

Understanding Juvenile Sex Offenders in Light of *Graham v. Florida*



by
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INTRODUCTION

Until the mid-1980s, juvenile sex offenders were routinely perceived, prosecuted and treated as adults in the criminal justice system. One of those offenders is a current Public Defender client who, in 1985, was convicted of three counts of sexual battery, three counts of burglary with an assault and two counts of robbery. The client was 15 years old and in middle school at the time of his crimes. The victims were all females, strangers and ten or more years his senior. In 1986, the client was sentenced to three consecutive life sentences. After serving nearly 28 years in prison, he is awaiting resentencing in the Fourth Judicial Circuit pursuant to the United States Supreme Court's decision in *Graham v. Florida*.¹

In the past three decades, research

on high-risk juvenile sex offenders has heightened our knowledge of and approach to this population. Researchers subdivided this heterogeneous population into two categories in an effort to better understand how psychological and familial factors, prior criminal history and age at the time of the offense impact victim choice, effectiveness of treatment and the likelihood of recidivism. More recently, greater attention has been placed on differentiating between juvenile rapists and juvenile child molesters.

This article summarizes the findings of that research spanning the last 25 years, focusing primarily on juvenile rapists. Research regarding juvenile child molesters is cited for comparison. For definition purposes, juvenile rapists are offenders whose victims are peers or adults. Juvenile child molesters are offenders who perpetrate crimes on victims five years or more their junior. The following four synopses outline the findings in the literature and will subsequently be discussed in greater detail.

► Strong differences exist in environmental and natural factors associated

with juvenile rapists and juvenile child molesters, including psychological diagnoses, academic performance, prior criminal history and age at time of the offense. However, on average, there are more similarities than dissimilarities in the risk factors presenting among sexual and non-sexual juvenile offenders.

- The recidivism rate for juvenile sex offenders is, on average, 14 percent. Juvenile child molesters are twice as likely to recidivate as juvenile rapists.
- The effectiveness of sex offender treatment for juvenile offenders remains inconclusive. Studies have shown that juvenile rapists respond well to community based services that incorporate a therapeutic component addressing rage and aggressiveness. Juvenile child molesters, on the other hand, rarely outgrow deviant sexual behavior and must learn to control impulses.
- The age of the offender at the commission of the initial offense impacts the likelihood of recidivism, with younger offenders boasting lower recidivism rates. In addition, juvenile rapists tend

to outgrow their offending behavior, typically at 44 years of age.

RISK FACTORS ASSOCIATED WITH JUVENILE SEX OFFENDERS

There are observable differences in the genetic and environmental factors of juvenile child molesters and juvenile rapists, with child molesters displaying more inherent risks. Prior to committing a sexual offense, juvenile rapists typically display conduct problems and general delinquent behaviors.² They struggle academically and are younger in age at the time of initial offense.³ Compared to juvenile child molesters, rapists are less likely to have been sexually abused. Rather, their greatest risk factor is a heightened level of aggression.⁴

Child molesters, on the other hand, tend to have more “socially inadequate behavior: preferring social isolation... more deviant sexual fantasies, fewer consenting sexual experiences and exposure to pornographic materials.”⁵ They suffer more frequently from depression, anxiety and severe personality disturbance,⁶ and they exhibit more psychosexual development problems.⁷ Child molesters tend to advance further in academics and, on average, are older at the time of first offense.⁸ Between 40 and 80 percent of child molesters were themselves victims of sexual and/or physical abuse.⁹

Other risk factors coupled with general deviant sexual behavior include, but are not limited to: “early alcohol abuse,”¹⁰ “lack of parental attachment bonds,”¹¹ “prior offense history,”¹² “difficulties of adolescence compounded by sexual impulses of puberty,”¹³ “academic struggles, Attention Deficit Disorder, impulsivity, antisocial interpersonal orientation, high-stress family environments and interpersonal aggression.”¹⁴ However, these same risk factors are also empirically associated with non-sexual juvenile offenders, according to a literature review of 17 articles from 1995 to 2005.¹⁵ Additionally, both sexual and non-sexual offenders present with

the same personality and behavioral problems,¹⁶ IQ, attendance at special schools,¹⁷ age at first sexual intercourse and number of female partners.¹⁸

Finally, divergent factors associated with juvenile rapists and child molesters have a visible impact on the type of crimes committed as well as the likelihood of recidivism. In terms of the crime, juvenile rapists predominantly victimize females and strangers. They are likely to commit their offenses forcefully and in conjunction with other criminal activity.¹⁹ Rape is qualified as an expression of rage, power and sadistic pleasure—the vehicle rapists choose to act out their aggression.²⁰ Researchers expect these feelings and actions to be relatively brief and overcome with time: “Rapists are likely to have, over the course of their lifetime, far more non-coercive than coercive sexual encounters with age-appropriate peers. By middle age, most rapists will have ‘settled into’ a non-coercive relationship.”²¹

Child molesters, by comparison, typically victimize both females and males, and their victims are often intra-familial. They tend to use tricks or bribery to lure their victims into sexual acts.²² The likelihood of recidivism among juvenile child molesters is greater than rapists due to their perceived inability of aging out or being cured of inappropriate sexual tendencies.²³ Therefore, the “ingrained patterns of paraphiliac arousal and sexual interest” typical of child molesters must be controlled through specific treatment and supervision.²⁴

RECIDIVISM RATES AND STATISTICS

The sexual recidivism rate for juvenile sex offenders is 14 percent; however, a plethora of studies consider the rate to be as low as 7 percent. Interestingly, the average recidivism rate for non-sexual offenses among juvenile sex offenders is approximately 43 percent.²⁵ In studies with seemingly low recidivism rates, critics point to short follow-up periods with participants likely to still be incarcerated.²⁶ Higher recidivism

rates occur when studies target high risk offenders or incorporate sex offenders known to recidivate frequently (such as voyeurs and those who commit indecent exposure).²⁷

Across studies, the sexual recidivism rates of juvenile rapists are significantly lower than juvenile child molesters, typically half the rate. In a study comparing the sexual recidivism rates of 351 juvenile sex offenders over an eight-year period, sexual recidivists with child victims at the time of initial assessment “were twice more likely to sexually recidivate than others.”²⁸ A small sample study comparing 50 juvenile rapists, 50 child molesters, and 50 juvenile delinquents corroborated that finding: The number of re-offenses of adolescent sex offenders with child victims (20 percent) was twice that of other delinquents (10 percent) eight years post-release from a juvenile correctional facility.²⁹

Studies assessing sexual recidivism rates of juvenile sex offenders with non-sexual offenders have found similar recidivism rates. In a 2010 study, Keith Soothill compared 249 juvenile sex offenders with 1,780 non-sexual offending delinquents released from secured custody. After a five-year follow-up, the sexual recidivism rates of both groups were comparable—6.8 percent and 5.7 percent, respectively.³⁰ Also, the general reoffending rate for the non-sexual offenders was higher than the sexual offenders. These findings suggest a need to reconsider our understanding of the root causes and the endurance of inappropriate adolescent sexual behavior.

EFFECTIVENESS OF SEX OFFENDER TREATMENT

Juvenile sex offender treatment programs have fluxed greatly in numbers over the past 30 years in response to wavering confidence in their effectiveness. In 1982, only 20 institutional, residential, and community-based outpatient treatment programs were identified for juvenile sex offenders. Ten years later, the number of programs inflated to over 800. Today, there are

fewer than 300 programs available in the United States.³¹ Furby (1989) reviewed 42 sex-offender recidivism studies and concluded, "There is as yet no evidence that clinical treatment reduces rates of sex re-offenses in general and no appropriate data for assessing whether it may be differentially effective for different types of offenders."³² Effectiveness of treatment continues to be scrutinized; however, there are specific sex offender treatment modalities that appear successful.

For the juvenile rapist, recommended treatment includes Cognitive Behavioral Therapy, intensive monitoring, and community-based programs. Cognitive Behavioral Therapy places emphasis on drawing connections between the offender's thoughts, attitudes, beliefs and fantasies with their choices, actions, and behaviors.³³ Some researchers assert that juvenile rapists must develop empathy for their victims to demonstrate effectiveness of treatment; however, statistically, this has had little impact on recidivism rates.³⁴ The rationale for therapeutic treatment has been stated as follows:

Because juvenile sex offenders are more likely to exhibit nonsexual recidivism compared to sexual recidivism, and because this population did not differ from violent and general juvenile offenders according to their early childhood problems, current behavioral adjustment, personality traits, antisocial attitudes and family background characteristics, some authors concluded that juvenile sex offenders do not need specialized sexual treatment and may profit from intensive family and social interventions as general antisocial youth do.³⁵

Therefore, behavioral treatment for sex offenders has at best only a modest effect on recidivism, and treatment should concentrate on re-educating and re-socializing the offender.³⁶

Specifically, for the juvenile child

molester, research suggests coupling Cognitive Behavioral Therapy with hormonal intervention. This is especially true for offenders with severe paraphiliac behavior (pedophilia). This treatment approach controls inappropriate behaviors while recognizing that these patients "will not necessarily be cured whatever treatment modalities are used."³⁷

RECIDIVISM RATES AND AGING OUT

One of the "most robust findings in criminology" is the relationship between age and recidivism; it is also the strongest predictor for recidivism among juvenile sex offenders both in regard to the age at the time of the offense and age upon release.³⁸ Similar to aging non-sexual offenders, aging juvenile sex offenders follow comparable reductions in the recidivism rates of violent and nonviolent offenses. The age-crime distribution of sexual and non-sexual offenders looks like an inverted "J," indicating that criminal behavior "spikes during adolescence, peaks in late adolescence and early adulthood, declines throughout adulthood and plateaus at a low level around age 40."³⁹

The age at the commencement of the offender's criminal behavior impacts the shape and findings of the "J" curve. Typically, the younger the offender at the time of the initial offense, the less likely he will re-offend. The older a person gets before initially offending, the higher the probability he will become a repeat offender. As an adult, "the likelihood of being charged with sexual offenses increases by 60 percent with each year increase in age at assessment."⁴⁰ These findings confirm that a very early sexual crime is unlikely to be a precursor to persistent sexual offending in adult life.⁴¹

Following the "J" curve to the end of the criminal career, research supports the probability of juvenile rapists outgrowing both sexual and non-sexual behaviors by the age of 44 and no later than the age of 60. One longitudinal study of sex offenders in Washington State deduced the following percentages for juvenile rapists (n=465) re-incarcerated

for a sexual crime:

- ▶ 12.1 percent for those younger than 25
- ▶ 18.3 percent for those between the age of 25 and 34
- ▶ 5.9 percent for those between 35 and 44
- ▶ and 0 percent for those older than 44.⁴²

These reductions in recidivism among sex offenders are consistent across studies⁴³ and invariant with offender groups who "(a) lived in different centuries, (b) came from different countries, (c) differed with respect to age and gender, [and] (d) were at large in the community or incarcerated."⁴⁴

Reasoning for the age-related reduction in recidivism of juvenile rapists cites biological aging effects, both physical and psychological, which is comparable to the ordinary aging man. First, findings indicate that sexual behaviors decrease in the aging male, as exemplified by reductions in blood levels of bio-available testosterone.⁴⁵ Second, the natural process of maturation is also cited as a reason for reduced recidivism rates. According to Prentkey and Lee (2007), "rape is a fundamentally predatory antisocial behavior that is subject to the same type of age-related decline observed with non-sexual antisocial behavior."⁴⁶ For instance, sexual violence risk factors (SVR-20), such as "elementary school maladjustment, failure on prior conditional release, past nonviolent offenses and more severe alcohol problems," reflect anti-social behaviors and traits associated with younger age of release.⁴⁷ These risk factors are less apparent in older and aging sex offenders.⁴⁸ For these reasons, data concludes that the persistence among rapists "occurs within a fairly narrow window." This window "lasts roughly five years."⁴⁹

CONCLUSION

A review of the research over the past three decades suggests that juvenile rapists share greater similarities with non-sexually offending juvenile delinquents when comparing prior criminal

history, the presence of psychological and familial risk factors and the persistence of sexual and non-sexual offending. Juvenile rapists differ greatly from juvenile child molesters when considering their psychological makeup, recidivism rates, and the efficacy of treatment. With this in mind, there is one last component to the assessment of the juvenile rapist—evaluating length of incarceration and recidivism rates.

In 2007, Nunes et al. investigated the relationship between length of incarceration and recidivism rates by following 627 male sex offenders. The results showed that sentencing sexual offenders to lengthy terms of incarceration “seems to have little, if any, impact on sexual and violent recidivism following release.”⁵⁰ The authors recognized the importance of community safety and the victim’s sense of security. However, they pose a valid question: Why do we as a society continue to sentence offenders to lengthy incarceration when the evidence for its deterrent effect is “unimpressive?”

Given that more money spent on incarcerating offenders leaves less money for other public services, such as education and health care, it is important to examine the effectiveness of incarceration for the management of criminal behavior and protection of the public.⁵¹

Based upon the existing research, and as additional studies surface supporting the efficacy of alternative sanctions, there is an increasing need to reconsider our proclivity to incarcerate youthful offenders, especially given that other methods are available, appropriate and effective. Lengthy incarceration is not the solution for dealing with juvenile sex offenders, and resentencings under *Graham v. Florida* provide a vehicle for addressing this misguided approach. ■

¹ 560 U.S. 2011 (2010).

² Center for Sex Offender Management, *Understanding Juvenile Sexual Offending Behavior* (Silver Spring, Md., 1999). www.csom.org/.

³ Julie Carpentier and Jean Proulx, “Correlates of Recidivism Among Adolescents who have Sexually Offended,” *Sexual Abuse*, 2011:23 (4):442.

⁴ Marcel Aebi, Gunnar Vogt, Belinda Plattner, Hans-Christoph Steinhausen and Cornelia Bessler, “Offender Types and Criminality Dimensions in Male Juveniles Convicted of Sexual Offenses,” *Sex Abuse*, 2012 24:267.

⁵ Anton van Wijk, Robert Vermeiren, Rolf Loeber, Lisette “T Hart-Kerkhoffs Theo Doreleijers and Ruud Bullens, “Juvenile Sex Offenders Compared to Non-Sex Offenders: A Review of the Literature 1995–2005,” *Trauma, Violence and Abuse*, 2006:7 (4):235.

⁶ Center for Sex Offender Management (1999). *Understanding Juvenile Sexual Offending Behavior* (Silver Spring, Md.). www.csom.org/.

⁷ Marcel Aebi, Gunnar Vogt, Belinda Plattner, Hans-Christoph Steinhausen and Cornelia Bessler, “Offender Types and Criminality Dimensions in Male Juveniles Convicted of Sexual Offenses,” *Sex Abuse*, 2012:24:267.

⁸ Carpentier, Julie and Jean Proulx, “Correlates of Recidivism Among Adolescents who have Sexually Offended,” *Sexual Abuse*, 2011:23 (4):442.

⁹ Center for Sex Offender Management, *Understanding Juvenile Sexual Offending Behavior* (Silver Spring, Md., 1999). www.csom.org/.

¹⁰ Sharon Kelley, Kathy Lewish and Janet Sigal, “The Impact of Risk Factors on the Treatment of Adolescent Sex Offenders,” *Journal of Addictions and Offender Counseling*, 2004, 24:68.

¹¹ Kelley et al, 24:69.

¹² Constanze Gerhold, Kevin Browne and Richard Beckett, “Predicting Recidivism in Adolescent Sexual Offenders,” *Aggression and Violent Behavior*, 2007 12(4):432.

¹³ Julie Carpentier and Jean Proulx, “Correlates of Recidivism Among Adolescents Who Have Sexually Offended,” *Sexual Abuse*, 2011:23 (4):444.

¹⁴ Carpentier et al, 433-442

¹⁵ Anton van Wijk, Robert Vermeiren, Rolf Loeber, Lisette “T Hart-Kerkhoffs Theo Doreleijers and Ruud Bullens, “Juvenile Sex Offenders Compared to Non-Sex Offenders: A Review of the Literature 1995–2005,” *Trauma, Violence and Abuse*, 2006:7 (4):232-233.

¹⁶ van Wijk et al, (2006):234.

¹⁷ Anton van Wijk, Robert Vermeiren, Rolf Loeber, Lisette “T Hart-Kerkhoffs Theo Doreleijers and Ruud Bullens. “Juvenile Sex Offenders Compared to Non-Sex Offenders: A Review of the Literature 1995–2005,” *Trauma, Violence and Abuse*, 2006:7 (4):232-233.

¹⁸ van Wijk et al, (2006):235

¹⁹ Aebi et al, (2012):268

²⁰ *Criminal Behavior: Theories*, Jacqueline B. Helfgott (Sage Publications Inc., 2008) p. 211.

²¹ Robert Alan Prentky and Austin F.S. Lee, “Effect of Age-at-Release on Long Term Sexual Re-offense Rates in Civilly Committed Sexual Offenders,” *Sex Abuse*, 2007, 19:57.

²² Aebi et al, 2012:268

²³ Julie Carpentier and Jean Proulx, “Correlates of Recidivism Among Adolescents who have Sexually Offended,” *Sexual Abuse*, 2011:23 (4):443.

²⁴ David Berenson and Lee Underwood, *Sex Offender Programming in Youth Correction and Detention Facilities* (Nov 2000). <http://pbstandards.org/cjcaresources/21/Sex-Offender-Programming.pdf> (5).

²⁵ Michael F. Caldwell, “Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism,” *International Journal of Offender Therapy and Comparative Criminology*, 2010 54(2):197. These numbers are derived from a meta-analysis, reviewing 63 studies and over 11,000 adolescent juvenile sexual offenders between 1990 and 2012.

²⁶ Keith Soothill, “Sex Offender Recidivism,” *Crime and Justice*, 2010 39(145):7.

²⁷ Keith Soothill (2010), 8.

²⁸ Julie Carpentier and Jean Proulx, “Correlates of Recidivism Among Adolescents who have Sexually Offended,” *Sexual Abuse*, 2011:23 (4):443.

²⁹ Michael P. Hagan, Karyn L. Gust-Brey, Meg E. Cho and Edward Dow, “Eight-Year Comparative Analyses of Adolescent Rapists, Adolescent Child Molesters, Other Adolescent Delinquents and the General Population,” *International Journal of Offender Therapy and Comparative Criminology*, 45(3), 2001:321

³⁰ Keith Soothill, “Sex Offender Recidivism,” *Crime and Justice*, 2010 39:145-211.

³¹ David Berenson and Lee Underwood, “Juvenile Sex Offender Programming in Youth Correction and Detention Facilities,” *Council of Juvenile Correctional Administrators* (2000), 6.

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³³ Susan Burke, “Juveniles Who Sexually Offend: Special Considerations for a Population Difficult to Define,” *Corrections Today*, Aug, 2012:68.

³⁴ M. Weinrott, “Recidivism Among Juvenile Sex Offenders: Are Favorable Outcomes Only Favorable When Therapy Matters?” Presentation at Child Abuse Action Network, Augusta, Maine, August 1998.

³⁵ Marcel Aebi, Gunnar Vogt, Belinda Plattner, Hans-Christoph Steinhausen and Cornelia Bessler, “Offender Types and Criminality Dimen-

SEE PAGE 28

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