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## MEMORANDUM

**To:** Assembly Committee on Corrections & the Courts  
**From:** **Children & the Law Section**  
*State Bar of Wisconsin*  
**Date:** December 3, 2003  
**Re:** Assembly Bill 550

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The State Bar's **Children & the Law Section** strongly opposes Assembly Bill 550, which would allow police chiefs and sheriffs to release juvenile sex offender registration data to the general public if they "determine that doing so is necessary to protect the public."

The Children & the Law Section consists of attorneys who have a special interest in laws that affect children, such as county corporation counsel, guardians ad litem, prosecutors and public defenders. After reviewing the proposed legislation, this diverse membership based its opposition on the following points:

- **This proposal would violate the core values of the juvenile justice system** - Juvenile court proceedings are to remain confidential (although some legislative exceptions have been crafted over the years, they all require court approval and do not delegate decisions to others). Furthermore, juveniles have the ability to learn from their mistakes and can be rehabilitated; they should not be stigmatized by their offenses.
- **Notification is not necessary to protect the public** - Data on juvenile sex offenders proves that they differ from adult offenders. Juvenile sex offenders are often 11-14 year-old boys and many have no other delinquent behavior. Only about 8 percent re-offend sexually.
- **There are no criteria listed to assist law enforcement officials in determining the potential risk to the public** - Psychologists and sex offender researchers have been working for years to determine what factors lead to a risk of re-offense. There are many myths about the risks of re-offense (i.e. denial or minimization of the facts, a history of being sexually abused, etc.) that are simply not true. Police chiefs and sheriffs, who are not trained in risk assessment of juvenile sex offenders, would be making uninformed decisions.

**State Bar of Wisconsin**

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- **The effects of notification are severe** - A state study of 30 recently released sex offenders indicated that a majority noted the adverse affect that notification had on their transition to the community; additionally, 77% were humiliated in their daily lives (i.e. ostracized by neighbors and harassed/threatened by nearby residents or strangers). In Washington, where juvenile sex offender registration can be released to the public, children have found that harassment and embarrassment makes it impossible for them to go back to school.

**Anytime oversight of juvenile matters is removed from the courts and delegated to others who have distinct roles separate from those prescribed by the Children's Code and Juvenile Justice Code, we believe that a higher level of scrutiny should be attached.**

*For more information contact Jason Westphal, Government Relations Coordinator, at (608) 250-6077 or email at [jwestphal@wisbar.org](mailto:jwestphal@wisbar.org).*

# Children's Trust Fund

Wisconsin's Resource For Preventing Child Abuse

Child Abuse and Neglect Prevention Board  
A Wisconsin State Agency  
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December 3, 2003

To: Assembly Committee On Corrections and the Courts

From: Mary Anne Snyder, Executive Director  
Children's Trust Fund 

RE: Testimony For Information Only—AB 550

The Legislative Committee of the Child Abuse and Neglect Prevention Board (also known as the Children's Trust Fund) reviewed AB 550 and recommended that the Board register testimony for information only.

Members of the Legislative Committee were supportive of the legislative intent underlying AB 550 and are genuinely appreciative of the sponsors' concern for the protection of Wisconsin's children. Committee members, however, were concerned about the lack of objective guidelines or standards for Sheriffs and Police Chiefs to use in determining which juvenile sex offenders pose a sufficient risk to the public to trigger the right of (or duty to) public disclosure.

The proposed legislation presently leaves it to the unfettered discretion of Sheriffs and Police Chiefs who may have little or no training in the area of predicting future dangerousness. The Department of Corrections does have (and use) diagnostic tools that have been shown to be statistically valid predictors of future dangerousness. Sheriffs and Police Chiefs already have challenging jobs. Assigning them this additional responsibility without fairly specific standards to guide them will subject them to potential liability concerns. Furthermore, decisions of this sort invariably offend one segment of the community or the other. The presence of objective guidelines will not only assist Sheriffs and Police Chiefs in making these important decisions, it will assist them in defending those decisions as well.

Finally, the Legislative Committee urges legislators to address the lack of specialized treatment facilities and programs for youth sex offenders. Increasing the availability of such programs will help prevent re-occurrence and do much to protect citizens.

Board members have expressed willingness to provide the sponsors with additional information if requested. I can be reached at (608) 266-3737 or [maryanne.snyder@ctf.state.wi.us](mailto:maryanne.snyder@ctf.state.wi.us) for contact information. Thank you.

*Celebrating 20 years of keeping Wisconsin's children safe and families strong*

# Application of Megan's Law to Juveniles

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University of Virginia

*This article examines (a) the history of registration and notification statutes for sex offenders and the concerns and legal challenges they have faced, (b) psychology's limited knowledge about normal versus abnormal sexual development, and (c) research that suggests rates of recidivism for sexual offenses may be lower for juveniles than for adults who have been discovered and received punishment and/or treatment. Although the behaviors of juvenile and adult sex offenders may appear similar, the underlying mechanisms triggering the behaviors may be different or juveniles' patterns of behaviors may be less established, accounting for some of the observed differences in recidivism rates. Although the authors recognize the critical objective of protecting victims and potential victims, this article focuses on intervention efforts with juvenile sex offenders.*

The juvenile justice system has historically promoted the best interests of the child under the doctrine of *parens patriae* and has maintained a rehabilitative rather than a punitive focus. In fact, the states' long-standing interest in protecting children has led to multiple state laws and the recent national adoption of a sex offender and child molester registration and public notification law. The registration and notification laws are often referred to as Megan's law, after the most far-reaching legislation that has been passed. Increases in the reporting of sex offenses, along with a heightened public awareness of sex crimes, have resulted in sex offenders being treated as a different type of criminal (Miller, 1998). The registration and, particularly, the notification statutes have been quite controversial, and critics have claimed that these laws violate several constitutional rights. Furthermore, juvenile sex offenders (JSOs) have increasingly been included in these statutes, raising serious concerns because the notification procedures appear contrary to the juvenile court's traditional goal of nonpunitive intervention.

Our goals are (a) to examine the history of Megan's law, the concerns about its utility, and the legal challenges to the law and (b) to review the contributions psychology has to make in discussing the potential risk of JSOs to society and the efficacy of treatment and intervention for JSOs. Differences between adult sex offenders and JSOs, such as differential rates of recidivism, are highlighted. Although we recognize the critical objective of protecting victims and potential victims, this article focuses on intervention efforts with JSOs.

## Sex Offender Registration and Notification Laws

On July 29, 1994, Jesse Timmendequas brutally raped and murdered his seven-year-old neighbor, Megan Kanka. Neighborhood residents' horror at the crime turned to outrage when it was discovered that Timmendequas had been convicted of two prior sex offenses against children, and yet he was living anonymously with two other convicted sex offenders in the community. In response to the crime, New Jersey passed in October 1994 the toughest sex offender registration act in the country (Hindman, 1997). This legislation, known as Megan's law, requires sex offenders who are convicted, adjudicated delinquent, or found not guilty by reason of insanity to register with local law enforcement agencies for the remainder of their lives. Under Megan's law, notification for moderate- and high-risk offenders consists of a recent photograph, a physical description of the offender, a description of the offense, the name of the offender's place of employment or schooling, and a description and the license plate number of the offender's vehicle. Furthermore, sex offenders must verify their address periodically.

In passing Megan's law, New Jersey went further than any other state by requiring, rather than simply allowing, law enforcement agencies to disclose information about certain sex offenders to the community (R. Martin, 1996). Offenders who have committed a crime less serious than aggravated sexual assault and who have been convicted for only one sexual offense can appeal to the state superior court to have their registration requirement ended, provided they have not committed an offense in the previous 15 years and pose no threat to others.

Similarly, a federal statute known as the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (1994) was passed, requiring all states to create registration programs for convicted sex offenders. The federal registration law requires convicted sex offenders to provide residential information to local law enforcement agencies for the remainder of their lives if

*Editor's note.* Judith Becker served as action editor for this article.

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(a) they have one or more prior convictions for a sexual crime against a minor or for a sexually violent offense, (b) if they have been convicted of an aggravated sexual offense, or (c) they have been determined to be a sexually violent predator. Offenders may be required to register for only 10 years if they don't meet any of the previous conditions and 10 years have passed since they were released from prison or were placed on parole or probation for their sexual crime.

As a result of the federal statute, many states have followed New Jersey's example, passing commitment statutes and registration and notification laws to deal with sex offenders. Although not discussed in this article, commitment laws, also known as sexually violent predator laws, generally allow states to place sex offenders in institutions after completing their sentences to prevent them from repeating their offense. Sex offenders are then released only when it can be proven that they will not be a threat to the public. Despite the controversial nature of these commitment statutes, the United States Supreme Court upheld their constitutionality in *Kansas v. Hendricks* (1997). (For more detailed discussions of sex offender registration, notification, and commitment statutes as they apply to adults, see Berliner, 1998; Lafond, 1998; Lieb, Quinsey, & Berliner, 1998; Matson, 2001; Winick, 1998.)

Although all 50 states have sex offender registration legislation, state statutes vary widely in the types of sex offenses included, the type of offender information required, and the duration (10 years to life) of registration required (Hiller, 1998). In addition, the federal statutes do not specify the conditions under which it would be necessary to protect the public, and states have grappled with the issue of whether it is sufficient to notify only at-risk persons or if the public at large should be informed (Miller,

1998). Consequently, some states have adopted broad community notification procedures, proactively notifying the public of the presence of sex offenders by using flyers, newspaper advertisements, and radio announcements.

Other states assess which sex offenders pose a threat to society and disclose information about sex offenders only to at-risk persons or organizations, meaning those who have contact with the offender or organizations working with children. This type of notification is often coupled with a three-tiered risk system (e.g., low, moderate, and high risk), and methods for determining risk tend to vary across states as well. For example, in Montana, circuit or district courts make the decision, whereas in Washington State, public agencies, such as law enforcement, determine who is at risk and then whom to notify (Miller, 1998).

Finally, other states grant public access to registration information through hotline numbers, CD-ROM databases, or the increasingly popular Internet registry sites. In February 1999, only 10 states had online registries (Paisner, 1999), but by April 2002, 31 states had statewide Internet access to registries and 5 additional states had limited Internet access, meaning information was available online for at least some localities (see <http://www.klaaskids.org/pg-legmeq.htm>; KlaasKids Foundation, 2002).

### Support for Registration and Notification Statutes

Private citizens, along with organizations such as the National Center for Missing and Exploited Children (NCMEC) and the Jacob Wetterling Foundation (JWF), promoted sex offender notification legislation in response to horrific sexual crimes against children. Although a very small percentage of sex crimes against children involve violence or death, the tragic loss of a child has led many victims' families and other citizens to demand stricter punishment for sex offenders and better management of sex offenders after release into the community (Lieb et al., 1998). Most supporters of sex offender registration and notification statutes do not intend the statutes to serve as retribution against sex offenders. Rather, they contend that citizens have a right to know if a convicted sex offender lives in their neighborhood or community so that they can better protect themselves and their children (see, e.g., Berliner, 1998; NCMEC, 1998).

People who support registration and notification emphasize the opportunity community notification provides to educate the community about sex offenses in general and about how to protect itself in particular. Sex offender registration and notification have also been promoted as a means for community policing in which citizens can partner with law enforcement to protect community families (Berliner, 1998). In addition to punishment and regulation, the NCMEC (1998) and the JWF (see its Web site at <http://www.jwf.org>) promote treatment for sex offenders. The NCMEC advocates a triaged approach for regulating sex offenders, ranging from maximum sentences for dangerous offenders to community-based treatment and supervision for nonviolent, less serious offenders. The NCMEC



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also supports research to develop early, accurate risk-assessment procedures and to determine which treatment and supervision procedures work.

### **Criticisms of Registration and Notification Statutes**

Several criticisms have been made about the utility and efficacy of Megan's law. A major concern is that offenders who fail to register cannot be made known to the public. Yet few law enforcement agencies have the resources to enforce compliance, and, not surprisingly, compliance rates have been found to be less than 100% (Miller, 1998). Washington State reported relatively high rates of compliance, with 84% of eligible sex offenders registering between 1990 and 1996; only 5.6% ( $N = 106$ ) of those not registered were convicted of failure to register (Matson & Lieb, 1996). Authorities in San Fernando County, California, investigated 300 registered offenders in July 2000, to find that only 80 of the offenders resided at the addresses they had provided to the registry (Vulliamy & Walsh, 2000). Similarly, it has been estimated that in Minnesota as many as one third of registered sex offenders may not live at their registered addresses (Chanen, 2001).

Little research has been conducted on the effectiveness of community notification. The Washington State Institute for Public Policy matched 90 adult sex offenders subject to the highest level of community notification between 1990 and 1993 with 90 sex offenders who were released prior to the community notification requirements (Schram & Milloy, 1995). After 54 months, the notification group did not differ significantly from the control group in the sexual recidivism rate according to official records of new arrests (19% vs. 22% for the comparison group). Schram and Milloy (1995) concluded that the notification

statutes had not reduced overall sexual recidivism. However, between 12 and 54 months, recidivists in the notification group were arrested more quickly than recidivists in the comparison group.

Some critics fear that Megan's law may lull the public into a false sense of security: The statutes cannot prevent further offenses from occurring and do not apply to sex offenders who remain undetected in the community, but the public may believe that knowledge is sufficient for protection. In addition, mandatory minimum sentences for sex offenders often replace sentencing alternatives and community-based treatment (Berliner, 1998). According to Berliner (1998), anecdotal evidence suggests that some victims are less likely to report sex crimes and cooperate with prosecutors when the offender will have to serve time, especially when the victim knows the offender. Yet 60% of boys and 80% of girls who are sexually abused are abused by someone the child or family knows (Lieb et al., 1998). Furthermore, there may be fewer successful prosecutions and fewer sex offenders in treatment because alternative treatment-related sentences are often incentives for guilty pleas (Berliner, 1998; Lafond, 1998).

Another serious problem with the registration and notification statutes is that some state registries fail to differentiate the severity of offense. For example, a juvenile who had been convicted of multiple rapes would appear no differently than a juvenile who had touched the breast of a female schoolmate. Also, there are cases where adolescents have been convicted of a felony sex offense and required to register for decades because of a situation where teasing behavior with peers crossed the line (see, e.g., O'Keefe, 1998). In Texas, 1,389 of the 26,769 sex offenders posted on the state's Internet registry in the fall of 2000 were between 11 and 16 years old (Williams, 2000), including offenders with relatively minor crimes. For instance, one of the postings is a 12-year-old boy who mooned a group of 5- and 6-year-old children.

Critics of Megan's law also raise the concern that registered sex offenders may become the targets of harassment or vigilantism (Miller, 1998). Although few major incidents of vigilantism have been reported since the statutes took effect, several have received public attention. In Los Angeles, California, in 1997, a sex offender's car was bombed only four days after being listed on a computer registry, and in New Jersey in 1998, shots were fired into the house of a convicted sex offender (Paisner, 1999). In Washington State, police recalled 33 acts of harassment and vigilantism (4% of all notification cases). Incidents included an offender's house being burned down, two physical assaults, minor property damage (i.e., eggs thrown, a small lawn fire, rocks thrown at a house), threats and verbal warnings, and picketing outside a residence (Matson & Lieb, 1996).

Although official reports of harassment are low, a study in Wisconsin with 30 adult sex offenders subject to notification revealed that 77% had been humiliated in their daily lives, ostracized by neighbors or acquaintances, and/or harassed or threatened by citizens (Zevitz & Farkas, 2000). All 30 offenders reported varying degrees of con-

cern for their safety, and 29 indicated that notification had adversely affected their transition back into the community through loss of employment and destruction of personal relationships. Several of the offenders had to live in minimum-security correctional facilities because they could not find a residence. Two thirds of the participants discussed how their families had been hurt by notification. Overall, the offenders were concerned that the stress and pressure created by the media and public could lead many sex offenders to recidivate.

Law enforcement agencies and organizations such as the NCMEC and the JWF have actively worked to prevent unlawful acts against sex offenders. The NCMEC advocates that states adopt zero tolerance policies against harassment and vigilantism. The JWF asserts that sex offenders are less likely to reoffend when they live and work in a harassment-free environment and has produced a video to help law enforcement personnel educate citizens about the importance of not acting out against sex offenders. The JWF warns citizens that harassing sex offenders may lead to notification statutes being repealed. Online Web sites usually include a statement about the legal consequences of harassing offenders, and law enforcement personnel discuss these consequences with citizens who attend community notification meetings.

## Constitutional Challenges to Megan's Law

Registration and notification laws have been highly controversial, and, not surprisingly, they have been accused of being unconstitutional. Specifically, Megan's law has been challenged for violating the Eighth Amendment's Cruel and Unusual Punishment Clause, the Ex Post Facto Clause, and the Fifth Amendment's Double Jeopardy Clause. However, all these constitutional protections are posed within the criminal context, meaning that violations of such rights could occur only if the registration and notification statutes constituted punishment (Bredlic, 1996). State courts have consistently rejected such challenges, finding the statutes to be regulatory, not punitive (Miller, 1998). The Supreme Court of New Jersey ruled in *Doe v. Poritz* (1995) that although the effect of Megan's law was punitive, it did not necessarily mean the law was punitive if there were additional intents. Chief Justice Wilentz concluded that the legislature's intent was not punitive but rather that the laws had been enacted to protect the public against sex offenders, who were known to have a high risk of recidivism. Any punitive effect of the laws was regarded as a by-product of the remedial legislation. Therefore, the court decided the notification provisions did not violate the Ex Post Facto Clause of the Constitution.

A common argument against the registration and notification laws, and one that was raised in *Doe v. Poritz* (1995), is that the statutes violate the right to privacy (Miller, 1998). Under the Due Process Clause of the Fifth and Fourteenth Amendments, privacy rights are granted to enable individuals to protect certain kinds of personal information from being known to the public. However, be-

fore an individual can claim these rights, he or she must demonstrate a reasonable expectation of privacy, and the courts maintain that sex offenders have a lower expectation of privacy because they are convicted felons. Moreover, in *Doe v. Poritz*, the New Jersey Supreme Court ruled that by disseminating registrants' information to the public, notification statutes do violate privacy rights, but that the state's interest in the safety of the public supercedes the privacy rights of sex offenders.

Because of the threat to privacy and personal reputation, however, the New Jersey Supreme Court granted sex offenders the protections of due process rights, establishing a procedure for judicial review of a prosecutor's decision regarding notification prior to public announcement. Although the registration and notification statutes have been challenged frequently in various state courts, the United States Supreme Court has yet to hear such a case. However in spring 2002, the Supreme Court did grant certiorari to hear two cases regarding the notification statutes. In *One v. Doe* (2002), the Court will consider the constitutionality of Internet registries, which have been deemed unconstitutional by several states because the information is available worldwide, rather than being limited to the community for whom the offender is a potential threat. In *Connecticut Dept. of Public Safety v. Doe* (2002), the Court will consider whether an online registry of sex offenders violates sex offenders' rights to due process of law because the state includes them in the registration and notification statutes without first holding a hearing to determine their current level of dangerousness.

## Megan's Law in the Juvenile Court

In 1899, Cook County, Illinois, decided children and adults differed in important ways and should be treated differently. Consequently, Illinois created a separate juvenile justice system focusing on rehabilitation, not punishment. This system was emulated by virtually every other state within the next 25 years. However, by the 1960s, numerous charges of abuse by the juvenile justice system resulted in the landmark United States Supreme Court decision *In re Gault* (1967) that extended to children several due process rights and procedural protections guaranteed by the Constitution to adults facing criminal charges. This case and several others (e.g., *Kent v. United States*, 1966, and *In re Winship*, 1970), although providing needed protections to juveniles, also contributed to an attitudinal shift in favor of more punishment and protection of the larger society (E. F. Martin & Pruett, 1998) and provided the legal framework for doing so (Manfredi, 1998).

By the 1990s, the focus on punishment had taken center stage (Reppucci, 1999; Scott & Grisso, 1997). However, in *McKeiver v. Pennsylvania* (1971), the United States Supreme Court affirmed that juveniles are distinct from adults when it failed to extend the right of a trial by jury to juveniles, and, in *Schall v. Martin* (1984), the Court upheld preventive detention of juveniles (Worrell, 1985). Furthermore, judges continue to be encouraged to use discretion in steering children back onto the right path (Hiller, 1998). The juvenile court's rehabilitative emphasis

can be seen in its meticulous use of different, more euphemistic terms (e.g., *petition* instead of *indictment*, *respondent* instead of *defendant*, and *disposition* instead of *sentencing*). The continued use of special procedures for juveniles despite the increase in punitive sentiments attests to the persistence of the belief that juveniles are less culpable than adults.

State registration requirements can be confusing regarding ISO registration (Hiller, 1998). As of 2001, 27 states, including New Jersey, specifically required juveniles adjudicated delinquent for a sex offense to register. An additional 5 states registered juveniles tried as adults. For example, in Virginia, only juveniles and adults convicted of a felony sex offense were required to register. However, a felony sex offense can include something as relatively minor as touching another person's breast. The remaining 18 states either specifically excluded juveniles or were ambiguous as to who must register, meaning that juveniles in the juvenile court system may be subject to the same provisions as adults. The trend has been to specifically include juveniles in the registration requirements; in 1998, only 17 states required juveniles to register as sex offenders (Hiller, 1998). One exception to this trend is Ohio, where public notification of ISOs was rejected on the grounds that it would go against the traditions of the juvenile court.

Additional variations across states in their treatment of juveniles include a reduced time period for registration, special waivers for juveniles, judicial discretion, multiple offenses before registration, and proof of continued risk. Of all the states, New Jersey has the strictest regulations for juveniles ages 14 and older (Swearingen, 1997). Not surprisingly, several cases involving ISOs have been appealed in New Jersey on the grounds that Megan's law violates their rights or causes extraordinary harm to the offender (see, e.g., *State of New Jersey in the Interest of B.G.*, 1996; *State of New Jersey in the Interest of K.B.*, 1997).

Under *parens patriae*, the juvenile court is supposed to protect juveniles, but public notification of ISOs may result in physical and emotional harm to the juvenile, as well as social ostracism. Hiller (1998) asserted that public degradation constitutes neglect on the part of the state, which is supposed to be acting in the child's best interest. Furthermore, Swearingen (1997) contended that Megan's law violates a rehabilitative model on the grounds of confidentiality and stigmatization. Yet those who support the notification statutes for adults argue that, because information is already available about many offenders through public hearings and court records, more proactive types of notification are legitimate (Hindman, 1997). However, this is not necessarily true for juvenile offenders; confidentiality has historically been a part of juvenile proceedings, based on the belief that publicity would not allow a juvenile to forget the mistakes of his or her past and would thereby interfere with his or her rehabilitation. As a result, juvenile court records may be kept confidential, and juvenile court proceedings are generally closed.

In July 2001, the New Jersey Supreme Court gave juveniles adjudicated delinquent of a sex offense prior to age 14 the right to have their records cleared and to be

removed from sex offender registries when they turned 18 if they could demonstrate clear and convincing evidence that they would not reoffend (*In re Registrant J.G.*, 2001). The New Jersey Supreme Court cited the conflicting philosophy between the *New Jersey Juvenile Code*, which protects juvenile records from the public and clears them when the youth is 18, and the lifetime registration requirements of Megan's law. The court distinguished between ISOs under 14 years and those 14 years and older because New Jersey law already recognizes differences between these youths (e.g., New Jersey common law rule indicates that youths under 14 lack the capacity to commit crime; youths are eligible to be transferred to adult court at age 14).

In contrast to previous provisions in the *New Jersey Juvenile Code*, Megan's law seems to constitute more of a punishment than an intervention aimed at rehabilitation. Furthermore, when delinquency proceedings become more punitive, concerns should be raised about the limited rights extended to juveniles (Swearingen, 1997) both over and under age 14. In *Doe v. Poritz* (1995), the New Jersey Supreme Court recognized that Megan's law was punitive in effect, if not in intent, and it extended due process protections to offenders. However, juveniles do not share the same due process rights (e.g., the right to a trial by jury, absolute right to counsel at a preindictment lineup, protection from discretionary pretrial detention) as adults. Thus, juveniles in New Jersey do not enjoy all the procedural safeguards extended to adults, despite being subject to the same registration and notification provisions.

Public disclosure of ISOs may hamper rehabilitative efforts in several ways (Hiller, 1998). Notifying schools about an enrolled ISO may increase the social ostracism experienced by the juvenile (Lowe, 1997), with peers likely targeting the juvenile for ridicule and possible physical assault and parents protesting the presence of a sex offender in the school. The parental pressure and in-school disturbances could result in a sex offender being placed in an alternative setting that might compromise his or her quality of education. Also, the juvenile may transfer schools frequently to avoid persecution, again risking his or her education. Such a situation occurred for a 9-year-old boy convicted of raping a younger boy. The boy was adjudicated delinquent and spent three years in a detention center (Avila, 1998). Seven years after the crime, when the boy was 16, his family moved from Washington State to Missouri in an attempt to escape continued public persecution. Although the boy had committed no additional sex offenses, residents in his new town discovered the teen's background, and he lost his privacy, his friends, and his right to attend school. School administrators asked that he be tutored at home because they worried about his safety at school. Similarly, a mildly retarded 17-year-old boy was forced to attend a special school after he was classified as a high-risk sex offender; he had been convicted of forcefully hugging an 18-year-old girl and touching her buttocks (Tysver, 2000).

Some critics may feel that being concerned about the educational and emotional needs of youthful offenders

takes the emphasis away from the best interests of the children who are victims of sexual crimes. It is important to note that the authors are very concerned with protecting the welfare of victims and potential victims. However, there is currently no evidence that the registration and notification statutes have protected children in the community. Despite the lack of documentation that the statutes defend the community against adult sex offenders, more states are beginning to extend Megan's law to juveniles, who are a potentially more vulnerable class of offenders because of their developmental stage.

One reason for the extension of Megan's law to JSOs may be the widespread public opinion about extremely high sexual recidivism rates for all sex offenders. In one national opinion poll with over 1,100 adults (*Star Tribune*, 1991), 78% of respondents strongly agreed with the statement "most sex offenders continue to repeat their crimes no matter what the punishment," and an additional 9% of respondents indicated they agreed but not so strongly. In a survey of Georgia residents (Applied Research Center, 1997), 60% endorsed the statement that "sex offenders are different than other types of criminals, and therefore, judges should sentence sex offenders to longer prison terms and require them to serve the entire term without possibility of parole."

State legislatures have the power to restrict or qualify a juvenile's right to be treated differently from adults. Thus, the application of Megan's law to juveniles must be upheld unless the courts rule that the law itself is unconstitutional (Swearingen, 1997) or, as in New Jersey, that the registration requirements cannot be reconciled with the philosophy of the *New Jersey Juvenile Code*. However, given the amount of controversy and the number of constitutional challenges surrounding registration and notification laws, it is inconsistent with the juvenile court's tradition of treating juveniles with special care to impose these statutes on them.

### **The Role of Psychology in the Megan's Law Debate**

Developmental psychology and child clinical psychology have much to offer to the debate over Megan's law, particularly regarding normative sexual development and issues of rehabilitation, recidivism, and treatment. Such research is useful in addressing the beliefs and misconceptions the public has about JSOs.

#### **Appropriate and Inappropriate Sexual Conduct**

Currently, no concrete definition exists within the behavioral sciences of what constitutes sexual misconduct in juveniles (E. F. Martin & Pruett, 1998; Pithers & Gray, 1998). In fact, there is no consensus on what is considered normative sexual conduct at different points in a child's life (Araji, 1997; Bolton & MacEachron, 1988; Bukowski, Sippola, & Brender, 1993; Koch, 1993; Lamb & Coakley, 1993; Ryan, 2000). In the study of adolescent sexuality, the focus is more on unwanted outcomes, such as teenage

pregnancy and sexually transmitted diseases, with little emphasis on healthy sexual development or the contextual nature of sexual development and expression (Koch, 1993). Consequently, much of the research on adolescent sexual behavior focuses on coital practices, with little research on the experiences of children and adolescents with caressing, kissing, and oral or genital contact prior to sexual intercourse, despite evidence that adolescents frequently engage in these activities (Schwartz, 1999).

Sexual development has been described by Bukowski et al. (1993) as a process that begins at birth and continues throughout life. It is viewed as a process that requires the synthesis of many dimensions of experience, including feelings of desire and attraction, morality and social convention, and the individual's view of others as sexual beings with desires and rights. The individual must make sense of all these factors and successfully integrate them to achieve healthy sexual development. The complexity of this task is apparent, yet there are few resources for children and adolescents to use in this process (Bolton & MacEachron, 1988; Bukowski et al., 1993). There is a lack of sex education in the home and minimal sex education in the schools, with many of the psychosocial aspects of sexuality, such as gender roles, sexual values, and ethical considerations of various sexual behaviors, absent from the curriculum (Wilcox, 1999).

Bukowski et al. (1993) emphasized the importance of understanding the process of sexual development to better understand the development of JSOs, or rather to understand why JSOs were unable to synthesize the dimensions of self, other, and society. On the basis of years of work at the Kempe Centre, Ryan (2000) emphasized that, given the confusing messages about sexuality from society, any child can become confused and exhibit some abnormal sexual behavior. Ryan contended that it is important that the adults and professionals in contact with children who exhibit such behavior respond appropriately to it with the realization that it is not necessarily indicative of a child who will persist in sexual deviance.

Contrary to the notion that childhood is a period of sexual latency, sexual behaviors are quite common in young children. In a retrospective study of 128 undergraduate women, Lamb and Coakley (1993) found that 85% of the women had played sexual games (e.g., playing doctor, experiments with genital stimulation, kissing games, and fantasy sexual play) when they were children and that, in general, the participants viewed the play as normal. The mean age at the time of the sexual play was 7.5 years, and 44% reported cross-sex play, whereas 56% reported same-sex play. The vast majority of the situations described involved peers (76%); 56% of the peers were the same age, 26% were older, and 18% were younger. A little over half of the respondents reported being discovered by an adult, with most of the adults merely ignoring the incident. One third of the sample indicated that some sort of pressure, from gentle persuasion to forceful coercion, had been used to persuade them to play the game.

Lamb and Coakley (1993) concluded that so-called normal sexual behavior is difficult to describe because

normal meaning behavior that is typical and *normal* meaning behavior that promotes development or at least is not detrimental are not always one and the same. Haugaard and Tilly (1988) obtained similar findings when they asked 1,089 male and female undergraduate students about their sexual interactions during childhood. The most frequent types of activities reported were kissing and hugging, exhibitionism, and fondling, although a few people reported engaging in oral sex and intercourse. Regardless of the type of activity engaged in, the encounter was viewed more negatively when higher levels of coercion were used.

Using information such as that provided in the previous studies, researchers have attempted to summarize and describe the sexual behaviors of children as normative and nonnormative to serve as basic guidelines for practitioners and caregivers. As outlined by Gil (as cited in Araji, 1997), normative sexual behavior for preschool children includes watching or poking others' bodies and being interested in bathroom functions. For children ages 5 to 7 years, it includes telling dirty jokes, kissing, and holding hands. Normative behavior for preadolescents (ages 8 to 12 years) includes mooning and exhibitionism, kissing, and touching others' genitals. Friedrich et al. (1992) identified nonnormative sexual behaviors in sexually abused children ages 2 to 12 years when they developed the Child Sexual Behavior Inventory. Behaviors of concern for children ages 2 to 12 include activities or actions such as making sexual sounds, talking flirtatiously, hugging or kissing unknown adults, wanting to watch television or movies with nudity or sex, and trying to have sexual intercourse with others.

Ryan (2000) described sexual behaviors for prepubescent and adolescent children along a continuum, categorizing behaviors as (a) normal or developmentally appropriate, (b) requiring adult response, (c) requiring correction, and (d) illegal and thus requiring immediate intervention. Ryan noted that some of the behaviors that may be normative for young children may become problematic in older children and that more unusual behavior among younger children may become more normal with age. Some of the behaviors requiring adult response or correction appear to differ only in degree from those in the normal range. However, for some adolescents, distinguishing between these lines may require a period of trial and error. The behaviors at the extreme end of the continuum are more easily identifiable because they generally include force or threats of force, sexual conversation or behavior with much younger children, or physically injurious behavior.

Much remains to be learned about normal and abnormal sexual development. To compensate for the lack of clear guiding principles, one must evaluate the context within which the behavior took place. Behavioral scientists need to consider the degree of coercion used, the maturity of the victim, and the age difference between the victim and the initiator (Ryan, 2000). However, development progresses at different paces for different children, and, thus, classification is difficult using age alone. Many clinicians attempt to rate the deviant content of an act on a continuum, rather than by applying rigid rules. Accordingly, there are a large number of contingencies and ex-

ceptions in determining the sexual misconduct of juveniles, leaving the legal system with many gray areas. In summary, by not having a clear understanding of what constitutes normative sexual development (which appears to include such activities as exhibitionism and fondling), the legal system could charge youth with felony sex offenses that may be better handled outside of this system. Some of these activities, depending on context, may be offenses that warrant prosecution, whereas others that appear similar may not.

### **Heterogeneity of Adolescent Offenders**

Existing studies on sex offender treatment and recidivism suggest that adolescent sex offenders represent a diverse group, including those who will desist naturally, those who will desist with some type of intervention or consequence, and those who will continue offending. This follows Moffitt's (1993) idea of adolescence-limited versus lifetime-persistent delinquents. Although the behaviors of JSOs and adult sex offenders may be similar on the surface, the underlying mechanisms triggering the behavior may be different, thereby accounting for some of the observed differences in recidivism rates. Hunter (1999) similarly concluded that JSOs are distinct from adults in that so few of them are likely to reoffend compared with adult sex offenders.

Becker and Kaplan (1990) theorized that for at least some adolescents, the behavior is exploratory and, particularly when there are consequences, will not be repeated. However, predicting which JSOs will continue to offend sexually is currently difficult because of problems such as low base rates of sexual recidivism, lack of knowledge about the etiology of sexual offending and the correlates of sexual recidivism among JSOs (e.g., family characteristics, social competence, sexual abuse history), and the need for empirical studies devoted to risk assessment in JSOs (see, e.g., Prentky, Harris, Frizzell, & Righthand, 2000; Smith & Monastersky, 1986).

The transition to sexual maturation can be difficult, possibly leading to the appearance of abnormal sexual behavior that simply needs correction or treatment, not the potentially lifelong stigma associated with sex offender registration and notification statutes. Furthermore, a greater percentage of juvenile offenders than adult offenders may be offending sexually in reaction to their own sexual abuse. JSOs have reported experiencing higher rates of sexual abuse than nonsexual offenders have (Zgourides, Monto, & Harris, 1997), and it is possible that having sexually aggressive models leads to sexual aggression in children and adolescents (Hunter & Becker, 1994; Ryan, Lane, Davis, & Isaac, 1987). In fact, a study with 74 JSOs found that male sex offenders who were sexually abused were more likely to select victims and perpetrate acts reflective of their own sexual victimization (Veneziano, Veneziano, & LeGrand, 2000).

Results from a meta-analysis of mostly adult sex offenders revealed that sexual recidivism was linked to victim characteristics, such as having male victims and victimizing strangers or extrafamilial victims (Hanson &

Bussiere, 1998). In contrast, Worling and Curwen (2000) found no relationship between sexual recidivism and victim factors (e.g., victim age or gender) for the 58 juveniles in their study and concluded that adolescents are still forming developmentally and identifying their sexual preferences. However, using polygraph testing with 76 JSOs, Emerick and Dutton (1993) found that juveniles abusing children of both genders had more victims (4.2 victims vs. 1.9 for offenders with female victims and 1.6 for offenders with male victims).

Rates of recidivism may further differ between juveniles and adults because deviant patterns of sexual behavior may be less established in JSOs. Hunter, Goodwin, and Becker (1994) found that sexual arousal in juvenile offenders was observed with a wider range of stimuli (e.g., both male and female rather than a preference for one sex) and was therefore less narrowly defined than for adults. Consequently, they asserted that juveniles have greater developmental fluidity, having not yet developed a stable pattern of sexual arousal and interest. A study of sexual arousal compared JSOs ages 14 to 17 years, young adult sex offenders ages 18 to 21 years, and a young adult comparison sample (Seto, Lalumiere, & Blanchard, 2000). Young adult child molesters with male or female victims and adolescents with male victims had more deviant scores than did the young adult nonoffender comparison group. However, adolescents with female child victims did not differ from the nonoffenders. On the basis of multiple studies with JSOs, Becker (1998) concluded that the relationship between phallometric arousal and clinical characteristics is weaker in the adolescent population than in the adult population.

We do not contend that all acts of sexual misconduct are exploratory in nature, and we do not advocate the "boys will be boys" attitude adhered to several decades ago (Barbaree, Hudson, & Seto, 1993). As explained by Becker and Johnson (2001), "the motivation behind sexual behaviors by children and adolescents . . . may range from exploration to well thought out and purposeful behavior to gratify one's sexual desires" (p. 274). Incidents of sexual offending should be corrected, not ignored, and offenders should be held accountable in accordance with the law. Yet sexual offenses can range along a continuum from hands-off to hands-on offenses. Within each category, behaviors can range in severity and in the amount of force or violence used. For example, in hands-off offenses, mooning can be very different from exhibitionism, and, in hands-on offenses, fondling can have a wide range of meanings. However, it seems that in attitudes, the pendulum has swung to the other extreme, with many policymakers bent on severely punishing all adolescent sexual misconduct as criminal and labeling JSOs as highly deviant, despite a paucity of data on what constitutes normal and abnormal sexual development. Moreover, such a punitive attitude may not be necessary to prevent sexual recidivism in adolescents because most adolescents desist when social and/or legal correction is applied.

### **A Picture of the JSO**

Data from the Uniform Crime Report and the National Crime Survey indicate that approximately 20% of rapes and 40% of incidents of child sexual abuse are perpetrated by adolescents (see Becker & Kaplan, 1990). Definitions of child sexual abuse range from noncontact offenses such as exhibitionism to contact offenses ranging from fondling to sexual intercourse, with fondling being the most prevalent offense (Haugaard & Reppucci, 1988). In addition, juveniles are more likely to offend against children, and most of their offenses tend to be coercive or manipulative, instead of aggressive (threatening) or violent (Weinrott, 1996). Society tends to have little sympathy for sexually abusive individuals, yet studies reveal that 40% to 60% of adolescent sex offenders have been victims of sexual abuse themselves (Emerick & Dutton, 1993; Hunter & Figuerido, 1999; Kahn & Chambers, 1991; Kahn & Lafond, 1988; Prentky et al., 2000; Spaccarelli, Bowden, Coatsworth, & Kim, 1997; Zgourides et al., 1997).

In a retrospective study of adult sex offenders, Knight and Prentky (1993) found that child molesters who began offending in adolescence had higher rates of sexual abuse than those who began offending as adults. Data further suggest that different types of JSOs have varying rates of sexual abuse. Ford and Linney (1995) found that youths with child victims had higher rates of sexual abuse in their history (52%) than did peer rapists (17%) and status offenders (13%). (A status offender is a juvenile who has committed an offense that would not be considered a crime if it were committed by an adult, e.g., running away or truancy.) A study of juveniles offending exclusively against female children, peers, and adults revealed that only 19% of the offenders had been sexually abused, although 54% reported being physically but not sexually abused (Becker, Kaplan, & Tenke, 1992). Moreover, those youths who had been sexually abused were more responsive to deviant arousal cues. In summary, data suggest that JSOs, especially those offending against children and male victims, have themselves had troublesome childhoods. Although this does not excuse the behavior, it may suggest that more treatment and rehabilitation might help prevent recidivism.

### **Treatment for JSOs**

Amenability to treatment is a cornerstone of the juvenile justice system's balance between rehabilitation and community safety. Childhood has been viewed as a time of development, and children have generally been considered more malleable than adults. The potential benefits of early intervention and treatment should, therefore, take on added significance for juveniles. Popular treatment programs for adults and juveniles include intensive family-based interventions, cognitive-behavioral therapies with a relapse-prevention focus, and pharmacological interventions, such as antiandrogen drugs or antidepressants to control sexual urges and compulsive behavior (Becker & Murphy, 1998). Unfortunately, few data exist on the efficacy of treatment programs for juveniles (Bremer, 1992). Few studies incor-

porate a control or appropriate comparison group, making it difficult to draw causal conclusions. However, there is some evidence that without detection and/or correction, JSOs may continue offending (see, e.g., Elliott, as cited in Weinrott, 1996; Fehrenbach, Smith, Monastersky, & Deisher, 1986; Hanson & Bussiere, 1998; Smith & Monastersky, 1986).

### **Risk and Recidivism for JSOs**

Federoff and Moran (1997) emphasized that mental health professionals should use caution in discussing the treatment of sex offenders. They contended that overzealous conclusions drawn from single studies with methodological flaws have led to many misconceptions about sex offenders, including the notion that sex offenders cannot be cured. In fact, legislators constructed the registration and notification laws under the assumption that individuals who engage in sexually abusive behavior resist change and persist in a lifetime of abuse (Pithers & Gray, 1998). In an older review of empirical studies on sex offender recidivism, Furby, Weinrott, and Blackshaw (1989) similarly concluded that the practical difficulties of designing such studies and the widespread methodological flaws have prevented researchers from gaining meaningful information about recidivism. Furthermore, much of the variation in recidivism rates across studies can be attributed to samples of offenders with different victim and offense characteristics (Bynum, Carter, Matson, & Onley, 2001). Finally, use of official sources on recidivism, such as arrest or reconviction, underestimates rates because these sources cannot account for unreported or undetected offenses (Weinrott, 1996).

Unfortunately, even fewer data are available on the recidivism rates of JSOs. Nevertheless, many legislators seem to consider JSOs untreatable and dangerous on the basis of their decision to include them under statutes like Megan's law. In addition, people may believe that all juveniles will reoffend because a portion of adult offenders report that they began offending while juveniles. However, the literature on JSOs does not appear to support this view.

Brannon and Troyer (1995) examined follow-up data collected four years after an initial study of 36 JSOs in the Idaho Division of Child and Family Services residential treatment program. Only 1 of the 36 original JSOs had committed a subsequent sexual crime. A serious limitation of this study is that its research methods failed to account for unreported sexual offenses or arrests in other states. Even with the lack of complete information, Brannon and Troyer contended that the low rates of recidivism suggest that the actual threat of JSOs does not match the public's perceived threat. In fact, an earlier review by Davis and Leitenberg (1987) concluded that reincarceration for a sexual offense among adolescent sex offenders was low, with most studies reporting rates around 10%. Alexander (1999) conducted a narrative review of 79 studies examining juvenile and adult sex offenders who had received treatment. Across studies ( $N = 1,025$  JSOs), the recidivism rate for treated JSOs was 7.1%. In a review by Weinrott (1996), the majority of juvenile sexual recidivism studies reported sexual recidivism rates at or below 14%. Those few studies

in this review reporting higher rates of recidivism for young sex offenders (17% to 20%) generally included 18- to 20-year-old offenders (Langstrom & Grann, 2000; Song & Lieb, 1995), suggesting that offenders 18 years and older may have higher rates of recidivism. However, the researchers did not compare the juvenile offenders (ages 17 years and younger, as legally defined) and the young adult offenders directly to determine whether juvenile offenders had lower rates of recidivism. A recent review of the literature by the Office of Juvenile Justice and Delinquency Prevention similarly concluded that the rates of recidivism for JSOs are low (Righthand & Welch, 2001). For instance, using an average follow-up period of 20 months, Kahn and Chambers (1991) reported a sexual recidivism rate of 7.5% in their sample of 221 JSOs entering treatment programs in Washington State in 1984. In a longer study of 170 convicted JSOs, Rasmussen (1999) reported that 14% of her sample reoffended sexually during the five-year observation period from 1989 to 1994.

In one of the few longitudinal studies of JSOs, Sipe, Jensen, and Everett (1998) followed 124 sex offenders from a state observation and assessment center. The study began in 1978 and continued through 1993, with offenders followed from a period of 1 to 14 years (mean follow-up was 6 years). Official arrest data indicated that only 9.7% of the sample were arrested for sexual offenses as adults. Bremer (1992) reported the results from a longitudinal study of 193 former participants in the Juvenile Sex Offender Program in Minnesota; this study followed participants who had been involved in the program during the previous 10 years. The juveniles varied in their length of stay in the program and in the amount of time they had been released, based on when they had entered the program. Official court records indicated that during the previous 10 years, only 6% of the participants had been charged with an additional sex offense. The low rate of recidivism is particularly striking considering the serious nature of the original offenses and the inclusion of residents who had not completed the program. The self-reported reoffense rate was higher than the official rate but, at 11%, still remained low.

In contrast to the previous studies, Hagan and Gust-Brey (2000) found that 10 (20%) of the 50 adolescent sex offenders who had completed a treatment program for serious sex offenders reoffended sexually during a 10-year period. The sample consisted of offenders who had perpetrated a sexual assault against children, and Hagan and Gust-Brey emphasized that the offenders were a particularly delinquent subsample of sex offenders because (a) the offenders would have been eligible for at least 10 years in prison for their original offense if they had been adults, (b) these youths had been incarcerated only after many attempts at community intervention had failed, and (c) 86% were involved in crime as an adult. Furthermore, the JSOs received treatment when the sex offender program was new and knowledge about adolescent sex offenders was even lower. In the years since the sample had received their treatment, the number of staff psychologists more than quadrupled from 3 to 13, and the length of time sex

offenders spent in treatment increased, as did the level of aftercare resources. Although the juveniles in the study were high risk by Hagan and Gust-Brey's (2000) definition, the sexual recidivism rate remained relatively low at 20%, especially compared with the 86% criminal recidivism rate.

Rubinstein, Yeager, Goodstein, and Lewis (1993) found that 37% (7 of 19) of the sexually assaultive offenders in their sample committed an additional sexual assault within eight years of being released from a juvenile correctional facility. This sample is not representative of all JSOs because of the small sample size and the extremely assaultive nature of their crimes, which is not characteristic of most JSOs (Righthand & Welch, 2001). However, studies finding higher rates of sexual recidivism among JSOs can be useful in helping to distinguish the small percentage of JSOs who are more likely to reoffend.

As with much of the existing literature on JSO interventions, the previous studies failed to include a control group in the evaluation of their programs. Thus, the improvements in behavior and the low rates of recidivism cannot be causally linked to treatment. However, for our purposes, the studies do demonstrate that reoffense rates are low, suggesting that the majority of juvenile offenders will not continue to offend sexually once they have been detected. The data may also imply that the fear of JSOs continuing their predatory sexual behavior into adulthood really does not hold true for most youths.

Worling and Curwen (2000) did incorporate a comparison group in their study. They followed 58 adolescent sex offenders receiving specialized, community-based sex-offender treatment in the Sex Abuse, Family Education, and Treatment (SAFE-T) program and compared them with 90 adolescent sex offenders who did not receive treatment in the SAFE-T program. (Sixty, or 67%, of the offenders in the comparison group did receive some other form of treatment.) The researchers examined charges, not convictions, and followed offenders for an average of six years, reporting a 5% sexual recidivism rate in the treatment group and an 18% sexual recidivism rate in the control group. However, the researchers did not include offenders who dropped out of treatment in their analyses, perhaps inflating the difference between the treatment and control groups. Given that nearly all of the sex offenders had originally committed hands-on offenses, their results may not be generalizable to all JSOs, particularly those with more minor offenses.

Lab, Shields, and Schondel (1993) incorporated both an experimental and a comparison group in their evaluation of a court-based JSO treatment program between 1988 and 1991. The experimental group participated in a psychosocial-educational program, whereas the comparison group was assigned to preexisting alternate interventions, ranging from commitment to the state's Department of Youth Services to general community-based interventions (i.e., not specific to sex offenders). Random assignment to the groups was not possible: offenders classified as low-to-moderate risk were placed in the JSO treatment experimental group ( $N = 46$ ), and offenders classified as high risk were placed in the comparison group ( $N = 109$ ). Prelimi-

nary analyses indicated that the groups did not differ initially in age, education, or previous court experience, and, despite intentions to the contrary, they did not differ in their risk scores.

The results indicated that the treatment group did not differ from the comparison group in recidivism rates for sexual offenses or for general offenses. Thus, the JSO treatment program was not more effective than were traditional treatments, including state commitment. However, judging from court records, the rate of recidivism for sexual offenses was very low (1 out of 46 for the JSO treatment group and 4 out of 109 for the comparison group). Lab et al. (1993) suggested that most of the original charges faced by the juveniles were actually for behaviors that were "expressions of normal juvenile curiosity" (p. 550) that could be corrected through normalization and therefore required no special treatment. In fact, many of the original offenses lacked force or aggression and consisted of more minor actions such as indecent exposure and sexual imposition.

The only published study randomly assigning JSOs to specialized treatment had a very small sample size: Eight adolescent sex offenders participated in intensive multisystemic therapy (MST), and eight youths participated in individual therapy (Bourduin, Henggeler, Blaske, & Stein, 1990). After an average of three years, one MST youth reoffended sexually (12.5%), compared with six of the comparison youths (75%). The high sexual recidivism rate for the comparison group may be an artifact of the small sample size, or it could be indicative of a particularly high-risk subset of youths. The youths had originally perpetrated sexually assaultive acts, which are not characteristic of many juveniles, and they had already committed multiple sexual offenses. This often-cited study supports the effectiveness of MST for high-risk JSOs. However, as the authors cautioned, strong conclusions can not be made without a much larger sample and a longer follow-up period.

### **Risk and Recidivism for Adult Sex Offenders**

The previous figures on juvenile recidivism contrast with the recidivism rates reported for adult sex offenders. Alexander (1999) reviewed recidivism rates across 79 studies for treated and untreated adult sex offenders, reporting a 20.1% recidivism rate for treated rapists (23.7% for untreated rapists), a 14.4% recidivism rate for treated child molesters (25.8% for untreated child molesters), and a 19.7% recidivism rate for treated exhibitionists (57.1% for untreated exhibitionists). Unfortunately, she did not conduct a quantitative meta-analysis, meaning that she did not account for effect sizes or length of time to reoffend. Consequently, statistical conclusions about the effects of treatment on adult sex offenders cannot be drawn.

Hanson and Bussiere (1998) conducted a meta-analysis of 61 studies of sex offenders in institutions and in the community, 52 of which contained data exclusively on adults. Across all the studies, they concluded that rapists had a sexual recidivism rate of 18.9% ( $N = 1,839$ ) and that child molesters had a recidivism rate of 12.7% ( $N = 9,603$ )

during an average follow-up period of four to five years. However, because JSOs were included in some of the data used for the meta-analysis, the low recidivism rates cannot necessarily be attributed only to adults. One study with a sample of sex offenders on probation only, many of whom received treatment, found that only 5.6% reoffended sexually within five years (Kruttschnitt, Uggen, & Shelton, 2000). In general, the sample in this study did not have early or extensive criminal histories, which is why its members were eligible for probation.

Quinsey, Rice, and Harris (1995) examined data from 179 men released from a maximum-security psychiatric facility before 1983 who had an opportunity to reoffend. Results indicated that across child molesters and rapists, 27.5% of the sample were convicted of a new sexual offense during an average period of reoffend of four years. Furthermore, Quinsey et al. found that rapists were at greater risk to reoffend than were child molesters, suggesting that adult sex offenders should be classified according to their presenting offense and analyzed separately to better discriminate offender typologies.

Quinsey, Khanna, and Malcolm (1998) studied adults referred to the Regional Treatment Centre Sex Offender Treatment Program in Ontario, Canada, between 1976 and 1989 and released before 1992. Of the 483 inmates followed, 213 received sex offender treatment, 183 were considered not to require treatment because they were believed to be low risk on a variety of factors (e.g., fewer previous arrests, less closely related to victims, not sexually deviant), and the remaining 99 either refused assessment or were found not suitable for treatment (e.g., because of language restrictions or developmental handicaps). The average opportunity to reoffend was 44 months, and in that time, 38% of the sample were arrested for a new violent or sexual offense. The investigators noted that the untreated participants were lower in risk to begin with and that the inmates who refused treatment were very similar in risk to those judged as not needing treatment. After controlling for the various risk factors, the treated inmates were still more likely to reoffend sexually.

Hanson, Steffy, and Gauthier (1993) examined long-term recidivism rates for 197 adult child molesters. The offenders were divided into three groups: (a) 106 offenders who received treatment from 1965 to 1973, (b) 31 offenders incarcerated before the initiation of the treatment program (1958 to 1964), and (c) 60 offenders incarcerated from 1965 to 1974 who did not receive treatment because of lack of space in the program, because of insufficient time in their sentences, or because they were judged unsuitable for treatment because of old age or mental illness or for security reasons. The offenders had a mean age of 33 at the time of release and a mean opportunity to reoffend of 19 years. Overall, 42% of the offenders were reconvicted for a sexual offense, a violent offense, or both, and there were no significant differences across the groups in rates of recidivism.

Prentky, Lee, Knight, and Cerco (1997) examined data across 25 years for 265 male sex offenders committed to the Massachusetts Treatment Center for Sexually Danger-

ous Persons in 1959. The authors obtained data from both state and federal records, again missing any unreported sexual offenses. To account for the varying amounts of time to reoffend, Prentky et al. performed survival analysis techniques, yielding a failure rate. For rapists, the failure rate after 25 years was 39%, and for child molesters, it was 52%. The higher rates of recidivism compared with those reported for juveniles can in part be attributed to the longer period of follow-up. Prentky et al. estimated that if they had limited their follow-up to only 5 years, they would have missed half of all new offenses. However, the studies by Sipe et al. (1998) and Bremer (1992) followed juveniles for 10 years or more and still found lower rates of sexual recidivism (9.7% and 11%, respectively). In addition, studies with longer follow-up periods originated during a time when sex offender treatment was just beginning and advances in treatment issues had not yet been made, perhaps accounting for the higher rates of recidivism (Pithers, 1993). Yet, even if Prentky et al.'s estimate regarding missed cases is accurate, it seems that juvenile reoffense rates remain lower than those of adults.

## Conclusions and Future Directions

Through examination of studies that have been cited in various reviews and published in peer reviewed professional journals, we have shown that three results stand out: (a) More needs to be learned about normal versus abnormal sexual development, (b) recidivism rates for adult sex offenders and JSOs are not nearly as high as popular opinion would suggest (e.g., the 78% of respondents to the 1991 *Star Tribune* poll who strongly agreed that most sex offenders would reoffend despite the consequences), and (c) recidivism rates for youth (generally ranging from 8% to 12%) are lower than for adults (generally ranging from 20% to 40%). Furthermore, the data indicate that juveniles are a diverse class of offenders. Adult sex offenders and JSOs may therefore have different offender typologies and etiologies, and the patterns of sexual behaviors among juveniles may be less established. It is important to note that many studies have reported moderate-to-high rates of general recidivism for JSOs but low rates of sexual recidivism (Hagan & Gust-Brey, 2000; Kahn & Chambers, 1991; Prentky et al., 2000; Rasmussen, 1999). Although these data may suggest that JSOs have risk factors associated with delinquency, the data (8% to 12% sexual recidivism) do not suggest that they should automatically be required to register as sexual offenders and be subject to community notification.

The trend to include JSOs in the registration and notification statutes may be due in part to several misconceptions. For instance, because a number of adult sex offenders have reported committing sex offenses during adolescence (see, e.g., Knight & Prentky, 1993), some people may believe that JSOs will inevitably become adult sex offenders. However, this logic is flawed. An adult sex offender sample is biased in that it does not include those youths who offended in adolescence and then desisted. Consequently, retrospectively asking adult sex offenders when they first began offending does not allow one to draw

conclusions about the offending patterns of a prospective sample of adolescent sex offenders. In addition, some retrospective studies have reported that JSOs have high reoffense rates because the JSOs admitted to committing sexual offenses prior to being detected (e.g., Elliott, as cited in Weinrott, 1996; see also Fehrenbach et al., 1986; Smith & Monastersky, 1986). However, once juveniles have been caught perpetrating sexual offenses, adjudicated, incarcerated, and/or treated, longitudinal studies indicate that rates of sexual recidivism are low compared with adults.

This is not to say that sex offender treatment reduces recidivism; researchers do not have the data to support such a strong conclusion. However, the studies reviewed do document lower recidivism rates for juveniles who have been detected and who have subsequently received punishment, treatment, or a combination of the two. These findings are particularly important given the likelihood of including juveniles under sex offender registration and community notification provisions. As previously mentioned, in *Doe v. Poritz* (1995), the Supreme Court of New Jersey upheld the constitutionality of Megan's law because the intent was to protect the public against sex offenders who were known to have a high risk of recidivism. However, the data indicate that this high risk of recidivism does not exist for JSOs. Therefore, if developmental differences between adults and juveniles lead to differential outcomes in offending, such that juveniles have a substantially lower risk of reoffending, then justification for juveniles being subject to registration and notification statutes is weakened because JSOs do not have a high risk of reoffending. Furthermore, JSOs are losing legal rights accorded to adults when they are treated the same as adult sex offenders under registration and notification statutes, while being treated like juveniles in the juvenile court system.

The intention of this article is not to offer definitive answers, but rather to bring attention to some of the possible differences between JSOs and adult sex offenders that have been suggested in the literature—differences that many people do not seem to be aware of and that little research has been devoted to exploring. In fact, the most consistent finding about JSOs is the lack of existing data about them and, in particular, the lack of prospective, longitudinal data (see, e.g., Becker & Johnson, 2001; Prentky & Knight, 1993; Sipe et al., 1998). Much remains to be learned about JSOs, including the etiology of sexually deviant behavior, the progression of such behavior over time, and the different subgroups of offenders that may exist. Studies exploring sexual development need to be initiated to help identify normative and nonnormative behaviors and to identify pathways leading to normal versus deviant sexual behavior. In addition, studies that incorporate comparable adolescent and adult samples are needed to explore more directly the differences that may exist between adult sex offenders and JSOs in terms of the patterns of offending behavior and the likelihood of rehabilitation.

Although a relatively small percentage of identified JSOs continue to offend sexually, the current science does not permit accurate detection through risk assessment of those youths who will persist in offending. Policymakers

may conclude that because assessment techniques do not exist to determine accurately who will be a repeat offender, it is safer to apply the sanctions to all. Given that the recidivism rate for JSOs is approximately 10%, the prediction of false positives could be as high as 90%. Although it is the false negatives who appear in the media and increase public fearfulness, psychology should not be timid in pointing out these statistics and their implications.

The situation is very similar to that which existed with mental health patients throughout most of the past century. Monahan's (1981) award-winning monograph on the prediction of dangerousness pointed out that at best, mental health professionals were accurate 33% of the time but that they were usually accurate only about 20% of the time. This, of course, meant that four out of five patients were being kept in hospitals for faulty reasons. With this information becoming widely disseminated, many patients were released without the predicted dire consequences. Moreover, it led to a finer grained analysis of the various risk factors so that significantly more accurate prediction is now possible (Monahan et al., 2001). This is not to say that anything like 100% accuracy has been or is even likely to be achieved. However, it has improved the lives of many mental patients with little, if any, increased risk to the public. It would seem an analogous situation exists with JSOs if the notification and registration laws are applied to them.

Sex offender legislation has met with much controversy, and there is little evidence demonstrating that such legislation has any preventive or deterrent effects. However, there is emerging evidence for the negative effects of stigma associated with sex offender registration and notification: Offenders have been threatened and injured, unable to work or attend school, and unable to find permanent residences. Furthermore, states are becoming increasingly punitive toward sex offenders. At the same time, more states are including juveniles in their registration and notification statutes, yet many juveniles who are caught and corrected through adjudication, incarceration, and/or treatment do not persist in committing sexual offenses. Moreover, some juveniles are being convicted and required to register for relatively minor offenses (e.g., touching a classmate inappropriately). Thus, the systematic registration and public notification of JSOs may be unwarranted and unnecessary.

Accordingly, a graded system of registration and notification should be considered for juveniles. For instance, juveniles who have been convicted of a sexual crime would be required to register only after committing a second or third subsequent offense, demonstrating that they are at higher risk for offending. The NCMEC (1998) similarly contends that only a small percentage of JSOs, those at highest risk to reoffend (e.g., those who were prosecuted as adults or committed very serious offenses), should be subject to community notification. Applying more tempered measures to juveniles who commit sexual offenses is more consistent with the existing data on JSOs and could help to restore the juvenile court's balance between rehabilitation and punishment.

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X Specify for which offenses would allow for info

▷ Allow petition at the court for defendant to make case as to why notification is not appropriate in their case.

▷ Judge to have discretion on whether chief or sheriffs will have discretion to notify.





A13 550

Services does have a  
Sex Offender Registry  
in the District of Columbia.

\* Applies to juveniles that are systematically perpetrating sexual offenses.

If the DT decides ~~not~~ to try as an adult, the records would be open. Provided the DT successfully petitions the court to have the juvenile waived into adult court.

Potentially pit law enforcement against DTs.

Allows sheriff or police chief to provide info from the sex offender registry to an organizer or member of the public if he feels it is necessary to protect the public.

Sexual offender vs sexual predator.

alleges! → Limit to

↓ Would be willing to tighten up language.

\* Require chief/sher to go to judge.

Require the info at least be communicated between jurisdictions (law enforcement).

of Juvenile sex offenders have the lowest recidivism rate in the nation 6-11%.

No limits on the deformation and no limits as to who can get the info.

End of treatment or supervision the juvenile court to make a determination as to whether the juvenile should be on the juvenile offender registry.