvenile Sex Offender*, in JUVENILE SEXUAL OFFENDING, *supra* note 19, at 199, 239; *see also* Knight & Prentky, *supra* note 27, at 51-52. A sex offender from a low-risk family that functions "basically within normal limits except for the offender's sexual aggression" usually has minimal problems with authority figures, and "disciplinary problems are of a relatively minor nature." Ross & Loss, *supra*, at 238-39. Sometimes the offender fails to complete assignments or disrupts the classroom environment. Ross & Loss, *supra*, at 239. In contrast, a sex offender from a high-risk family that refuses "to believe the offenses occurred, den[ies] that their child is responsible, or overtly blame[s] the victim" often receives failing grades and demonstrates "significant problems with disruptive, aggressive, and/or defiant behavior especially towards authority figures. . . ." Ross & Loss, *supra*, at 238-39.

<sup>33</sup> Knight & Prentky, *supra* note 27, at 51-52.

<sup>34</sup> Gail Ryan, *Juvenile Sex Offenders: Defining the Population*, in JUVENILE SEXUAL OFFENDING, *supra* note 19, at 3, 6. In 66% of all cases, the victim is a female with a median age of seven. Morain, *supra* note 1, at F7.

<sup>35</sup> Morain, *supra* note 1, at F7. "Once in treatment, juvenile sex offenders admit to an average 20 to 30 crimes committed before their arrest." Weinhouse, *supra* note 4, at 38.

<sup>36</sup> Barbaree et al., *supra* note 9, at 12; *see generally* Peter A. Fehrenbach et al., *Adolescent Sexual Offenders: Offender & Offense Characteristics*, 56 AM. J. ORTHOPSYCHIATRY 225, 225-33 (1986) (providing descriptive data on 305

among groups of boys, such as inner-city gangs and sports teams.<sup>37</sup> An explanation for this difference is that these boys are questioning their masculinity and are resolving any doubts by "trying to prove" their manhood to their peers.<sup>38</sup>

### *B. Why Do Juveniles Commit Sex Offenses?*

Many factors predispose a juvenile to manifest extreme sexual behavior.<sup>39</sup> Family environment, sexual victimization and neurological problems are possible causes of juvenile sexual conduct.<sup>40</sup>

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adolescent sexual offenders); Wayne R. Smith et al., *MMPI-Based Personality Types Among Juvenile Sexual Offenders*, 43 J. CLINICAL PSYCHOL. 422, 422-30 (1987) (discussing the results of a study of 262 adolescent males who committed sexual offenses).

Studies reveal that the nature of abuse in 60% of the cases is penetration, and physical force is the nature of abuse in 31% of the cases. Morain, *supra* note 1, at F7. However, a specific sample of juvenile sex offenders between ages 11 and 16 revealed that the offenders mainly fondled their victims, while an older sample of juvenile sex offenders with a mean age of 15.3 raped, or attempted to rape, in 77.5% of cases. Barbaree et al., *supra* note 9, at 12.

<sup>37</sup> Weinhouse, *supra* note 4, at 40. For example, on January 4, 1994, 17-year-old Richie Parker and a friend forced a 15-year-old girl to perform oral sex on them in their high school basement stairwell. Marc Fisher, *Foul Trouble*, WASH. POST, July 16, 1995, at F1. Parker was one of the country's best high school basketball players. *Id.*

<sup>38</sup> Weinhouse, *supra* note 4, at 40. "A lot of gang rape takes place when there's one guy who wants to prove he's a man and five guys who are terrified of being thought of as less than one." Weinhouse, *supra* note 4, at 40 (citing Michael Kimmel, Ph.D., professor of sociology, State University of New York at Stony Brook).

Two of the most publicized cases of juvenile sexual assault illustrate how gangs and sports teams can, in some instances, incite rape. In Manhattan's Central Park, a group of boys aged 14 to 16 viciously raped and brutally beat a jogger. *Jogger Trial, Act II*, TIME, Dec. 24, 1990, at 23; Toufexis, *supra* note 11, at 52. In Glenridge, New Jersey, a group of high school football players sexually assaulted a 17-year-old mentally impaired girl with a baseball bat and a broomstick. Bernard Lefkowitz, *3 Guilty in Jersey Rape 4th Convicted of Lesser Charge*, NEWSDAY, Mar. 17, 1993, at 5.

<sup>39</sup> Knight & Prentky, *supra* note 27, at 45.

<sup>40</sup> SUSAN S. LANG, TEEN VIOLENCE 43 (1991); Knight & Prentky, *supra* note 27, at 49-51; Russell Eisenman, *Society Confronts the Hardcore Youthful Offender*, USA TODAY, Jan. 1994, (Magazine), at 27.

According to one theory, juvenile sexual aggression is the result of physical and psychological abuse by the juvenile's family, primarily the parents.<sup>41</sup> The known risk factors for juveniles that contribute to sexually abusive behavior include "humiliation, or trauma, combined with a lack of empathic care, early parental loss, inconsistent care, and/or the lack of a confidant in childhood."<sup>42</sup>

Experts are abandoning the theory that "the deadly cycle of sex abuse began and ended with adult offenders who themselves had been molested as children,"<sup>43</sup> and are turning to the view that juvenile sexual aggression may be the result of "their own sexual victimization."<sup>44</sup>

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<sup>41</sup> Eisenman, *supra* note 40, at 27. Many parents are immature, confused, stressed and ill-equipped to be parents and are therefore abusive or indifferent to their children. Eisenman, *supra* note 40, at 27.

The following statistics indicate "[f]amily variables in one thousand cases of juvenile sex offenders referred to specialized treatment programs." In 57% of the cases, juvenile sex offenders suffered parental loss; in 28% of the cases, juvenile sex offenders suffered parental violence; in 27% of the cases, juvenile sex offenders had mothers who were substance abusers; in 43% of the cases, juvenile sex offenders had fathers who were substance abusers and in only 27.8% of the cases, juvenile sex offenders lived with both natural parents at the time of their sexual offense. Gail Ryan, *The Juvenile Sex Offender's Family*, in JUVENILE SEXUAL OFFENDING, *supra* note 19, at 143, 144 (statistics compiled by the Uniform Data Collection System of the National Adolescent Perpetrator Network (Kempe Center; Denver, Colorado)).

<sup>42</sup> Ryan, *supra* note 41, at 143.

<sup>43</sup> Gelman et al., *supra* note 6, at 68. According to Susan Xenarios, C.S.W., director of St. Luke's-Roosevelt Hospital Rape Intervention Program in New York City, "[m]any juvenile offenders probably witnessed or were victims of some sort of sexual abuse and are acting out their anger." Weinhouse, *supra* note 4, at 41. A 1984 study revealed that 41% of adolescent sex offenders reported family sexual abuse. Shela R. Van Ness, *Rape As Instrumental Violence: A Study of Youth Offenders*, 9 J. OFFENDER COUNSELING, SERVICES, & REHABILITATION 161, 166 (1984) (discussing a sample of 29 males, 12 of whom reported sexual abuse as children).

<sup>44</sup> Knight & Prentky, *supra* note 27, at 49. The number of juvenile sex offenders who are victims of sexual abuse is higher than the estimates of sexual abuse in both the general male population and in the number of juvenile offenders accused of noncontact sexual offenses like exhibitionism. Knight & Prentky, *supra* note 27, at 49-50. Moreover, the rates reported by juvenile sex offenders prior to sentencing may actually be higher "because the reporting of

Other experts place the blame “squarely on the shoulders of the offender.”<sup>45</sup> Under this approach, the juvenile sex offender is not considered a victim of poor upbringing, but rather as an individual who “commit[s] crimes because [he or she] chooses to do so.”<sup>46</sup> One commentator explains that such voluntary deviant behavior may be the result of “brain chemistry that makes the person oriented toward thrill-seeking.”<sup>47</sup> Studies indicate that an offender’s overwhelming need for sensation can, in the presence of encouragement from others or in specific circumstances, result in extreme sexual behavior.<sup>48</sup> While most juveniles can learn to restrain their “aggressive impulses,” others “act aggressively.”<sup>49</sup> Furthermore, serious biological abnormalities such as a seizure and brain damage, or minor ones such as a head injury and abnormal brain waves can lead to violent behavior.<sup>50</sup> Although family abuse

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sexual abuse often emerges only after the adolescent has been in therapy.” Knight & Prentky, *supra* note 27, at 50.

A 1988 study revealed that 81% of juvenile sex offenders were themselves victims of sexual abuse. Knight & Prentky, *supra* note 27, at 49; see generally William N. Friedrich & William J. Luecke, *Young School-Age Sexually Aggressive Children*, 19 PROF. PSYCHOL.: RES. & PRAC. 155, 155-64 (1988) (providing data from the psychological evaluation of 22 children ages four to 11 who exhibited sexually aggressive behavior).

“When someone is sexually assaulted, his or her power is taken away. A child may reason that, if power can be taken from me in this way, the way I get power back is to repeat that same thing to someone younger.” Nancy Hobbs, *Kids & Sex: A Formula for Abuse*, SALT LAKE TRIB., Jan. 9, 1995, at D1.

<sup>45</sup> Eisenman, *supra* note 40, at 27.

<sup>46</sup> Eisenman, *supra* note 40, at 27.

<sup>47</sup> Eisenman, *supra* note 40, at 27.

<sup>48</sup> Eisenman, *supra* note 40, at 27. “Some experts believe that aggression is a biologically programmed impulse in men, particularly young men, either part of their genetic makeup or caused by male hormones,” primarily with respect to violent juvenile offenders. LANG, *supra* note 40, at 43.

<sup>49</sup> LANG, *supra* note 40, at 43. Studies indicate that children who engage in violent or destructive behavior, or who defy their superiors, are three times more likely to become criminals than children who do not engage in such behavior. LANG, *supra* note 40, at 43.

<sup>50</sup> LANG, *supra* note 40, at 43. Studies show that brain hemorrhages caused by shaking a child can cause violent behavior. LANG, *supra* note 40, at 43. A seven-year study concluded in 1989 which observed 95 jailed juveniles revealed “that those who grew up to be the most violent not only had a family history of

may incite violent behavior, "physical problems may impair the youngster in controlling his [or her] violent impulses."<sup>51</sup>

## II. THE REHABILITATIVE IDEAL

In 1899, Illinois established the first juvenile court based on the philosophy of *parens patriae*.<sup>52</sup> Early juvenile courts viewed adult procedures and penalties as contrary to society's duty of *parens patriae* justice,<sup>53</sup> maintaining that society's role was not to discern

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abuse but also suffered from serious neurological damage." LANG, *supra* note 40, at 43.

<sup>51</sup> LANG, *supra* note 40, at 44.

<sup>52</sup> Brian R. Suffredini, Note, *Juvenile Gunslingers: A Place for Punitive Philosophy in Rehabilitative Juvenile Justice*, 35 B.C. L. REV. 885, 890 (1994). The early rehabilitative programs based on the philosophy of *parens patriae* were the Houses of Refuge and the Child Savers programs. *Id.* In the United States, the first institutions designed to control juvenile delinquency were the Houses of Refuge, established in 1825. *Id.* These institutions focused on prevention and education, "seeking less to punish and more to educate and train youths, mentally and morally preparing them for a productive role in society upon their release." *Id.* at 888.

Toward the end of the 19th-century, another group, the Child Savers, also rejected the idea of punishing juvenile delinquents and instead concentrated on placing them with farming families in an effort to provide these children with "moral, compassionate and hardworking role models . . ." *Id.* at 889. The Child Savers reached more children than the Houses of Refuge because their programs were more effective than mere long-term institutionalization. *Id.*; see generally ANTHONY M. PLATT, *THE CHILD SAVERS* (1969) (detailing the history of the Child Savers programs).

<sup>53</sup> George Bundy Smith & Gloria M. Dabiri, *The Judicial Role in the Treatment of Juvenile Delinquents*, 3 J.L. & POL'Y 347, 351-52 (1995). The juvenile court was created amidst an era of industrialization and urbanization known as the Progressive Era, the period from 1880 to 1920. Suffredini, *supra* note 52, at 889. At the time, the "public's newly acquired faith that there must be scientific explanations to perplexing social problems" caused a rift between social reformers and Social Darwinists, who believed that "attempting rehabilitation of an individual is tantamount to fighting the natural process of selection itself." Suffredini, *supra* note 52, at 889. The reformers prevailed and eventually instituted the "modern welfare state and criminal justice system." Suffredini, *supra* note 52, at 890. They introduced a multitude of criminal justice reforms at the turn of the century including probation, parole, indeterminate sentences and the juvenile court. Feld, *supra* note 15, at 823.

a child's "guilt" or "innocence," but rather to determine "[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."<sup>54</sup> Before the *parens patriae* approach, juveniles were punished like adults and imprisoned with adult offenders.<sup>55</sup> The creation of juvenile courts discarded the structure and harshness of both adult substantive and procedural criminal law, including the fundamental notions of crime and punishment.<sup>56</sup>

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Probation is a "[s]entence imposed for commission of crime whereby a convicted criminal offender is released into the community under the supervision of a probation officer in lieu of incarceration." BLACK'S LAW DICTIONARY 1202 (6th ed. 1990). Parole is "[r]elease from jail, prison or other confinement after actually serving part of sentence." *Id.* at 1116. An indeterminate sentence is "imprisonment the duration of which is not fixed by the court but is left to the determination of penal authorities within the minimum and maximum time limits fixed by the court of law." *Id.* at 771.

<sup>54</sup> Smith & Dabiri, *supra* note 53, at 351.

<sup>55</sup> Suffredini, *supra* note 52, at 890. Before the advent of *parens patriae* juvenile justice, children charged with committing serious crimes and who "had reached the age of criminal responsibility . . . were tried as adults." Jan L. Trasen, Note, *Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?*, 15 B.C. THIRD WORLD L.J. 359, 369 (1995). At common law, the "age of criminal responsibility" was seven. *Id.* at 369 n.79.

<sup>56</sup> Smith & Dabiri, *supra* note 53, at 352. In 1966, in *Kent v. United States*, 383 U.S. 541 (1966), the Supreme Court initiated the first of many changes to the juvenile court system by holding that a "full investigation" was required in all future proceedings before a waiver of jurisdiction to a criminal court could be considered. *Id.* at 561. However, it was not until the Supreme Court's landmark decision, *In re Gault*, that a transformation of the juvenile court began, aimed at engrafting "formal trial procedures onto the juvenile court's individualized treatment sentencing scheme." Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 691 (1991).

Although the Court in *Gault* did not intend to change the juvenile court's rehabilitative purpose, "in the past two decades, legislative, judicial, and administrative responses to *Gault* have modified the [juvenile] court's jurisdiction, purpose, and procedures." *Id.* The Supreme Court used the Fourteenth Amendment's Due Process Clause to support its holding that some criminal procedures are so essential that they must be applied to both adult and juvenile proceedings. *Id.* These basic rights include notice, the right to counsel, the right against self-incrimination and the right to confrontation. *In re Gault*, 387 U.S. at 33-34, 41-42, 47-56; see also Kristina H. Chung, Note, *Kids Behind Bars: The*

### A. Contemporary Juvenile Court Dispositions

In juvenile court, if a youth admits to his or her guilt or is deemed a delinquent after a trial,<sup>57</sup> the proceeding shifts from an "adjudicatory stage" to a "dispositional stage," in which the judge must determine the what sentence to impose.<sup>58</sup> Remedial intervention,<sup>59</sup> restitution<sup>60</sup> and punishment are all possible

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*Legality of Incarcerating Juveniles in Adult Jails*, 66 IND. L.J. 999, 1010 (1991). The Fourteenth Amendment holds that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

The Court in *Gault* reaffirmed the importance of *parens patriae* by concluding that there were other practices so unique to juvenile courts that they should be continued in light of the clinical and rehabilitative approach to juvenile justice. *Gault*, 387 U.S. at 22-25. Some of these practices include processing juveniles separately from adults, not classifying juveniles as criminals, closing juvenile proceedings to the public and making juvenile records confidential. *Id.*

<sup>57</sup> A "juvenile delinquent" refers to "a person over seven and less than [16] years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court . . ." N.Y. FAM. CT. ACT. § 301.2(1) (McKinney 1983).

<sup>58</sup> Nicholas Bala & Ira Schwartz, *Legal Responses to the Juvenile Sex Offender*, in THE JUVENILE SEX OFFENDER, *supra* note 9, at 25, 36. Unlike "treatment" in juvenile court, "punishment" in criminal proceedings regards deviant acts by offenders not as "the consequence of mature and malevolent choice but . . . of other forces beyond their control." *McKeiver v. Pennsylvania*, 403 U.S. 528, 551-52 (1971) (White, J., concurring). The Supreme Court's decision in *McKeiver* supported a "model of the juvenile court as a benevolent treatment agency making dispositions in the 'best interests of the child.'" Feld, *supra* note 15, at 838 (citing *McKeiver*, 403 U.S. at 568) (Douglas, J., dissenting)).

<sup>59</sup> "Remedial intervention" is residential or nonresidential rehabilitation by skilled treatment providers. FAY HONEY KNOPP, REMEDIAL INTERVENTION IN ADOLESCENT SEX OFFENSES: NINE PROGRAM DESCRIPTIONS 26 (1982). See discussion *infra* part IV.B-C.

<sup>60</sup> Restitution programs require the offender "to repay, as a condition of his sentence, the victim or society in money or services." BLACK'S LAW DICTIONARY 1313 (6th ed. 1990). A new ordinance adopted in Silverton, Oregon, allows parents to be fined up to \$1,000.00 when their child commits a crime such as arson, robbery, assault, underage drinking and vandalism. Hope Viner

dispositions for juvenile delinquents.<sup>61</sup> Prior to making such determinations, juvenile court judges often utilize their significant discretionary powers and order an assessment of the offender to determine whether the juvenile can be rehabilitated.<sup>62</sup>

Common dispositions for juvenile sex offenders normally include either probation or custody.<sup>63</sup> Probation allows juveniles to remain at home with their families while under the supervision of a probation officer and conditioned upon participation in a treatment program that offers counseling or therapy sessions.<sup>64</sup> In some instances, juvenile offenders are considered so dangerous that they cannot be safely kept or treated in the community through probation, and therefore may require varying degrees of custody in a residential facility.<sup>65</sup> Usually these offenders are removed from parental care and placed in proper treatment facilities.<sup>66</sup>

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Samborn, *Kids' Crimes Can Send Parents to Jail*, A.B.A. J., March 1996, at 28. Since the enactment of the ordinance in January 1995, juvenile crime dropped by 44.5%. *Id.*

<sup>61</sup> Heinz et al., *supra* note 19, at 190.

<sup>62</sup> Heinz et al., *supra* note 19, at 190-91. While sentencing immediately following adjudication is possible, the case is usually adjourned for sentencing at a later date. Bala & Schwartz, *supra* note 58, at 36. An adjournment provides extra time for the preparation of special reports designed to aid in the sentencing procedure. Bala & Schwartz, *supra* note 58, at 36. Sometimes, a probation officer prepares a presentence report that includes a narrative of the child's history and previous juvenile court record. Bala & Schwartz, *supra* note 58, at 36. Often, an additional psychiatric or psychological assessment of the juvenile is possible, as well. Bala & Schwartz, *supra* note 58, at 36.

<sup>63</sup> Bala & Schwartz, *supra* note 58, at 37.

<sup>64</sup> Bala & Schwartz, *supra* note 58, at 37.

<sup>65</sup> For example, in *The Matter of West*, 427 S.E.2d 889 (N.C. Ct. App. 1993), the North Carolina Court of Appeals affirmed a lower court dispositional order to place a juvenile in an in-state residential treatment program which had special services for sex offender treatment. *Id.* at 892. A psychiatric evaluation confirmed that the juvenile was "developmentally disabled" and his "risk of re-offending was moderate to high . . ." *Id.* at 890. The court held that the order was "a proper balancing of the pertinent interests, . . . a proper application of law, and [did] not constitute an abuse of discretion." *Id.* at 892.

<sup>66</sup> Bala & Schwartz, *supra* note 58, at 37-38. In some jurisdictions, juvenile court judges have a limited role in the placement of a youth offender. Bala & Schwartz, *supra* note 58, at 38. See discussion *infra* part IV.C.



Several courts have held that juveniles involuntarily placed in residential facilities may have a constitutional "right to treatment."<sup>67</sup> These courts relied on the Supreme Court's determination in *Jackson v. Indiana*<sup>68</sup> that the nature and duration of commitment in a residential facility must be "reasonably related" to the purpose for which the individual is committed.<sup>69</sup> Courts have determined that because states have a *parens patriae* interest in the welfare of delinquent juveniles, "due process requires that juveniles confined under that authority be given treatment consistent with the beneficent purpose of their confinement."<sup>70</sup> However, the denial of certain due process safeguards in the juvenile justice system, such as the right to a jury trial in juvenile

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<sup>67</sup> See, e.g., *Nelson v. Hyne*, 491 F.2d 352, 358 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); *Morgan v. Sproat*, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977); *Martarella v. Kelley*, 349 F. Supp. 575, 599 (S.D.N.Y. 1972).

According to *Martarella*, minimal rehabilitative treatment is measured by the following:

1. The institution need not demonstrate that its treatment program will cure or improve, but only that there is "a bona fide effort to do so",
2. [t]he effort must be to provide treatment adequate in light of present knowledge,
3. the fact that science has not reached finality of judgment as the most effective therapy cannot relieve the court of its duty to render an informed decision and
4. continued failure to provide suitable adequate treatment cannot be justified by lack of staff or facilities . . . .

349 F. Supp. at 601.

<sup>68</sup> 406 U.S. 715, 738 (1972). In *Jackson*, on equal protection and due process grounds, the Supreme Court struck down an Indiana law which allowed more lenient commitment standards and more stringent release requirements for insanity acquittees than for other mentally ill individuals. *Id.* at 723-39.

<sup>69</sup> See, e.g., *Nelson*, 491 F.2d at 360; *Morgan*, 432 F. Supp. at 1135-36; *Martarella*, 349 F. Supp. at 602. But see *Santana v. Collazo*, 714 F.2d 1172, 1176 (1st Cir. 1983). In *Santana*, the First Circuit Court of Appeals held that "since rehabilitative treatment is not the only legitimate purpose of juvenile confinement, the Supreme Court's insistence that the nature of confinement must bear a reasonable relationship to the purpose of that confinement gains plaintiffs little ground in their effort to establish a right to rehabilitative treatment." *Id.*

<sup>70</sup> *Santana*, 714 F.2d at 1176; see also *Nelson*, 491 F.2d at 360; *Morgan*, 432 F. Supp. at 1135-36; *Martarella*, 349 F. Supp. at 602.

proceedings, have been found constitutionally acceptable because the purpose of incarceration is rehabilitation.<sup>71</sup> The “‘*quid pro quo*’ for the denial of safeguards is the promised rehabilitation.”<sup>72</sup> Although courts disagree on whether involuntarily incarcerated juveniles have a right to treatment,<sup>73</sup> the better view is that they should have this right based on the rehabilitative notion of juvenile justice.

### III. LEGISLATIVE RESPONSES TO INCREASED JUVENILE VIOLENCE

Lawmakers across the country are responding to the problem of juvenile sex offenders by hardening juvenile sex offender laws.<sup>74</sup> Within the past decade, ten state legislatures have redefined the purpose of their juvenile courts by downplaying the role of rehabilitation.<sup>75</sup> These states stress the “importance of public

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<sup>71</sup> See, e.g., *McKeiver v. Pennsylvania*, 403 U.S. 528, 547 (1971) (stating that there is no right to a jury trial in juvenile proceedings); see also *Nelson*, 491 F.2d at 360 (holding that juveniles have a Fourteenth Amendment right to treatment); *Morgan*, 432 F. Supp. at 1135-36 (holding that juveniles must be afforded treatment or the involuntary commitment in a residential facility is considered an arbitrary exercise of governmental power in violation of the Due Process Clause); *Martarella*, 349 F. Supp. at 586 (discussing the denial of certain due process safeguards in the juvenile justice system).

<sup>72</sup> *Santana*, 714 F.2d at 1176; see also *Nelson*, 491 F.2d at 359; *Morgan*, 432 F. Supp. at 1136; *Martarella*, 349 F. Supp. at 586.

<sup>73</sup> See, e.g., *Nelson*, 491 F.2d at 360; *Morgan*, 432 F. Supp. at 1135-36; *Martarella*, 349 F. Supp. at 602. But see *Santana*, 714 F.2d at 1176.

<sup>74</sup> *Lawmakers Step Up Efforts to Toughen Sex Offender Laws*, LEGAL INTELLIGENCER, Aug. 23, 1994, at 5. In New York, Governor George Pataki proposed legislation that would make it easier for juveniles as young as 13-years-old to be prosecuted as adults. James Dao, *Governor Proposes a Juvenile Crackdown*, TIMES UNION, Dec. 10, 1995, at A1. In addition to longer sentences, Governor Pataki's proposal subjects juveniles convicted of violent crimes to automatic transfer to state prison once they turn 16 years of age. *Id.* at A6. Currently, most young offenders remain in Division for Youth Centers (facilities for the confinement of juveniles) until they turn 21-years-old. *Id.*

<sup>75</sup> Feld, *supra* note 15, at 842. The 10 state statutes that have modified the role of rehabilitation in the juvenile courts include the following: ARK. CODE ANN. § 9-27-302 (Michie 1993); CAL. WELF. & INST. CODE § 202 (West 1984 & Supp. 1996); FLA. STAT. ANN. § 39.001(2)(a) (West 1988 & Supp. 1996); HAW. REV. STAT. § 571-1 (1993); IND. CODE ANN. § 31-6-1-1 (Burns Supp.

safety, punishment, and individual accountability in the juvenile justice system.”<sup>76</sup> Juvenile sex offenders are considered untreatable because extensive studies on adult sex offenders indicate a high rate of recidivism.<sup>77</sup> Consequently, states have adopted new laws and policies directed at prosecuting juvenile sex offenders as adults and requiring the registration and notification of their presence in the community.

### A. *Waiving Juveniles to Criminal Courts*

Since 1978, twenty-four states and the District of Columbia have modified their statutory provisions to permit more juveniles to be tried in adult criminal courts.<sup>78</sup> Some states lowered the age

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1995); MINN. STAT. ANN. § 260.011(2) (West 1992); TEX. FAM. CODE ANN. § 51.01(2) (West 1986); VA. CODE ANN. § 16.11-227 (Michie 1988); WASH. REV. CODE ANN. § 13.40.010(2) (West 1993); W. VA. CODE § 49-1-1(a) (1995).

Since the inception of the original juvenile court in Illinois, juvenile courts aim “to secure for each minor . . . such care and guidance, preferably in his own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community . . . .” ILL. ANN. STAT. ch. 705, § 405/1-2(1) (Smith-Hurd 1992).

<sup>76</sup> Feld, *supra* note 15, at 842. In New Jersey, Governor Christine Todd Whitman advocates waiving more juvenile offenders to adult courts by “using errant youths’ criminal records to tip the scales in favor of prosecutors.” Jim Hooker, *More Young Offenders May Be Tried As Adults*, ASBURY PARK PRESS, May 23, 1995, at A1. New Jersey Attorney General Deborah T. Poritz said that laws permitting juveniles to be tried as adults should be amended to stress accountability and public safety. *Id.*

<sup>77</sup> WILLIAM L. MARSHALL ET AL., HANDBOOK OF SEXUAL ASSAULT 6 (1990) (discussing the high recidivism among adult sexual offenders); Jerome Miller, *Sex Offenders: Public Hysterical Despite Effectiveness of Treatment*, DALLAS MORNING NEWS, Nov. 13, 1994, at 5J (stating that the most accepted view is that adult sex offenders are untreatable, although recent studies indicate that some treatments may be successful).

<sup>78</sup> GAO REPORT, *supra* note 18, at 19. Criminal court jurisdiction refers to “adult courts” that are “charged with the administration of the criminal laws, and the punishment of wrongs to the public.” BLACK’S LAW DICTIONARY 353 (6th ed. 1990). In contrast, juvenile courts have special jurisdiction, “of a paternal nature, over delinquent, dependent, and neglected children.” *Id.* at 867.

The following 24 states and the District of Columbia increased the population of juvenile offenders who may be subject to criminal court

at which juvenile offenders could be tried as an adult in criminal court,<sup>79</sup> and others expanded the types of offenses for which juveniles may be waived into criminal court.<sup>80</sup>

In judicial waiver jurisdictions,<sup>81</sup> the state bears the burden of

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jurisdiction: ALA. CODE § 12-15-34 (1995); ARK. CODE ANN. § 9-27-318 (Michie 1993 & Supp. 1995); CAL. WELF. & INST. CODE §§ 707, 707.2 (West 1984 & Supp. 1996); CONN. GEN. STAT. ANN. §§ 46b-126, 46b-127 (West 1995); DEL. CODE ANN. tit. 10, § 921 (1975); DEL. CODE ANN. tit. 10, §§ 1010, 1011 (Supp. 1994); D.C. CODE ANN. §§ 16-2301, 16-2307 (1989 & Supp. 1995); FLA. STAT. ANN. §§ 39.022, 39.047, 39.052 (West Supp. 1996); GA. CODE ANN. §§ 15-11-5, 15-11-39, 15-11-39.1 (1994); IDAHO CODE § 16-1806 (1979 & Supp. 1995); IDAHO CODE § 16-1806A (Supp. 1995); IND. CODE § 31-6-2-4 (1987 & Supp. 1995); KAN. STAT. ANN. § 21-3611 (1981 & Supp. 1994); KAN. STAT. ANN. § 38-1602 (1993 & Supp. 1994); KAN. STAT. ANN. § 38-1636 (1993); KY. REV. STAT. ANN. §§ 635.020, 640.010 (Michie 1990 & Supp. 1994); LA. REV. STAT. ANN. § 305 (West 1995 & Supp. 1996); LA. REV. STAT. ANN. § 857 (West 1995); MISS. CODE ANN. §§ 43-21-105, 43-21-151, 43-21-157 (1993 & Supp. 1995); MISS. CODE ANN. § 43-23-29, 43-23-31 (1993); N.J. STAT. ANN. § 2A:4A-26 (West 1987 & Supp. 1994); N.C. GEN. STAT. § 7A-608 (1995); N.D. CENT. CODE § 27-20-34 (1991 & Supp. 1995); OR. REV. STAT. §§ 419C.340, 419C.349, 419C.352, 419C.361, 419C.364 (1995); R.I. GEN. LAWS §§ 14-1-3, 14-1-7.1 (1994 & Supp. 1995); R.I. GEN. LAWS §§ 14-1-7, 14-1-7.2, 14-1-7.3, 14-1-7.4 (1994); S.C. CODE ANN. §§ 20-7-390, 20-7-430 (Law. Co-op. 1985 & Supp. 1995); TENN. CODE ANN. §§ 37-1-134, 37-1-159 (1991 & Supp. 1995); VT. STAT. ANN. tit. 33, § 5502 (1991 & Supp. 1994); VT. STAT. ANN. tit. 33, §§ 5505, 5506 (1991); VA. CODE ANN. §§ 16.1-269.1, 16.1-271 (Michie 1988 & Supp. 1995); VA. CODE ANN. §§ 16.1-269.3, 16.1-269.4, 16.1-269.6 (Michie Supp. 1995); WIS. STAT. ANN. § 48.18 (West 1987); WIS. STAT. ANN. §§ 48.183, 970.032 (West Supp. 1995).

<sup>79</sup> For example, California now permits juvenile court judges to waive offenders to criminal court from the age of 14 for specified offenses such as rape. CAL. WELF. & INST. CODE §§ 707 & 707.01 (West Supp. 1996). Similarly, a New Jersey juvenile court judge may waive juveniles ages 14 or older to criminal court if charged with aggravated sexual assault or sexual assault. N.J. STAT. ANN. § 2A:4A-26.

<sup>80</sup> GAO REPORT, *supra* note 18, at 2. "Judicial waiver statutes provide that a judge may transfer a juvenile to adult court, at the judge's discretion, if certain statutory criteria are met." *State v. A.L.*, 638 A.2d 814, 817 (N.J. Super. Ct. App. Div. 1994) (discussing the Supreme Court's review of the practice of judicial waiver in *Kent v. United States*, 383 U.S. 541, 556 (1966)).

<sup>81</sup> See, e.g., ALA. CODE § 12-15-34; ARK. CODE ANN. § 9-27-318; CONN. GEN. STAT. ANN. § 46b-126; DEL. CODE ANN. tit. 10 § 1010; D.C. CODE ANN. § 16-2307; MASS. GEN. L. ch. 119, § 61 (1993); MICH. COMP. LAWS § 712A.4

proving that the offender "is not amenable to treatment and poses a threat to the community."<sup>82</sup> When the state is successful, a juvenile faces a trial in criminal court rather than a juvenile proceeding.<sup>83</sup>

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(1992); N.J. STAT. ANN. § 2A:4A-26; TEX. FAM. CODE ANN. § 54.02 (West 1986).

<sup>82</sup> *A.L.*, 638 A.2d at 817. In deciding whether to transfer a case to criminal court, most jurisdictions consider some or all of the following requirements as enumerated in *Kent v. United States*:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint . . . .
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile . . . .
8. The prospects for adequate protections of the public and the likelihood of reasonable rehabilitation of the juvenile . . . .

383 U.S. at 566-67; *see generally* Hansen v. State, 904 P.2d 811 (Wyo. 1995); A.D.T. v. State, 630 So. 2d 165 (Ala. Crim. App. 1993); *A.L.*, 638 A.2d at 817; Jasper v. State, 477 N.W.2d 852 (Iowa 1991); State v. Pentland, 719 P.2d 605 (Wash. Ct. App. 1986).

Usually this evidence is presented at a judicial waiver hearing. In *Kent*, the Supreme Court held that judicial waiver proceedings are "a 'critically important' action determining vitally important statutory rights of the juvenile." 383 U.S. at 556.

<sup>83</sup> GAO REPORT, *supra* note 18, at 4-5. Juveniles have received adult sentences for a variety of sex offenses as a result of the waiver process. Life sentence without parole was found not disproportionate to the crime of aggravated rape and was imposed on a juvenile who was less than 16-years-old. State v. Foley, 456 So. 2d 979, 984 (La. 1984). Similarly, an Arkansas court has stated that "rape, as defined, is a violent offense" and refused to transfer a 16-year-old juvenile charged with rape to juvenile court. Slay v. State, 832 S.W.2d

Prosecutorial waiver statutes provide another means to transfer juveniles to adult court.<sup>84</sup> Prosecutorial waiver statutes allow concurrent jurisdiction between juvenile and criminal courts, and the "prosecutor rather than the judge is vested with [the] discretion to determine the forum."<sup>85</sup>

Some states have statutory exclusion statutes which automatically exclude designated crimes or juveniles with certain prior records from juvenile court jurisdiction.<sup>86</sup> For example, in New York, juveniles fourteen or older charged with assault or rape are precluded from a juvenile court proceeding and are prosecuted in criminal court.<sup>87</sup>

Judicial, prosecutorial and exclusionary waivers normally result in an automatic adult trial that bars juvenile offenders from any

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217, 219 (Ark. 1992). An Alabama court held that a probation officer's recommendation that a juvenile not be transferred was not "binding on a juvenile judge," and affirmed a juvenile court's order to transfer a 17-year-old juvenile charged with rape to circuit court for prosecution as an adult. *A.D.T.*, 630 So. 2d at 171.

In *Doe v. State*, 617 P.2d 826 (Haw. Ct. App. 1980), a 17-year-old was determined to be "not treatable in any available institution or facility within the State designed for the care and treatment of children" and was convicted as an adult of attempted rape after the family court waived its jurisdiction. *Id.* at 829. In *Hansen v. State*, 904 P.2d 811 (Wyo. 1995), two consolidated cases sought to "inhibit the discretion of the prosecuting attorney and the discretion of the trial court with respect to the prosecution of young offenders as adults in district court." *Id.* at 813. In one of the cases, the court affirmed a lower court decision to charge appellant, Arthur Hansen, Jr., age 16, with first degree sexual assault because "the matter is best suited for disposition in adult court." *Id.* at 828.

<sup>84</sup> *A.L.*, 638 A.2d at 818.

<sup>85</sup> *Id.* Prosecutorial waiver is considered a common "charging decision that does not require judicial review." *Id.*; see also Marcy Rasmussen Podkopacz & Barry C. Feld, *Judicial Waiver Policy and Practice: Persistence, Seriousness and Race*, 14 LAW & INEQ. J. 73, 178 n.9; see, e.g., ARK. CODE ANN. § 9-27-318; COLO. REV. STAT. § 19-2-805 (1990 & Supp. 1995); D.C. CODE ANN. § 16-2307; FLA. STAT. ANN. § 39.047.

<sup>86</sup> GAO REPORT, *supra* note 18, at 5. See, e.g., CONN. GEN. STAT. § 46b-127; N.J. STAT. ANN. § 2A:4A-26; N.Y. PENAL LAW § 30.00 (McKinney 1987); N.C. GEN. STAT. § 7A-608.

<sup>87</sup> N.Y. PENAL LAW § 30.00.

hope of rehabilitative treatment.<sup>88</sup> Unlike juvenile court, the likely outcome of an adult proceeding is imprisonment.<sup>89</sup> Between 1978 and 1990, the number of juveniles under eighteen years of age that were transferred from juvenile to criminal courts increased at an alarming rate.<sup>90</sup>

### *B. Consequences of Adult Imprisonment*

Juvenile sex offenders sentenced to adult prisons rarely receive treatment because few treatment facilities exist for adult offenders.<sup>91</sup> For example, no residential treatment facilities for adult sex offenders exist in Washington, D.C., Georgia, Maryland, Mississippi or West Virginia.<sup>92</sup> By comparison, community-based

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<sup>88</sup> See Catherine Candisky & Randall Edwards, *Prison or Compassion?*, COLUMBUS DISPATCH, Mar. 5, 1995, at 1B (citing criticism of pending Ohio House Bill 1, supported by Republican legislators, which would require automatic waiver of habitual or violent juvenile offenders to adult court).

<sup>89</sup> *Id.* Juvenile proceedings, which largely disregard the technicalities and formalities of the criminal court, focus on reformatory rather than punitive sentences. "The Fourteenth Amendment . . . does not require that [a juvenile delinquency] hearing conform with all the requirements of a criminal trial." *In re Appeal in Pima County*, 631 P.2d 526, 529 (Ariz. 1981). See *supra* note 56 (discussing the Fourteenth Amendment).

<sup>90</sup> Smith & Dabiri, *supra* note 53, at 365. In 1978, judicial waiver or transfer provisions resulted in the prosecution of only 9000 juveniles in state criminal courts. Smith & Dabiri, *supra* note 53, at 365. In 1990, this number exploded to 176,000 juveniles under 18 years of age that were transferred from juvenile to adult courts. Smith & Dabiri, *supra* note 53, at 365. Between 1984 and 1990, the number of juveniles sentenced to adult prisons increased 30%, from 9078 in 1984 to 11,782 in 1990. Smith & Dabiri, *supra* note 53, at 365.

<sup>91</sup> See Peter Finn, *Do Sex Offender Treatment Programs Work?*, 78 JUDICATURE 250, 250 (1995).

<sup>92</sup> ROBERT E. FREEMAN-LONGO ET AL., 1994 NATIONWIDE SURVEY OF TREATMENT PROGRAMS & MODELS 11 (1995). The following states have only one residential treatment program for adult sex offenders: Alabama, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Kansas, Kentucky, Massachusetts, Maine, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Rhode Island, South Dakota and Wyoming. *Id.* The 24-bed Sex Offender Treatment Unit at the Federal Correctional Institution in Butner, North Carolina, is the only sex offender treatment program of the 30 federal institutions that house sex offenders. Finn, *supra* note 91, at 250.

in-patient and out-patient programs offering specialized treatment for adult sex offenders have multiplied from 297 in 1986 to 710 in 1994.<sup>93</sup>

Generally, juveniles sentenced to adult prisons are housed separately from adult prisoners but subject to policies and procedures similar to those applicable to adults, including the same health services, educational, vocational and work opportunities and recreational facilities.<sup>94</sup> During confinement in adult facilities, many juvenile offenders suffer physical, mental and psychological abuse by adult inmates as well as by other juveniles.<sup>95</sup> This abuse

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<sup>93</sup> FREEMAN-LONGO ET AL., *supra* note 92, at 6. A 1989 survey indicates that "[c]ommunity-based out[-]patient programs made up 80 percent of the available services; residential treatment settings accounted for the remaining 20 percent." Fay Honey Knopp & Sandy Lane, *Program Development, in JUVENILE SEXUAL OFFENDING*, *supra* note 19, at 21, 25. Fifty-two percent of the programs were public and 48% were private. Knopp & Lane, *supra*, at 26.

<sup>94</sup> GAO REPORT, *supra* note 18, at 4. Increasingly, juveniles confront the prospect of incarceration in adult prisons where they are likely to encounter overcrowding and other dangerous conditions including facilities that exceed their intended capacity, inferior security, education, management of suicidal behavior and health care. Patricia Puritz et al., *Seeking Better Representation for Young Offenders*, 10 CRIM. JUST. 14, 14-15 (1996). Some courts have held that the harsh conditions of adult jails subject incarcerated juveniles to cruel and unusual punishment. *See Gary v. Hegstrom*, 831 F.2d 1430 (9th Cir. 1987); *Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983).

In *Gary*, the Ninth Circuit Court of Appeals held that "[t]he status of the detainees (may include juveniles who are committed to residential treatment facilities) determines the appropriate standard for evaluating conditions of confinement. The Eighth Amendment applies to 'convicted prisoners,'" and prohibits cruel and unusual punishment. *Gary*, 831 F.2d at 1432. "By contrast, the more protective [F]ourteenth [A]mendment standard applies to conditions of confinement when detainees, whether or not juveniles, have not been convicted." *Id.* The court held that the proper approach for review is to apply the Fourteenth Amendment's Due Process Clause which implicitly incorporates the Cruel and Unusual Punishment Clause of the Eighth Amendment as a constitutional minimum. *Id.* (applying the standard developed in *Santana*). Moreover, in *Santana*, the First Circuit Court of Appeals held that "there is no simple test for determining whether conditions of confinement are cruel and unusual. The Eighth Amendment draws its meaning from 'evolving standards of decency that mark the progress of a maturing society.'" *Santana*, 714 F.2d at 1179 (citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

<sup>95</sup> Chung, *supra* note 56, at 1008.



damages a juvenile offender's self-esteem.<sup>96</sup> Even short periods of confinement in adult prisons can cause juvenile offenders "severe and irreparable damage."<sup>97</sup> Studies indicate that incarcerated juveniles are five times more likely to commit suicide than youths in the general population, and eight times more likely to commit suicide than offenders committed to juvenile detention centers.<sup>98</sup> Furthermore, imprisoned juveniles risk a substantially increased possibility of recidivism.<sup>99</sup>

### C. Registration and Notification of Juvenile Sex Offenders

Public concern over juvenile and adult sex offenders released from prisons or youth authorities led to the creation of registration and notification statutes such as Washington State's Community

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<sup>96</sup> Chung, *supra* note 56, at 1008.

<sup>97</sup> Chung, *supra* note 56, at 1006. Educational and recreational facilities in adult prisons are rarely equipped for juveniles. Chung, *supra* note 56, at 1006. Confinement in these institutions often leads to "idleness, boredom, and depression among juvenile inmates." Chung, *supra* note 56, at 1007. A juvenile's experience in confinement has been compared to a "product's development in a factory" because a juvenile sex offender will often enter as a "rough delinquent" and exit a "polished criminal." Chung, *supra* note 56, at 1008.

<sup>98</sup> Chung, *supra* note 56, at 1006. The "hostile environment, lack of privacy and unsanitary conditions intensify feelings of fear and anxiety among youths, regardless of the amount of time they are forced to spend in jail." Chung, *supra* note 56, at 1006.

<sup>99</sup> Candisky & Edwards, *supra* note 88, at 1B. A long-term study of 97 delinquent teenage boys suggests that "they are better off even in the most inadequate family home than in a prison or reform school." *The Fate of Violent Boys*, 11 HARV. MENTAL HEALTH LETTER 7, 7 (1995) (reviewing Dorothy O. Lewis et al., *A Clinical Follow-Up of Delinquent Males: Ignored Vulnerabilities, Unmet Needs, and the Perpetuation of Violence*, 33 J. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 518, 518-28 (1994)). The juveniles who participated in the study were residents of a correctional facility in the late 1970s. *Id.* During a follow-up survey, 73% of the men had committed violent crimes. *Id.* "The men originally placed in the most restrictive settings—prisons, group homes, and the disciplinary residence—had committed more violent crimes . . ." *Id.* Furthermore, the most unfavorable places to go were adult prisons because boys sentenced there "came out angry, ignorant, and unprepared for life on the outside." *Id.*

Protection Act.<sup>100</sup> Registration and notification statutes attempt to "increase public safety by ensuring that violent sex offenders who are released into the community and who may pose a substantial threat to area children are tracked, and that neighbors will know of their presence."<sup>101</sup>

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<sup>100</sup> WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1996). The Community Protection Act requires all sex offenders to register with law enforcement officials upon their release. WASH. REV. CODE ANN. § 9A.44.130(1). "Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense . . . shall register with the county sheriff for the county of the person's residence." WASH. REV. CODE ANN. § 9A.44.130(1). In addition, this law compels the state to disclose information about the sex offender's crime to the public. WASH. REV. CODE ANN. § 9A.44.130(1). The Act was prompted by the brutal sexual assault of a young boy by a man who had been released from prison, "even though authorities knew he was still potentially dangerous." Sheila A. Campbell, Note, *Battling Sex Offenders: Is Megan's Law an Effective Means of Achieving Public Safety?*, 19 SETON HALL LEGIS. J. 519, 527 (1995).

<sup>101</sup> Campbell, *supra* note 100, at 536. See generally Tracy L. Silva, *Dial "1-900-Pervert" and Other Statutory Measures That Provide Public Notification of Sex Offenders*, 48 SMU L. REV. 1961, 1994 n.65 (1995) (discussing the consequences of registration and notification statutes); Julia A. Houston, Note, *Sex Offender Registration Acts: An Added Dimension to the War On Crime*, 28 GA. L. REV. 729, 731 (1994) (same).

New Jersey followed Washington's model and enacted Megan's Law, which is "one of the most stringent sex offender laws in the country." Campbell, *supra* note 100, at 537; N.J. STAT. ANN. § 2C:7-6 (West 1995). Megan's Law is named after Megan Kanka who was sexually assaulted and then murdered by Jesse Timmendequas, a twice-convicted pedophile. Jenny A. Montana, Note, *An Ineffective Weapon in the Fight Against Child Sexual Abuse: New Jersey's Megan's Law*, 3 J.L. & POL'Y 569, 570 n.8 (1995). Under Megan's Law a "person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register to release in accordance with procedures established by the Department of Corrections or the Department of Human Services." N.J. STAT. ANN. § 2C:7-2(c)(2) (West 1995).

Megan's Law establishes a three-tiered system that mandates advance notice to the community when convicted sex offenders are released into the community. It also requires offenders, regardless of when convicted, to register with law enforcement authorities either upon their release from prison or, if free, by February 27, 1995.

Campbell, *supra* note 100, at 519.

Requiring juvenile sex offenders to register with authorities may have a negative impact on the normal development of adolescents and children, and is contrary to *parens patriae* juvenile justice.<sup>102</sup>

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The three-tiered system of notification that Megan's Law creates is "based upon the potential risk that an offender poses to society." N.J. STAT. ANN. § 2C:7-2(c)(2); *see also* Montana, *supra*, at 573 n.23. Tier I requires the notification of law enforcement officials where the offender's risk of reoffending is low. Montana, *supra*, at 573 n.23. Tier II requires the notification of community organizations, such as schools and youth and religious organizations, when an offender's risk of reoffending is moderate. Montana, *supra*, at 573 n.23. Tier III requires that all community members be notified when an offender's risk of reoffending is high. Montana, *supra*, at 573 n.23.

<sup>102</sup> ROBERT E. FREEMAN-LONGO, PUBLIC NOTIFICATION OF SEX OFFENDER RELEASE: PREVENTION OR PROBLEM 9 (1995). "Public notification may be considered a form of punishment," and is therefore contrary to rehabilitative juvenile justice. *Id.* at 6. Moreover, "[a]dditional punishment after court sentencing may be unconstitutional. If public notification is considered to be a form of punishment, then public notification laws may be unconstitutional." *Id.*

Throughout the country, registration and notification statutes have been the subject of numerous legal challenges. Campbell, *supra* note 100, at 549. Registration statutes have been upheld in Alaska, Arizona, Illinois, New Hampshire and Washington. *See* Rowe v. Burton, 884 F. Supp. 1372, 1388 (D. Alaska 1994) (denying preliminary injunction against registration statute); State v. Costello, 643 A.2d 531, 533-34 (N.H. 1994) (holding that registration statute was not an unconstitutional *ex post facto* law); State v. Ward, 869 P.2d 1062, 1077 (Wash. 1994) (holding that registration and notification statute was not violative of the Eighth Amendment or the *ex post facto* clauses of the U.S. Constitution); State v. Noble, 829 P.2d 1217, 1224 (Ariz. 1992) (holding that Arizona's registration statute was regulatory in nature and not an unconstitutional *ex post facto* law); People v. Adams, 581 N.E.2d 637, 642 (Ill. 1991) (holding that registration was not violative of the Eighth Amendment, or the Due Process or Equal Protection Clauses).

The Supreme Court of California struck down a registration statute, holding that mandatory registration of sex offenders convicted of misdemeanors violates California's "cruel and unusual" provision in its constitution because it applies "even to the most minor of sex offenders." Campbell, *supra* note 100, at 549 n.177 (citing *In re Reed*, 663 P.2d 216, 222 (Cal. 1983) (en banc)); *see supra* note 94 (discussing the constitutional standards of the Eighth Amendment).

However, community notification statutes have been struck down as unconstitutional in Louisiana, Alaska and New York because they are *ex post facto* laws. *See* Doe v. Pataki, No. 96-CIV-1657, 1996 WL 131859, at \*7-8 (S.D.N.Y. March 21, 1996); Rowe, 884 F. Supp. at 1388; Louisiana v. Babin, 637 So. 2d 814, 824 (La. Ct. App. 1994). The U.S. Constitution states that "[n]o

Public notification poses a "legal obstacle" to juveniles who are developing friends and deprives them of their self-esteem and their ability to experience normal child-adolescent development.<sup>103</sup> Public notification laws also ostracize offenders from their communities and undermine efforts to rehabilitate these offenders, thereby increasing the risk of recidivism.<sup>104</sup>

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Bill of Attainder or *ex post facto* Law shall be passed." U.S. CONST. art. I, § 9, cl. 3. The Constitution also provides that "[n]o state shall enter into any . . . *ex post facto* Law. . . ." U.S. CONST. art. I, § 10, cl. 1. *Ex post facto* refers to a "law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." BLACK'S LAW DICTIONARY 580 (6th ed. 1990).

<sup>103</sup> FREEMAN-LONGO, *supra* note 102, at 9. Alan Groome, a juvenile sex offender who spent three years in a Washington prison for raping two boys, moved into an Olympia, Washington apartment with his mother. Gayle M. B. Hanson, *Experts Vexed at What to Do with Sex Offenders*, WASH. TIMES, June 6, 1994, at A8. The local police department knocked on 700 doors in the neighborhood, handing out fliers containing Groome's photo and address. *Id.* After the landlord evicted Groome and his mother, they moved in with his grandmother. *Id.* When the grandmother's community was notified of Groome's prior criminal behavior, the company that owned the grandmother's apartment pressured Groome to leave or all three would be evicted. *Id.* Groome now seeks shelter at a facility for the homeless in a different part of the state, and employers have rejected Groome wherever he has applied for a job. Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, (Magazine), at 24; *see also* Montana, *supra* note 101, at 580 n.50.

<sup>104</sup> FREEMAN-LONGO, *supra* note 102, at 8-9. Public notification laws relieve the offender of the burden for community safety and "appropriate individual conduct" by shifting the responsibility to the community. FREEMAN-LONGO, *supra* note 102, at 9. However, rehabilitation is most productive "when offenders are required to take total responsibility for their [deviant] behavior." FREEMAN-LONGO, *supra* note 102, at 9. A comprehensive program should require the offender "to notify persons in his [or her] support system [concerning] offending behaviors, patterns and risk factors for reoffense." FREEMAN-LONGO, *supra* note 102, at 9. For example, the offender should notify his or her landlord, employer, family, friends and significant others. FREEMAN-LONGO, *supra* note 102, at 9.

## IV. ALTERNATIVES TO INCARCERATION

Rehabilitating juvenile sex offenders prevents youths from committing sexual offenses as adults.<sup>105</sup> Studies reveal that fifty percent of adult sex offenders committed sexual offenses as adolescents.<sup>106</sup> Approximately eighty-five to ninety-five percent of the juvenile offenders enrolled in treatment programs, however, are rehabilitated through psychological treatment.<sup>107</sup>

The remarkable success of treatment programs requires state legislatures to fund more community-based treatment programs for preadolescent and minor sex offenders,<sup>108</sup> as well as specialized residential treatment programs for more serious juvenile sex offenders.<sup>109</sup> While some states such as California, Minnesota,

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<sup>105</sup> Eddie Lucio, Jr., *Treating Sex Offenders Saves Victims*, AUSTIN AM. STATESMAN, Feb. 21, 1995, at A15; see also Barbaree & Cortoni, *supra* note 24, at 243; Brian McCormick, *Courts Opting to Treat, Rather Than Punish, Some Abusers*, AM. MED. NEWS, Jan. 6, 1992, at 30.

<sup>106</sup> Lucio, *supra* note 105, at A15; see also Barbaree & Cortoni, *supra* note 24, at 243; McCormick, *supra* note 105, at 30. Adult "sex offenders who begin as juveniles average 380 sex crimes during their lifetimes . . ." Lucio, *supra* note 105, at A15.

<sup>107</sup> *Get Control of Child Rapists*, TAMPA TRIB., Aug. 16, 1995, at 10; Sally Kestin, *State Gets Wake-Up Call on Child Sex Offenders*, TAMPA TRIB., Aug. 14, 1995, at 1.

Clearly, the recidivism rate of youthful offenders suggests that something in the equation of punishment is failing to compute, perhaps for lack of severity or insufficient duration, but too many anti-social and destructive attitudes are not changing. The norms of civility and accountability are not taking root.

Tommy Denton, *Matters of Will and Retribution*, FT. WORTH STAR-TELEGRAM, Feb. 12, 1995, at C2.

<sup>108</sup> According to a 1994 survey of juvenile sex offender programs and treatment providers, 22 states and the District of Columbia have five or less community-based treatment programs. FREEMAN-LONGO ET AL., *supra* note 92, at 10. Alabama and New Mexico have no community-based treatment programs, and Rhode Island has only one. FREEMAN-LONGO ET AL., *supra* note 92, at 10. Only 10 states have 20 or more community-based treatment programs. FREEMAN-LONGO ET AL., *supra* note 92, at 10.

<sup>109</sup> Arkansas, Washington, D.C., Delaware, Georgia, Hawaii, Indiana, Maryland and Mississippi have no residential treatment programs for juveniles.

Oregon and Washington have commendable programs, most states "have no effective intervention" for juvenile sex offenders.<sup>110</sup>

### A. Traditional Treatment Approaches

Cognitive-behavioral, conditioning and pharmacological therapies are techniques used by juvenile sex offender treatment programs.<sup>111</sup> Appropriate treatment can be effective in teaching sex offenders how to control their deviant behavior.<sup>112</sup>

Ninety-six percent of all sex offender treatment programs use cognitive-behavioral therapies such as empathy training.<sup>113</sup>

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FREEMAN-LONGO ET AL., *supra* note 92, at 10. The following states have only one residential treatment program: Alabama, Connecticut, Maine, North Carolina, North Dakota, Nebraska, New Hampshire, New Mexico, Nevada, Oklahoma, South Dakota, West Virginia and Wyoming. FREEMAN-LONGO ET AL., *supra* note 92, at 10.

<sup>110</sup> Weinhouse, *supra* note 4, at 42-43. In 1982, half of all treatment programs available in the United States were located in Washington, California, Minnesota and Oregon. Knopp & Lane, *supra* note 93, at 24. "Many states, particularly in the southeastern United States were entirely without identified, specialized programs." Knopp & Lane, *supra* note 93, at 24. "The Pacific states offer the greatest number of juvenile services (28%) while the East and West—South—Central states are the most poorly endowed." Knopp & Lane, *supra* note 93, at 24.

For example, New Jersey's only facility for juvenile sex offenders is the 18-bed Pinelands Residential Group Center in Chatsworth, established in 1984. Jean Rimbach, *\$2.4M Proposed to Treat Juvenile Sex Offenders*, RECORD, Jan. 24, 1995, at A1. "Pinelands has a strict entrance criteria" that admit only convicted sex offenders between the ages of 14 and 17 who accept "some degree of responsibility for the crime." *Id.* Furthermore, juveniles "who have a suicidal history, are on psychotropic medication, or have an IQ below 70 are not considered" for treatment. *Id.* New Jersey has "26 beds in centers for treating juvenile sex offenders." *Id.* In addition to Pinelands, "the Division of Youth and Family Services contracts with two private providers for eight beds." *Id.*

<sup>111</sup> Finn, *supra* note 91, at 250-51.

<sup>112</sup> Daniel Goleman, *Therapies Offer Hope for Sex Offenders*, N.Y. TIMES, Apr. 14, 1992, at C1.

<sup>113</sup> Finn, *supra* note 91, at 251. "Empathy training" refers to a method of treatment which helps offenders develop compassion for their victims. Goleman, *supra* note 112, at C11. The offenders read accounts and view videotapes from the perspective of their victims. Goleman, *supra* note 112, at C11.

Cognitive-behavioral therapy includes relapse prevention, social and life skills development and education.<sup>114</sup>

Relapse prevention is designed to help sex offenders strengthen their ability to control deviant urges by teaching "self-management skills" that provide "methods for identifying problematic situations [and] . . . developing strategies to avoid, or cope more effectively with, these situations."<sup>115</sup> Social and life skills development and educational strategies aim to correct the "distorted attitudes, beliefs, and perceptions that may help perpetuate deviant behavior."<sup>116</sup>

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<sup>114</sup> Finn, *supra* note 91, at 250.

<sup>115</sup> MARSHALL ET AL., *supra* note 77, at 346. Like alcoholics and drug abusers, sex offenders who abstain from deviant behavior for an extended period of time "may find themselves making decisions and engaging in activities, often seemingly innocuous in themselves, that could eventually result in a recurrence of the unwanted behavior." Finn, *supra* note 91, at 250. For example, an offender en route to a store to buy some groceries may decide to take a shortcut across an elementary school playground, or a rapist may purchase a pornographic magazine. Finn, *supra* note 91, at 250. Relapse prevention can help sex offenders refrain from these situations by teaching them to identify offense precursors (circumstances in which sexual offenses can occur), avoid specific circumstances that evoke deviant sexual behavior, and offer programmed coping responses and escape strategies to deal with unexpected situations that may precipitate a deviant sexual offense. MARSHALL ET AL., *supra* note 77, at 352-54.

Other cognitive-behavioral techniques involve a discussion between a therapist and offender about the offender's rationale for committing the particular sexual offense. Judith V. Becker & Meg S. Kaplan, *Cognitive Behavioral Treatment of the Juvenile Sex Offender*, in THE JUVENILE SEX OFFENDER, *supra* note 9, at 264, 270. Cognitive-behavioral therapy deals with "(1) lack of empathy, (2) objectification of females, (3) viewing sex as something that one does to another person for personal gratification as opposed to a shared consensual experience, (4) lack of remorse, and (5) acceptance of violence as part of their lives." Becker & Kaplan, *supra*, at 271. For example, one juvenile sex offender who suffered sexual abuse himself, excused his behavior by stating that "[s]ince somebody put me in pain, I might as well put someone else in pain." Becker & Kaplan, *supra*, at 270.

<sup>116</sup> Finn, *supra* note 91, at 250. Juveniles undergoing social and life skills development and education are given sex instruction as a way to "(1) increase their knowledge about adolescent sexual development and sexual anatomy and physiology; (2) broaden their knowledge about sexual myths . . . and (3) become more aware of their own attitudes and feelings concerning sexuality . . . ." Becker & Kaplan, *supra* note 115, at 273-74. The juveniles also discuss sexual myths. Becker & Kaplan, *supra* note 115, at 274. Other sessions discuss why

Conditioning therapy, another treatment technique, consists of aversive conditioning, covert conditioning and masturbatory satiation.<sup>117</sup> Aversive conditioning, a controversial new therapy, presents participants with "inappropriate sexual stimuli by means of slides, audiotapes, or videotapes followed by" negative stimulus such as electric shocks to the penis or foul odors such as ammonia or smelling salts.<sup>118</sup> Covert conditioning therapy focuses on raising the awareness of the sex offender to the negative consequences of their deviant behavior.<sup>119</sup> Many clinicians observe "that most offenders seem to exclude any thoughts about possible negative consequences of their offense."<sup>120</sup> Covert conditioning trains sex offenders to associate the pattern of behaviors that result in a sexual offense with situations "involving extremely distasteful consequences, such as being arrested or being discovered by their parents . . ."<sup>121</sup> Masturbatory satiation is a widely used and seemingly effective treatment for adult sex offenders which

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juveniles have sex, birth control methods and protection from sexually transmitted diseases. Becker & Kaplan, *supra* note 115, at 274.

Therapies also include role-playing, which helps to shatter the offender's false beliefs about sex. Becker & Kaplan, *supra* note 115, at 273-74. Role-playing involves the participation of juveniles in several situations in which the group members are asked "to identify what message the girl's body is giving to the boy in particular situations." Becker & Kaplan, *supra* note 115, at 273. This allows for "role-play talk" about sex with another patient so that offenders will feel less troubled about "sexual communication" when a situation arises. Becker & Kaplan, *supra* note 115, at 273.

<sup>117</sup> Finn, *supra* note 91, at 251.

<sup>118</sup> Finn, *supra* note 91, at 251; *Sonya Live: Therapy for Sex Disorders* (CNN television broadcast, Aug. 5, 1992), available in LEXIS, News Library, CNN File [hereinafter *Sonya Live*]. Aversive conditioning very often involves the use of a penile plethysmograph that measures blood flow change. *Sonya Live, supra*. The penile plethysmograph is an instrument not unlike an electroencephalograph or ("EEG"), which detects and records brain waves. *Sonya Live, supra*. The plethysmograph tracks an offender's pattern of arousal to various stimuli and can be effective in "strengthening appropriate arousal." *Sonya Live, supra*.

<sup>119</sup> Finn, *supra* note 91, at 251.

<sup>120</sup> Finn, *supra* note 91, at 251.

<sup>121</sup> Finn, *supra* note 91, at 251. Usually covert sensitization training is done by placing the offender in a near-hypnotic state while a therapist connects his or her fantasy with offensive imagery such as a toilet bowl filled with vomit. Cheryl McCall, *The Offenders*, LIFE, Dec. 1984, at 35, 52.



reinforces arousal to proper sexual cues while reducing arousal to deviant sexual cues.<sup>122</sup> Masturbatory satiation requires the offender to achieve orgasm first to an appropriate adult sexual image, then immediately to his favorite deviant sexual fantasy.<sup>123</sup> "Usually impotent at this stage, [the offender] has great difficulty achieving arousal and over time the fantasy loses appeal."<sup>124</sup>

Pharmacotherapy, the final major treatment approach, involves the reduction of the male hormone testosterone to "prepubertal levels" through the injection of Depo-Provera every seven to ten days.<sup>125</sup> This decrease in "plasma testosterone level" diminishes a patient's sex drive and, according to supporters of Depo-Provera, a sex offender will be less likely to engage in sexually deviant behavior.<sup>126</sup>

### *B. Model Community-Based Treatment Programs*

Specialized community-based treatment facilities for juvenile sex offenders are necessary because the need for "early therapeutic intervention in juvenile and adolescent sexually aggressive behavior

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<sup>122</sup> Finn, *supra* note 91, at 251.

<sup>123</sup> McCall, *supra* note 121, at 52.

<sup>124</sup> McCall, *supra* note 121, at 52.

<sup>125</sup> John M. W. Bradford, *The Pharmacological Treatment of the Adolescent Sex Offender*, in *THE JUVENILE SEX OFFENDER*, *supra* note 9, at 278, 284. Depo-Provera (medroxyprogesterone acetate) is a medication approved by the Federal Drug Administration as an injectable contraceptive and a treatment of testicular cancer. Finn, *supra* note 91, at 251; McCall, *supra* note 121, at 52.

<sup>126</sup> Finn, *supra* note 91, at 251. There are numerous side effects associated with Depo-Provera treatment including fatigue, weight gain, hot and cold flushes, nausea, vomiting, headaches and sleep disturbances. Bradford, *supra* note 125, at 284. Many treatment programs refrain from aversive and pharmacotherapy programs because they should only be administered with informed consent, appropriate medical supervision and the involvement of parents or guardians. Bala & Schwartz, *supra* note 58, at 38. Furthermore, these treatments may violate the Eighth Amendment's Cruel and Unusual Punishment Clause or other constitutional rights. *See, e.g.*, Gary v. Hegstrom, 831 F.2d 1430 (9th Cir. 1987); Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983); *see supra* note 94 (discussing the constitutional standards of the Eighth Amendment's Cruel and Unusual Punishment Clause).

is clear and compelling.”<sup>127</sup> Unlike an adult offender, a juvenile sex offender’s “deviant patterns are less deeply ingrained and are therefore easier to disrupt . . . .”<sup>128</sup> Community-based treatment programs also improve public safety “by preventing further victimization.”<sup>129</sup> Finally, specialized community-based treatment, provided at the earliest recognition of the problem, costs much less than later institutional treatment for more serious sexual offenses.<sup>130</sup>

An effective community-based treatment program should provide juvenile sex offenders with a “complete, individualized assessment and treatment plan.”<sup>131</sup> The program should teach

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<sup>127</sup> FAY HONEY KNOPP, *THE YOUTHFUL SEX OFFENDER: THE RATIONALE & GOALS OF EARLY INTERVENTION & TREATMENT* 12 (1985). “From the perspective of community safety, the value of early intervention by skilled treatment providers into sexually abusive adolescent behaviors seems indisputable.” KNOPP, *supra* note 59, at 26.

<sup>128</sup> KNOPP, *supra* note 127, at 12. Studies concluding that more than 50% of adult sex offenders began their sexually deviant behaviors before the age of 18, “confirm[s] the need for earlier identification and intervention.” Gail Ryan, *The Historical Response to Juvenile Sexual Offenses*, in *JUVENILE SEXUAL OFFENDING*, *supra* note 19, at 17, 18.

<sup>129</sup> KNOPP, *supra* note 127, at 12; *see also* Lucio, *supra* note 105, at A15.

<sup>130</sup> KNOPP, *supra* note 127, at 12. In New York, the annual cost per juvenile in a specialized sex offender treatment facility is approximately \$900.00 per year, compared with \$80,000.00 annually for one juvenile in a secure Division for Youth facility. KNOPP, *supra* note 127, at 11-12.

Community-based services for juvenile sex offenders are inexpensive to institute because they do not require capital investment for new structures. KNOPP, *supra* note 127, at 19. Treatment can occur in houses, schools, hospitals, mental health centers, professional offices and universities or religious social service centers. KNOPP, *supra* note 127, at 19. The length of treatments are flexible and can range anywhere from four weeks for minor incidents which require minimal educational exposure, to one or more years for more serious incidents. KNOPP, *supra* note 127, at 19. The length of therapy sessions can range from one hour to three or more hours per week, plus time spent on homework and additional family therapy sessions where necessary. KNOPP, *supra* note 127, at 19.

<sup>131</sup> KNOPP, *supra* note 127, at 21. The Male Adolescent Sex Offender Group (“MASOG”) is housed in a former elementary school in Richfield, Minnesota. KNOPP, *supra* note 59, at 73. At MASOG most juvenile sex offenders meet once a week for two hours, while others “meet in individual or family sessions for

juvenile offenders to accept responsibility for their offenses, control their deviant sexual urges and engage the juveniles in reeducation and resocialization.<sup>132</sup> Moreover, juvenile offenders need "a prolonged period during [their] treatment when [they] can begin to test safely [their] newly acquired insights and control mechanisms."<sup>133</sup> Finally, a community-based treatment program should provide juvenile offenders with "access to . . . post-treatment group[s] for assistance in maintaining a safe lifestyle."<sup>134</sup>

The Juvenile Sex Offender Treatment Program ("JSOP") was the first coherent and comprehensive community-based treatment program for juvenile sex offenders.<sup>135</sup> The JSOP model stresses the importance of the family by refusing to accept a juvenile

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about one and one-half hours, weekly or biweekly." KNOPP, *supra* note 59, at 74. The treatment involves a five-step process beginning with an admission to the group that the juvenile "has acted sexually in ways he [or she] describes in some detail." KNOPP, *supra* note 59, at 74.

<sup>132</sup> KNOPP, *supra* note 127, at 19. At MASOG, the second step requires the offender to write an autobiographical description of life "as he [or she] presently perceives it." KNOPP, *supra* note 59, at 75. In addition, the offender lists his or her likes and dislikes about life and the people around him or her. KNOPP, *supra* note 59, at 75. A member of the group is then selected for a dialogue concerning the items listed by the offender. KNOPP, *supra* note 59, at 75. Step three encourages the offender to take "responsibility for what he [or she] does and how he [or she] feels," through group discussion and the maintenance of a daily journal. KNOPP, *supra* note 59, at 75.

<sup>133</sup> KNOPP, *supra* note 127, at 25. At MASOG, step four helps offenders "make amends for [their] behavior and provides an exercise asking [them] to list the times [they] felt [their] behavior hurt someone close to [them]." KNOPP, *supra* note 59, at 75. Step five, or "goodbye step," "prepares the [youth] to leave the group and evaluate the changes he [or she] has made." KNOPP, *supra* note 59, at 76.

<sup>134</sup> KNOPP, *supra* note 127, at 25. At present, post-treatment groups are common in residential facilities to help offenders readjust to the community. KNOPP, *supra* note 59, at 100-01. For example, the Sex Offender Therapy Program ("SOTP"), a residential treatment facility in Snoqualmie, Washington, attempts to locate special services in the community to assist sex offenders after release. KNOPP, *supra* note 59, at 101.

<sup>135</sup> KNOPP, *supra* note 59, at 39. The University of Washington School of Medicine's Adolescent Clinic, in Seattle, Washington, launched the Juvenile Sexual Offender Program ("JSOP") in 1975. KNOPP, *supra* note 59, at 39.

offender unless the offender's family also actively participates in the program.<sup>136</sup>

### C. A Model Residential Treatment Program

Juvenile sex offenders who pose a danger to the community should not be treated in a community-based program, but should instead receive treatment at a specialized residential facility.<sup>137</sup> One such facility, the Hennepin County Home School ("HCHS") in Minnetonka, Minnesota, provides effective treatment for juvenile sex offenders twenty-four hours a day.<sup>138</sup> HCHS focuses primarily on treating male juveniles who "have been found guilty of sexual offenses that would carry the potential sanction of

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<sup>136</sup> KNOPP, *supra* note 59, at 42. "Part of [the family] assessment is to determine how the child's behavior fits into the family dynamic." KNOPP, *supra* note 59, at 42. Often, the family will minimize the child's behavior by blaming it on sexual curiosity, adolescent experimentation or the victim. KNOPP, *supra* note 59, at 49. Some offenders resist treatment to protect their families who do not wish to acknowledge the offender's situation. KNOPP, *supra* note 59, at 49. JSOP treats this "self-protective kind of avoidance phenomenon" through family systems-oriented therapy. KNOPP, *supra* note 59, at 49. Family systems-oriented therapy "acknowledges that the youth is part of a larger system—part of a family—and the child's problem may serve some kind of function for the rest of the family." KNOPP, *supra* note 59, at 43.

Another community-based program, SPARK, offers "'monster therapy,' geared toward children [five] to [eight] years old." Gelman et al., *supra* note 6, at 69. Juveniles "are told that they are not evil, but that their molesting behavior is a monster—represented through puppets and stuffed animals—that must be vanquished." Gelman et al., *supra* note 6, at 69.

<sup>137</sup> Barbaree & Cortoni, *supra* note 24, at 250.

<sup>138</sup> JOSEPH W. HEINZ ET AL., A MODEL RESIDENTIAL JUVENILE SEX-OFFENDER TREATMENT PROGRAM: THE HENNEPIN COUNTY HOME SCHOOL 3, 11 (1987). The Hennepin County Home School ("HCHS") is a state-licensed, coeducational residential treatment facility that is distinctive for its outstanding basic education program, carefully constructed human sexuality curriculum and its therapeutic involvement with families. *Id.* at 3. To be accepted at HCHS, a juvenile sex offender must be adjudicated delinquent and ordered into the program by a court. *Id.* at 9. Moreover, "the court is involved directly with institutional procedures, since county judges occupy an equal number of seats (four) with county commissioners on the HCHS governing board." *Id.* at 3.

incarceration had the offense been committed by an adult."<sup>139</sup> Since the inception of HCHS, the rates of recidivism for graduating members have wavered annually between three and seven percent.<sup>140</sup>

At HCHS, juveniles live in specialized groups which often "evolve spontaneously, [although] many are formally structured and institutionalized."<sup>141</sup> These groups include a "cottage group,"<sup>142</sup> "small group"<sup>143</sup> and "community group."<sup>144</sup> The unique living

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<sup>139</sup> *Id.* at 9.

<sup>140</sup> *Id.* at 4-5 (relying on the more than 200 offenders who have completed the program since its inception in 1979). "Seventy-seven percent of the youth who enter [HCHS] complete the program and graduate." *Id.* at 10. "Approximately 94% of the successful graduates have not become involved in any reported sexual acting out up to one year after release." *Id.* Those offenders who fail to complete the program are returned to court for alternate dispositions often including a more secure correctional setting or a state or private psychiatric hospital. *Id.*

<sup>141</sup> *Id.* at 11.

<sup>142</sup> "The 'cottage group' meets daily from 30 minutes to [two] hours, depending upon need." *Id.* It consists of all cottage residents and is led by three staff juvenile correctional workers. *Id.* This group provides social and life skills development which includes daily housekeeping details and chores, programming information, and may deal with "issues such as school grades and other types of client performance." *Id.* See discussion *supra* part IV.A.

<sup>143</sup> "The 'small group,' consisting of not more than 12 cottage residents, meets twice weekly for up to two hours." HEINZ ET AL., *supra* note 138, at 11. This group provides cognitive-behavioral therapy, including relapse prevention and is led by a social worker and a juvenile correctional worker who provoke discussions that focus on the offenders' deviant sexual behaviors. HEINZ ET AL., *supra* note 138, at 11. See discussion *supra* part IV.A. "The small group meets in a marathon session every other month for two and one-half days at an off-campus retreat center." HEINZ ET AL., *supra* note 138, at 11. Here the group holds a "marathon session" lasting up to 10 hours a day. HEINZ ET AL., *supra* note 138, at 11. This session deals with "sexual offense issues intensively and in depth." HEINZ ET AL., *supra* note 138, at 11.

<sup>144</sup> "The 'community group,' which includes the entire cottage population, meets twice weekly for about two hours with three staff juvenile correctional workers." HEINZ ET AL., *supra* note 138, at 11. This group provides social and life skills development which includes discussions led by three staff juvenile correctional workers and "may deal with daily living and housekeeping problems that arise in the small groups but affect the entire community." HEINZ ET AL., *supra* note 138, at 11. See discussion *supra* part IV.A.

arrangements, which provide juvenile offenders with the opportunity to interact daily with each other and authority figures, creates the proper environment for juvenile offenders to experience risk taking, change and growth.<sup>145</sup> The program is divided into nine stages which offer a comprehensive treatment designed to target the various problems associated with juvenile sex offenders.<sup>146</sup>

## V. THE ROLE OF THE STATE IN REHABILITATION

Now that many treatment options exist, it is necessary for states to survey available resources and institute organized and effective private and community-based out-patient and residential treatment programs.<sup>147</sup> If such programs existed statewide, judges and prosecutors could place offenders in proper rehabilitative facilities

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<sup>145</sup> HEINZ ET AL., *supra* note 138, at 11.

<sup>146</sup> HEINZ ET AL., *supra* note 138, at 15-56. HCHS offers nine stages of therapy which include: (1) orientation, (2) power and passivity, (3) confusion and frustration, (4) bonding, (5) the offender as a victim, (6) integration, (7) honesty about feelings and victims, (8) developing empathy and (9) reintegration. HEINZ ET AL., *supra* note 138, at 11. These stages are not mutually exclusive, and not every offender progresses in the same order or for the same duration. HEINZ ET AL., *supra* note 138, at 15.

Another residential treatment facility, similar to HCHS, is SOTP. KNOPP, *supra* note 59, at 91. SOTP focuses primarily on increasing the juvenile sex offender's "acceptance of responsibility for his sexually aggressive behavior; to increase his empathy by developing his awareness of the impact of his assault on his victim(s); and to help him plan ways to maintain control of his sexually aggressive behavior in the future." KNOPP, *supra* note 59, at 93.

<sup>147</sup> If states successfully create comprehensive treatment structures, the burden shifts to judges and prosecutors to become informed of treatment programs and resources available, through private and public agencies, both in placement facilities and the community. Smith & Dabiri, *supra* note 53, at 375. According to a *National Law Journal* poll of 250 judges across the country who hear juvenile delinquency cases, three-quarters of the respondents stated that "if well-financed, first rate rehabilitation programs were available, the majority of youths could be saved from criminality." Rorie Sherman, *Juvenile Judges Say: Time to Get Tough*, NAT'L L.J., Aug. 8, 1994, at A1, A24. Approximately half of the respondents have said "that only 10 percent or less of the youths who come before them probably cannot be made into law-abiding citizens under any circumstances." *Id.* at A24.

rather than in prisons.<sup>148</sup> A state plan for "comprehensive remedial intervention" should include a task force which determines the number of known juvenile sex offenders within the state and evaluates the public response of the system to the juvenile offender's deviant behavior.<sup>149</sup> Furthermore, a state treatment model should include a faculty of training specialists in both "the public and private sectors to assess, evaluate, and treat adolescent sex offenders."<sup>150</sup> There should also be a system whereby all offenders are assessed prior to adjudication so that "recommendations for appropriate placement and treatment can be offered [to] the court before sentencing occurs."<sup>151</sup>

States must provide, in all major cities and counties, private community-based out-patient services to all offenders who are deemed suitable for community placement by the court.<sup>152</sup> For the more serious offenders, it is necessary to establish residential treatment facilities, either in the private or public sector, that offer a "gradual, monitored release" from the facility to community living.<sup>153</sup> Probation and parole officers should receive special

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<sup>148</sup> KNOPP, *supra* note 127, at 28-29.

<sup>149</sup> KNOPP, *supra* note 127, at 28.

<sup>150</sup> KNOPP, *supra* note 127, at 28. New Jersey has attempted to implement a comprehensive treatment model as part of their juvenile justice system. David M. Levitt, *Panel Will Call for New Youth Agency*, RECORD, Jan. 4, 1995, at A1. Governor Whitman organized an advisory council to consider the establishment of a new youth agency that "would take over responsibility for the Jamestown and Bordentown youth prisons which are now under the Corrections Department, and the small rehabilitative programs now run by the Department of Human Services." *Id.* The new agency's responsibilities would include the management of juvenile inmates as well as "set[ting] policy for the entire juvenile justice system, [by] working in partnership with financially fortified county-level youth service commissions to direct more aid to the grass roots." *Id.*

<sup>151</sup> KNOPP, *supra* note 127, at 28. In Florida, a task force is recommending that \$32 million be spent to battle juvenile sex crimes. *Dealing With Young Sex Criminals*, TAMPA TRIB., Feb. 6, 1995, at 10. The task force also recommends that convicted offenders be assessed by a psychologist before placement in a rehabilitative facility. *Id.*

<sup>152</sup> KNOPP, *supra* note 127, at 28. See discussion *supra* part IV.B.

<sup>153</sup> KNOPP, *supra* note 127, at 29. See discussion *supra* part IV.C. In Texas, "the Youth Commission has only 55 parole officers statewide and devotes a meager [six] percent of its budget to aftercare services." *Texas Youth Commission*

training which deals with "issues involved with adolescent sex offender patterns and treatment so that compliance with the specialized conditions of sentencing can be monitored."<sup>154</sup> States should also institute a research agency that collects data, "establishes offense typologies"<sup>155</sup> and measures treatment outcomes."<sup>156</sup> Finally, states must educate the community about juvenile sexual offenses and develop a "comprehensive prevention strategy, integrating treatment as one component."<sup>157</sup>

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*Must Be Bolstered*, DALLAS MORNING NEWS, June 5, 1994, at 2J. Parole services should be improved so that a juvenile continues to receive treatment after leaving a residential facility. *Id.* Without supervision, offenders might "revert to [their] old ways." *Id.*

<sup>154</sup> KNOPP, *supra* note 127, at 29.

<sup>155</sup> "Offense typology" is "the classification [especially] of human behaviour or characteristics according to type." THE NEW SHORTER OXFORD ENGLISH DICTIONARY 3442 (4th ed. 1993); *see also* Knight & Prentky, *supra* note 27, at 47-49.

<sup>156</sup> KNOPP, *supra* note 127, at 29. In October 1995, the Florida Department of Health and Rehabilitative Services began collecting data regarding juveniles who sexually abuse other juveniles. Kestin, *supra* note 107, at 1. The agency received over 1548 reports of juveniles sexually abusing their peers. Kestin, *supra* note 107, at 1. Nearly half of the victims were younger than five-years-old. Kestin, *supra* note 107, at 1.

<sup>157</sup> KNOPP, *supra* note 127, at 28-29. Some states have already implemented comprehensive prevention strategies.

The Family and Children's Service ("FCS") of Greensboro, North Carolina, is a nonprofit agency that offers intensive in-home therapy for sexually aggressive children. Dawn DeCwikiel-Kane, *New Therapy Helps Young Sex Offenders*, NEWS & RECORD, Feb. 6, 1995, at B2. FCS attempts to curtail a juvenile's "sexual aggression before it continues and intensifies." *Id.* at B5. Since September 1994, the program has served four families with 12 children, ages five through eight. *Id.* Therapy ranges anywhere from one to four hours, two to four times per week. *Id.*

The Mental Health Center's Specialized Treatment for Perpetrators ("STOP") program also serves 50 to 60 youths in North Carolina. *Id.* STOP offers in-home therapy to older children and commenced an after-school program for elementary school children last fall. *Id.* As of December 31, 1994, no child had sexually attacked another child. *Id.*

Some states offer special courses in preventing physical and sexual violence. Toufexis, *supra* note 11, at 52. A number of high schools in Boston, Detroit and Denver use a 10-session curriculum designed by Dr. Deborah Prothrow-Stith, the Massachusetts Commissioner of Public Health. Toufexis, *supra* note 11, at 52.



## CONCLUSION

Comprehensive treatment models, designed especially for the rehabilitation of juvenile sex offenders, prevent recidivism and comport with the traditional notion of *parens patriae* juvenile justice. Over the past few decades, the treatment of juveniles accused of deviant sexual behavior has transformed from a rehabilitative process into a system concerned mostly with deterrence and accountability. Because a large percentage of adult sex offenders begin as juveniles, and treatment of juveniles has proven effective, states should create structured treatment organizations designed for juvenile sexual offenders. Judges and prosecutors should evaluate these treatment organizations when deciding whether to order rehabilitative rather than punitive sentencing. States must not heed the public outcry for punitive justice, as these offenders are treatable youths who deserve a second chance.

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Ohio has a one year ("YEAR"), intensive probation and education program for juveniles ages 13 to 15, with no more than two felony convictions. Candisky & Edwards, *supra* note 88, at 1B. The program consists of small classes that offer a structured educational program, followed by evening training and recreational programs managed by probation officers all in the course of an eight- to 10-hour day, five days a week. Candisky & Edwards, *supra* note 88, at 1B. The YEAR program has the capacity to serve 134 youths. Candisky & Edwards, *supra* note 88, at 1B.