

IMPROVING ILLINOIS' RESPONSE TO SEXUAL OFFENSES COMMITTED BY YOUTH

Recommendations for
Law, Policy, and Practice

March 2014

*A report to the
Governor and
General
Assembly
pursuant to
Public Act
097-0163.*



ILLINOIS JUVENILE JUSTICE COMMISSION

Positive Youth Outcomes. Public Safety. Fiscal Responsibility.

Acknowledgments

The Illinois Juvenile Justice Commission (the Commission) serves as the federally mandated State Advisory Group to the Governor, General Assembly and the Illinois Department of Human Services in developing, reviewing, and approving the State’s juvenile justice plan for the expenditure of funds granted to Illinois by the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice. The Commission members include:

| | | | |
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The Commission acknowledges the generosity of the many stakeholders, including providers of treatment to victims, offenders and families; the Illinois Department of Juvenile Justice employees; probation officers and offices across the state; the Illinois Criminal Justice Information Authority; and the Center for Prevention Research and Development. They willingly shared their knowledge, experience, and data. The information and insight provided forms the backbone of this report.

This report has been completed only through the immense efforts of Anita Weinberg, Director, and Amy Meek, Post-Graduate Policy Teaching Fellow, ChildLaw Policy Institute at Loyola University Chicago School of Law, Civitas ChildLaw Center. Professor Weinberg provided the initial vision for this project and also volunteered for her and her students to carry out the lion's share of the research and analysis which undergirds the report. Her advocacy for children involved in sexual abuse, whether as victims or offenders, and her consistent fair-mindedness strengthened the report in immeasurable ways.

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Finally, the Commission recognizes the leadership and contributions of former Senator John Millner, Senator William Haine, and former Representative Jim Sacia, who crafted and supported the legislation that made this study possible. In doing so, they have created an unprecedented opportunity to enhance public safety, protect victims and improve the outcomes of young people and communities through evidence-informed policy and practice.

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Executive Summary

Illinois passed its first laws concerning sex offense registries nearly 30 years ago. At that time, little research was available concerning the characteristics of individuals who commit sex offenses, the risks for reoffending and strategies to prevent reoffending. Even less was understood about young people who commit sex offenses.

Since then, nearly every legislative session has yielded multiple new laws concerning sex offending. Until 1999, registry and notification laws applied only to adults, but since 1999, the scope of such laws has broadened to include youth. Today, most Illinois youth who are adjudicated delinquent for sex offenses under the Juvenile Court Act have all adult sex offender rules and restrictions imposed upon them; many receive permanent adult felony convictions for registry violations. Adult sex offender restrictions are largely applied to juveniles without any consideration of the youth's age at the time of offense, background, current risk level, or clinical recommendations. The restrictions are assigned without sufficient clarity from practitioners about which provisions are mandatory, discretionary, or apply only to adults.

Over the same period, a growing body of evidence has produced a clearer picture of the characteristics of youth with sexual behavior problems and the interventions most likely to prevent further sexual offending, strengthen families, and support victims. The increased availability of high-quality, reliable, youth-specific research findings presents an exceptional opportunity to align law and practice with expert consensus about best practices for responding to youth sex offenses.

Most importantly, research over the last few decades has conclusively established that youth are highly amenable to treatment and highly unlikely to sexually reoffend. Research also indicates that strategies used with adults—principally sex offender registries and residency/employment restrictions—are not only unnecessary as applied to youth, but also counterproductive, as they often jeopardize victim confidentiality and can interfere with youth rehabilitation to an extent that undermines the long-term safety and well-being of our communities.

In recognition of this research and the vital need to identify evidence-based best practices with regard to this very serious issue, the General Assembly charged the Illinois Juvenile Justice Commission with making recommendations to ensure the effective treatment and supervision of youth who are adjudicated delinquent for a sex offense.¹

To fulfill its legislative charge, the Commission, partnering with Civitas ChildLaw Policy Institute at Loyola University Chicago School of Law² and the Center for Prevention Research and Development at the University of Illinois³:

- Analyzed Illinois and federal law;
- Collected and analyzed Illinois arrest, probation, detention, and incarceration data;
- Reviewed 179 probation files and 77 Illinois Department of Juvenile Justice master files;
- Surveyed social science research on youth adjudicated delinquent for a sex offense—including recidivism and best practices studies; and
- Interviewed practitioners who work with victims, youth who have offended and the families impacted by youth sexual offending.

In presenting this report, the Commission emphasizes that neither the study nor its findings and recommendations attempt to understate the harm experienced by victims of sexual offending. On the contrary, it is the intent of the Commission to help reduce sexual victimization and the harm it causes by advancing public policy and law that prevents sexual victimization, addresses the harm done to victims, and strengthens Illinois families and communities.

Based on its comprehensive analysis of law, empirical research, Illinois data and practitioner experience, the Commission found that:

- The number of youth arrested for sexual offenses in Illinois is small and has declined.
- The majority of youth arrested for sexual offenses are young; half are 14 years old or younger.
- Youth detained or incarcerated for sex offenses are a very small proportion of admissions, and are incarcerated far longer than their peers, including for administrative reasons.

¹ 20 ILCS 505/17a-5, enacted as P.A. 97-0163 and effective as of January 1, 2012, directs the Commission to “study and make recommendations to the Governor and General Assembly to ensure the effective treatment and supervision of the specialized population of juvenile offenders who are adjudicated delinquent for a sex offense.” The Act further required that the Commission “utilize available information and research on best practices within the state and across the nation including, but not limited to, research and recommendations from the U.S. Department of Justice. Among other relevant options, the Commission shall: consider requiring specially trained probation, parole or aftercare officers to supervise juveniles adjudicated as sex offenders; explore the development of individualized probation or parole orders which would include, but is not limited to, supervision and treatment options for juveniles adjudicated as sex offenders; and consider the appropriateness and feasibility of restricting juveniles adjudicated as sex offenders from certain locations including schools and parks.”

² The Civitas ChildLaw Center’s Policy Institute seeks to improve the lives of children and families in Illinois through systems reform and legislative advocacy. The Policy Institute develops and promotes child-centered laws, policies and practices, and builds coalitions and partnerships to improve the functioning of the legal, social welfare, juvenile justice, health care and other systems that impact underrepresented children and families.

³ The Center for Prevention Research and Development (CPRD) is part of the Institute of Government and Public Affairs at the University of Illinois. CPRD seeks to support public policy by improving state and community capacity for prevention, improving prevention and educational practices through research and evaluation, and improving policies and decision-making.

- Illinois sex offense charges can encompass a wide range of youth behavior and do not differentiate between nature, harm, or severity of unlawful sexual conduct.
- Most youth sexual offending involves a family member or a person known to the youth.
- Most youth who sexually offend never repeat their harmful conduct.
- Risk-responsive treatment is effective in reducing sexual reoffending. Successful interventions include key and replicable features:
 - Individualized supervision and treatment based on an assessment of a youth’s risks, needs, and strengths;
 - Community-based interventions provided by skilled practitioners to address risk and build social and developmental skills;
 - Comprehensive, family-focused, evidence-based treatment attentive to the needs of victims and their families while promoting offender accountability; and
 - Intensive and specialized treatment for the small number of youth who present serious and persistent risks for future sexual offending.
- Illinois’ current practice of requiring youth to register as sex offenders and imposing collateral restrictions without regard to risk does not enhance public safety; moreover, research indicates that applying these strategies can actually undermine rehabilitation and the long-term well-being of victims, families, youth, and communities:
 - Categorical responses misjudge public safety risks and undermine the goals of juvenile court;
 - Illinois’ registration and community notification laws impose mandatory, categorical collateral consequences on youth behavior, including for natural life;
 - Federal law instructs states to institute a mandatory and categorical registry for youth; most states do not comply;
 - Due to lengthy mandatory registration periods, the Illinois juvenile registry continues to grow even as offenses have decreased;
 - There is no persuasive evidence that the growing number of youth on Illinois’ sex offender registry prevents victimization;
 - Identifying youth as “sex offenders” can create significant obstacles to rehabilitation and public safety;
 - Youth lack legal representation to resolve confusing or inconsistent directives;
 - Victim and offender therapists agree that sex offense stigma interferes with successfully treating their clients; and

- Individualized restrictions support the accountability and rehabilitation purposes of the Juvenile Court Act.

Some aspects of the Illinois juvenile justice system are aligned with the research presented in this study on “what works” to address sexual offending by youth, but others are not. To better align Illinois law, policy and practice with current research on youth sexual offending, the Commission recommends that Illinois:

1. Develop and implement professional best practice standards and provide current, objective, and evidence-informed training for professionals who work with youth offenders and victims of sexual abuse. Various entities such as the Illinois Sex Offender Management Board (SOMB), the Illinois Law Enforcement Training and Standards Board (ILETSB), the Administrative Office of Illinois Courts (AOIC), the Illinois Supreme Court, and the Illinois Department of Juvenile Justice (IDJJ), should promulgate evidence-based standards of professional practice for intervening with sexually offending youth and victims and should take steps to ensure that professionals receive appropriate training to equip them to meet these standards. In addition, these entities should implement meaningful quality assurance strategies for the professionals and agencies they support. To assist in these efforts, the Commission will support the development and delivery of high-quality, evidence-based training and professional development to practitioners.

2. Equip courts and communities to intervene effectively with individualized, community-based, family-focused services and supervision. Ensure that interventions proven effective in reducing risks of reoffending and addressing the needs of offenders and victims are implemented at all juvenile justice system decision points.

At Pre-Adjudication

- Develop protocols for pre-adjudication evaluation of youth to better inform decision-making while protecting youth constitutional due process rights.
- Empower state’s attorneys, defenders and judges to make decisions based on the individualized, comprehensive approach envisioned in the Illinois Juvenile Court Act, rather than imposing requirements that are based solely on offense category.

At Sentencing, Probation and Treatment

- Rely on individualized, comprehensive, evidence-informed assessments conducted by qualified assessors to determine each youth’s risk, needs, and strengths.

- Develop individualized case plans based on an assessment where the level of intervention corresponds to the risk level.
- Apply community-based programs that allow youth to reside at home, whenever possible and appropriate, which research shows can bolster public safety more effectively than incarceration.
- Ensure that probation officers and treatment providers have access to training, ongoing support, oversight, evidence-based and family-focused services, and intensive specialized treatment resources when necessary to effectively supervise youth in the community.
- Ensure that judges have access to assessments, evaluations, and evidence-based practices to inform appropriate supervision and service plans for each youth.
- Fully implement a recent change to the Juvenile Court Act (effective January 1, 2012)⁴ by eliminating the unnecessary use of IDJJ commitments when less-restrictive alternatives are appropriate and ensuring that all judges have access to such alternatives.

While Committed to Illinois Department of Juvenile Justice and Under the Jurisdiction of the Illinois Prisoner Review Board

- Ensure that youth receive high-quality, evidence-informed treatment and services and are transitioned into community-based services and supervision in a timely manner.
- Eliminate unnecessary stays in secure facilities and long-term residential placements.
- Expedite transition of youth from Illinois Department of Corrections (IDOC) parole officers, who supervise large caseload of adults, to skilled aftercare specialists who are qualified to work with youth committed to IDJJ for sexual offenses.
- Apply evidence-informed, youth-appropriate standards for release, parole conditions, and parole discharge.

3. Remove young people from the state’s counter-productive sex offender registry and categorical application of restrictions and “collateral consequences.” Because there is no persuasive evidence that subjecting youth to registries improves public safety or reduces risks of future offending, Illinois should repeal the registry, restrictions, and notification requirements applied to youth adjudicated delinquent for sexual offenses. Moreover, the research indicates that registries do not repair harm to victims, many of whom are family members.

⁴ HB 83 [P.A. 97-0362] modified the Juvenile Court Act of 1987 by amending 705 ILCS 405/5-750.

Methodology

To fulfill its legislative charge, the Commission partnered with the Civitas ChildLaw Policy Institute at Loyola University Chicago School of Law⁵ and the Center for Prevention Research and Development at the University of Illinois Urbana Champaign⁶ to conduct its comprehensive and exhaustive research study.⁷ Over the course of more than 18 months, the Commission⁸: interviewed practitioners who work with victims of sexual abuse, youth who have offended, and the families impacted by youth sexual offending; collected and analyzed state and federal law; analyzed state and national data on youth involved in the juvenile justice system for sexual offenses; reviewed probation and Illinois Department of Juvenile Justice files; and reviewed U.S. Department of Justice and social science research on youth who sexually offend, best practices for intervention, and recidivism rates.

Stakeholder Interviews

To understand the impact of youth sexual offending and the needs of victims, families, and youth offenders, the Commission sought feedback from a wide range of professionals who work in the state's juvenile justice system. The Commission developed a structured interview tool and used it to conduct interviews with probation officers, forensic psychiatrists, IDJJ staff and providers of direct services to victims, offenders, and families. The interview questionnaire is attached as Appendix A. The Commission also met with members of the Illinois Juvenile Officers' Association.⁹ All interviewees were guaranteed anonymity to encourage frank and thorough responses. The interviews addressed current policy and practice regarding youth who sexually offend, the strengths and weaknesses of Illinois' responses to youth who have sexually offended, the impact of offending behavior on victims and families, and the challenges and opportunities in supporting victims and working effectively with youth offenders and their families. A compilation of interview excerpts is attached as Appendix B. In addition, the Commission interviewed leading national experts on juvenile sex offending, including Dr. Mark Chaffin¹⁰ and Dr. Elizabeth Letourneau.¹¹

⁵ See Civitas ChildLaw Center's Policy Institute, *supra* note 2. The Civitas ChildLaw Center's Policy Institute seeks to improve the lives of children and families in Illinois through systems reform and legislative advocacy. The Policy Institute develops and promotes child-centered laws, policies and practices, and builds coalitions and partnerships to improve the functioning of the legal, social welfare, juvenile justice, health care and other systems that impact underrepresented children and families.

⁶ See Center for Prevention Research and Development, *supra* note 3.

⁷ Members of the Commission along with its partners from the ChildLaw Policy Institute and CPRD formed a study team to design and conduct the research and analysis necessary for this report. References to the work of the Commission throughout this report encompass tasks completed by both members of the Commission and its individual study partners.

⁸ The Illinois Criminal Justice Information Authority provided the Commission with valuable assistance in its data collection efforts.

⁹ The Illinois Juvenile Officers' Association is an organization of the state's police officers specializing in working with youth.

Legal Research

The interviews with front-line practitioners revealed widespread confusion regarding the application of adult sex offender laws to youth and a need for analysis of current law. In response, the Commission analyzed the provisions of the Illinois Juvenile Court Act, the Illinois Criminal Code, the Illinois Sex Offender Registration Act, the Illinois Sex Offender Community Notification Act, the Illinois Sex Offender Evaluation and Treatment Providers Act and other state and federal law applicable to youth adjudicated delinquent for sexual offenses. A timeline of the development of Illinois' laws is attached as Appendix C and a 50-state survey of the registration laws for youth adjudicated delinquent for sexual offenses is attached as Appendix D.

Data Collection and Analysis

The Commission collected and analyzed state and national data on the prevalence and scope of sexual offending by youth, the demographics of this population, and secure detention and incarceration trends within Illinois. The Commission collected state data for 2004, 2006, 2008, and 2010 to ensure a sufficiently large sample size for analysis.

The Commission analyzed data on youth arrested for sexual offenses using the Illinois Criminal History Records Information System (CHRI), which is maintained by the Illinois State Police and contains statewide data from over 1,200 law enforcement agencies. State law requires arrest data to be submitted for all juvenile felony arrests, but reporting is optional for class A and B misdemeanors. Therefore, data on arrests for the most serious offenses is contained in the CHRI database, but not all misdemeanor arrests are included.

The Commission also collected and examined data on the confinement of youth in the state's 16 county-based secure detention facilities, using data from the Illinois Juvenile Monitoring Information System. All Illinois detention centers provide the following information on each youth to JMIS: demographics, an offense record, youth status, detention admission and release data, adjudication, and disposition. Using this information, the Commission was able to match five personal identifiers to determine readmissions to detention.

¹⁰ Dr. Mark Chaffin is an expert on pediatric psychology and has authored several studies on juvenile sex offending. He is a Professor in the Department of Pediatrics, a counseling psychologist, and the Director of Research in the Section of Developmental and Behavioral Pediatrics at the University of Oklahoma.

¹¹ Dr. Elizabeth Letourneau is a leading researcher and national expert on sex offender policy and intervention particularly as applied to juvenile offenders. She is an Associate Professor in the Department of Mental Health within the Bloomberg School of Public Health at Johns Hopkins University.

Finally, the Commission gathered data on commitment of youth to the Illinois Department of Juvenile Justice using IDJJ's Juvenile Tracking System (JTS). Data captured includes youth admissions and exits, parole, average length of stay, and daily populations at all IDJJ Youth Centers. This information was supplemented with information from the implementation of the 2010 Illinois Capstone project, which reviewed¹² 87 IDJJ master files of youth incarcerated in IDJJ facilities beyond their release dates to identify placement issues for the youth. Thirty-four of the youth included in the Capstone file review had been incarcerated for sex offenses.

File Review

The Commission reviewed probation and IDJJ case files to obtain case-level details not otherwise available in state data systems. Statewide arrest data identified 16 counties with the highest number of juvenile sex offender arrests from 2008 to 2010. The Commission sought permission from the chief circuit judge in each of these counties to access probation files. With court authorization in nine communities, the Commission developed protocols to protect the security and confidentiality of information and created a standardized data coding form to collect youth demographic information, offense details, prior offense history (if any), victim information, risk assessment results, probation supervision, services, and treatment outcomes. The standardized data collection form is attached as Appendix E. The Commission then coded and analyzed the data from all of the 179 files for youth adjudicated delinquent for sex offenses and placed on probation in participating counties from 2008 to 2010.

In addition, the Commission reviewed master files for youth committed to the Illinois Department of Juvenile Justice for a sex offense. The Commission worked with IDJJ to identify all youth committed to IDJJ for sexual offenses statewide in 2008, 2009 and 2010. The Commission reviewed 77 randomly selected files of youth in four facilities, accounting for approximately half of the youth incarcerated in IDJJ for sex offenses from 2008 to 2010. Similar to the process used with probation files, reviewers used a standardized data collection form to code the files for analysis. The standardized data collection form is attached as Appendix F.

Best Practices Research

Finally, the Commission conducted a comprehensive review of research from a variety of sources, including the U.S. Department of Justice and randomized clinical trials of specific interventions. The

¹² In 2010, a team of seven leaders in the Illinois executive branch participated in Georgetown University's Center for Juvenile Justice Reform certificate program. The team partnered with Northwestern University to examine the reasons for youth being incarcerated in IDJJ facilities beyond their release dates; many of the youth held beyond their release dates were those incarcerated for sex offenses.

Commission completed an extensive literature review, drawing upon a wide range of individual social science studies and meta-analyses of: the origins of youth sexual offending; the characteristics of youth who commit sexual offenses; risks for reoffending among youth with problem sexual behaviors; and the interventions demonstrated most effective in reducing risks for reoffending, protecting victims and enhancing public safety. A bibliography of research is attached as Appendix G.

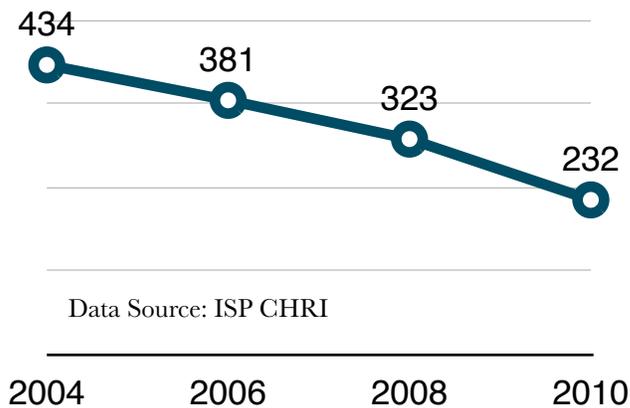
Research Findings

FINDING 1: The number of youth arrested for sexual offenses in Illinois is small and has declined.

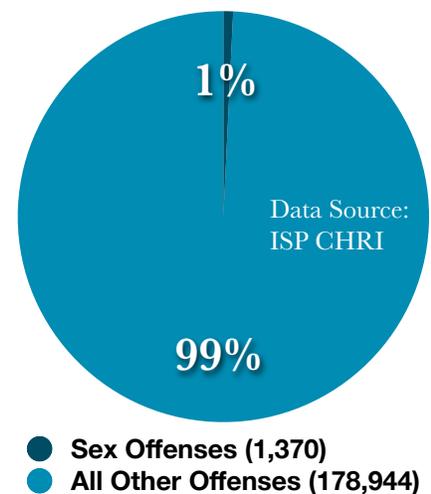
Annual statewide youth arrests for sex offenses have steadily declined to 232 during the most recent study year—roughly half (53.5 percent) of the number of arrests made in 2004.¹³

Youth arrested for sex offenses comprised less than one percent of all juvenile arrests during the four sample years.¹⁴ These findings are consistent with national data indicating that approximately 1.2 percent of arrests of youth aged 16 and under are for sex offenses.¹⁵

Number of 10-16 year olds arrested in Illinois for Sex Offenses



Arrests



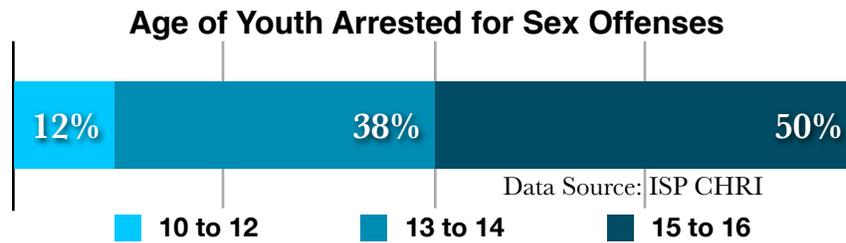
FINDING 2: The majority of youth arrested for sexual offenses are young; half are 14 years old or younger.

During the study period, fully half of the youth arrested for sexual offenses were 14 years old or younger. One in eight youth arrested were not yet teenagers.

¹³ During the four years studied for this report (2004, 2006, 2008, 2010), a total of 1,370 youth were arrested in Illinois for sex offenses. ILLINOIS DEPARTMENT OF JUVENILE JUSTICE, STATEWIDE DATA REPORT ON ILLINOIS JUVENILE SEX OFFENDERS 4 (2012) [hereinafter IDJJ Data Report].

¹⁴ *Id.*

¹⁵ Crime in the United States 2011: Arrests by Age, Federal Bureau of Investigation, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-38>.

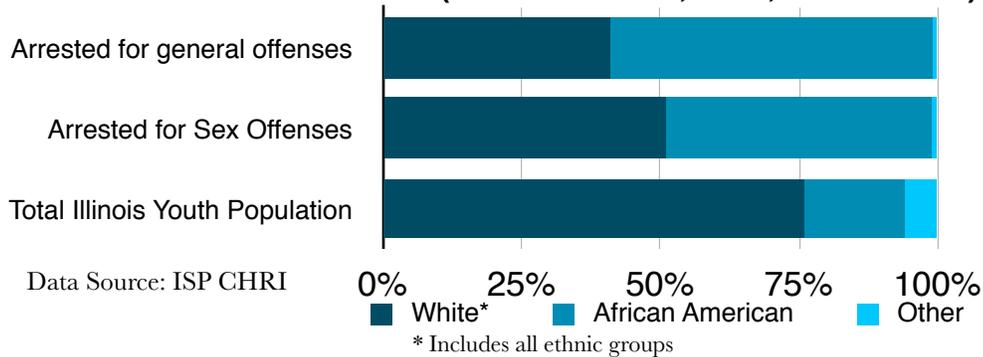


Other demographic information: A disproportionate number of youth identified for sexually offending behavior have themselves been sexually abused. Study samples include sexual abuse victimization rates ranging from 30-46 percent of youth offenders, abuse rates five times higher than those of adolescent non-sex offenders.¹⁶

Ninety-five percent of youth arrested for sex offenses in Illinois during the study period were male, whereas males comprise 78 percent of all other youth arrests.

The majority (51 percent) of youth arrested for sex offenses during the study period were white (see figure). Because Illinois arrest data does not include ethnicity, it is not possible to ascertain the proportion of Latino youth in these populations.

Race of Youth Arrested in Illinois (combined 2004, 2006, 2008 & 2010)



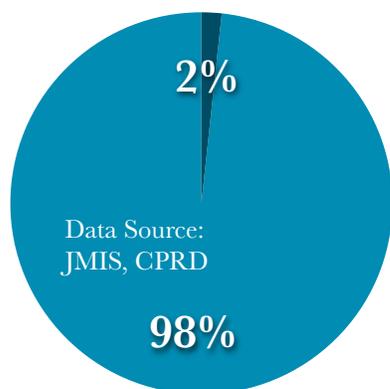
¹⁶ Michael C. Seto & Martin L. Lalumiere, *What Is So Special About Male Adolescent Sexual Offending? A Review and Test of Explanations through Meta-Analysis*, 136 PSYCHOLOGICAL BULLETIN, 544-548 (2010).

FINDING 3: Youth detained or incarcerated for sex offenses are a very small proportion of admissions, and are incarcerated far longer than their peers, including for administrative reasons.

Detentions: Youth admitted to Illinois’ 16 county-operated secure juvenile detention facilities for a sex offense constitute less than two percent of all youth admitted during the four years studied for this report.¹⁷ Two percent of youth admitted to juvenile detention facilities are charged with a sexual offense. The admission rate is double the proportion of youth arrested for sexual offenses (see Finding 1).

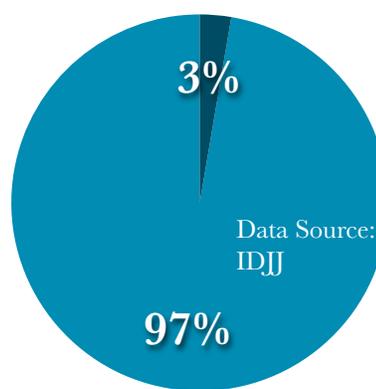
Commitments to the Illinois Department of Juvenile Justice (IDJJ): Youth sentenced for sex offenses made up less than three percent of all youth committed to IDJJ. The incarceration rate is nearly triple the proportion of youth arrested for sexual offenses (see Finding 1).¹⁸ While the total number of youth committed to IDJJ facilities for sex offenses is very small compared to all other offenses, youth committed for sex offenses have an average length of stay more than twice that of youth committed for all other offenses.¹⁹

Admissions Juvenile Detention Centers (2004, 2006, 2008 & 2010)



● Sex Offenses (874)
● All Other Offenses (50,474)

New Sentence Commitments to IDJJ (2004, 2006, 2008 & 2010)

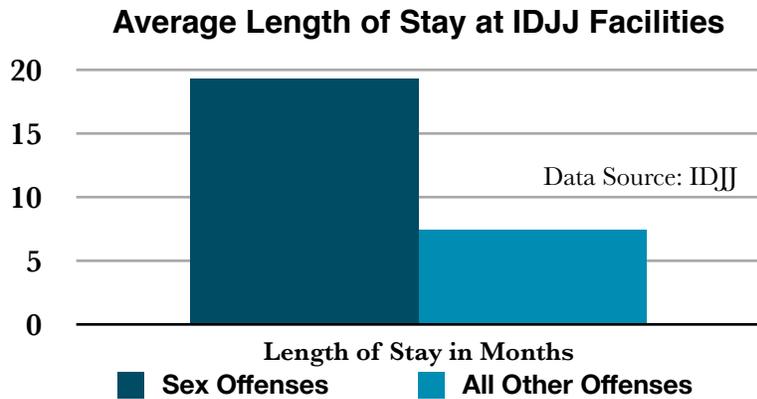


● Sex Offenses (266)
● All Other Offenses (9,646)

¹⁷ IDJJ DATA REPORT, *supra* note 13.

¹⁸ *Id.*

¹⁹ Youth adjudicated delinquent for sex offenses and committed to IDJJ had an average length of stay of 19.3 months. Youth adjudicated delinquent for non-sexual offenses stayed for an average of 7.4 months in IDJJ. *Id.* at 24. As discussed in detail in the Commission’s 2011 Youth Reentry Improvement Report, children are committed to the IDJJ for an indeterminate sentence. ILLINOIS JUVENILE JUSTICE COMMISSION, YOUTH REENTRY IMPROVEMENT REPORT 16 (2011), available at <http://ijjc.illinois.gov/reentryimprovementreport> [hereinafter IJJC YOUTH REENTRY REPORT]. Thus, the Administrative Review Date (ARD) acts as a guidepost for IDJJ in determining when to present a youth to the Prisoner Review Board for a parole hearing. A youth’s ARD is based largely on the youth’s committing offense and offense history and is assigned within 10 days of his or her incarceration.



As discussed in Finding 8, these lengths of stay reflect, in part, the residency and movement restrictions placed on youth adjudicated for sexual offenses (e.g. outside proximity of schools, parks, daycare centers, or other children).

FINDING 4: Illinois sex offense charges can encompass a wide range of youth behavior and do not differentiate between nature, harm, or severity of unlawful sexual conduct.

All sexual conduct involving youth under 17 is unlawful per se, including any manner of sexual contact between peers without the use of force. However, Illinois uses only four offense classifications to describe 89 percent of arrests, 92 percent of detentions and 95 percent of IDJJ commitments for youth charged with sex offenses: criminal sexual abuse, aggravated criminal sexual abuse, criminal sexual assault, and aggravated criminal sexual assault.

Four extremely broad sexual offense categories may be an appropriate approach to criminal code classification for adults, but due to the breadth of each definition, Illinois sexual offense charges cannot adequately communicate meaningful information about the nature, harm, or severity of an incident of unlawful youth sexual conduct.

Each of the four charges encompasses a wide range of behaviors:

- Illinois law contains no “Romeo and Juliet” or “age gap” provisions decriminalizing certain consensual teen sexual behaviors, as is done in at least 35 other states;²⁰
- Force is not a required element of any of the four offenses (but any of the offenses can involve the use or threat of force);

²⁰ BRITTANY LOGINO SMITH & GLEN A. KERCHER, CRIME VICTIMS’ INSTITUTE, CRIMINAL JUSTICE CENTER, SAM HOUSTON STATE UNIVERSITY, ADOLESCENT SEXUAL BEHAVIOR AND THE LAW 8-13 (2011), available at http://www.crimevictimsinstitute.org/documents/Adolescent_Behavior_3.1.11.pdf.

- As routinely defined, sexual penetration²¹ is not a required element for any of the four offenses (but any of the offenses can involve penetration);
- Aggravating factors that significantly elevate charges (the age of the victim, presence of disability, family relationship, or residence in the same home²²) are intended to target adult predators, but are applied to youth regardless of predation or risk;
- Youth can be considered simultaneous perpetrators and victims under the law; both participants in a consensual encounter may be charged, including with aggravated offenses due to characteristics of vulnerability that both victim-perpetrators share;²³ and
- Youth victims who report unwanted sexual contact from another young person to mandatory reporters or law enforcement may be charged with sex offenses based on their testimony about the fact that the incident occurred, if there is insufficient evidence to prove the use of force.²⁴

²¹ Under 720 ILCS 5/11-0.1, the legal definition of “sexual penetration” includes a range of activities (e.g. oral sex, fondling) that do not meet the medical definition of penetration. *People v. W.T.*, 626 N.E.2d 747, 755 (Ill. App. 2d Dist. 1994). The legal definition includes “any contact, however slight” between one person’s sex organ and the sex organ, mouth, or anus of another, as well as “any intrusion, however slight” of an object, finger, etc., into an anus or sex organ. Because Illinois courts have held that “the female ‘sex organ’ is not limited to the vagina but also includes the labia majora and labia minora, the outer and inner folds of skin of the external genital organs. . .vaginal penetration is not necessary to constitute sexual penetration under Illinois law,” which can occur by touching the external female genitalia. *Id.*

²² Under 720 ILCS 5/11-0.1, the legal definition of “family member” for the purpose of sex offense charges includes not only many blood relations, but anyone under 18 who has resided in the household with the accused for at least 6 months, including fellow adolescents who may not have a formal or blood relationship to the accused (i.e. a parent’s roommate’s children; fellow foster children; step-siblings). Sexual encounters without the use of force that occur between housemates who are minors constitute aggravated criminal sexual abuse (Class 2 felony) or criminal sexual assault (Class 1 felony). ²³ “[W]here, as here, two minors engage in a consensual sexual act, the statute may validly be applied to prosecute both minors on the basis that each is the victim of the other. . . .The purpose. . . is to protect children 13 to 16 years old from the consequences of premature sexual experiences through experimentation.” *In re T.W.*, 685 N.E.2d 631 635, 637 (Ill. App. 1st Dist. 1997). See also *Pappas v. Zorzi*, No. 11 C 6239, 2013 U.S. Dist. LEXIS 170393, at *5 (N.D. Ill. Dec. 3, 2013) (“When a 15-year-old and 16-year-old both willingly engage in sexual conduct, both are guilty of misdemeanor sexual abuse.”).

²⁴ “If plaintiff voluntarily engaged in unforced sexual activity with Brown, then she committed misdemeanor sexual abuse in violation of 720 ILCS 5/12-15(b) and defendants had probable cause to arrest her even though that was not the stated basis for her arrest. Again, no finding is being made by the court that plaintiff, *an alleged victim of forcible sexual abuse*, willingly engaged in unforced sexual activity with Brown. The question is whether defendants had information sufficient to support a probable cause determination that plaintiff engaged in unforced sexual activity and therefore *a sufficient basis existed to arrest her for engaging in misdemeanor sexual abuse, if not false-reporting of disorderly conduct as well.*” *Pappas*, 2013 U.S. Dist. LEXIS 170393, at *17 (emphasis added).

Characteristics of Sex Offense Charges in Illinois

| Offense | Behavior | Criminal or Aggravating Circumstances | Registration Period |
|-----------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Aggravated Criminal Sexual Assault <i>720 ILCS 5/11-1.30</i> | Sexual penetration (as defined in note 21) | <ul style="list-style-type: none"> Victim under 8 years old, and offender under 17²⁵; Force/threat of force with victim age 9-12 and offender under 17; Victim severely or profoundly intellectually disabled; or Criminal sexual assault with aggravating circumstances (dangerous weapon, elderly or physically disabled victim, bodily harm²⁶ to victim, threat to person's life). | Lifetime |
| Criminal Sexual Assault <i>720 ILCS 5/11-1.20</i> | Sexual penetration (as defined in note 21) | <ul style="list-style-type: none"> Force or threat of force; Knowledge that the victim can't understand or consent; or Victim is a family member under 17 years old (as defined in note 22). | Lifetime |
| Aggravated Criminal Sexual Abuse <i>720 ILCS 5/11-1.60</i> | Touching or fondling ²⁷ (in most cases) | <ul style="list-style-type: none"> Victim is a family member under 18 years old (as defined in note 22); Victim is under 9 years old, and offender under 17; Force or threat of force with victim age 9-16, and offender under 17; Victim is severely or profoundly intellectually disabled; or Criminal sexual abuse with aggravating circumstances (dangerous weapon, elderly or physically disabled victim, bodily harm to victim, threat to person's life). | Lifetime |
| Criminal Sexual Abuse <i>720 ILCS 5/11-1.50</i> | Touching or fondling (in most cases) | <p>Force or threat of force;</p> <p>Knowledge that the victim can't understand or consent;</p> <p>Victim age 9-16 years old, and offender under 17 (can also include penetration; or</p> <p>Victim age 13-16 years old (see note 23), and offender less than 5 years older (can also include penetration).</p> | 10 years |

²⁵ In Illinois, the age of sexual consent is 17 as is the age of default juvenile jurisdiction. *People v. Lloyd*, 987 N.E.2d 386, 393 (Ill. 2013); *The Juvenile Court Act of 1987* (705 ILCS 405 as amended by P.A. 98-61, effective January 1, 2014). Age-specific sexual offenses, elements, aggravating factors, and definitions should be clarified accordingly, remaining at 17 for matters tied to consent and victimhood, while being raised to 18 for matters concerning criminal responsibility.

²⁶ Bodily harm includes evidence of first sexual experience. *People v. Lauderdale*, 593 N.E.2d 757, 759 (Ill. App. 1st Dist. 1992).

²⁷ Under 720 ILCS 5/11-0.1 "sexual conduct" means any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.

The issues underlying each offense vary as widely as the behaviors comprising offense categories. Youth who commit sexual offenses have been described by researchers as a heterogeneous group with little in common with each other beyond the “sex offender” label.²⁸ Studies have shown that youth with problem sexual behaviors vary greatly across individual, social and familial risk and protective factors.²⁹

Youth labeled as “sex offenders” include:

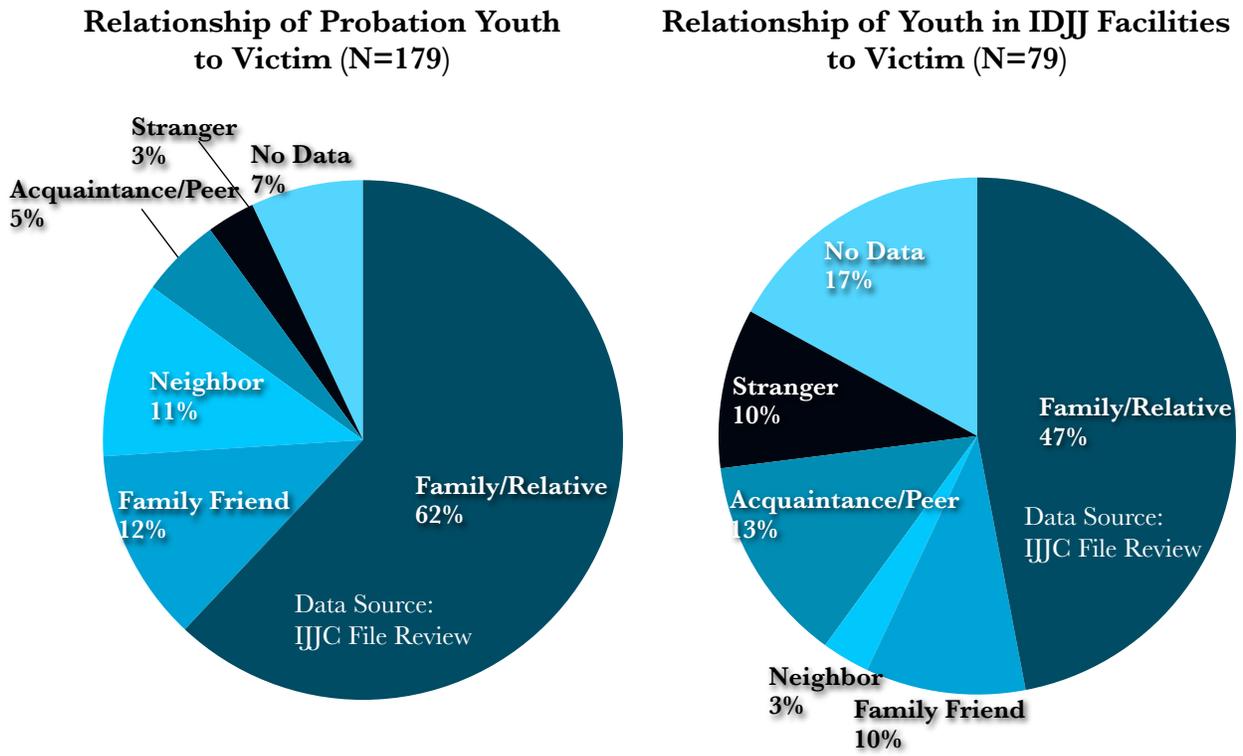
- Traumatized youth reacting to their own sexual victimization;
- Otherwise normal early-adolescent boys who are curious about sex and act experimentally but irresponsibly;
- Immature and impulsive youth acting without thinking;
- So-called “Romeo and Juliet” cases;
- Those who are indifferent to others and selfishly take what they want;
- Youth misinterpreting what they believed was consent or mutual interest;
- Children imitating actions they have seen in the media;
- Youth ignorant of the law or the potential consequences of their actions;
- Youth attracted to the thrill of rule violation;
- Persistently delinquent teens who commit both sexual and nonsexual crimes;
- Youth imitating what is normal in their own family or social ecology;
- Depressed or socially isolated teens who turn to younger juveniles as substitutes for age mates;
- Seriously mentally ill youth;
- Youth responding primarily to peer pressure;
- Youth preoccupied with sex;
- Aggressive and violent youth;
- Youth under the influence of drugs and alcohol;
- Youth wept away by the sexual arousal of the moment; or
- Youth with incipient sexual deviancy problems.

Mark Chaffin, *Our Minds Are Made Up – Don’t Confuse Us With the Facts: Commentary on Policies Concerning Children With Sexual Behavior Problems and Juvenile Sex Offenders*, 13 CHILD MALTREATMENT 110 (2008).

²⁸ Stephen M. Butler & Michael C. Seto, *Distinguishing Two Types of Adolescent Sex Offenders*, 41 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY (2002); FRANK C. DICATALDO, *THE PERVERSION OF YOUTH: CONTROVERSIES IN THE ASSESSMENT AND TREATMENT OF JUVENILE SEX OFFENDERS* 18 (2009).

²⁹ *Id.*; Anton Van Wijk et al., *Juvenile Sex Offenders Compared to Non-Sex Offenders*, 7 TRAUMA, VIOLENCE, & ABUSE 227, 228 (2006); FRANKLIN E. ZIMRING, *AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING* (2d ed. 2009); John A. Hunter et. al., *Juvenile Sex Offenders: Toward the Development of a Typology*, 15 SEXUAL ABUSE: J. RES. TREATMENT 27 (2003).

FINDING 5: Most youth sexual offending involves a family member or a person known to the youth. Illinois data, national research, and the Commission’s interviews and file reviews demonstrate that youth rarely victimize a stranger.³⁰ Rather, youth sexual offending typically involves family members or people known to the youth. Sixty-two percent of cases in the Commission’s probation file reviews reflected offending within the family.³¹ Forty-seven percent of the cases in the IDJJ file reviews reflected intra-familial offending, with an addition 17 percent of the files lacking data to make a clear determination of the relationship between the youth and the victim. Interviews with treatment providers and review of probation and IDJJ files for this report similarly found that these offenses almost always involve victims previously known to the offender, and most often involve family members.



³⁰ Gail Ryan, et al., *Trends in a National Sample of Sexually Abusive Youths*, 35 J. AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY 17-25 (1996); David Finkelhor, et al., *Juveniles Who Commit Sex Offenses Against Minors*, OJJDP JUVENILE JUSTICE BULLETIN 1-11 (2009).

³¹ See discussion of statutory definition of “family member,” *supra* note 22.

The Chicago Children’s Advocacy Center (CCAC)³² reported similar findings in its analysis of all reports of child sexual abuse in 2013 where a youth was alleged to be the offender. The CCAC found that in 96 percent of the cases, the victim knew the youth before the offense. Overall, 60 percent of these cases involved a family member (29 percent involved a sibling and 21 percent involved a cousin).

FINDING 6: Most youth who sexually offend never repeat their harmful conduct.

Juvenile Sexual Recidivism is Unlikely: Over the last decade, researchers have produced multiple meta-analyses in which the results of individual studies are combined, compared and contrasted. Meta-analysis allows researchers to test the strength and consistency of results across multiple studies and identify the findings that are most reliable and generalizable to a larger population. The large and recent meta-analysis of sexual recidivism patterns among youth identified for a sexual offense is set forth below.³³ Individual studies have produced similar findings using various definitions of recidivism, sources of data and sample sizes.³⁴ Collectively, these analyses indicate that youth are unlikely to sexually reoffend in adulthood.³⁵

| Recidivism Meta-Analysis of Youth Who Sexually Offend | | | | |
|-------------------------------------------------------|-------------------|-----------------------|--------------------------|--------------------------------|
| Meta-analysis | Composite Studies | Total Youth in Sample | Average Follow-up Period | Average Sexual Recidivism Rate |
| Caldwell (2010) ³⁶ | 63 | 11,219 | 59.4 months | 7.1% |

³² The Chicago Children’s Advocacy Center (CCAC) coordinates reports of sexual abuse involving children in Chicago received through the police or the Department of Children and Family Services Child Abuse Hotline. CCAC coordinators schedule interviews, coordinate investigations, and provide referrals to children and families. See CHICAGO CHILDREN’S ADVOCACY CENTER, FY13 CYSBP SUMMARY REPORT (2013) attached as Appendix H.

³³ Michael F. Caldwell, *Study Characteristics of Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT’L. J. OFFENDER THERAPY COMP. CRIMINOLOGY 197, 197–212 (2010).

³⁴ Studies have consistently estimated sexual recidivism rates average between 5-15 percent, with the more recent and comprehensive research finding low sexual recidivism rates, mirroring the overall decline in juvenile sex offenses. See Caldwell, *supra* note 33 at 201-07; Kristie McCann & Patrick Lussier, *Antisociality, Sexual Deviance, and Sexual Reoffending in Juvenile Sex Offenders*, 6 YOUTH VIOLENCE & JUV. JUSTICE 363, 363–85 (2008); James R Worling & Niklas Långström, *Risk of Sexual Recidivism in Adolescents Who Offend Sexually: Correlates and Assessment*, in THE JUVENILE SEX OFFENDER 219–47 (Howard E. Barbaree & William L. Marshall eds., 2008); Lorraine R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-Analysis*, 18 SEX ABUSE 401, 401–21 (2006); James R. Worling & Niklas Långström, *Assessment of Criminal Recidivism Risk with Adolescents Who have Offended Sexually*, 4 TRAUMA VIOLENCE ABUSE 341, 341–62 (2003) [hereinafter Worling & Långström, *Assessment of Criminal Recidivism*]; James R. Worling & Tracey Curwen, *Adolescent Sexual Offender Recidivism: Success of Specialized Treatment and Implications for Risk Prediction*, 24 CHILD ABUSE & NEGLECT 965, 965–982 (2000).

³⁵ See Caldwell, *supra* note 33, at 197-212.

³⁶ *Id.*

Such low re-offense rates are perhaps not surprising given the young age at which many youth are arrested for sexual offending. Research on adolescent brain development³⁷ shows that youth are still gaining the capacity to make decisions, assess risk, control impulses, make moral judgments, consider future consequences, evaluate rewards and punishment, and react to positive and negative feedback.³⁸

Unlike logical-reasoning abilities, which appear to be fully developed by age 15, psychosocial capacities that improve decision-making and curb risk taking—such as impulse control, emotion regulation, delay of gratification, and resistance to peer influence—continue to mature well into young adulthood.³⁹

³⁷ See Elizabeth R. Sowell et al., *In Vivo Evidence For Post-Adolescent Brain Maturation In Frontal And Striatal Regions*, 2 NATURE NEUROSCIENCE 859, 859–61 (1999) (finding that the frontal lobe does not mature until the early 20s and undergoes far more change during adolescence than any other stage of life).

³⁸ See Elizabeth R. Sowell et al., *Mapping Cortical Change Across the Human Life Span*, 6 NATURE NEUROSCIENCE 309, 309–15 (2003) (“Structural brain imaging studies in normal children and adolescents have been helpful in relating the dramatic maturation of cognitive, emotional, and social functions with the brain structures that ultimately underlie them.”); Brief of Amici Curiae, American Medical Association et al. at 12, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633); ELKHONON GOLDBERG, *THE EXECUTIVE BRAIN: FRONTAL LOBES & THE CIVILIZED MIND*, 31, 143 (2001); Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. Am. Acad. Child & Adolescent Psychiatry 1, 1 (1999).

³⁹ See Edward P. Mulvey et al., *Trajectories of Desistance and Continuity In Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEV. & PSYCHOPATHOLOGY, 453, 453–475 (2010); Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Dev. REV. 78, 78–106 (2008).

Adolescent Brain Development and the Law

Prominent experts in mental health, law, criminal justice, education, and public policy who compose the MacArthur Foundation’s Research Network on Adolescent Development and Juvenile Justice agree that the “systems governing reward sensitivity are ‘amped up’ at puberty, which would lead to an increase in sensation-seeking and in valuing benefits over risks.” RESEARCH NETWORK ON ADOLESCENT DEVELOPMENT AND JUVENILE JUSTICE, LESS GUILTY BY REASON OF ADOLESCENCE 3 (2009), available at http://www.adjj.org/downloads/6093issue_brief_3.pdf. In this report, the authors state that studies “do not say that adolescents cannot distinguish right from wrong, nor that they should be exempt from punishment. Rather, they point to the need to consider the developmental stage of adolescence as a mitigating factor when juveniles are facing criminal punishment.” *Id.*

The Illinois Juvenile Court Act recognizes that youth are less culpable than adults by relying on restorative justice principles to guide policy and practice away from harsh punishment and toward youth accountability and competency development.

The Supreme Court has also recognized what research shows: adolescent antisocial decision-making is strongly influenced by developmental forces, and these behaviors often change with the transition into adulthood. In three recent decisions, the Court cited the significant research on adolescent brain development, how it impacts a youth’s criminal culpability, and the importance of giving youth the opportunity and resources for rehabilitation.

In *Roper v. Simmons*, the Court held that it was unconstitutional to impose capital punishment for crimes committed while under the age of 18. 543 U.S. 551 (2005). Citing numerous scientific studies of adolescent brain development, the Court found that “a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* at 570. In 2010, the Court ruled in *Graham v. Florida* that because of the developmental differences between adolescents and adults, youth are categorically less culpable than adults. 560 U.S. 48 (2012). This ruling was based on the reasoning that since youth are still developing, they “are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.” *Id.* at 68. Finally in 2012, the Supreme Court ruled in *Miller v. Alabama* that “children’s diminished culpability and greater prospects for reform mean that they are less deserving of the most severe punishments.” 132 S. Ct. 2455, 2469 (2012).

Reoffending Risks Are Distinct and Do Not Include Being a Survivor of Sexual Abuse:

Most “youth sex offenses are not intended to be sexual.”⁴⁰ Youth do not tend to eroticize aggression, nor are they aroused by child sex stimuli.⁴¹ On the contrary, immaturity, developmental challenges, and deficits in social skills are risk factors for youth sexual offending.⁴² Youth typically experience sexual

offending as out of character and are uncomfortable with what they perceive to be deviant behavior. They do not want to identify as “sex offenders” and are highly motivated to change.⁴³ The growing research on juvenile sex offenders supports the view of mental health treatment providers that “normal development wins out most of the time for these kids.”⁴⁴

There is some evidence of correlation for the following youth sexual reoffense risk factors: deviant sexual interests, sexual offending involving multiple victims over time, sexually victimizing strangers, social isolation, and treatment non-compliance.⁴⁵ However, youth who display these continuing risk factors are a distinct minority of youth identified for sexually offending behavior.⁴⁶ Promisingly, for the high percentage (at least one-third) of sexually-offending youth who have themselves been sexual abuse victims, research has shown that past sexual victimization is unlikely to predict continued sexual offending.⁴⁷

“Jurisdictions should employ a deliberate, strategic, and collaborative model for managing and reducing risk.”
- Center for Sex Offender Management

⁴⁰ JUSTICE POLICY INSTITUTE, THE NEGATIVE IMPACT OF REGISTRIES ON YOUTH, WHY ARE YOUTH DIFFERENT FROM ADULTS, available at http://www.justicepolicy.org/uploads/justicepolicy/documents/08-08_fac_sornakidsaredifferent_ji.pdf.

⁴¹ *Id.*; see also NATIONAL JUVENILE JUSTICE NETWORK, FACT SHEET ON YOUTH WHO COMMIT SEX OFFENSES, available at <http://www.acacamps.org/sites/default/files/images/knowledge/Fact%20Sheet--Youth%20Offenders.pdf>.

⁴² See John A. Hunter et al., *Developmental Pathways in Youth Sexual Aggression and Delinquency: Risk Factors and Mediators*, 19 J. FAMILY VIOLENCE 233, 233–242 (2004). Chaffin and Bonner (1998) explain that “poor social competency skills and deficits in self-esteem can best explain sexual deviance in children,” not sexually unusual and deviant interests or psychopathic characteristics. Mark Chaffin & Barbara Bonner, *Editor’s Introduction: Don’t Shoot, We’re Your Children: Have We Gone too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?* 3 CHILD MALTREAT. 314, 316 (1998).

⁴³ See GAIL RYAN ET AL., JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES AND CORRECTION (John Wiley & Sons, Inc., 2010); DONNA D. SCHRAM, ET AL., JUVENILE SEX OFFENDERS: A FOLLOW-UP STUDY OF REOFFENSE BEHAVIOR (1991), available at http://www.wsipp.wa.gov/ReportFile/1139/Wsipp_Juvenile-Sex-Offenders-A-Follow-Up-Study-of-Reoffense-Behavior_Full-Report.pdf.

⁴⁴ HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US (2007), available at http://www.hrw.org/reports/2007/us0907/7.htm#_ftnref238 (citing Human Rights Watch telephone interview with Dr. Robert Longo, a child psychiatrist who specializes in treating child sex offenders, August 1, 2005).

⁴⁵ See Worling & Långström, *Assessment of Criminal Recidivism*, *supra* note 34.

⁴⁶ See generally *id.*; see also Seto & Lalumiere, *supra* note 16.

⁴⁷ Seto & Lalumiere, *supra* note 16 at 565 (“In other words, sexual abuse is associated with the likelihood that someone commits a sexual offense for the first time, but it does not predict who is more likely to sexually reoffend once identified”).

Offense Patterns are Comparable to Other Delinquent Youth:

Research also contradicts assumptions that youth adjudicated delinquent for a sex offense are at significantly higher risks of future sexual offending than “general offense” delinquent youth who have no history of sexual offending.⁴⁸ In fact, sexual offending rates are similar between these two groups. Further, sexual recidivism is substantially lower than general delinquency reoffending rates, including person, property, and drug crimes.⁴⁹ As discussed previously, the vast majority of youth who have committed a sexual offense never repeat it; further, like other delinquent youth, they will ultimately stop all other criminal activity before reaching adulthood.⁵⁰

“Most cases are much more about adolescence and developmental changes. Often, these cases will involve reenactments of something kids have seen, like pornography or exposure to sexual material. It doesn’t reflect a true danger to society. For most offenders, it’s a one-time thing, a single incident.”

- Treatment provider for victims and youth offenders

Illinois recidivism reflects national studies: Although there is a significant body of national research on the sexual recidivism of youth, research on Illinois-specific sexual and non-sexual recidivism rates is scarce. Findings from an August 2012 Illinois Criminal Justice Information Authority (ICJIA) report examining juvenile and adult arrest records of youth released from IDJJ facilities were consistent with national estimates of recidivism.⁵¹ The ICJIA data found that re-arrest rates were high for all youth released from IDJJ, but that youth adjudicated for sex offenses were the least likely to be rearrested.⁵²

⁴⁸ See, e.g., Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 SEX ABUSE 107, 109–11 (2007) (comparing recidivism rates among 249 youth who had sexually offended with 1,780 youth charged with other delinquent offenses who were released from custody between 1998 and 2000, finding that during a five-year follow-up period, 6.8 percent of youth who were originally in custody for a sexual offense obtained a new charge for a sexual offense, while 5.7 percent of those youth released after committing a non-sexual offense were charged with a sexual offense); see also Elizabeth J. Letourneau & Kevin S. Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 SEXUAL ABUSE: J OF RES. & TREATMENT 393, 393–408 (2008). Brown & Burton conducted a smaller study (N=290) to explore the overlap in male juvenile sexual offending and general delinquency. See Adam Brown & David Burton, *Exploring the Overlap in Male Juvenile Sexual Offending and General Delinquency: Trauma, Alcohol Use, and Masculine Beliefs*, 19 J. OF CHILD SEXUAL ABUSE 450, 450–68 (2010). Researchers found that even sexually aggressive youth who reoffended were three to four times more likely to recidivate non-sexually than sexually. *Id.*

⁴⁹ See Caldwell, *supra* note 45; Letourneau & Armstrong, *supra* note 45 at 393–408.

⁵⁰ See FRANK C. DICATALDO, *THE PERVERSION OF YOUTH* 83 (New York University Press, 2009); Caldwell, *supra* note 45.

⁵¹ The ICJIA analysis focused only on youth in the “deep end” of the Illinois juvenile justice system (those sentenced to the Illinois Department of Juvenile Justice). The analysis did not address recidivism rates for all youth arrested or adjudicated in the Illinois juvenile justice system. Lindsay Bostwick et al., *Juvenile Recidivism: Examining Re-arrest and Re-incarceration of Youth Released from the Illinois Department of Juvenile Justice*, Chicago, IL: Illinois Criminal Justice Information Authority (2013), available at http://www.icjia.state.il.us/public/pdf/ResearchReports/Juvenile%20Recidivism%20in%20Illinois_063013.pdf. Youth sent to IDJJ are generally considered to have committed more serious offenses and/or to be at higher risk of offending than other adjudicated youth (including probation populations or other diverted youth). *Id.*

⁵² *Id.* at 19 (“Youth released from IDJJ for sex offenses were the least likely to be rearrested — 27 percent were not re-arrested for any offense during the study period [n=45]”).

The general recidivism rates and low sexual reoffending rates among youth released from IDJJ custody were consistent with the national data and findings reported in other states as well.⁵³

Observations by Illinois practitioners corroborate research: Treatment providers and evaluators interviewed for this report corroborated the foregoing academic research regarding sexual recidivism among youth.⁵⁴ These practitioners stressed the low likelihood that youth will commit new sex offenses and estimated that only a small percentage (estimates ranged from one percent to five percent) of the youth they evaluated or treated presented high-risk factors for sexual reoffending.

As with all youth, those who commit sexual offenses are still developing and are highly amenable to positive change. Taken as a whole, the national research, state-level data and practitioner interviews indicate that youth adjudicated delinquent for a sexual offense present low risks of further sexual offending, despite public misperceptions.⁵⁵ In fact, the vast majority of “juvenile sex offenders” never commit another sexual offense, especially with appropriate intervention.

FINDING 7: Risk-responsive treatment reduces sexual reoffending. Successful interventions include key and replicable features.

While overall reoffending rates are low, research and practitioner interviews also demonstrate clear strategies for working effectively with youth who sexually offend. The Center for Sex Offender Management (CSOM) (a partnership among the U.S. Department of Justice’s Office of Justice Programs, National Institute of Corrections, and the State Justice Institute) highlights these strategies in its 2007 publication, *Enhancing the Management of Adult and Juvenile Sex Offenders: A Handbook for Policymakers and Practitioners*.⁵⁶ CSOM states that jurisdictions should employ a deliberate, strategic, and collaborative model for managing and reducing risk⁵⁷ that includes three fundamental components.

⁵³ *Id.* at 26–27. The ICJIA report found that Illinois’ one-year and two-year re-arrest rates for youth released from IDJJ facilities (66 percent) were similar to that of other states, including California (62 percent), Florida (59 percent), Maryland (62 percent), New York (49 percent), Texas (43 percent), and Virginia (53 percent).

⁵⁴ See Appendix B.

⁵⁵ In February 2010, the National Center for Sex Offender Management (CSOM) conducted a public opinion survey to better understand the public’s knowledge of sex offending. CSOM determined that 66 percent of survey respondents significantly overestimated recidivism rates of youth adjudicated for sexual offenses. CENTER FOR SEX OFFENDER MANAGEMENT, EXPLORING PUBLIC AWARENESS AND ATTITUDES ABOUT SEX OFFENDER MANAGEMENT: FINDINGS FROM A NATIONAL PUBLIC OPINION POLL 1–12 (2010), available at <http://www.csom.org/pubs/CSOM-Exploring%20Public%20Awareness.pdf>.

⁵⁶ CENTER FOR SEX OFFENDER MANAGEMENT, ENHANCING THE MANAGEMENT OF ADULT AND JUVENILE SEX OFFENDERS: A HANDBOOK FOR POLICYMAKERS AND PRACTITIONERS 1–98 (2007), available at <http://www.nationalafc.com/images/file/CSOM%20Enhancing%20the%20Management%20of%20Adult%20and%20Juvenile%20Sex%20Offenders.pdf>.

⁵⁷ See CENTER FOR SEX OFFENDER MANAGEMENT, THE COMPREHENSIVE APPROACH TO SEX OFFENDER MANAGEMENT 1–18 (2010), available at <http://www.csom.org/pubs/managing%20sex%20offenders-%20a%20toolkit%20for%20legislators.pdf>.

Individualized supervision and treatment based on an assessment of a youth’s risks, needs and strengths.

Effective assessment allows those supervising or providing services to youth to understand, manage and reduce risks for future offending. CSOM describes risk assessment as a process that has interdependent goals—risk prediction and risk management—that practitioners should understand and communicate about clearly and consistently.⁵⁸

- **Risk prediction** is the science of estimating the likelihood of recidivism over a period of years. The most accurate and useful estimations of risk come from objective, empirically-based, scientifically-validated tools. These tools enhance the ability of practitioners to identify youth who pose a higher risk to reoffend than others and those who pose low risk.

“In doing risk assessment, [we] need to consider the youth, their cognitive ability, static and dynamic factors as risk predictors, their history and what is changing, their past and current living environments.”

- Treatment provider

- **Risk management** is the process undertaken by probation/parole officers, treatment providers, police officers, victim advocates, families and others of recognizing and responding to factors that may present a risk of reoffending. This process is premised on the understanding that every youth has unique characteristics and circumstances that may need to be addressed to reduce the risk of reoffending and to produce positive outcomes.

Promising risk assessment tools for youth who sexually offend include the Juvenile Sex Offender Assessment Protocol—J-SOAP-II⁵⁹ and the Estimate of Risk of Adolescent Sexual Offense Recidivism—ERASOR.⁶⁰ According to CSOM,⁶¹ these tools have gained widespread acceptance for assisting

⁵⁸ *Id.* at 11–12.

⁵⁹ See Robert Prentky, *An Actuarial Procedure for Assessing Risk with Juvenile Sex Offenders*, 12 *SEXUAL ABUSE* 71–93 (2000).

⁶⁰ See JAMES R. WORLING & TRACEY CURWEN, ESTIMATE OF RISK OF ADOLESCENT SEXUAL OFFENSE RECIDIVISM (THE “ERASOR”): VERSION 2.0 1–10 (2001), available at http://www.erasor.org/uploads/8/7/7/6/8776493/erasor_2.0_10-page_coding_form.pdf. Both J-SOAP II and ERASOR are tools used to offer a prediction of how likely a youth is to sexually reoffend by weighing a range of sex-offense specific risk factors (associated with increased reoffending) against protective factors (that help guard against reoffending). See also *id.*; Prentky, *supra* note 59; R. KARL HANSON, ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, RISK ASSESSMENT 1–11 (2000), available at <http://www.atsa.com/sites/default/files/InfoPack-Risk.pdf>.

⁶¹ See CENTER FOR SEX OFFENDER MANAGEMENT, *supra* note 56.

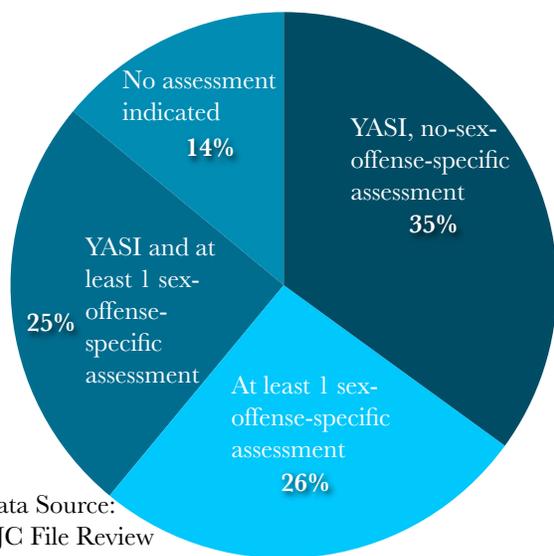
juvenile court judges, supervision officers, case managers, treatment providers, and other professionals system-wide with:

- Determining the appropriate level of care and intensity of supervision;
- Identifying the most effective targets of treatment;
- Assessing changes in risk over time; and
- Gauging the impact of interventions.

“[T]o maximize opportunities for pro-social activities and positive family or other supports, individualized interventions should be offered in settings that offer the least restrictiveness while at the same time providing for community safety.”
 - Association for the Treatment of Sexual Abusers

It is important to note that developers of the J-SOAP and the ERASOR recommend that only properly trained clinical evaluators conduct sex offense risk assessment and that assessments be updated every six months during treatment or supervision to account for the rapid changes in adolescent development.⁶² Further, while specialized risk assessment tools are an important source of information, the research indicates that these tools should be used in conjunction with other information sources and clinical expertise to make informed decisions.⁶³

Probation File Assessments (N=179)



The Commission’s review of the 179 probation files indicated inconsistent use or documentation of risk assessment tools.⁶⁴ Most probation files reviewed included the Youth Assessment and Screening Instrument (YASI). Mandated for use with all youth on probation by the Administrative Office of the Illinois Courts, the YASI has been validated to predict the risk of future delinquency, but is not designed or intended to predict specific risks for sexual offending. About half (49 percent) of the probation files examined did not include an assessment specific to sex offenses (14 percent had

⁶² See *Approaches to Assessing Risk*, CENTER FOR SEX OFFENDER MANAGEMENT, http://www.csom.org/train/juvenile/3/3_12.htm; Prentky, *supra* note 59; WORLING & CURWEN, *supra* note 60.

⁶³ See generally *Clinical Assessments*, CENTER FOR SEX OFFENDER MANAGEMENT, http://www.csom.org/pubs/cap/2/2_4.htm; *Approaches to Assessing Risk*, *supra* note 62.

⁶⁴ The Commission was unable to draw conclusions about risk assessments in DJJ files because youths’ associated mental health files, which generally include the bulk of risk assessment information, were unavailable for review.

no assessment information and 35 percent included only the YASI).

While the other half of the files included information from at least one risk assessment instrument specific to sex offenses, the files indicated inconsistent use of assessment tools to predict risk and inform decisions. Some files included as many as four different assessments, while others failed to specify the assessment tool used.

During stakeholder interviews, Illinois treatment providers and evaluators agreed that effective assessment is critical for effective supervision and treatment of youth, and they expressed concern regarding a lack of training and consistency in conducting sex-offense specific risk assessments.⁶⁵

Community-based interventions, provided by skilled practitioners, to address risk and build social and developmental skills.

Youth who sexually offend can be effectively treated in the community, without removal from their homes or incarceration. Worling and Curwen assessed the success of specialized community-based treatment specifically for reducing adolescent sexual reoffending and found that the recidivism rate for sexual offenses for treated adolescents was 5.17 percent.⁶⁶

Studies on overall juvenile offending consistently find that incarceration is no more effective than probation or alternative sanctions in reducing offending among adjudicated youth.⁶⁷ States that have reduced juvenile confinement experienced more favorable reductions in juvenile crime than jurisdictions that maintained or increased their correctional facility populations.⁶⁸ In fact, the interventions and treatment strategies that reduce recidivism, particularly those focused on skill-building, strengthening family relationships, and cognitive behavioral strategies, are ineffective in detention centers or youth prisons.

Victim empathy is a core element of cognitive behavioral therapy. Many treatment providers assert that part of a youth's success depends on their understanding of the negative impact of sexual abuse has on the victim and their family. While victim empathy is important in all sexual abuse cases, a victim-centered approach is particularly significant for youth, given that the victim and the offender often live in the same home.

⁶⁵ See Appendix B.

⁶⁶ Worling & Curwen, *supra* note 34 at 971–976.

⁶⁷ See ANNIE E. CASEY, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 1–47 (2011), available at http://www.aecf.org/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf.

⁶⁸ *Id.* at 26–27.

Success of community-based treatment is also evident in recent findings from the Lucas County, Ohio Juvenile Court’s community-based program for working with youth adjudicated for sexual offenses. In 2007, Lucas County, Ohio implemented a juvenile sex offender treatment and probation (JSOT) program,⁶⁹ which includes comprehensive assessment, highly structured community-based supervision, and evidence-based services.⁷⁰ The Lucas County Juvenile Court and the University of Cincinnati evaluated the JSOT and the initial findings indicate that less than two percent of the 250 youth who have participated in the specialized community-based supervision and treatment program since November 2007 have committed another sexual offense. In addition, program costs have been reduced from over a million dollars spent per year to under one hundred thousand. Final results from this evaluation study will be available later in 2014.⁷¹

Despite the success of community-based supervision and treatment models⁷² with youth who sexually offend—and solid evidence that unnecessary incarceration or residential placement is counterproductive⁷³—“juvenile sex offenders as a group are disproportionately placed in public and private facilities nationwide.”⁷⁴ This results from faulty assumptions about recidivism risk, limited treatment capacity, and few housing alternatives for juveniles who victimize children within the family.⁷⁵ However, research demonstrates that incarceration⁷⁶ is ineffective in reducing recidivism among all

⁶⁹ See email from Stuart M. Berry, MSW, LCSW, Special Projects Director for the Lucas County Juvenile Court, to author (Feb. 7, 2014) (on file with author). Mr. Berry is a licensed independent social worker in Ohio. For the past 17 years, he has been a teacher, trainer and consultant to juvenile courts, state and federal government and social welfare agencies, providing training, evaluation, planning, and facilitation. *Id.* See also brochures describing the Lucas County Juvenile Sex Offender Treatment Program attached as Appendix I.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² ROBERT J. MCGRATH ET AL., THE SAFER SOCIETY FOUNDATION, CURRENT PRACTICES AND EMERGING TRENDS IN SEXUAL ABUSER MANAGEMENT: THE SAFER SOCIETY 2009 NORTH AMERICAN SURVEY 1–158 (2010), available at http://www.safersociety.org/uploads/WP141-Current_Practices_Emerging_Trends.pdf.

⁷³ Unnecessary residential placement may undermine youth development by increasing their risk of victimization, exacerbating criminality, and interfering with developmental and social milestones that move youth toward appropriate social behavior. Elizabeth J. Letourneau & Charles M. Borduin, *The Effective Treatment of Juveniles Who Sexually Offend: An Ethical imperative*, 18 ETHICS & BEHAV. 286, 286–306 (2008).

⁷⁴ CENTER FOR SEX OFFENDER MANAGEMENT, *supra* note 57 (citing M. Chaffin, *Our Minds are Made Up – Don’t Confuse Us with the Facts: Commentary on Policies Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders*, 13 CHILD MALTREATMENT 110, 110–21 (2008)); John A. Hunter et al., *Strengthening Community-Based Programming for Juvenile Sex Offenders: Key Concepts and Paradigm Shifts*, 9 CHILD MALTREATMENT 177, 177–189 (2004); MELISSA SICKMUND, UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS IN RESIDENTIAL PLACEMENT, 1997–1999 (2002), <http://www.prisonpolicy.org/scans/ojjdp/fs200207.pdf>; MELISSA SICKMUND, UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILES IN CORRECTIONS (2004), <https://www.ncjrs.gov/pdffiles1/ojjdp/202885.pdf>.

⁷⁵ CENTER FOR SEX OFFENDER MANAGEMENT, *supra* note 57.

⁷⁶ For information about the commitment of sex offenders to the IDJJ, see *supra* Finding 3 and *infra* Finding 8.

delinquent youth, including youth adjudicated of sex offenses.⁷⁷ Some researchers even suggest that residential treatment creates harmful side effects for many youth by increasing their risk of victimization, exacerbating criminality, and interfering with developmental and social milestones that move youth toward appropriate social behaviors.⁷⁸

Research consistently demonstrates that community-based interventions produce more positive youth, family and community outcomes, at a fraction of the cost of incarceration-based strategies.⁷⁹ In its cost-benefit analysis, the Washington State Institute for Public Policy (WSIPP)⁸⁰ concluded that community-based treatment for youth identified for sexually offending behavior is highly cost effective.⁸¹ Based on studies concerning juvenile sex offender treatment programs, Illinois could save between \$60,000 to \$100,000 annually in reduced incarceration costs per youth.⁸²

“Evidence-based treatment is out there — we could be using it, we aren’t.”
- Treatment Provider

Comprehensive cost-benefit analyses incorporate not only potential savings in criminal justice costs, but benefits to potential victims of crime as well. Sexual assault victims are at risk for post-traumatic stress disorder, depression, and substance abuse, with the costs of sexual victimization in the United States totaling between \$8 billion and \$26 billion per year.⁸³ When benefits to potential crime victims were factored in, the estimated savings from Multisystemic Therapy, which relies on community-based intervention treatment, rose to \$182,789 per youth, producing savings of \$38.52 for every dollar spent on treatment.⁸⁴ Simply put, effective treatment reduces both suffering and financial costs borne by potential victims of crime.

⁷⁷ ANNIE E. CASEY, *supra* note 67.

⁷⁸ Letourneau & Borduin, *supra* note 73.

⁷⁹ Community-based programs save money by avoiding the high costs of incarceration or residential placements and, in the long term, by reducing reoffending, associated criminal justice expenses, and costs to future victims. STEVE AOS ET AL., WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES 1–44 (2006), available at <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/nsa/dojnsa11906.pdf>.

⁸⁰ Washington State Institute for Public Policy is a public non-partisan research unit that advises the Washington state legislature, governor, and other policy makers.

⁸¹ Elizabeth K. Drake et al., *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, 4 VICTIMS & OFFENDERS 170, 170–96 (2009).

⁸² See, e.g., Letourneau & Borduin, *supra* note 73 (citing CM Borduin & SJ Kliez, *Multisystemic Therapy with Juvenile Sexual Offenders: Clinical and Cost Effectiveness*, paper presented at the meeting of the American Psychological Association (2003)).

⁸³ *Id.* at 287.

⁸⁴ Charles M. Borduin et. al, *A Randomized Clinical Trial of Multisystemic Therapy with Juvenile Sexual Offenders: Effects on Youth Social Ecology and Criminal Activity*, 77 J. OF CONSULTING & CLINICAL PSYCHOL. 26, 35 (2009) (citing SJ Kliez et al., *Cost-Benefit Analysis of Multisystemic Therapy with Juvenile Sexual Offenders*, unpublished manuscript (2007)).

Comprehensive, family-focused, evidence-based treatment attentive to the needs of the victim and their families while promoting offender accountability. Intensive and specialized treatment for the small number of youth who present serious and persistent risks for future sexual offending.

Research demonstrates that cognitive-behavioral and family-oriented approaches effectively use individualized, comprehensive strategies to build skills and reduce risk of recidivism among juvenile sex offenders. Cognitive-behavioral approaches use modeling, practice and positive reinforcement to change thinking patterns and improve skills and behaviors.

Most of the treatment providers interviewed use elements of cognitive-behavioral therapy in their programs.⁸⁵

Cognitive-behavioral therapy often includes:

- confronting the offense;
- developing victim empathy;
- anger and stress management;
- social skills training; and
- relapse prevention.⁸⁶

“It’s important for determinations to be specific to the victim and the offender, not one size fits all. For example, in some cases the offender needs to be separated from the victim, and in others they can live together with appropriate safety planning.”

- Treatment Provider

Multisystemic Therapy (MST), a family and home-based treatment that incorporates cognitive-behavioral and structural family therapy, was developed over 25 years ago and is considered to be one of the most effective interventions for troubled youth.⁸⁷ MST has since been adapted specifically to treat youth who sexually offend and research demonstrates this adaption is effective in reducing problem behaviors and future offending.

Some of this research has roots in Illinois: Letourneau studied 127 youth accused of sex offenses in Cook County who were referred over a 2½-year period to attend sex offender treatment.⁸⁸ Sixty-seven

⁸⁵ See Appendix B.

⁸⁶ See Aviva Moster et al., *Cognitive Behavioral Therapy Interventions with Sex Offenders*, 14 J. OF CORR. HEALTH CARE, 109, 109–21 (2008).

⁸⁷ See generally Borduin, *supra* note 84; see also *Multisystemic Therapy (MST) for Juvenile Offenders*, THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION’S NATIONAL REGISTRY OF EVIDENCE-BASED PROGRAMS AND PRACTICES (2012), <http://nrepp.samhsa.gov/ViewIntervention.aspx?id=254>.

⁸⁸ Elizabeth J. Letourneau et al., *Multisystemic Therapy for Juvenile Sexual Offenders: 1-Year Results from a Randomized Effectiveness Trial*, 23 J. OF FAMILY PSYCHOL. 89, 91 (2009).

received “youth” MST and 60 attended weekly, 60-minute sex offender group sessions of 8 to 10 youths—or treatment as usual (TAU).⁸⁹ Clinicians specially trained in MST provided treatment to the 67 youth and their caregivers in their homes or a community setting. Probation officers who had completed a certification course to treat juvenile sex offenders led TAU youth in discussions on victim empathy, deviant arousal, and cognitive distortions.⁹⁰

After controlling for sex offense records and demographics, researchers found that youth in the MST group experienced significant reductions in problem sexual behavior, delinquent behavior and substance abuse over the 12-month follow up period compared to the TAU group.⁹¹ The research tracked a variety of indicators over the course of a year, and the findings included a 45 percent reduction in delinquent behavior within the MST group, in contrast to only 8 percent reduction in the TAU group.⁹² Further, substance use among youth in the MST group was cut in half, while it nearly doubled in the TAU group.⁹³ Finally, the probability that youth in the MST group would be removed from the home in the year after placement stayed static at 7 percent, while it jumped to 17 percent for youth in the TAU group.⁹⁴

Evidence-informed approaches, like MST, also focus on a youth’s pro-social peer development. Researchers identified social isolation and a lack of close peer relationships as risk factors for sexual reoffending among youth.⁹⁵ Evidence-informed treatment providers help youth develop social skills and promote healthy peer relationships; researchers attribute the success of MST in part to its strong

What is Multisystemic Therapy?

Multisystemic therapy (MST) is an intensive, family- and home-based treatment that incorporates multiple clinical techniques, including cognitive-behavioral and structural family therapy.

Key elements of MST include:

- Individualized, flexible interventions
- Participation by parents and families
- Collaboration with community-based resources including case workers, probation/parole officers, and school professionals

⁸⁹ *Id.* at 93.

⁹⁰ *Id.* at 94.

⁹¹ *Id.* at 89 (“Relative to youth who received TAU-JSO, youth in the MST condition evidenced significant reductions in sexual behavior problems, delinquency, substance use, externalizing symptoms, and out-of-home placements”).

⁹² *Id.* at 97.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Worling & Långström, *Assessment of Criminal Recidivism*, *supra* note 34, at 341–62.

emphasis on socialization processes and interpersonal skills.⁹⁶ Studies of effective interventions such as MST also highlight caregiver involvement and support as an important factor in lowering recidivism.⁹⁷

Unfortunately, MST—one of the most effective forms of cognitive behavioral therapy—is unavailable throughout much of the state due, in part, to the costs to providers of establishing an MST program and retaining qualified staff in an era of unpredictable and declining state funding, despite its proven ability to reduce risk at a cost significantly less than incarceration. By incorporating MST and other cognitive-behavior forms of therapy, Illinois can meet the clinical needs of juvenile sex offenders in a highly cost-effective manner.

⁹⁶ Borduin, *supra* note 84, at 26–37.

⁹⁷ Scott W. Henggeler et al., *Mediators of Change for Multisystemic Therapy with Juvenile Sexual Offenders*, 77 J. OF CONSULTING AND CLINICAL PSYCHOL. 451, 451–62 (2009).

Commitment of Youth Sex Offenders to IDJJ

Reports by the John Howard Association (JHA) and experts in *RJ v. Bishop* indicate that – despite commendable and ongoing efforts by IDJJ leaders and staff – the IDJJ is currently unable to provide even minimally acceptable education or mental health services to youth in its custody and does not provide the specialized treatment required to rehabilitate youth with sexual behavior problems.⁹⁸

Youth committed to IDJJ for sex offenses are held at IYC Kewanee, located 2¹/₂ hours west of Chicago.⁹⁹ Kewanee’s location and status as a secure prison facility creates obstacles to the family-focused interventions which have been demonstrated effective in reducing risks for reoffending and improving outcomes for youth adjudicated delinquent for sexual offenses. The facility’s location also presents challenges in employing enough qualified clinical staff to provide even basic programming and treatment. In 2013, the JHA found that IYC Kewanee staffing levels were inadequate to meet the youth’s needs, with only 10 of 17 clinical positions filled,¹⁰⁰ resulting in a cumulative deficit of 262 hours of treatment per week.¹⁰¹ The ACLU’s experts set forth a number of findings regarding the lack of mental health support for all youth, and note, in particular, the absence of specialized sex offender treatment to prepare youth for a safe, successful return to the community.

Moreover, as this study demonstrates, youth committed to IDJJ for sex offenses have significantly longer stays than youth committed for other offenses, staying an average of 19.3 months compared with an average length of incarceration of 7.4 months for other offenses. Youth cannot be released without a host site approved by a parole agent or aftercare specialist, who typically applies adult parole standards in making these determinations. These standards create sometimes insurmountable obstacles for youth who could otherwise safely return to their homes.¹⁰² The 2013 JHA report indicates that, at the time of their monitoring visit, at least 14 boys were held even after the PRB had approved their release, because they were not allowed or able to return home and no “placement” had been secured for them.¹⁰³

IDJJ’s lack of clinical resources, coupled with insufficient family engagement, inappropriate release standards, and costly lengths of stay raise significant concerns especially for youth committed to IDJJ for sexual offenses, many of whom have experienced prior abuse or trauma and require specialized services.

⁹⁸ The John Howard Association is the state’s prison watch-dog group. *RJ v. Bishop* is a class action lawsuit brought by the American Civil Liberties Union challenging the conditions, services, and treatment at IDJJ. *RJ v. Bishop*, 1:12-cv-07289 (N.D. Ill. Sept. 12, 2012).

FINDING 8: Illinois’ current practice of requiring youth to register as sex offenders and imposing collateral restrictions without regard to risk does not enhance public safety; moreover, research indicates that applying these strategies can actually undermine rehabilitation and the long-term well-being of victims, families, youth, and communities.

Categorical responses misjudge public safety risks and undermine the goals of juvenile

court. Registries and other restrictions for youth appear to have resulted from the perception that 1) there is an epidemic of juvenile sex offending, 2) juvenile sex offenders have more in common with adult sex offenders than with other juvenile delinquents, and 3) juvenile sex offenders are at high risk of reoffending.¹⁰⁴ As discussed throughout this report, the available data do not support any of these assumptions.¹⁰⁵ Yet “now that the data has shown most of the assumptions [about juvenile sex offenders] were wrong, it is difficult to undo those messages,”¹⁰⁶ which influence the legal interventions applied to juvenile sex offenders, including the application of adult interventions to youth.

Juvenile courts are rooted in rehabilitative and restorative principles of accountability and the recognition that youth are fundamentally different than adults.¹⁰⁷ Youth who sexually offend, however, have been carved out as an exception under sex offender registration and notification laws at the federal level and in many states, including Illinois. All Illinois juvenile registration laws are driven by offense category, meaning that registration requirements are derived exclusively from sex offense definitions in the adult criminal code - never from the level of risk a youth presents or their behavior. As a result,

⁹⁹ During the four-year period studied in this report (2004, 2006, 2008 and 2010), 266 youth adjudicated delinquent for sex offenses were committed to the Illinois Department of Juvenile Justice. Illinois law requires that youth committed to IDJJ serve an “indeterminate” sentence, as opposed to a finite sentence determined at the time of commitment. Juvenile Court Act of 1987, 705 ILCS 405/5-750(3). While indeterminate sentences are limited by the maximum adult term of imprisonment for the committing offense, there are effectively two ways for a youth to be released from incarceration in an IDJJ facility: to “age out” of the juvenile justice system at age 21 or to be released by the Prisoner Review Board based on its determination that the youth is no longer in need of further institutional programs and that parole is in the best interest of the youth and community. There are no definitive timelines for IDJJ to present youth to the PRB for release consideration, and there are no detailed written standards or criteria to guide release decisions of the PRB.

¹⁰⁰ JOHN HOWARD ASSOCIATION, MONITORING VISIT TO IYC-KEWANEE 1 (2013), available at http://thejha.org/sites/default/files/JHA_IYC_Kewanee_Report%202013.pdf.

¹⁰¹ *Id.*

¹⁰² IJJC YOUTH REENTRY REPORT, *supra* note 19, at 12.

¹⁰³ MONITORING VISIT TO IYC-KEWANEE, *supra* note 100, at 2.

¹⁰⁴ Elizabeth J. Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Status Quo*, 17 SEX. ABUSE: J. RES. & TREAT. 293, 293-312 (2005).

¹⁰⁵ 1) In the past several decades, rates of juvenile offending have remained relatively stable. *Id.* at 296. 2) Juvenile sex offenders are distinct from adult offenders and have more in common with other types of juvenile offenders. *Id.* at 296-300. 3) Sexual recidivism rates for juvenile offenders are low. *Id.* at 300.

¹⁰⁶ David Crary, *Child-on-Child Sex Abuse Poses Complex Challenges*, SAFE HORIZON (Jan. 9, 2012), <http://www.safehorizon.org/index/pressroom-5/safe-horizon-in-the-news-28/news/safe-horizon-svp-nancy-arnow-discusses-child-on-child-sex-abuse-case-issues-with-associated-press-114.html> (quoting Dr. Mark Chaffin).

¹⁰⁷ See generally Juvenile Court Act of 1987, 705 ILCS 405.

youth are placed on sex offender registries, usually for the rest of their lives, with little or no demonstrable benefit to public safety.¹⁰⁸

Illinois registration and community notification laws impose mandatory, categorical collateral consequences on youth behavior, including for natural life. Illinois began requiring registration for sex offenses in 1986¹⁰⁹ - almost 10 years before federal registry legislation - and has been expanding requirements since. Sex offender registries are intended to track individuals convicted of specific offenses following their release into the community.¹¹⁰ Early laws focused only on adults convicted of sex offenses. But in 1999, Illinois enacted legislation to apply the registration and community notification requirements to youth adjudicated for sex offenses.¹¹¹ Over the years the law has expanded the list of offenses requiring registration, extended the length of registration from 10 years to life for a range of offenses, and extended the length of registration by 10 years for any individuals who fails to properly register under the law.¹¹²

Currently, every youth adjudicated delinquent for any sexual offense – including low-risk youth, those whose offenses are misdemeanors, and those whose offenses did not involve force – is required to register for either 10 years or for life. Failure to complete registry requirements¹¹³ is a felony offense; youth in their late teens receive public, permanent adult felony convictions and prison sentences for juvenile registry errors.¹¹⁴ Since 1999, community notification provisions have also expanded, requiring law enforcement to distribute information about youth who have sexually offended to schools, institutions of higher education, and “any person when that person’s safety may be compromised for some reason

¹⁰⁸ Michael F. Caldwell & Casey Dickinson, *Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders*, 27 BEHAVIORAL SCIENCES & THE LAW 941, 953 (2009).

¹⁰⁹ Habitual Child Sex Offender Registration Act (Ill. Rev. Stat. 1987, ch. 38, par. 221 *et seq.* as enacted by P.A. 84-1279, eff. Aug. 15, 1986).

¹¹⁰ OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART), THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION 3, available at www.smart.gov/pdfs/final_sornaguidelines.pdf.

¹¹¹ Sex Offender Community Notification Law, 730 ILCS 152/105 (as amended by P.A. 91-48, effective July 1, 1999).

¹¹² Sex Offender Registration Act, 730 ILCS 150/7.

¹¹³ To register, a youth must go in person to the police station in each community in which he or she resides and attends school at least once per year. Registration costs \$100 per year and requires the youth to provide information including: photo identification, addresses, home and mobile phone numbers, license plate numbers, all email addresses, school name and location, employer name and location, any known Internet Protocol (IP) addresses at home or work, any tattoos/marks, and information about the offense and perhaps the members about the youth’s household. The youth must re-register in person within three days of moving, attending school, or starting a new job. In addition, the youth must provide local law enforcement with a detailed itinerary before traveling for three or more days. 730 ILCS 150/3.

¹¹⁴ *Id.* § 150/10.

related to the juvenile sex offender.”¹¹⁵ Current law does not place a duty of confidentiality on those so notified.

In 2007, the General Assembly created a mechanism to petition a court for removal from the sex offender registry after a specified waiting period.¹¹⁶ However, the statute creates a number of limitations and the removal process is lengthy, complex,¹¹⁷ and costly.¹¹⁸ There is no right to an appointed attorney to assist with the process, and a petition can be filed only after securing and financing an costly risk assessment and complying with the registry requirements and restrictions for the specified waiting period. Petitions are rare. Current Illinois data shows that 70 percent of the youth on the state’s sex offender registry will remain there for life unless they successfully navigate the complicated and costly process of petitioning a court for removal.¹¹⁹

¹¹⁵ Sex Offender Community Notification Law, 730 ILCS 152/121.

¹¹⁶ Sex Offender Registration Act, 730 ILCS 150/3-5(c).

¹¹⁷ The judge must consider a risk assessment, in addition to the youth’s sex offender history; mental, physical, educational and social history; evidence of rehabilitation; age at the time of the offense; and any submitted victim impact statements. The judge may also consider any other factors he or she deems relevant. *Id.* § 150/3-5(e).

¹¹⁸ The youth is responsible for the cost of the risk assessment by a licensed evaluator, which can exceed \$500, in addition to any court costs and attorney fees.

¹¹⁹ *See* Chart, *infra* page 43.

Overview: Illinois Juvenile Sex Offender Registry Provision

Who must register?

Under Illinois law, any youth adjudicated for a sex offense (including misdemeanors as well as felony offenses) is required to register with law enforcement, regardless of his or her age at the time of offense or current level of risk.

With whom must they register?

Youth adjudicated of sex offenses must register, in person, with a number of different agencies:

- the local police chief or county sheriff in every city, town, or county where he or she lives, works, attends school, or attends an institution of higher education; and
- the security director of any institution of higher education where he or she attends school or works.

What information does a youth need to provide when registering?

Youth must provide a signed written statement and a current photo, address, place of work, phone number(s), employer's phone number, school attended, email addresses, Internet messaging and chat identities, URLs registered or used, blogs posted, license plate number, and DNA submission. The youth must also show documentation of residence at the address at which they are staying.

How often does a youth have to register?

Youth adjudicated of sex offenses must register at least annually in person. In addition, youth must register again when any of the following life events occur:

- Within 3 days and in person anytime he or she begins school, gets a new job or starts work, or moves to a new residence (even temporarily). 730 ILCS 150/3(b), (d).
- If no fixed address, youth must notify agency in person within 3 days of becoming homeless, within 3 days of leaving a jurisdiction, AND register weekly in person to the agency where he or she is located. 730 ILCS 150/3(a).
- When temporarily absent for 3 or more days from a registered address, must notify ALL agencies and provide a travel itinerary. 730 ILCS 150/3(a).
- At request of the agency (not more than 4 times a year). 730 ILCS 150/6.
- In person whenever he or she changes phone numbers (including cell phones). 730 ILCS 150/6.
- Within 3 days after establishing any residence, job, or attending school outside the state of Illinois. 730 ILCS 150/5.

Overview: Illinois Juvenile Sex Offender Registry Provision (continued)

How much does it cost a youth to register?

First time registration costs \$100. There also is a \$100 annual fee so long as one is required to be registered. The fee may be waived upon a finding of indigence, but there are no guidelines for law enforcement to make a determination of indigence.

What are the penalties for not registering?

A conviction for failure to register constitutes a permanent adult felony, punishable by a minimum of 7 days confinement in jail, a minimum \$500 fine, and 10-year extension of the registration period. A criminal conviction (or an arrest without conviction) for failure to register is public information, even though the underlying juvenile adjudication is not.

Who has access to youth's information?

While registry information on juveniles adjudicated of sex offenses is not publicly available online, the laws do allow the information to be shared with “any person when that person’s safety may be compromised for some reason related to the juvenile sex offender.” This information is then vulnerable to becoming public. Law enforcement agencies are also required to share information that a youth has been identified as sexually offending and provide the information to any school in which he is enrolled.

What can a school do with a youth's information?

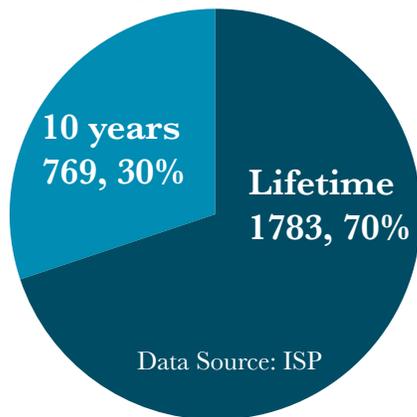
Registration information is provided to the principal of the school the youth attends, as well as to any guidance counselor that he or she designates, and the information must be kept separate from other records. 730 ILCS 152/121(b). However, the law does not require that school officials refrain from sharing this information with other school personnel, students, or others.

Do public defenders assist youth with the registration process?

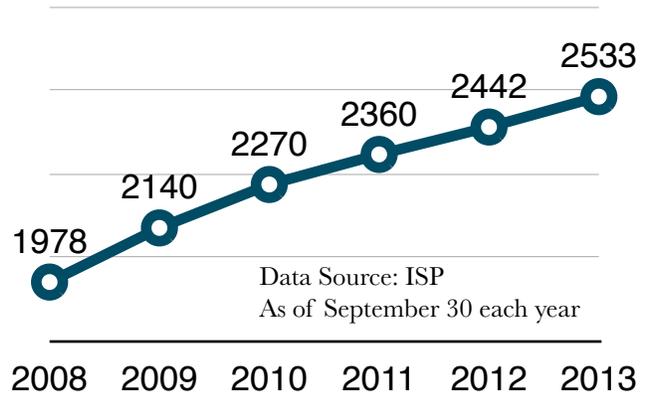
Youth seldom have access to public defenders after adjudication. Only youth who can afford a private attorney can receive ongoing assistance with registration issues or with filing a petition for registry removal.

Due to lengthy registration periods, the Illinois juvenile registry continues to grow even as offenses have decreased. As of December 4, 2013, there were 2,553 individuals on Illinois' Juvenile Sex Offender Registry.¹²⁰ Of those, 1,783 (69.9 percent) are registered for life while the other 769 (30.1 percent) are required to register for 10 years. The number of youth placed on the Illinois Sex Offender Registry has increased 28 percent since 2008, although offenses during the study period fell by half.¹²¹

Juveniles on the Illinois Sex Offender Registry, December 2013



Juveniles on the Illinois Sex Offender Registry 2008-2013



There is no persuasive evidence that Illinois' growing juvenile sex offender registry prevents victimization. Youth are increasingly subject to sex offender registration laws based on the assumptions that a) they pose a uniquely high risk for future sexual violence¹²² and that b) registration may help to mitigate this risk. However, recent studies have specifically examined the impact of youth sex offender registries and have concluded that categorical registries have not been demonstrated to reduce sexual recidivism.

Offense-driven registries can't forecast risk. Studies have found that conviction-based tier designations on juvenile registries, such as those envisioned by SORNA and currently used in Illinois, fail to distinguish between low-risk and high-risk youth, as measured both by risk instruments and sexual recidivism rates.¹²³ State-level data has also supported the findings of broader national research.¹²⁴ Further, youth who

¹²⁰ Correspondence with Illinois State Police (Dec. 2013).

¹²¹ Compare the fact that the number of youth placed on the Illinois Sex Offender Registry has increased 28 percent since 2008, with Finding 1, *supra* page 15 (noting that the number youth arrested for sex offenses comprised less than 1 percent of all juvenile arrests during the four sample years and was reduced by half between 2004-2010).

¹²² See text accompanying notes 45-50 (noting that sexual recidivism rates are similar between delinquent youth who are and are not considered sex offenders).

have sexually offended do not commit future sexual offenses at rates higher than non-sexually-delinquent youth, calling into question the very purpose of the designation.¹²⁵

Youth reoffend sexually at similarly low rates whether or not they are placed on a registry. The collection of recidivism studies, some of which have been described here, demonstrate that most youth

“To date the research provides no support for the effectiveness of sex offender registration of adolescent offenders.”

-Caldwell and Dickinson, 2009¹²⁶

on sex offender registries do not go on to commit sexual offenses in the future. Multiple studies have found comparable and low rates of reoffending when comparing youth who are registered as a “sex offender” with those who have committed similar offenses but are not required to register.¹²⁷ There is simply no evidence

in the research that registration lowers future risk of sexual reoffending among youth.¹²⁸

¹²³ See, e.g., Ashley B. Batastini, et al., *Federal Standards for Community Registration of Juvenile Sex Offenders: An Evaluation of Risk Prediction and Future Implications*, 17 PSYCHOL. PUB. POL’Y & L. 451, 451–74 (2011) (examining the ability of the classification system of the Adam Walsh Act and SORNA to predict future offending among a sample of 112 adjudicated juvenile sex offenders over a 2-year outcome period, and finding that offenders who met criteria for registration did not reoffend (sexually or non-sexually) at a significantly higher rate than those who did not meet registration criteria). Michael F. Caldwell, et al., *An Examination of the Sex Offender Registration Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, PSYCHOL. PUB. POL’Y & L., 89, 89–114 (2008) (Study examined whether SORNA registry strategies correctly distinguished between lower and higher risk youth and whether there were differences in recidivism rates among the various risk levels as designated in SORNA. Researchers followed 91 juvenile sex offenders and 174 juvenile nonsexual violent offenders for an average 72 months. They found that conviction-based tier designations on the registry failed to distinguish between lower and higher risk youth. There was also no significant difference in recidivism rates of juvenile sex offenders among the registry’s tiers.).

¹²⁴ See, e.g., Donna M. Vandiver, *A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults*, 21 JOURNAL OF INTERPERSONAL VIOLENCE, 673, 673–88 (2006) (examining the impact of sex offender registration laws in Texas on youth sexual offense recidivism and finding that of the 300 male youths on Texas’ sex offender registry, only 4.3 percent were rearrested as an adult for a new sex offense while more than half were arrested at least once for a nonsexual offense). Elizabeth J. Letourneau, et al., *The Influence of Sex Offender Registration on Juvenile Sexual Recidivism*, 20 CRIM. JUST. POL’Y REV., 136, 136–53 (2009) (Study examined recidivism rates of all male juveniles with sex crime convictions (N=1,275) across an average nine-year follow up. Researchers studied the influence of registration status on risk of new sexual, violent, and nonviolent charges and on new convictions/adjudications. Findings included a sexual offense reconviction rate less than 3 percent and evidence that registration has no impact on nonsexual violent recidivism). Because the sexual recidivism rate was the same for the juvenile sex offenders and the juvenile nonsexual offenders, Letourneau suggests that distinctions between these two groups of youth are misplaced. Elizabeth J. Letourneau, *Affidavit* (2011), available at <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/30208>.

¹²⁵ See *id.* (Because the sexual recidivism rate was the same for the juvenile sex offenders and the juvenile nonsexual offenders, Letourneau suggests that distinctions between these two groups of youth are misplaced); see also text accompanying notes 33–35.

¹²⁶ See Caldwell & Dickinson, *supra* note 108, at 953.

¹²⁷ For instance, a study evaluating the influence of South Carolina’s sex offender registration and notification on juvenile sexual and nonsexual recidivism rates matched 111 pairs of registered and nonregistered male youth based on the following criteria: 1) year of index offense, 2) age at index offense, 3) prior person offenses, 4) prior nonperson offenses, and 5) type of index sexual offense. Youth were followed for an average of four years and researchers found a sexual recidivism rate of less than 1 percent (just two events for 222 youth). The nonsexual violent offense reconviction rate did not differ between registered and nonregistered males. Letourneau & Armstrong, *supra* note 45, at 393–408; see Caldwell & Dickinson, *supra* note 108, at 953; see also Batastini, *supra* note 152, at 451–74.

¹²⁸ Letourneau & Armstrong, *supra* note 46, at 393–408; see Caldwell & Dickinson, *supra* note 108, at 953.

Identifying youth as “sex offenders” can create significant obstacles to rehabilitation and public safety. Delinquent youth rehabilitate more quickly and comprehensively when they are able to access healthy family relationships, safe and stable living environments, educational and employment opportunities, required therapies, a network of pro-social peers, and responsible, caring adults in a community setting.¹²⁹

By contrast, surveillance-only strategies can disrupt youth rehabilitation and even increase recidivism when they are applied to low- and moderate-risk youth.¹³⁰ As one example, identifiable law enforcement officers appearing at school, work, and home effectively destroy juvenile court

“People don’t change in a shaming environment.”

-Treatment provider for victims and offenders

confidentiality and can directly affect the stability of education, employment and housing. Yet in addition to Illinois’ statutory registry and community notification requirements, youth adjudicated delinquent for sex offenses face a complex array of “collateral consequences” – restrictions to which they

are largely subject as a result of being labeled as sex offenders. When restrictions and other collateral consequences are applied without an individualized assessment of risk (and in some cases in direct tension with treatment need), they may impede treatment progress and unduly restrict activities that are critical to healthy adolescent development and long-term successful rehabilitation.

A detailed explanation of collateral restrictions placed upon Illinois youth is too lengthy to include here, but may be found at Appendix J. Youth are routinely told that they must comply with all of the statutory, regulatory, and administrative restrictions and requirements of an adult sex offender, regardless of whether each restriction is clinically recommended or statutorily required. Taken in combination, restrictions can be baffling or even contradictory.

As just one example, youth who have been committed to IDJJ facilities are subject to parole conditions and administrative practices that – even when not required by statute – may result in re-incarceration or even the inability to be paroled from a facility at all.¹³¹ As the Commission’s reentry report notes in detail, all youth who are released from IDJJ facilities are subject to 17 general “boilerplate conditions” of parole based on adult standards, plus any discretionary or youth-specific conditions that may be imposed.¹³² In addition, youth adjudicated delinquent for a sex offense are subject to another four

¹²⁹ IJJC YOUTH REENTRY REPORT, *supra* note 19, at 28.

¹³⁰ *Id.* at 27–28.

boilerplate sex offender parole restrictions¹³³ and up to 18 statutorily-based discretionary restrictions.¹³⁴ Youth who do not comply with non-statutory parole conditions are still subject to re-incarceration for parole violation. Several common restrictions can be simultaneously imposed even though they are self-contradictory; for instance, youth may be both required to attend school and barred from school

“How have we crafted this kind of draconian response to juvenile offenders without knowing everything we need to know about that kid’s life”?

- Administrator for program for child victims sexual offenses

grounds, with violation of either condition potentially resulting in incarceration.

All collateral consequences deriving from registry status continue to apply well after youth have completed their juvenile court supervision – often for the rest of their lives. It is critical to note that many

restrictions can also stigmatize and destabilize the families of the youth offender, since the youth’s family more often than not includes the victim of the sexual offense.¹³⁵

¹³¹ Illinois law and practice currently vest adult IDOC parole officers with authority to approve “host homes” to which a youth adjudicated for a sexual offense is allowed to be released upon parole. Although it is not mandated by law, adult parole agents routinely reject a youth’s family home as a “host home” if any child is present, regardless of a) whether any children in the home were victimized or are at risk of victimization, b) whether family-based therapy and engagement is recommended, and c) regardless of the youth’s individual risk factors, strengths, and rehabilitation. *See id.* at 28. Even when no children are present and regardless of whether the law requires it, a family home may be rejected because it is near a park, school, day care center, swimming pool, beach, theater, or any other place minor children congregate. 730 ILCS 5/3-3-7(b-1)(12). When a youth’s home is rejected, he or she remains incarcerated until an alternative is found. As discussed earlier in this report, youth adjudicated delinquent for sex offenses remain incarcerated more than twice as long as youth incarcerated for all other offenses and are disproportionately represented in the population of youth who stay beyond their Administrative Review Date awaiting placement. As one facility staff member noted in an interview, “(We have) a whole housing unit that cannot be paroled because of housing issues. They have completed treatment and passed (their) ARD, but cannot be paroled because their proposed host site is too close to a school or something. It could be years where they could have been paroled.”

¹³² “A parolee must: not commit a crime in any jurisdiction, not possess a firearm or other dangerous weapon, report all arrests to an agent of the Department of Corrections within 24 hours after release from custody, successfully complete sex offender treatment if convicted of a sex offense, not possess narcotics or other controlled substances or frequent locations where controlled substances are illegally distributed, follow specific instructions provided by the parole agent, consent to searches of his person and property, provide truthful information to his parole officer and seek permission from the Department of Corrections before leaving the state or changing residences.” IJJC YOUTH REENTRY REPORT, *supra* note 19, at 22; *see* 730 ILCS 5/3-3-7(a).

¹³³ *See id.* § 5/3-3-7(b).

¹³⁴ *See id.* § 5/3-3-7(b-1).

¹³⁵ Sixty-two percent of cases in the Commission’s probation file reviews reflected offending within the family. *See supra*, Finding 5, at 22.

Common Collateral Consequences

May Restrict:¹³⁶

| | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Housing</p> <ul style="list-style-type: none"> Location Family in home Other nearby residents Subsidy availability | <p>Education</p> <ul style="list-style-type: none"> K-12 school attendance College/technical school admissions Campus housing | <p>Employment</p> <ul style="list-style-type: none"> Employer application questions Employer background search Professional licensing denial |
| <p>Family relationships</p> <ul style="list-style-type: none"> Time spent with minor non-victim siblings Family-focused treatment/counseling Maintaining positive relationship with own children: Attending school/extracurricular events; taking own child to park, public places; and permitting child to socialize with peers. | <p>Communication</p> <ul style="list-style-type: none"> Calls/texts Smartphone possession Computer/internet use Social networking (e.g. Facebook, LinkedIn) | <p>Presence in public places</p> <ul style="list-style-type: none"> Ability to leave house without prior permission Curfews and other movement restrictions Public parks, beaches, zoos, forest preserves |
| <p>Confidentiality</p> <ul style="list-style-type: none"> Via visits at home, school, and work by enforcement Via community notification to multiple local agencies Via disclosures (no remedy/penalty) Via obvious restrictions (e.g. phoneless, ankle bracelet) Via registry-related public adult arrests/felony convictions | | <p>Religious Worship</p> <p>Military service</p> <p>Treatment opportunities</p> <p>Socialization with age peers</p> <p>Recreation</p> |

Restrictions may be based upon one or more:

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> Statutory requirements Registry requirements Organizational policies Mandatory parole/probation conditions Discretionary parole/probation conditions Confusion over mandatory/discretionary conditions Incorrect application of adult guidelines to youth | <ul style="list-style-type: none"> Confusion over whether adult guidelines apply Uniform administrative practice for all youth Treatment need Public housing guidelines Misunderstanding about youth classification Breach of confidentiality |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

¹³⁶ See, e.g., Appendices J, K.

Youth lack legal representation to resolve confusing or inconsistent directives. Some restrictions are mandated by law, flowing from a youth's status as a “registered sex offender.” Others are solely routine administrative practice, such as the habitual imposition of non-mandatory adult sex offender parole conditions on youth. Additional challenges arise from ambiguity or confusion regarding the law or rules to be applied to juveniles,¹³⁷ the sources of specific practices, and whether a particular practice can be modified.

Practitioners interviewed for this study – including law enforcement officials, probation officers, IDJJ staff, treatment providers and others – indicated widespread confusion on the growing network of federal and state law and regulations regarding registry, community notification, and other restrictions on youth. Interviews indicated that understanding and following statutory restrictions is not only difficult for youth and families, but for the wide array of professionals seeking to enforce or comply with the law.

The broad leeway to establish further conditions of parole or probation can also create confusion not only for the youth, but for family members, treatment providers, and other justice professionals who counsel youth regarding their obligations and options. For instance, attorneys advising youth about a plea offer often cannot fully inform their clients about potential collateral consequences by answering basic questions about how sex offense provisions will affect their clients' future prospects.

After adjudication, youth usually navigate mandates and restrictions without the advice of a public defender or other attorney, for years after the conclusion of their court case. As a result, youth adjudicated for sex offenses encounter widespread confusion and often inconsistent advice about their duties to register or to notify others about their status as well as about where they may live, work or go to school. Failure to follow a mandatory restriction can result in incarceration and/or new adult felony criminal charges, which become permanent public record.

¹³⁷ As just one example of the lack of clarity, Illinois' Sex Offender Registration Act (SORA) explicitly includes youth with juvenile adjudications in the statutory definition of “sex offender” and requires juveniles to register. Sex Offender Registration Act, 730 ILCS 150/2(A)(5), 150/3. However, the definition of “sexual predator” contained in the same act is less clear. Juvenile adjudications are not enumerated in the predator definition (730 ILCS 150/2(E)). Although the “sex offender” definition states that convictions and adjudications are the same for the purpose of the section (730 ILCS 150/2(A)), the placement of the statement and the special attention paid to adults who are adjudicated rather than convicted suggests that juveniles might not have been anticipated by the sexual predator definition. The distinction is important, since designated sexual predators must register for life and are subject to greater restrictions. See Appendix J. Another such designation, “child sex offender,” defined in an entirely different statute; appears to categorically exclude adjudications, yet youth are still often subject to restrictions based on the designation. See Appendix K.

Victim and offender therapists agree that sex offense stigma interferes with successfully treating their clients. Holding youth who have sexually offended accountable for the harm they have caused is an important goal of the juvenile justice system. Ensuring that young people develop victim empathy and positive peer and family relationships is an important part of preventing reoffending. But the stigma attached to registry and collateral consequences can isolate both offenders and intrafamilial victims from their communities, preventing healthy activities and interpersonal relationships.

Simply put, treatment and rehabilitation of children is not bolstered by publicizing that they were adjudicated or convicted of a sex crime. As one treatment provider for youth offenders noted in interviews for this study, “[t]o find employment, to get into school - these become additional hurdles. All these things affect resiliency. You take away the (ability) to build self-esteem, make a living (or) go to school.” Creating a sense of hopelessness – regardless of ongoing lawful behavior, rehabilitation or remorse – can undermine compliance with treatment objectives as well as with the law.

“We should stop putting kids on the sex offender registry. There’s zero scientific evidence that it prevents reoffending. The earlier we label them and shame them, the more we could be actually damaging them.”

- Clinician specializing in risk assessments for youth identified for sexually offending behavior

A provider of treatment services to victims of sexual abuse noted, “[t]here’s collateral based damage to having offenders on [the] registry. We forget the collateral damage to victims and family members who live in those homes and the destabilization that occurs.”

Individualized restrictions support the accountability and rehabilitation purposes of the Juvenile Court Act. Some or all of the restrictions and requirements can be appropriate to manage reoffending risks for individual youth who pose high risks of reoffending in very specific ways. Mandates which are narrowly tailored to an individual youth’s risks, needs, and strengths can be effective in achieving restorative goals for victims, improving youth outcomes, and increasing public safety.¹³⁸ Yet excessive, impractical and

“Labeling as ‘juvenile sex offender’ affects treatment because of the stigma, lost hope.”

- Residential treatment provider

¹³⁸ See, e.g., Moster, *supra* note 86, at 109–21.

rigid conditions – especially those which fail to address a youth’s individual needs and strengths – undermine rehabilitation and long term public safety.¹³⁹

Under current Illinois law, juvenile courts, juvenile probation officers, the Illinois Department of Juvenile Justice, and the Prisoner Review Board are able to place restrictions on delinquent youth who have not offended sexually (e.g. victim contact, place of residency, movement, use of computers and social media, interactions with other minors, curfew, etc.) until the age of 21 for serious offenses – without the involvement of a registry. Removing youth from the sex offender registry would likewise still permit authorities to place reasonable restrictions on specific youth for lengthy periods of time, in the few high-risk cases in which it is recommended.

In short, the evidence is clear and growing: treating youth like adults and categorically applying registries and other barriers to stable housing, education, family relationships, and employment does not protect public safety. On the contrary, employing these strategies is much more likely to undermine youth rehabilitation, harm intrafamilial victims of sexual abuse, stigmatize families, and produce poor outcomes for communities.

Federal law instructs states to institute a mandatory and categorical registry for youth; most states do not comply. Over a span of 12 years (1994-2006), several federal laws created and expanded sex offender registries and community notification laws.¹⁴⁰ The most recent, the Adam Walsh Child Protection and Safety Act (AWA), reorganized and consolidated registration and notification provisions, applying them to youth for the first time. Title I of the AWA, the Sex Offender Registration and Notification Act (SORNA), created a comprehensive set of federal guidelines directing states to expand the scope of their registration and notification laws.¹⁴¹ Most notably, SORNA requires that youth age 14 years or older adjudicated delinquent of a sexual offense comparable to or more severe than aggravated sexual abuse must register with local law enforcement.¹⁴²

¹³⁹ See U.S. DEPARTMENT OF JUSTICE, MOTIVATING OFFENDERS TO CHANGE: A GUIDE FOR PROBATION AND PAROLE (June 2007), available at <https://s3.amazonaws.com/static.nicic.gov/Library/022253.pdf>.

¹⁴⁰ Federal laws creating or expanding federal registry requirements and community notification provisions include the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act enacted in 1994, Subtitle A of Title XVII of the Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322 (1994); Megan’s Law enacted in 1996, 42 U.S.C. § 14071(d) (1996); The Pam Lychner Sex Offender Tracking and Identification Act enacted in 1996, 42 U.S.C. § 14071 (1996); and the Adam Walsh Child Protection and Safety Act, 42 USCA § 16901 et seq. (2006).

¹⁴¹ The Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248 (2006).

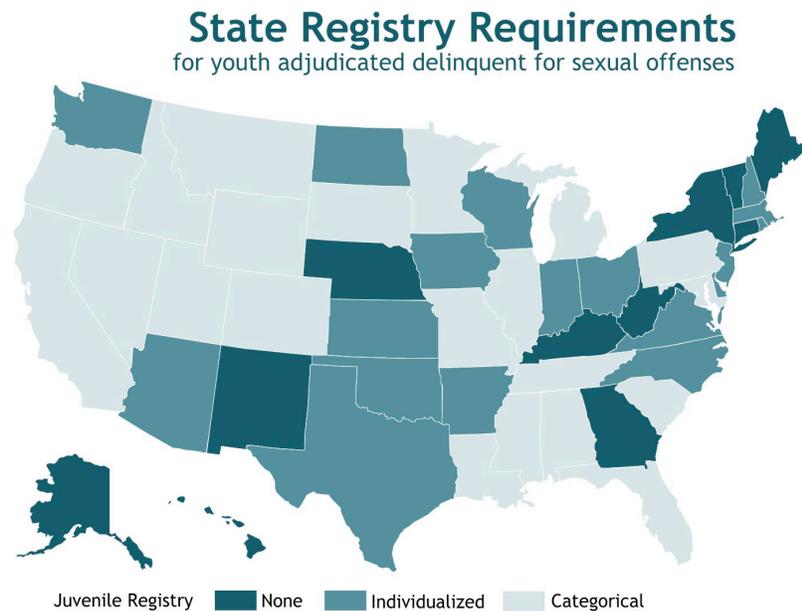
¹⁴² *Id.* at §111(8).

SORNA Noncompliance - The AWA established deadlines by which states were to implement different parts of SORNA and provided penalties for non-compliance.¹⁴³ The initial deadline for implementation was July 2009. According to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), the entity charged with managing the implementation of the Adam Walsh Act/SORNA, 33 out of 50 states were not in compliance with SORNA as of February 2013, including Illinois.¹⁴⁴

Due to widespread non-compliance, the U.S. General Accounting Office conducted a performance audit designed to identify compliance obstacles.¹⁴⁵ The audit, conducted from January 2012 to February 2013, identified a series of challenges that resulted in states being out of compliance, including: conflicts between state laws and the federal law; retroactive application of requirements, as required under the federal law; the inclusion of juveniles on registries; and the costs associated with implementation of the requirements.¹⁴⁶ States also expressed concern that SORNA registration requirements are based on

categories of convictions and do not identify individuals who pose the highest risks of reoffending.¹⁴⁷

Alternatives to SORNA Youth Registry - Many of the states currently out of compliance with SORNA requirements do not subject youth to the same federally-recommended registration and community



¹⁴³ The AWA provides for a penalty for non-compliance of the loss of 10 percent of the state-level portion of the jurisdictions Byrne/Justice Assistance grant funds.

¹⁴⁴ U.S. Government Accountability Office, GAO-13-211, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT – JURISDICTIONS FACE CHALLENGES TO IMPLEMENTING THE ACT, AND STAKEHOLDERS REPORT POSITIVE AND NEGATIVE EFFECTS, A REPORT TO THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES (Feb. 2013) [hereinafter GAO Report].

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* First year costs of implementing SORNA may outweigh potential penalties associated with non-compliance. JUSTICE POLICY INSTITUTE, WHAT WILL IT COST STATES TO COMPLY WITH THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT? (2012), available at http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JI.pdf.

¹⁴⁷ GAO Report, *supra* note 123.

notification requirements as adults.¹⁴⁸ As an alternative, 11 states and the District of Columbia choose to exercise individualized supervision over youth in juvenile court—these states do not have a juvenile registry and only require youth who have been tried and convicted as adults to participate on the sex offender registry. Another 19 states require registry for some juvenile cases but impose registry requirements with some degree of individualized consideration. Besides Illinois, 19 other states use a categorical (offense classification-based) juvenile registry; although over half of these states limit it to only the oldest juvenile offenders, Illinois does not.

Constitutional Challenges to Youth Registries - Recognizing numerous problems with juvenile registration, legal challenges have arisen in some states with juvenile registries. In 2012, the Ohio Supreme Court held that a statute placing juveniles on an automatic lifetime registry violated the federal and state constitutional prohibition against cruel and unusual punishment.¹⁴⁹ It also held that the statute violated the state and federal Due Process Clause, finding that the principle of "[f]undamental fairness requires that the judge decide the appropriateness of any such penalty"¹⁵⁰ because "[a]n automatic long term punishment is contrary to the juvenile system's core emphasis on individual, corrective treatment and rehabilitation."¹⁵¹

More recently, Pennsylvania lower courts have held federal and state SORNA laws and similar juvenile registration schemes unconstitutional under several different rationales:

- Lifetime registries are particularly cruel for youth.¹⁵²
- Juveniles are less deserving of punishment due to their diminished culpability and increased prospects for reform.¹⁵³
- Sexual recidivism rates are low, as demonstrated by remarkably consistent findings across studies, time, and population.¹⁵⁴

¹⁴⁸ For a detailed analysis of other states' responses to youth registration for sexual offenses, see Appendix D.

¹⁴⁹ *In re C.P.*, 967 N.E.2d 729, 732 (Ohio 2012) ("To the extent that it imposes automatic, lifelong registration and notification requirements on juvenile sex offenders tried within the juvenile system, R.C. 2152.86 violates the constitutional prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 9, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 16.").

¹⁵⁰ *Id.* at 749.

¹⁵¹ *Id.* at 748.

¹⁵² *In re J.B. et al.*, No. CP-67-JV-0000726-2010, 1, 34 (Penn. Ct. Com. Pl. of York County Nov. 4, 2013) ("[L]ifetime registration . . . is particularly harsh for juveniles in light . . . of . . . the detrimental effects that registration can have on all aspects of their lives and livelihood.").

¹⁵³ *Id.* at 16 ("Because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments").

- Juveniles are likely to suffer irreparable harm as a result of being required to register.¹⁵⁵
- Lifetime registration is contrary to the rehabilitative goals of the juvenile justice system.¹⁵⁶
- Requirements such as retroactive registration, periodic in-person appearances, verification, and penalties for non-compliance impose a substantial burden on juveniles, and there is little to indicate that lawmakers assessed how these requirements would impact juveniles or whether such provisions are necessary.¹⁵⁷
- State and federal lawmakers did not design categorical registry laws to focus on high-risk youth.¹⁵⁸
- No adjudication-based registry would identify high-risk youth.¹⁵⁹
- Juveniles are likely to be shunned where their registration is known which creates collateral consequences by imposing limits on their ability to obtain housing, schooling, and employment.¹⁶⁰
- Being labeled a sexual offender goes much further than simply implying that a juvenile was adjudicated delinquent.¹⁶¹

Registries with Individualized Consideration of Youth – Nineteen states currently reject a categorical registry for youth offenders, adopting a customizable approach. One such example is the “targeted and limited” juvenile registry used in Oklahoma, where registry of youth is individualized and risk-based rather than categorical and offense-based as in Illinois.¹⁶² This statutory framework allows a court to consider an

¹⁵⁴ *Id.* at 18 (“There are now more than 30 published studies evaluating the recidivism rates of youth who sexually reoffend. The findings are remarkably consistent across studies, across time, and across populations: sexual recidivism rates are low”).

¹⁵⁵ *Id.* at 19–20 (“[T]he Court finds that juvenile sex offenders . . . are likely to suffer various forms of irreparable harm as a result of being required to register . . .”).

¹⁵⁶ *Id.* at 34 (“Such lifetime registration is also contrary to the rehabilitative goals of our juvenile justice system, as a court of second chances”).

¹⁵⁷ *Id.* at 19–20 (“[R]etroactive registration, periodic in-person appearances, verification, and penalties for non-compliance impose a substantial burden on juvenile sex offenders. These provisions were enacted despite a minimal legislative history with regard to how they would impact juvenile offenders, or whether such provisions were necessary with regard to juveniles”).

¹⁵⁸ *In re B.B. et al.*, No. 248JV 2012, 1, 30 (Penn. Ct. Com. Pl. of Monroe County Jan 16, 2014) (“[W]e have reviewed both the state and federal legislative histories for reasoning or evidence which supports the premise that the adjudication-based registration is closely tied to juveniles at a high risk of reoffense. We have found none”).

¹⁵⁹ *Id.* at 25 (“[E]ven if the legislature were to preface its legislature with very extensive research it is hard to see how it would be possible to create an adjudication-based registry to cover only those juveniles who are, in fact, dangerous”).

¹⁶⁰ *Id.* at 17 (“The Juveniles will almost certainly be shunned wherever their registration is known. Presence on a sexual offender registry may impose limits on the Juveniles ability to obtain housing. Schools may refuse to admit them. Businesses may refuse to employ them. At this point the precise effects of the law are unknown, but its negative consequences are highly likely”).

¹⁶¹ *Id.* at 17, 21 (“The term ‘sexual offender’ does not simply imply that the juvenile was adjudicated delinquent . . . The law will imbue the juvenile with the reputation of a sexual offender through formative stages of his life and continuing into old age”).

individual youth’s age, offense history and behaviors, treatment history and progress, risks to reoffend, needs, and strengths, in order to decide whether that youth should be required to register as a sex offender.¹⁶³ Under the Oklahoma statute, only youth who offended at the age of 14 or older can be required to register as juveniles.¹⁶⁴

The registration review involves three steps: First, at the conclusion of a youth’s treatment or placement, a district attorney reviews the youth’s behavior and progress, deciding whether to file an application for registry based on indicia of significant risks to reoffend.¹⁶⁵ Second, if an application is filed, a panel of two court-appointed juvenile mental health professionals evaluates the youth and submits a written report and recommendation regarding registration to the court.¹⁶⁶ Judges, prosecutors and defenders handling these cases have also received training on effective evaluation, supervision and treatment of youth who have sexually offended.¹⁶⁷ Third, upon submission of the evaluation report, the court determines whether the juvenile represents an “ongoing serious or aggressive threat to the public or children under sixteen years of age” and, if so, shall order the youth to register on the state’s juvenile sex offender registry.¹⁶⁸

¹⁶² Oklahoma Juvenile Sex Offender Registration Act, 10A § 2-8-102–2-8-112.

¹⁶³ *Id.* § 2-8-104(A).

¹⁶⁴ *Id.* § 2-8-102.

¹⁶⁵ *Id.* § 2-8-104(A).

¹⁶⁶ *Id.* Oklahoma law provides specific and detailed criteria for clinicians to qualify to evaluate youth for registry and the State Office of Juvenile Affairs provides a listing of clinicians who meet these established criteria, for use by courts in conducting the evaluations. *Id.* While not specifically mandated by law, the evaluation uses a structured and objective assessment tool—typically the Juvenile Sex Offender Assessment Protocol or JSOAP—as well as the youth’s records and the clinical judgment of evaluators with expertise in working with youth on sex offending problems. Interview with Dr. Mark Chaffin, Professor and Director of Research (Oct. 25, 2012).

¹⁶⁷ *Id.*

¹⁶⁸ Oklahoma Juvenile Sex Offender Registration Act, 10A § 2-8-104(B).

Recommendations for Aligning Law, Policy, and Practice with Research on Effective Interventions

The Illinois Juvenile Court Act promotes a juvenile justice system that protects communities, imposes accountability for harmful behavior, and equips affected youth with the competencies to live responsibly and productively.¹⁶⁹ A strong body of research on “what works” with youth who sexually offend offers tools to achieve these goals. Aligning law, policy and practices with research and proven strategies will enhance public safety, improve offender and victim outcomes, and reduce and address the harms caused by sexual victimization.

Based on the data, research and stakeholder interviews, the Commission has advanced key principles to rehabilitate youth who have committed sexual offenses:

- **Apply fact, research, and data:** Evidence-informed policy and practice take advantage of objective knowledge, research, and data regarding the origins of sexual misconduct among youth and the low rates of sexual offending among youth to develop interventions which reduce future offending and ensure the safety of the victims and community;
- **Implement alternatives to costly and ineffective incarceration:** Evidence-informed policy and practice prioritizes individualized, community-based, and family-focused interventions to reduce risk for future offending and to produce long-term positive outcomes for victims, offenders, families, and communities; and
- **Do no harm:** Above all – interventions and policy must *do no harm* to victims or to youth with great potential for rehabilitation. Policy makers should take action to eliminate laws that undermine rehabilitation, increase risk of offending or cause harm to victims, youth, and families.

To realize these principles of evidence-informed policy and practice, Illinois should:

RECOMMENDATION 1: Develop and implement professional best practice standards and provide current, objective, and evidence-informed training for professionals who work with youth offenders and victims of sexual abuse.

Today, research and analysis provides practitioners with strategies to intervene effectively with youth who exhibit sexual misconduct problems, to produce better outcomes with youth, victims, and families and to avoid the long-term harm that antiquated, adult-oriented and punitive approaches can cause.

¹⁶⁹ Juvenile Court Act of 1987, 705 ILCS 405/5-101.

Professionals called upon to intervene with youth should be provided with the knowledge and skills necessary to handle these challenging cases. Entities such as the Illinois Sex Offender Management Board (SOMB), the Illinois Law Enforcement Training and Standards Board (ILETSB), the Administrative Office of the Illinois Courts (AOIC), the Illinois Supreme Court, and the Illinois Department of Juvenile Justice (IDJJ) should promulgate standards of professional practice to guide the work of clinicians and treatment providers, law enforcement officers, lawyers and judges, probation officers, and IDJJ facility and aftercare staff.

These agencies and entities should also equip police, teachers, clinicians, lawyers,¹⁷⁰ judges and probation or parole officers, community-corrections professionals and aftercare specialists with the current, accurate, evidence-informed, and high-quality information and training on youth sexual offending, sexual abuse, and victimization needed to meet the professional standards and to deliver services effectively.

State and local policy makers should also apply current and objective research to develop law and policy that holds youth accountable in a manner that effectively supports victims and families, advances rehabilitation, and uses scarce public resources effectively. Agencies should promulgate evidence-based standards of professional practice for intervening with sexually offending youth and victims and should take steps to ensure that professionals receive appropriate training to equip them to meet these standards. In addition, these entities should implement meaningful quality assurance strategies for the professionals and agencies they support. To assist in these efforts, the Commission will support the development and delivery of high-quality, evidence-based training and professional development to practitioners.

RECOMMENDATION 2: Equip courts and communities to intervene effectively with individualized, community-based, family-focused services and supervision.

At Pre-Adjudication: Individualized, comprehensive and evidence-informed assessments of each youth’s risk, needs, and strengths are the cornerstone of effective intervention. The Illinois Juvenile Court Act recognizes the importance of meaningful assessment, providing that “any minor found to be guilty of a sex offense... shall be required as part of the social investigation to submit to a sex offender

¹⁷⁰ Attorneys, in particular, have clear professional obligations to be highly knowledgeable and skilled in handling these complex cases. Model Rules of Prof'l Conduct R. 1.1 (2004), available at http://www.law.cornell.edu/ethics/aba/current/ABA_CODE.htm (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”). Prosecutors, defenders and judges make daily decisions regarding charges and pleas, providing an effective defense, and developing effective interventions. As such, they should be required to access specialized professional development opportunities and apply the interventions most appropriate for each individual young offender.

evaluation. The evaluation shall be performed in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board.”¹⁷¹

However, the Illinois Sex Offender Management Board standards address only adult offenders, with no existing standards or guidelines for the evaluation of youth.¹⁷² As a result, assessment protocols for youth vary widely across the state, potentially undercutting juvenile courts’ ability to make informed, fair, and effective decisions and develop appropriate supervision plans.

To address these gaps, Illinois should

- Develop protocols that provide for pre-adjudication evaluation of youth to better inform plea negotiations and pre-adjudication decision-making, while protecting constitutional due process rights and rights against self-incrimination;
- Mandate that only assessors with demonstrated expertise in evaluating youth shall conduct juvenile sex offender evaluations and that all evaluations shall rely on evidence-informed assessment tools and protocols intended for youth; and
- Recognize and address the negative impact categorical registry requirements and their collateral consequences have on the appropriate charging and disposition of juvenile cases, and instead empower state’s attorneys, defenders and judges to make decisions based on an individualized, comprehensive approach envisioned in the Illinois Juvenile Court Act.

At Sentencing, Probation, and Treatment: The Illinois Juvenile Court Act explicitly encourages “programs and services that are community based” and provides that youth should “reside within their homes whenever possible and appropriate” with the “support necessary to make this possible.”¹⁷³ It further provides that secure confinement should be applied narrowly and only when minors present a danger to the community.¹⁷⁴ To take full advantage of the positive outcomes offered by community-based supervision and services, Illinois should:

- Rely on individualized, comprehensive, evidence-informed assessments conducted by qualified assessors to determine each youth’s risks, needs and strengths;

¹⁷¹ Juvenile Court Act of 1987, 705 ILCS 405/5-701.

¹⁷² PA 97-1098 amended the Sex Offender Evaluation and Treatment Provider Act to establish qualifications for sex offender evaluators and treatment providers, but eliminated prior requirements for the SOMB to promulgate guidelines and standards for the evaluation or treatment of juvenile offenders, which had not been implemented.

¹⁷³ Juvenile Court Act of 1987, 705 ILCS 405/5101(2).

¹⁷⁴ *Id.*

- Require probation officers to be active participants in developing assessment-based individualized case plans where the level of intervention corresponds to the risk level;
- Implement community-based programs that allow youth to reside at home whenever possible and appropriate, which research shows can bolster community safety more effectively than incarceration-based strategies;
- Ensure that probation officers and treatment providers have access to training, ongoing support, oversight, evidence-based and family-focused services, and intensive specialized treatment resources to effectively supervise youth in the community;¹⁷⁵
- Ensure that judges have access to assessments, evaluations and evidence-based practices to inform appropriate sentencing and supervision decisions for each youth; and
- Fully implement 705 ILCS 405/5-750 to eliminate unnecessary use of IDJJ commitments when less-restrictive alternatives are appropriate and ensure that all judges have access to these alternatives.

Research on family-focused, community-based services for youth adjudicated for sexual offending offers reliable strategies for working effectively with youth who sexually offend and at a fraction of the cost of incarceration-based strategies. Multisystemic Therapy for youth with Problem Sexual Behaviors (MST - PSB), for example, targets youth who have sexually offended and intensively engages with youth and families in the context of their homes, schools, and neighborhoods. In randomized clinical trials, MST-PSB has been demonstrated to reduce reoffending, improve family functioning and improve long-term outcomes for youth, parents and other siblings.¹⁷⁶ While the Commission does not endorse a specific program, Illinois should:

- Ensure that every court and every community has access to evidence-informed, family-focused services for youth, families, and victims who need them;
- Ensure that the small number of youth who present possible serious and persistent risk of sexual offending receive intensive and specialized treatment; and
- Ensure that scarce resources are not wasted on intensive and specialized treatment for youth who pose no serious risk of sexual reoffending as determined through the use of evidence-informed assessment tools.

¹⁷⁵ “Specialized” probation caseloads per se are not necessary to provide effective supervision of youth and families in sexual offense cases.

¹⁷⁶ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, BLUEPRINTS FOR VIOLENCE PREVENTION 71 (July 2004), available at <https://www.ncjrs.gov/pdffiles1/ojdp/204274.pdf>

While Committed to Illinois Department of Juvenile Justice and Under the Jurisdiction of the Illinois Prisoner Review Board:

Comprehensive, family-focused, and skills-developing interventions are difficult, if not impossible, to implement in any incarceration setting and are not currently used within the Illinois Department of Juvenile Justice. As a result, youth committed to IDJJ stay for long periods of time—well over twice as long as youth committed for all other offenses—and receive inadequate education, mental health care, and specialized services to prepare them for a successful return home. While the Commission commends the Department’s reform efforts, given these current deficits, the Commission strongly recommends that commitment of youth to IDJJ must be used as a last resort, consistent with Illinois law. If youth are committed to IDJJ, Illinois should:

- Meet its fundamental obligations to provide safe and humane treatment and to prepare the youth in its custody for the timely and successful return to their communities;
- Expedite efforts to address serious deficits at IDJJ, including providing adequate mental health care and educational services, eliminating the use of damaging and counter-productive isolation, protecting youth from abuse by staff or other youth in custody, and ensuring the use of appropriate disciplinary strategies;
- Develop and implement evidence-informed standards of practice for in-facility and aftercare treatment and services to youth adjudicated for sexual offending and expedite transitioning youth from IDOC parole officers to skilled youth aftercare specialists;¹⁷⁷
- Ensure that youth are not held in secure facilities or placed in expensive residential facilities unnecessarily due to categorical restrictions on “host homes” that prevent safe family reunification; and
- Require the Illinois Prisoner Review Board to develop and apply evidence-informed, youth-appropriate standards when making release or discharge decisions and imposing parole requirements on youth committed to IDJJ for sexual offenses.

RECOMMENDATION 3: Remove young people from the state’s counter-productive sex offender registry and the application of categorical restrictions and “collateral consequences.”

After careful consideration and analysis of data, interviews, and social science research, the Commission has determined that, unlike community-based, family-focused, evidence-based interventions, offense-based registration strategies do not show positive results. There is no persuasive evidence that subjecting youth to registries and restrictions enhances public safety or prevents reoffending. In fact,

¹⁷⁷ To do so, IDJJ should recruit and retain highly skilled and qualified aftercare staff to work with youth committed to IDJJ for sexual offenses and should develop individualized and youth-appropriate case plans and supervision strategies rather than applying categorical, adult-focused restrictions and requirements.

research demonstrates that these statutory strategies do not improve community safety and can actually increase risk of reoffending and exacerbate harms to victims, particularly when they are siblings or other family members of the youth. Further, as discussed in this report, a growing number of state legislatures and courts—including the U.S. Supreme Court—are recognizing that the imposition of life-long consequences for acts committed as a child are unnecessary and counter-productive.

In addition, the Commission notes that individualized, evidence-informed practices like risk-based, family-focused intervention, treatment, and supervision offer real, practical approaches to achieve the goals of reducing reoffending, minimizing trauma for victims and their families, imposing accountability for harm caused, effectively using scarce resources, and fostering environments where youth are encouraged to become contributing members of our communities.

Conclusion

The Illinois Juvenile Justice Commission performed extensive scientific and legal research to understand the complex issues of the behavior, treatment, and rehabilitation of juvenile sex offenders and the extent to which current knowledge has resulted in practical applications throughout the state. The findings from this research shaped the Commission's recommendations, which aim to increase public safety, improve outcomes for young offenders, and allocate scarce public resources effectively. To do this, Illinois should implement evidence-informed policies for professionals who work with victims and youth offenders; provide individualized, community-based, family-focused treatments and services; and repeal counter-productive sex offender registration requirements and categorical restrictions for young people.

We, the members of the Illinois Juvenile Justice Commission, respectfully request that the Illinois General Assembly and the Governor of the State of Illinois give due consideration to the findings and recommendations set forth in this report, and take all action necessary to promote public safety, equip Illinois youth for successful, sustainable life in the community, and ensure a fiscally efficient and effective Illinois juvenile justice system.

Respectfully submitted,

Juvenile Justice Commission

State of Illinois