
JUVENILES ADJUDICATED FOR SEXUAL OFFENSES: FALLACIES, FACTS, AND FAULTY POLICY*

Amanda M. Fanniff,[♦] Alex R. Piquero,⁺ Edward P. Mulvey,^Δ
Carol A. Schubert,^α and Anne-Marie R. Iselin^Ω

Significant changes to the juvenile justice system emerged in the last quarter of the twentieth century as a response to concern regarding increases in juvenile crime.¹ On the whole, such changes increased the severity of sanctions applied to juvenile offenders, including, but not limited to, new mechanisms for juvenile waiver to adult court, blended sentencing options,² and juvenile life without parole sentences.³ Concerns about an epidemic of juvenile violent crime coincided with an increasing focus on juvenile sexual crime, rooted in research indicating that many adult sex offenders' deviant sexuality emerged during adolescence,⁴ as well as an increasing awareness that juveniles represent a significant proportion of arrests for sexual offenses each year (e.g., 15.56% of arrests for forcible rape and 16.97% of arrests for other sexual offenses in 2014⁵). The resulting sudden demand for policy and treatment approaches to manage these juveniles led to the adoption of strategies based on what was known about adult sex offenders rather than a sound, developmentally informed approach.

* The project described was supported by funds from the following organizations: Office of Juvenile Justice and Delinquency Prevention, National Institute of Justice, John D. and Catherine T. MacArthur Foundation, William T. Grant Foundation, Robert Wood Johnson Foundation, William Penn Foundation, Centers for Disease Control and Prevention, National Institute on Drug Abuse (R01DA019697), Pennsylvania Commission on Crime and Delinquency, and the Arizona Governor's Justice Commission. We are grateful for their support. The content of this Article, however, is solely the responsibility of the authors and does not necessarily represent the official views of these agencies.

♦ Ph.D., Palo Alto University.

+ Ph.D., The University of Texas at Dallas.

Δ Ph.D., University of Pittsburgh Medical Center.

α MPH, University of Pittsburgh Medical Center.

Ω Ph.D., University of North Carolina-Wilmington.

1. HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 93 (2006).

2. *Id.* at 110.

3. HUMAN RIGHTS WATCH & AMNESTY INT'L, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 25–27 (2005), <https://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf>.

4. E.g., A. Nicholas Groth, Robert E. Longo & J. Bradley McFadin, *Undetected Recidivism Among Rapists and Child Molesters*, 28 CRIME & DELINQUENCY 450, 456–57 (1982); Robert E. Longo & A. Nicholas Groth, *Juvenile Sexual Offenses in the Histories of Adult Rapists and Child Molesters*, 27 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 150, 154–55 (1983).

5. 2014 Crime in the United States, FED. BUREAU INVESTIGATION, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014> (last visited June 1, 2016).

Such specialized social control and clinical practice policies for juveniles would be reasonable if based on either unique risk to community safety or unique treatment/management needs connected with these adolescent offenders. The current Article provides a brief overview of the specialized social control policies applied to juveniles adjudicated for sexual offenses (JSOs), followed by a review of the existing literature regarding whether this population presents unique risk or treatment needs meriting specialized approaches. It concludes that there is little logical justification for current policies.

I. SPECIALIZED SOCIAL CONTROL POLICIES APPLIED TO JSOs

JSOs have been identified as a population of concern requiring specialized treatment and policies since the 1980s.⁶ Most JSOs are required to participate in treatment, with some states requiring sex offense-specific treatment.⁷ When JSO treatments were first developed, many programs relied heavily upon approaches taken with adult sex offenders.⁸

During the 1980s and 90s, such a strategy was logical given the lack of empirically supported treatments (ESTs) for JSOs. Currently, however, there are several interventions for JSOs with empirical support, largely emphasizing developmental factors and family involvement.⁹ Nonetheless, juvenile programs modeled on adult treatment persist. Survey results indicate that more than half of treatment programs for JSOs employ behavioral sexual arousal control treatments,¹⁰ a common feature of adult programs, as well as lengths of treatment about double those in programs for other types of juvenile offenders.¹¹ Also, about half of treatment programs for JSOs use polygraph exams, a rarity in other treatments for delinquent youth, and almost 40% use sexual interest

6. 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, 111 (2008); Elizabeth J. Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 SEXUAL ABUSE 293, 294–95 (2005).

7. *E.g.*, FLA. STAT. ANN. § 985.475 (West 2016).

8. *See* Nat'l Adolescent Perpetrator Network, *The Revised Report from the National Task Force on Juvenile Sexual Offending, 1993*, 44 JUV. & FAM. CT. J. 5, 5–7 (1993).

9. *E.g.*, Charles M. Borduin, Cindy M. Schaeffer & Naamith Heiblum, *A Randomized Clinical Trial of Multisystemic Therapy with Juvenile Sexual Offenders: Effects on Youth Social Ecology and Criminal Activity*, 77 J. CONSULTING & CLINICAL PSYCHOL. 26, 26–27 (2009); Elizabeth J. Letourneau et al., *Two-Year Follow-Up of a Randomized Effectiveness Trial Evaluating MST for Juveniles Who Sexually Offend*, 27 J. FAM. PSYCHOL. 978, 978–79 (2013); Lorraine R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-Analysis*, 18 SEXUAL ABUSE 401, 402–03 (2006); James R. Worling, Ariel Litteljohn, & David Bookalam, *20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offended Sexually*, 28 BEHAV. SCI. & L. 46, 47–48 (2010).

10. *E.g.*, ROBERT J. MCGRATH ET AL., CURRENT PRACTICES AND EMERGING TRENDS IN SEXUAL ABUSER MANAGEMENT: THE SAFER SOCIETY 2009 NORTH AMERICAN SURVEY 72 (2010), http://www.safersociety.org/downloadables/WP141-Current_Practices_Emerging_Trends.pdf.

11. *E.g.*, MCGRATH ET AL., *supra* note 10, at 83; WASH. STATE INST. FOR PUB. POLICY, EVIDENCE-BASED JUVENILE OFFENDER PROGRAMS: PROGRAM DESCRIPTION, QUALITY ASSURANCE, AND COST (2007), <http://www.wsipp.wa.gov/ReportFile/986>.

measures like the plethysmograph or viewing time measures,¹² another common feature of adult sex offender programs.

JSOs are also subject to a wide range of restrictive social control policies modeled after ones meant to manage adult sex offenders. Perhaps the most restrictive policy is civil commitment as a sexually violent predator (SVP), for which juveniles are eligible in at least twelve states.¹³ SVP commitment is designed to incapacitate and rehabilitate “the dangerous sexual offender whose serious mental illness, abnormality, or disorder” makes him a continued risk to the community in a manner that is distinct from “the dangerous but typical recidivist convicted in an ordinary criminal case.”¹⁴ Commitments under this type of statute are very long, with relatively few SVPs released to date nationwide.¹⁵ No data are currently available on how many individuals who committed sexual crimes as minors have been committed as SVPs or how many have been released.

Statutes requiring registration and community notification are also now commonly applied to JSOs. Sex offender registration laws require offenders to provide their addresses, places of employment or education, physical descriptions (e.g., via updated photographs), and sometimes additional information (e.g., online identifiers) to local law enforcement at set intervals and upon changing residences.¹⁶ Community notification laws require that law enforcement provides information about sex offenders to the public, with required forms of notification based on different risk tiers (e.g., level one versus level two or three offenders).¹⁷ The association between statutorily defined “risk tiers” and recidivism, however, is not empirically supported.¹⁸

Although federal mandates for registration and notification applied only to

12. MCGRATH ET AL., *supra* note 10, at 60.

13. Amanda M. Fanniff, Randy K. Otto, & John Petrila, *Competence to Proceed in SVP Commitment Hearings: Irrelevant or Fundamental Due Process Right?*, 28 BEHAV. SCI. & L. 647, 649 (2010).

14. *Kansas v. Crane*, 534 U.S. 407, 413 (2002).

15. See DEIRDRE D’ORAZIO ET AL., SOCCPN ANNUAL SURVEY OF SEX OFFENDER CIVIL COMMITMENT PROGRAMS 2013 (2013), http://www.soccpn.org/images/SOCCPN_survey_presentation_2013_in_pdf.pdf; WASH. STATE INST. FOR PUB. POLICY, COMPARISON OF STATE LAWS AUTHORIZING INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS: 2006 UPDATE, REVISED 1 (2007), http://www.wsipp.wa.gov/ReportFile/989/Wsipp_Comparison-of-State-Laws-Authorizing-Involuntary-Commitment-of-Sexually-Violent-Predators-2006-Update-Revised_Full-Report.pdf.

16. *E.g.*, ARIZ. REV. STAT. ANN. §13-3821 (2016); *see also* NICOLE PITTMAN & QUYEN NGUYEN, A SNAPSHOT OF JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS: A SURVEY OF THE UNITED STATES 5, 25 (2011), http://www.njjn.org/uploads/digital-library/SNAPSHOT_web10-28.pdf.

17. *E.g.*, ARIZ. REV. STAT. ANN. §13-3825.

18. *E.g.*, Michael F. Caldwell, Mitchell H. Ziemke & Michael J. Vitacco, *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 PSYCHOL. PUB. POL’Y & L. 89, 104–05 (2008); Kristen M. Zgoba et al., *The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems*, SEXUAL ABUSE: J. RES. & TREATMENT (forthcoming 2016) (manuscript at 14–17), <http://sax.sagepub.com/content/early/2015/02/04/1079063215569543>.

adult sex offenders initially,¹⁹ some states chose to apply such policies to juveniles in the late 1980s and early 1990s.²⁰ The Adam Walsh Child Protection and Safety Act of 2006 initially required registration and notification for JSOs starting at age fourteen, although subsequent revision based on feedback from scientists and stakeholders led to the removal of the notification requirement.²¹ In a review of statutes in place in 2011, Nicole Pittman and Quyen Nguyen identified thirty-four states that required registration of JSOs, with twenty-five subjecting at least some juveniles to community notification, six of which required lifetime registration.²² As one extreme example, Delaware had 639 children on its registry in 2011, 55 of whom were under the age of twelve.²³ The automatic application of sex offender registry laws to juveniles has recently been found unconstitutional in some jurisdictions.²⁴ Despite this development, registry and notification requirements for JSOs persist in many locales.

These policies, along with other specialized policies to which JSOs are subject,²⁵ rest on a number of assumptions about JSOs. They rely on the premise that JSOs are very different than other delinquent offenders,²⁶ with these differences resulting in unique, intractable, and high risk for continued sexual offending throughout their lives.²⁷ Moreover, the requirement that JSOs participate in sex offender-specific treatment indicates the apparent assumption that they present with unique treatment needs. Based on the existing empirical literature, however, all of these assumptions appear to be fallacious²⁸ and

19. Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 1796 (1994) (codified as amended at 42 U.S.C. § 14071 (2012)); Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending 42 U.S.C. § 14071(d) (1996)).

20. HUMAN RIGHTS WATCH, RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE US 3-4 (2013), http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf.

21. Elizabeth J. Letourneau & Michael F. Caldwell, *Expensive, Harmful Policies that Don't Work or How Juvenile Sexual Offending Is Addressed in the U.S.*, 8 INT'L J. BEHAV. CONSULTATION & THERAPY 23, 24-25 (2013).

22. PITTMAN & NGUYEN, *supra* note 16, at 32-41; *see e.g.*, S.C. CODE ANN. § 23-3-460 (2016) (requiring lifetime registration).

23. PITTMAN & NGUYEN, *supra* note 16, at 12.

24. *E.g.*, *In re J.B.*, 107 A.3d 1, 17-20 (Pa. 2014); *In re C.P.*, 967 N.E.2d 729, 750 (Ohio 2012).

25. *See e.g.*, Rebecca Shepard, Comment, *Does the Punishment Fit the Crime?: Applying Eighth Amendment Proportionality Analysis to Georgia's Sex Offender Registration Statute and Residency and Employment Restrictions for Juvenile Offenders*, 28 GA. ST. U. L. REV. 529, 533-34 (2012) (noting that JSOs must comply with strict employment and residency requirements); HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US *passim* (2007), <http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf> (detailing some residency requirements to which JSOs are subject).

26. Letourneau & Miner, *supra* note 6, at 296-300.

27. *See, e.g.*, Chaffin, *supra* note 6, at 112-13; Letourneau & Caldwell, *supra* note 21, at 25-26.

28. Alex R. Piquero et al., *Sex Offenders and Sex Offending in the Cambridge Study in Delinquent Development: Prevalence, Frequency, Specialization, Recidivism, and (Dis)continuity over the Life-Course*, 35 J. CRIME & JUST. 412, 421-23; Franklin E. Zimring, Alex R. Piquero & Wesley G. Jennings, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 CRIMINOLOGY & PUB. POL'Y 507, 529-31 (2007) [hereinafter

deserve more careful consideration.

II. RELATIVE RISK OF JSOs AND OTHER DELINQUENTS

There is little evidence that JSOs are qualitatively different from non-JSO offenders or are at particularly high risk for future sexual offending. Rather, there is considerable evidence that JSOs are rearrested at a lower rate than adolescent offenders who have committed other crimes and are overwhelmingly more likely to be rearrested for nonsexual crimes when they are arrested.²⁹ Moreover, JSOs do not appear to be at an appreciably higher risk for sexual recidivism than other delinquent youth. A meta-analysis including sixty-three data sets comprised of over 10,000 JSOs followed for an average of about five years found a mean sexual recidivism rate of 7.08% ($SD = 3.9\%$).³⁰ This rate does not appear to differ from the long-term sexual recidivism rates of non-JSOs. Michael Caldwell found no significant difference in sexual recidivism between 249 JSOs (6.8%) and 543 juveniles adjudicated for a nonsexual violent offense (5.7%), examining outcomes approximately five years post-release from secure institutions.³¹ Although some early research found higher rates of sexual recidivism among JSOs,³² more recent research has consistently shown that although JSOs appear to have slightly higher sexual recidivism rates, these seeming differences are not statistically significant.³³

Zimring et al., *Racine*]; Franklin E. Zimring, Wesley G. Jennings, Alex R. Piquero & Stephanie Hays, *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort*, 6 JUST. Q. 58, 70–73 (2009) [hereinafter Zimring et al., *Investigating the Continuity*].

29. See tbl.1 *infra*.

30. Michael F. Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 197, 201–02 (2010) [hereinafter Caldwell, *Study Characteristics and Recidivism Base Rates*].

31. Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 SEXUAL ABUSE 107, 110 (2007) [hereinafter Caldwell, *Sexual Offense Adjudication*].

32. E.g., Michael P. Hagan et al., *Eight-Year Comparative Analyses of Adolescent Rapists, Adolescent Child Molesters, Other Adolescent Delinquents, and the General Population*, 45 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 314, 322–23 (2001); Ron Sipe, Eric L. Jensen & Ronald S. Everett, *Adolescent Sexual Offenders Grown-Up: Recidivism in Young Adulthood*, 25 CRIM. JUST. & BEHAV. 109, 117–18 (1998).

33. E.g., Caldwell et al., *supra* note 18, at 91–92; Nancy G. Calleja, *Juvenile Sex and Non-Sex Offenders: A Comparison of Recidivism and Risk*, 36 J. ADDICTIONS & OFFENDER COUNSELING 2, 9–10 (2015).

TABLE 1. RECIDIVISM RATES OF JSOs AND NON-JSO DELINQUENTS³⁴

Source	N		Sexual Reoffense		General Reoffense		Average Follow-Up
	JSO	Non-JSO	JSO	Non-JSO	JSO	Non-JSO	
Caldwell (2007)	249	1780	6.8%	5.7%	73.9% ^a	80.4% ^b	60.5 mo.
Caldwell et al. (2008)	91	174	12.1%	11.6%	69% ^a	88.4% ^b	71.6 mo. (SD=18.1)
Calleja (2015)	40	101	N/A	N/A	3% ^a	32.9% ^b	2 yr.
Hagan et al. (2001)	100	50	18% ^a	10% ^b	N/A	N/A	up to 8 yr.
Hargreaves & Francis (2014)	920	11750	13.1% ^a	2.4% ^b	60.2%	61.7%	35 yr. (projected)
Mulder Vermunt et al. (2012)	66	334	3%	6%	27% ^a	74% ^b	5.83 yr. (SD=2.39)
Schmidt et al. (2015)	204	185	10.8% ^a	3.8% ^b	18.1% ^a	30.8% ^b	947.70 days
Sipe et al. (1998)	124	132	9.7% ^a	3.0% ^b	32.3%	43.9%	~ 6 yr.
van der Put & Asscher (2015)	548	1356	N/A	N/A	24.11% ^a	47.5% ^b	18 mo.
van der Put et al. (2013)	625	504	N/A	N/A	26.4%	50%	18 mo.

Two cohort studies with quite different samples (Racine, Wis., $n = 6,127$ ³⁵; Philadelphia, Pa., $n = 27,160$ ³⁶) demonstrated that juveniles with police contact for sexual offenses were no more likely than other juvenile offenders to have police contact for sexual offenses as adults. Instead, being a high-frequency juvenile offender (regardless of engaging in sexual crime) was the best predictor of adult sex offending. Two other recent studies conducted outside of the United States found higher rates of sexual recidivism for JSOs (England and Wales;³⁷

34. Values with different superscripts differ between JSOs and non-JSO offenders. Claire Hargreaves and Brian Francis included individuals with any sexual offense under the age of twenty-one in their JSO group, which they compared to a violent offender group (reported in the table) and a burglary offender group ($n = 11750$; the pattern of results was the same for this group). Claire Hargreaves & Brian Francis, *The Long Term Recidivism Risk of Young Sexual Offenders in England and Wales—Enduring Risk or Redemption?*, 42 J. CRIM. JUST. 164 (2014). Recidivism rates for this study were estimated based on expected rates as if a full thirty-five years of data were available for all participants. *Id.* Eva Mulder et al. provided data on three groups of nonsexual offenders. Eva Mulder et al., *Recidivism in Subgroups of Serious Juvenile Offenders: Different Profiles, Different Risks?*, 22 CRIM. BEHAV. & MENTAL HEALTH 122 (2012). This data here represent the non-JSO group with violent and property offenses—the largest group in the sample. Similar results were found for violent offenders ($n = 114$) and property offenders ($n = 214$). Violent reoffense rate from the study by Fred Schmidt et al. is reported in the table; similar patterns were reported for nonviolent and technical reoffenses. Fred Schmidt, Sarah M. Sinclair & Sólveig Thomasdóttir, *Predictive Validity of the Youth Level of Service/Case Management Inventory with Youth Who Have Committed Sexual and Non-Sexual Offenses: The Utility of Professional Override*, 43 CRIM. JUST. & BEHAV. 413 (2015).

35. Zimring et al., *Racine*, *supra* note 28, at 513.

36. Zimring et al., *Investigating the Continuity*, *supra* note 28, at 69–70.

37. Hargreaves & Francis, *supra* note 34, at 168–69.

Netherlands³⁸). However, the latter of these studies still detected that chronic juvenile offending was a better predictor of adult sex crime than having committed a sexual offense as a juvenile.³⁹ In a third international study that tracked sex offenders and sex offending to age fifty using data from the Cambridge Study in Delinquent Development, Alex Piquero and colleagues found that sex offending was rare (3% of the sample were convicted for a sex offense through age fifty) and that none of the JSOs were convicted for a subsequent sex offense in adulthood.⁴⁰

The current authors (in preparation) conducted an analysis of both officially detected and self-reported recidivism using data from the Pathways to Desistance study—a large, longitudinal study of serious adolescent offenders.⁴¹ Using this sample enhances the empirical understanding of JSOs by comparing two groups of serious offenders (those with and without sexual crimes) followed for seven years during the transition between adolescence and adulthood on a wide range of background and outcome variables. This sample included 127 males who were referred to the juvenile court for felony sexual offenses prior to and/or at the time of enrollment in the study, and 1,021 general offenders referred for a range of other types of offenses. Over eighty-four months of follow-up, the two groups did not differ in their rearrest rate (1.25 arrests per year at risk in the community for JSOs and 1.60 arrests per year at risk for non-JSOs) or self-reported general offending (at least two delinquent activities in 13% of months at risk for JSOs and 17% of months at risk for non-JSOs). A larger percentage of JSOs (7.87%) than non-JSO delinquents (2.84%) were arrested for a subsequent sexual offense. The majority of sexual crime during the follow-up period, however, was committed by the non-JSO group, as 29 of the non-JSO delinquents sexually recidivated, whereas 10 of the JSOs did so. Notably, JSOs in the Pathways study also showed more involvement in school or work and reported more positive, supportive relationships with peers and adults over the follow-up period.

III. TREATMENT NEEDS OF JSOs AND OTHER DELINQUENTS

Although there is a general lack of evidence for unique dangerousness in the JSO population, specialized policies and practices could be appropriate if JSOs present unique risk factors and treatment needs. Michael Seto and Martin Lalumière provided a comprehensive theory-based meta-analysis of differences between JSOs and non-JSOs on potential etiological factors that either related to

38. Patrick Lussier & Arjan Blokland, *The Adolescence-Adulthood Transition and Robins's Continuity Paradox: Criminal Career Patterns of Juvenile and Adult Sex Offenders in a Prospective Longitudinal Birth Cohort Study*, 42 J. CRIM. JUST. 153, 157–58 (2014).

39. *Id.* at 161–62.

40. Piquero et al., *supra* note 28, at 421–23.

41. See Edward P. Mulvey et al., *Theory and Research on Desistance from Antisocial Activity Among Serious Adolescent Offenders*, 2 YOUTH VIOLENCE & JUV. JUST. 213 (2004); see also Carol A. Schubert et al., *Operational Lessons from the Pathways to Desistance Project*, 2 YOUTH VIOLENCE & JUV. JUST. 237 (2004).

specialized theories (i.e., theories purporting sex offending by juveniles is driven by unique etiological factors) or generalized theories (i.e., theories purporting sex offending by juveniles can be explained by the same factors as general offending).⁴² JSOs and non-JSOs were similar in ways that would not be predicted by specialized theories (e.g., no differences in antisocial tendencies, family problems, social skills, sexual experiences, cognitive abilities), yet they differed in ways that suggest generalized theories may not fully explain sexual offending either (e.g., JSOs had lower criminal involvement, fewer substance problems, higher rates of maltreatment, greater exposure to pornography, more anxiety, greater learning problems).⁴³ Additional research is needed to clarify, as neither specialized nor generalized theories appear able to fully account for sexual offending by adolescents.

A variety of research focused on risk factors and treatment needs also found considerable similarities between JSOs and non-JSO delinquent youth. There is evidence for similar levels of psychopathic traits,⁴⁴ as well as similarities in conduct disorder, antisocial behavior while incarcerated, and impulse control.⁴⁵ Consistent with the lower general recidivism rates for JSOs found in most research, JSOs appear to have lower rates of a number of dynamic risk factors, including aggressive behavior,⁴⁶ school problems,⁴⁷ antisocial attitudes,⁴⁸ and substance problems.⁴⁹ Initial research also indicates similar deficits in executive functioning for JSOs and non-JSO delinquents.⁵⁰ Findings are highly inconsistent across studies regarding whether JSOs have similar, greater, or lesser family-related risks and needs.⁵¹

42. Michael C. Seto & Martin L. Lalumière, *What Is So Special About Male Adolescent Sexual Offending? A Review and Test of Explanations Through Meta-Analysis*, 136 *PSYCHOL. BULL.* 526, 560–68 (2010).

43. *Id.*

44. *E.g.*, Cyril Boonmann et al., *Self-Reported Psychopathic Traits in Sexually Offending Juveniles Compared with Generally Offending Juveniles and General Population Youth*, 59 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 85, 88–90 (2015); Caldwell et al., *supra* note 18, at 89; Jason D. Netland & Michael H. Miner, *Psychopathy Traits and Parental Dysfunction in Sexual Offending and General Delinquent Adolescent Males*, 18 *J. SEXUAL AGGRESSION* 4, 6–8 (2012).

45. *E.g.*, Mulder et al., *supra* note 34, at 132–33.

46. *E.g.*, Wiebke Driemeyer et al., *Comparing Sexuality, Aggressiveness, and Antisocial Behavior of Alleged Juvenile Sexual and Violent Offenders*, 58 *J. FORENSIC SCI.* 711, 712 (2013); Claudia E. van der Put et al., *Differences in the Prevalence and Impact of Risk Factors for General Recidivism Between Different Types of Juveniles Who Have Committed Sexual Offenses (JSOs) and Juveniles Who Have Committed Nonsexual Offenses (NSOs)*, 25 *SEXUAL ABUSE* 41, 60 (2013).

47. *E.g.*, Claudia E. van der Put & Jessica J. Asscher, *Protective Factors in Male Adolescents with a History of Sexual and/or Violent Offending: A Comparison Between Three Subgroups*, 27 *SEXUAL ABUSE* 109, 122 (2015).

48. *E.g.*, Seto & Lalumière, *supra* note 42, at 539–41; van der Put et al., *supra* note 46, at 60.

49. *E.g.*, Driemeyer et al., *supra* note 46, at 714; Seto & Lalumière, *supra* note 42, at 541; van der Put & Asscher, *supra* note 47, at 122; van der Put et al., *supra* note 46, at 43.

50. *E.g.*, Hugo B. Morais et al., *The Neuropsychology of Adolescent Sexual Offending: Testing an Executive Dysfunction Hypothesis*, *SEXUAL ABUSE* (forthcoming 2016) (manuscript at 9–12), <http://sax.sagepub.com/content/early/2015/02/04/1079063215569545.full.pdf>.

51. *See* Mulder et al., *supra* note 34, at 128; Netland & Miner, *supra* note 44, at 8–9; Seto &

There is some research indicative of unique treatment needs for JSOs. This group may demonstrate more problematic sexual interests, fantasies, and experiences while also having less experience with normative sexual behaviors.⁵² JSOs may also be more likely to present with anxiety problems⁵³ or autism spectrum disorders.⁵⁴ Additionally, there is some evidence that JSOs are more likely to have learning disorders, with mixed results for academic achievement problems and neurological problems.

In sum, JSOs appear to present quite similarly to non-JSO delinquent youth. The ways in which they differ are generally indicative of lower risk, consistent with their lower recidivism rates, or indicative of unique treatment needs (e.g., mental health problems) rather than indicative of a greater need for risk management. There is some indication of a higher prevalence of problematic sexuality among JSOs. Although deviant sexual interests may be associated with sexual recidivism risk,⁵⁵ very few JSOs present with paraphilias.⁵⁶ When present, such interests should certainly be one treatment target; however, persistent deviant interests will be a rarity in most treatment contexts.

A largely similar pattern emerged in analyzing data from the Pathways to Desistance study, as the two groups did not significantly differ on risk markers indicative of parental deviance, mental health problems, psychopathic traits, or emotion regulation abilities.⁵⁷ Differences were found on antisocial history, school behavior problems, antisocial peers, and substance use problems. Consistent with previous research, each of these differences indicated significantly lower risk in the JSO group.

It is difficult to see the connection between the few differences that emerge between these groups and the vast differences in the justice system's response to them. Treatment-relevant factors that are more common among JSOs (e.g., maltreatment history, mental health problems, problematic sexuality, learning problems) should inform interventions in formulating an individualized treatment plan targeting the most important needs of a juvenile—as would be the case for a sex offender or non-sex offender. Certain needs may be more common in one group or another, but the overall similarities suggest that radically different approaches are unnecessary.

Lalumière, *supra* note 42, at 530; van der Put & Asscher, *supra* note 47, at 114; Sonya G. Wanklyn et al., *Can We Distinguish Juvenile Sex Offenders, Violent Non-Sex Offenders, and Versatile Violent Sex Offenders Based on Childhood Risk Factors?*, 27 J. INTERPERSONAL VIOLENCE 2128, 2130 (2012).

52. Driemeyer et al., *supra* note 46, at 711–12; Seto & Lalumière, *supra* note 42, at 527–28.

53. Seto & Lalumière, *supra* note 42, at 526.

54. Mulder et al., *supra* note 34, at 131.

55. R. Karl Hanson & Kelly E. Morton-Bourgon, *The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies*, 73 J. CONSULTING & CLINICAL PSYCHOL. 1154, 1157–58 (2005).

56. A.Ph. van Wijk et al., *Relating Psychiatric Disorders, Offender and Offence Characteristics in a Sample of Adolescent Sex Offenders and Non-Sex Offenders*, 17 CRIM. BEHAV. & MENTAL HEALTH 15, 22 (2007).

57. See *supra* note 41 and accompanying text for discussion of the Pathways to Desistance study.

IV. MALLEABILITY OF JSOs

An additional assumption underlying social control policies applied to JSOs is that the (fallaciously) assumed high risk they present is intransigent. The U.S. Supreme Court has noted the malleability of adolescents in several recent landmark decisions establishing that juvenile offenders are potentially less culpable than adult offenders and therefore not deserving of the most extreme punishments.⁵⁸ In addition to the variety of maturational processes that make adolescence a time of high-risk behavior,⁵⁹ sexuality is fluid during this time; it is impossible to draw conclusions about long-term sexual risk based on sexual behavior during adolescence.⁶⁰

There is also considerable evidence that JSOs respond positively to treatment. Meta-analytic results indicate that JSOs who receive treatment have lower sexual, general, and violent recidivism rates than those who do not receive treatment.⁶¹ In Lorraine Reitzel and Joyce Carbonell's meta-analysis, including nine studies comprised of 2,986 participants, treated JSOs had a sexual recidivism rate of 7.37% compared to 18.93% of the comparison JSOs.⁶² There is particularly strong empirical support for Multisystemic Therapy, originally designed to treat serious general juvenile offenders and the only approach with randomized controlled efficacy and effectiveness trials with JSOs.⁶³ There is additional evidence for the effectiveness of cognitive behavioral therapy with JSOs, but the programs that have been tested are notably focused on family involvement and provide comprehensive, holistic services well beyond a focus on the sexual offense itself.⁶⁴ Given the similarities between JSOs and non-JSO delinquents, the success of interventions designed for general delinquents is not surprising, and further efforts to capitalize on the well-developed general

58. *E.g.*, *Miller v. Alabama*, 132 S. Ct. 2455, 2464–65 (2012); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 618–19 (2005).

59. *See* B. J. Casey, Rebecca M. Jones & Leah H. Somerville, *Braking and Accelerating of the Adolescent Brain*, 21 J. RES. ADOLESCENCE 21, 22–23 (2011); Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 464–71 (2009).

60. *See* Michael J. Vitacco et al., *Assessing Risk in Adolescent Sexual Offenders: Recommendations for Clinical Practice*, 27 BEHAV. SCI. & L. 929, 931 (2009).

61. *E.g.*, Lorraine R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-Analysis*, 18 SEXUAL ABUSE 401, 408–13 (2006); Donald F. Walker et al., *Treatment Effectiveness for Male Adolescent Sexual Offenders: A Meta-Analysis and Review*, 13 J. CHILD SEXUAL ABUSE 281, 287–90 (2004).

62. Reitzel & Carbonell, *supra* note 9, at 408–09.

63. *See* Charles M. Borduin, Cindy M. Schaeffer & Naamith Heiblum, *A Randomized Clinical Trial of Multisystemic Therapy with Juvenile Sexual Offenders: Effects on Youth Social Ecology and Criminal Activity*, 77 J. CONSULTING & CLINICAL PSYCHOL. 26, 35 (2009); Elizabeth J. Letourneau et al., *Multisystemic Therapy for Juvenile Sexual Offenders: 1-Year Results from a Randomized Effectiveness Trial*, 23 J. FAM. PSYCHOL. 89, 98 (2009); Elizabeth Letourneau et al., *Two-Year Follow-Up of a Randomized Effectiveness Trial Evaluating MST for Juveniles Who Sexually Offend*, 27 J. FAM. PSYCHOL. 978, 983–84 (2013).

64. *See, e.g.*, James R. Worling, Ariel Litteljohn & David Bookalam, *20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offend Sexually*, 28 BEHAV. SCI. & L. 46, 46–47 (2010).

delinquency literature should prove fruitful in the treatment of JSOs. What is clear is JSOs are still changing and developing just like other adolescents, that they are likely to desist from sexual offending, and that they are responsive to treatment. None of this is consistent with the assumptions of long-term, intractable risk that underlie policies such as SVP commitment, residency restrictions, and registration and community notification. Indeed, Pennsylvania's Supreme Court relied on some of the research reviewed above in ruling that "SORNA's registration requirements improperly brand all juvenile offenders' reputations with an indelible mark of a dangerous recidivist, even though the irrebuttable presumption linking adjudication of specified offenses with a high likelihood of recidivating is not 'universally true.'"⁶⁵ Some restrictive policies were enacted before much of the relevant research on JSOs was conducted; now that the evidence is available, it is time to rethink our approach to this population.

V. POLICY IMPLICATIONS

The existing empirical evidence makes it difficult to justify current policies and practices applied to juveniles adjudicated for sex offenses. Specialized treatment and social control policies certainly seem warranted in situations where either unique risk or needs are clearly associated with the commission of a crime. The literature consistently indicates that JSOs are similar to or *less* at-risk than other delinquent youth to engage in future crime. Additionally, they are responsive to treatment, thus their already low risk can be decreased further by the provision of appropriate services.

Several research studies have found that JSOs and non-JSO delinquents have similar sexual recidivism rates.⁶⁶ Although some research indicates higher rates of sexual recidivism for JSOs, these rates across all studies are still quite low, account for a smaller proportion of total sexual crime than offenses committed by non-JSOs, and may reflect greater detection rather than greater perpetration of sexual crime (e.g., due to increased monitoring of JSOs).⁶⁷

This is a particularly relevant point to consider when one assesses the likely effectiveness and impact of wholesale control procedures like registration and notification policies reflected in the expansive (and expensive) provisions of the Adam Walsh Act.⁶⁸ A starting point for considering the reasonableness of such policies is whether they accurately target likely future sexual offenders. Unfortunately, the categories used for determining policy outcomes under this

65. *In re J.B.*, 107 A.3d 1, 19 (Pa. 2014).

66. *E.g.*, Caldwell, *Study Characteristics and Recidivism Base Rates*, *supra* note 30, at 204–05; Zimring et al., *Investigating the Continuity*, *supra* note 28, at 69–73; Zimring et al., *Racine*, *supra* note 28, at 529–31.

67. *E.g.*, Elizabeth J. Letourneau & Kevin S. Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *SEXUAL ABUSE: J. RES. & TREATMENT* 393, 399–401 (2008); Elizabeth J. Letourneau et al., *Effects of Sex Offender Registration Policies on Juvenile Justice Decision Making*, 21 *SEXUAL ABUSE* 149, 157–58.

68. 42 U.S.C.A. § 16901 (2012).

Act do not demonstrate validity; risk tiers for registration and notification based on such factors have been shown to be unrelated to actual recidivism rates.⁶⁹ And the case becomes more dismal when one considers the possible impact of these policies. Most obviously relevant is the body of research indicating that these policies do not have a deterrent effect. Studies comparing registered and nonregistered juveniles,⁷⁰ as well as studies investigating trends in offending before and after the passage of registration and notification statutes, have been unable to identify reductions in sexual offending.⁷¹ However, iatrogenic effects of registration and notification have been identified. Surveys of adult sex offenders and their family members have documented detrimental outcomes from registration, including negative effects on employment, housing, and relationships,⁷² all of which may inadvertently increase recidivism risk. While there is limited research regarding the collateral consequences in juvenile offenders, there is little reason to believe they would not be similar and substantial (e.g., regarding mental health, academic performance, and living stability).⁷³ Initial evidence suggests that JSOs who are employed as adults have lower recidivism rates,⁷⁴ thus any policies that create barriers to employment may increase risk. Additionally, the stigma experienced by family members⁷⁵ may lead to less social support for JSOs over the long term. Overall, it appears that registration and notification as applied to juveniles is (1) inconsistent with their low risk of sexual recidivism, (2) likely to have collateral consequences that could increase risk, and (3) not associated with any demonstrated improvements in public safety. There may be more effective alternative approaches, since doing nothing to prevent sexual crime is not a tenable position.

A reasonable strategy would be to target the highest risk JSOs for the most intensive treatments and most invasive social control policies. While such a

69. 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, 452 (2011); Caldwell, *Study Characteristics and Recidivism Base Rates*, *supra* note 30, at 204–05.

70. See, e.g., Michael F. Caldwell & Casey Dickinson, *Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders*, 27 BEHAV. SCI. & L. 941, 951–52 (2009); Elizabeth J. Letourneau et al., *The Influence of Sex Offender Registration on Juvenile Sexual Recidivism*, 20 CRIM. JUST. POL'Y REV. 136, 147–50 (2009).

71. E.g., Elizabeth J. Letourneau et al., *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?*, 37 CRIM. JUST. & BEHAV. 553, 564–65 (2010).

72. E.g., Jill S. Levenson & Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49, 61–63 (2005); Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 AM. J. CRIM. JUST. 54, 64–66 (2009); Cynthia C. Mercado, Shea Alvarez & Jill Levenson, *The Impact of Specialized Sex Offender Legislation on Community Reentry*, 20 SEXUAL ABUSE 188, 200–03 (2008).

73. E.g., Andrew J. Harris et al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, SEXUAL ABUSE (forthcoming 2016) (manuscript at 14–16), <http://sax.sagepub.com/content/early/2015/02/27/1079063215574004.full.pdf>.

74. Chantal van Den Berg, Catrien Bijleveld & Jan Hendriks, *The Juvenile Sex Offender: Criminal Careers and Life Events*, SEXUAL ABUSE (forthcoming 2016) (manuscript at 4–5), <http://sax.sagepub.com/content/early/2015/04/08/1079063215580967.full.pdf>.

75. See Levenson & Tewksbury, *supra* note 72, at 57.

strategy would likely reduce recidivism,⁷⁶ currently available strategies are only moderately accurate at best in identifying risk for sexual recidivism.⁷⁷ More refined identification procedures based on individual risk factors, rather than the presenting offense, could certainly target policies and interventions more effectively.

There is still much work to be done before this possibility will be fully realized. Given the difficulty associated with predicting such a low base rate behavior, the likelihood of developing highly accurate sexual risk assessment tools is slim. Using the 7% sexual recidivism rate from Caldwell's meta-analysis as indicative of the base rate of reoffense,⁷⁸ if evaluators simply opined that all JSOs were low risk, they would be right 93 times out of 100. That level of accuracy is difficult to improve upon with any risk tool.

Alternatively, it could be useful to recognize that individuals not previously identified as sexual offenders are responsible for most sexual crimes. As observed in Pathways to Desistance data, about 75% of sex offenses detected during the eighty-four-month follow-up period in the sample as a whole were committed by other serious juvenile offenders.⁷⁹ As a result, secondary prevention efforts targeting serious and persistent juvenile offenders may prove more fruitful than registration and notification policies. Prevention programs that provide skills that may reduce sexual offense risk—possibly including a focus on increasing self-regulation skills⁸⁰ or reducing antisocial attitudes more generally⁸¹—when applied to serious juvenile offenders, are likely to have a preventive impact. It certainly seems reasonable to posit that they could have as large or larger impact than registration and notification policies without the potential harmful effects associated with these latter policies. Continuing with the status quo of expensive programs that do little to protect public safety⁸² in the name of doing *something* about sexual crime is certainly not the only, or even a reasonably sound, solution.

76. Scott W. Henggeler & Sonja K. Schoenwald, *Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them*, 25 SOC. POL'Y REP. 1, 3–7 (2011); R. Karl Hanson et al., *The Principles of Effective Correctional Treatment Also Apply to Sexual Offenders: A Meta-Analysis*, 36 CRIM. JUST. & BEHAV. 865, 867 (2009).

77. Jodi L. Viljoen, Sarah Mordell & Jennifer L. Beneteau, *Prediction of Adolescent Sexual Reoffending: A Meta-Analysis of the J-SOAP-II, ERASOR, J-SORRAT-II, and Static-99*, 36 LAW & HUM. BEHAV. 423, 424–25 (2012).

78. Caldwell, *Study Characteristics and Recidivism Base Rates*, *supra* note 30, at 197.

79. See *supra* note 41 and accompanying text for discussion of the Pathways to Desistance study.

80. See, e.g., Gabriele Masi et al., *Child Behaviour Checklist Emotional Dysregulation Profiles in Youth with Disruptive Behavior Disorders: Clinical Correlates and Treatment Implications*, 225 PSYCHIATRY RES. 191, 193 (2015).

81. See, e.g., Michael F. Caldwell et al., *Treatment-Related Changes in Psychopathy Features and Behavior in Adolescent Offenders*, 39 CRIM. JUST. & BEHAV. 144, 145 (2012).

82. Letourneau & Caldwell, *supra* note 21.

VI. CONCLUSIONS AND FUTURE DIRECTIONS

Accumulating evidence continues to show that policies based on assumptions that JSOs present unique, intractable risk have little, if any, empirical base. Although some differences are found between JSOs and other juvenile offenders, these appear to have more implications for etiology and treatment than for wholesale policy (e.g., higher rates of childhood sexual abuse in JSOs).⁸³ Consistent findings indicate low rates of sexual recidivism,⁸⁴ similarities between groups in sexual and general recidivism,⁸⁵ and similarities in risk/need factors⁸⁶ between groups of JSO and non-JSO offenders. As noted by Elizabeth Scott (in this Symposium issue), children are different.⁸⁷ This applies to JSOs just as it does to other delinquent youth, who although different from adults may not be very different from each other. Thus, current public policies like registration and notification are at odds with the research landscape and the realities of adolescent development. Moreover, these policies are unlikely to improve public safety substantially.

A change in policies is needed. Sexual violence is a significant public health concern that deserves new empirically supported policies for targeted prevention. Simply relying on emotionally based, reactive patches makes no sense.

83. E.g., Seto & Lalumière, *supra* note 42, at 564.

84. E.g., Caldwell, *Study Characteristics and Recidivism Base Rates*, *supra* note 30, at 205–06.

85. E.g., Zimring et al., *Investigating the Continuity*, *supra* note 28, at 69–73; Zimring et al., *Racine*, *supra* note 28, at 529–31.

86. E.g., Mulder et al., *supra* note 34, at 132–33.

87. Elizabeth Scott, Thomas Grisso, Marsha Levick & Laurence Steinberg, *Juvenile Sentencing Reform in a Constitutional Framework*, 88 TEMP. L. REV. 675, 676 (2016).