

SEX OFFENDER MANAGEMENT ASSESSMENT and PLANNING INITIATIVE

SMART
Office of Sex Offender Sentencing, Monitoring,
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Chapter 1: Unique Considerations Regarding Juveniles Who Commit Sexual Offenses

by Roger Przybylski and Christopher Lobanov-Rostovsky

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Introduction

While most perpetrators of sex crimes are adults, a significant number of sex crimes are committed by offenders who are younger than age 18. Estimates of the prevalence of juvenile sexual offending vary depending on the data source and method of measurement. Finkelhor, Ormrod, and Chaffin (2009), for example, estimated that juveniles account for about one out of every four (25.8 percent) sexual offenders known to law enforcement and more than one out of every three (35.6 percent) sexual offenders who victimize a minor and are known to law enforcement. Statistics from the Federal Bureau of Investigation's Uniform Crime Reporting program indicate that about 15 percent of the nation's 21,407 rape arrestees in 2009 were younger than age 18 (FBI, 2009). Victim reports, however, suggest that juvenile perpetrators may be responsible for as many as 4 out of every 10 sexual assaults (Swenson & Letourneau, 2011).

Although laws and policies designed for adult sexual offenders are increasingly being applied to juveniles who sexually offend, juvenile offenders have historically been viewed as a distinct population from adult offenders. The juvenile justice system has been largely independent from the adult criminal justice system since the first juvenile court in the United States was created in 1899, and the procedures and methods used with juvenile offenders tend to emphasize accountability and rehabilitation rather than retribution and punishment (Przybylski, 2008; Illinois Criminal Justice Information Authority, 1997).

Juvenile justice systems throughout the United States were established under and have largely been guided by the doctrine of *parens patriae*. This means that the state acts as the guardian or responsible authority for a minor to protect the youth from harmful conduct or environments (Przybylski, 2008; Illinois Criminal Justice Information Authority, 1997). This approach is based on a formal recognition that juveniles are developmentally different from adults and are impressionable enough to be diverted from persistent criminal behavior. Hence, the procedures of the juvenile court are intentionally nonadversarial, and the terminology used with juvenile offenders is intentionally noncriminal (Illinois Criminal Justice Information Authority, 1989). The juvenile court's philosophy and goals are to hold youthful offenders accountable for their behavior while ensuring that they receive necessary guidance and appropriate therapeutic services. Although many states have enacted laws in recent years that encourage greater accountability and punishment for juvenile offenders, most juvenile courts and other segments of the juvenile justice system continue to view treatment and guidance for young offenders as central to their mission. (See [chapter 5](#), "Effectiveness of Treatment for Juveniles Who Sexually Offend," in the Juvenile section.)

While juvenile offenders have long been viewed as fundamentally different from adult offenders, **the developmental differences between juveniles and adults that have been identified through recent advances in neuroscience and developmental criminology are extensive and profound.** Based on the scientific evidence, it is clear that juveniles and adults differ in their cognitive capabilities, capacity for self-management and regulation, susceptibility to social and peer pressure, and other factors related to judgment, criminal intent, and the capacity to regulate behavior (Tolan, Walker, & Reppucci, 2012). Juveniles also differ from adults in their propensity to engage in persistent criminal behavior, in that they are less likely to continue to engage in such behavior (Tolan, Walker, & Reppucci, 2012).

While improvements in cognitive functioning and reasoning undoubtedly occur during late childhood and adolescence, "mature judgment is the product not only of cognitive capacity ... but also of emotional capabilities" (Tolan, Walker, & Reppucci, 2012, p. 126). Brain research demonstrates that psychosocial development occurs much more slowly than cognitive development and that juveniles thus have less capacity than adults to manage emotions and control behavior, despite their growing ability to process information (Scott & Steinberg, 2008; Tolan, Walker, & Reppucci, 2012).

Research also demonstrates that "adolescence is a time of heightened risk-taking and recklessness" and that puberty is associated with both higher levels of sensation-seeking behavior and heightened intensity of feeling in risk-taking situations (Steinberg et al., 2008, p. 1776). Steinberg and colleagues (2008), for example, found that risky behavior is more prevalent during adolescence than it is during either preadolescence or adulthood. Similarly, in a study employing random assignment procedures, Gardner and Steinberg (2005, pp. 625 and 634) found that "adolescents are more inclined toward risky behavior and risky decision making than are adults" and that "the presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions." Again, these findings regarding adolescent behavior are not surprising, as neurobiological research demonstrates that

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Based on the scientific evidence, it is clear that juveniles and adults differ in their cognitive capabilities, capacity for self-management and regulation, susceptibility to social and peer pressure, and in other areas related to judgment, criminal intent, and the capacity to regulate behavior.

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The ability to plan ahead, be aware of time, and anticipate future consequences significantly increases with age.

dopamine—a neurotransmitter that plays a key role in the reward circuitry of the brain—is at its highest levels during early adolescence and that higher levels of dopamine are associated with increased reward-seeking behavior (Steinberg, 2012; Steinberg et al., 2008). As Steinberg and colleagues (2008) have stated:

Heightened vulnerability to risk-taking in middle adolescence may be due to the combination of relatively higher inclinations to seek excitement and relatively immature capacities for self-control that are typical of this period of development ... adolescent risk taking is hypothesized to be stimulated by a rapid and dramatic increase in dopaminergic activity within the socio-emotional system around the time of puberty, which is presumed to lead to increases in reward seeking ... The temporal gap between the arousal of the socio-emotional system, which is an early adolescent development, and the full maturation of the cognitive control system, which occurs later, creates a period of heightened vulnerability to risk taking during middle adolescence.

Juveniles also have less capacity than adults to consider the future consequences of their actions, as recent brain research demonstrates that regions of the brain associated with foresight and planning continue to develop well beyond adolescence (Casey et al., 2005; Steinberg et al., 2009). Steinberg and colleagues (2009) examined age differences in future orientation in a large sample of individuals ($N=935$) ages 10 to 30 and found that planning ahead, time perspective, and anticipation of future consequences all significantly increased with age. Steinberg and his colleagues found not only that adolescents tended to emphasize short-term consequences when making decisions, but also that **decreases** in planning took place between ages 10 to 15. Similarly, in a study examining the ability to recognize long-term consequences of actions in a legal context, Grisso and colleagues (2003) found that younger adolescents were significantly less likely than older adolescents to recognize the consequences of their decisions. Overall, these findings are consistent with those produced in other studies and they can be explained by the evidence on brain development derived from neuroscience (see, e.g., Casey, Jones, & Hare, 2008; Cauffman & Steinberg, 2000; and Nurmi, 1991) as the "weaker orientation to the future" and "lesser sensitivity to the longer term consequences" of actions found among adolescents that appear to be primarily "related to arousal of the socio-emotional network" of the brain (Steinberg et al., 2009, p. 40).

Taken together, research findings from neuroscience and developmental criminology increasingly support the notion long held in the juvenile justice system that juveniles are fundamentally different from adults. **The scientific evidence clearly indicates that there are significant differences between adults and juveniles in their capacity to plan ahead, regulate emotions, control behavior, and weigh the costs and benefits of decisions** (Scott & Steinberg, 2008; Tolan, Walker, & Reppucci, 2012). Moreover, these cognitive and behavioral differences can be explained and understood in the context of the brain's physiology and neurofunctioning.

The evidence regarding adolescent development from neuroscience and developmental criminology has important implications for policy and practice aimed at juvenile offenders of all types, including those who commit sexual offenses. As Tolan and his colleagues (2012, p. 129) have aptly stated: "In sum, research on the neurophysiology of the brain and the neurofunctional developmental changes in the brain suggest a qualitatively different basis for much of the behavior that falls under sexual offense if the behavior is that of an adolescent rather than an adult."

Unfortunately, many of the intervention and management strategies for juveniles who commit sexual offenses that have emerged in recent years have not been based on a formal recognition that juveniles are developmentally different from adults. Prior to the 1980s, juvenile sexual offending in the United States tended to be minimized and dealt with outside of the justice system. Following a series of retrospective studies conducted in the 1980s, in which many adult sexual offenders reported engaging in sexual offending behaviors as juveniles, many policymakers and practitioners began to view juveniles who commit sexual offenses as future adult sexual offenders. As a result, a greater focus was placed on detecting and responding to sexual offenses committed by juveniles, and treatment and intervention strategies using targets and approaches previously reserved exclusively for adult sexual offenders began to proliferate (Lobanov-Rostovsky, 2010).

By the early 2000s, many treatment and supervision strategies for juveniles who commit sexual offenses began to account for the developmental differences between juveniles and adults and to move away from adult-oriented models. However, many new legislative and policy initiatives that equated juveniles with adult sex offenders also began to emerge, culminating in the passage of the Adam Walsh Child Protection and Safety Act of 2006 (Lobanov-Rostovsky, 2010). The use of sex offender management strategies such as civil commitment, residence restrictions, registration, and notification became more common in jurisdictions across the country, and they tended to be applied to juveniles much as they were to adults. (See [chapter 8](#), "Sex Offender Management Strategies," in the Adult section and [chapter 6](#), "Registration and Notification of Juveniles Who Commit Sexual Offenses," in the Juvenile section for more information about these strategies.)

Of course, the Adam Walsh Act included the Sex Offender Registration and Notification Act (SORNA), which for the first time required states to register certain juveniles who commit sexual offenses.¹ Jurisdictions failing to comply with SORNA requirements risk losing 10 percent of the federal Edward J. Byrne Justice Assistance Grant funds available to them pursuant to the Omnibus Crime Control and Safe Streets Act of 1968.

Despite the concerns raised by some stakeholders—about statutes or policies that treat juveniles in a manner similar to adults—many policymakers, legislators, and members of the public continue to equate the characteristics and risks of juveniles who commit sexual offenses with those of adult sexual offenders (for a more thorough review of this topic, see Lobanov-Rostovsky, 2010).

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Organization of Section 2: Juveniles Who Commit Sexual Offenses

Given the fundamental differences that have been observed between juveniles who commit sexual offenses and adult sexual offenders, it is critically important to distinguish between these two populations when describing their characteristics or discussing research on issues such as etiology, risk,

or intervention effectiveness. Hence, section 2 of this report focuses specifically on research pertaining to juveniles who sexually offend. It examines what is scientifically known in the following topic areas:

- Etiology and typologies.
- Assessment of risk for sexual reoffense.
- Treatment effectiveness.
- Registration and notification.
- Recidivism.

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Issues To Consider

In each topic area, research focused specifically on juveniles who sexually offend is reviewed and key, up-to-date findings that policymakers and practitioners can use to better understand and manage juveniles who commit sexual offenses are presented. Research concerning adults who sexually offend is addressed in section 1 of this report.

When reading the chapters that follow, it is important to keep certain ideas in mind. First, relatively few studies in any of the topic areas addressed in this review cover female juveniles who commit sexual offenses or preadolescent children who engage in sexually abusive or sexually troubled behavior. Hence, the findings presented in this review are most directly relevant to male adolescents who commit sexual offenses. While there is evidence suggesting that important differences exist between males and females who sexually offend, as well as between adolescents who sexually offend and preadolescents with sexual behavior problems, the extant literature is not sufficient in either its scope or level of detail to allow substantive findings to be presented about preadolescent or female juvenile populations. Again, relatively few studies have focused on either population, and research dealing with juveniles who sexually offend has not consistently or sufficiently described the age or gender characteristics of study participants. As a result, adolescent/child or male/female breakdowns simply cannot be presented for many of the studies discussed in this section.

Second, the empirical evidence clearly demonstrates that juveniles are fundamentally different from adults in their cognitive capabilities and capacity to regulate emotions, control behavior, and weigh the long-term consequences of actions. The evidence suggests that juveniles differ from adults in their propensity to engage in persistent criminal behavior; simply put, sexual offending prior to age 18 is not necessarily indicative of an ongoing and future risk for sexual offending. Research also has demonstrated that labeling—legal or otherwise—can have unintended harmful consequences, particularly for youth. Therefore, this population is referred to as "juveniles who commit sexual offenses," rather than juvenile sex offenders, in each chapter, and only juvenile-specific research should be considered as relevant for this population.

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¹ SORNA applies to youth ages 14 and older who are adjudicated delinquent for an offense equivalent to aggravated sexual abuse. These youth are subject to Tier III classification under SORNA, which requires lifetime registration and quarterly verification with law enforcement; however, they are eligible for removal after 25 years with a "clean record." Furthermore, youth included under SORNA may be excluded from public sex offender website posting, per each jurisdiction's discretion.

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