Sexually Abusive Youth Residence, Recidivism, and Registration: Critical Implications of AB 403

California Coalition on Sexual Offending

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Residence, Recidivism, and Juvenile Registration



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Sexually Abusive Youth - Residence, Recidivism, and Registration: Critical Implications of AB 403

The California Coalition on Sexual Offending (CCOSO) developed this paper to address three very complicated issues involving sexually abusive youth: residence, recidivism, and registration. These issues are addressed separately in the text below although they have overlapping elements. Part One briefly addresses the three issues; Part Two provides a deeper rationale for CCOSOs concerns in these areas.

Part One:

Critical Issues Impacting Sexually Abusive Youth

Effective January 1, 2017 California's Child Welfare Continuum of Care Reform (CCR) act, AB 403, was enacted, restructuring the California Foster Care system, effecting where youth who have been removed from their homes will be placed. Intent of AB 403 is to assist policy makers and practitioners in making informed decisions regarding out-of-home care. In the case of sexually abusive youth, the CCR raises critical concerns for policies for supervision, placement plans, treatment, and juvenile registration. The research has consistently demonstrated that the recidivism rate is low for adjudicated sexually abusive youth. These research findings must be considered when formulating these policies, including registration, an action that can have life-long ramifications.

I. Residential Placement for Sexually Abusive Youth

The issue of residence status for adjudicated sexually abusive youth is notably more complicated than the residential restrictions imposed on adult sex offenders. Court interventions on sanctioned juvenile sex offenders, (as either Ward, and/or as a Dependent), who are deemed to be a dangerous risk either at home and/or in the community, are likely to include removal from the home (i.e., an out-of-home placement status). Placement can be in a detention facility, a residential facility, a group home, and/or foster care. AB 403 brings about significant changes in the foster care system.

The major focus and goals of the CCR are to preserve families, keep youth at home and support the family unit.

When it is determined that a child cannot safely remain in the home of their parent or guardian, the offerings of the first placement should match an accurate assessment of the child or youth's needs. Children should not have to experience multiple placements to get the services they need. Preserving or reunifying the family is the first priority, when possible, for all children and youth. When reunifying a family is not possible, the obligation to secure a permanent family through adoption or guardianship remains.

Consistent with this priority is the principle that children who cannot be safely placed in home-based family care can go into residentially-based care with specific care plans and intensive therapeutic interventions. Such placements should be short-term in nature and have the goal of returning the child or youth to a home-based family care setting or other permanency option as quickly and safely as possible. (California's Child Welfare Continuum of Care Reform, California Department of Social Services, p. 19)

AB 403 is primarily focused on children in the welfare/dependency system, but has important implications related to sexually abusive youth, including those adjudicated for sexual crimes. Prior to the enactment of AB 403, these youths received treatment in residential programs (i.e., group homes funded through the Foster Care System). The homes served moderate to high risk youth through intensive treatment programming, usually lasting between one and two years. Many youths were placed in group homes away from the victim, thus giving the family and victim time to receive treatment and counseling. Family counseling and eventual reunification support were provided as a part of the treatment regimen.

Effective January 1, 2017, AB 403 replaced the residential group home model with the "Short-Term Residential Treatment Center" (STRTC) model, to provide short-term, specialized, and intensive treatment for sexually abusive youth. AB 403 recognizes youth in foster care under the supervision of county probation departments may require additional considerations for placements. It affirms that the juvenile court and probation officers must consider safety and needs of the youth as well as public safety. Placement into a STRTC shall be based upon the individualized assessment of needs and strengths and the recommendation of the CFT that placement is necessary because the child requires intensive services in a 24/7 supervised setting to maintain their or the public's safety...

The STRTC programs will provide the highest level of care and supervision, offering immediate access to an array of services that are tailored to meet the needs of the individual child, including intensive mental health treatment or intervention services for victims of commercial sexual exploitation. Building upon the residentially-based services model, STRTC providers will be required to have the capacity to transition children and youth to a home-based family care setting. (CDSS, p. 30)

CCOSO's Concerns Regarding Unintended Effects of Applying AB 403 to Moderate to High Risk Sexually Abusive Youth:

1. Intensive residential treatment programs for sexually abusive youth in California will close. The STRTC model (defined as six months with case by case review thereafter) has had a major impact on existing residential treatment programs offering specialized treatment services to sexually abusive youth. Several (if not most) existing residential treatment programs offering specialized treatment services to sexually abusive youth are closing;

others are merging or changing their programs to serve dependent or non-adjudicated youth, thus eliminating critical resources. Consequently, treatment needs and school placements of sexually abusive youth, as well as rights and considerations of victims, may not be served sufficiently.

- 2. California's sexually abusive youth may be sent to out-of-state treatment programs. Placing adjudicated youth in out-of-state programs, separating youth geographically further from family and community support systems, makes reunification, victim reparations and family counseling difficult and unlikely to occur. Programs are already seeing vacancies as youth are sent to costly, longer term treatment programs located in other states, which is contrary to a core principle in AB 403 (i.e., short-term placement and treatment).
- 3. Moderate and high risk sexually abusive youth will likely be treated in community settings. In reducing residential treatment options for California counties, outpatient programs will be tasked with treating moderate to high risk sexually abusive youth. Existing community-based therapeutic treatment programs for sexually abusive youth may not follow evidence-based principles, without which high risk individuals receive less effective intervention. Treating moderate to high risk sexually abusive youth in an outpatient setting without additional community supervision resources places providers, other lower risk youth and the public at risk, further straining already burdened probation officer caseloads.
- 4. Increased use of the Department of Juvenile Justice (DJJ). Higher risk sexually abusive youth will likely lack adequate supervision, case management, and community treatment options, potentially increasing the use of the highest cost and most restrictive level of care and treatment.
- 5. Lack of oversight, less stringent standards of treatment and supervision for sexually abusive youth may result in increased recidivism and place the community at risk. Currently no system or agency provides oversight of programs for sexually abusive youth or sets treatment standards. There is no statewide sex offender management board authorized to establish placement and treatment criteria for these youths. The current state law enacting the California Sex Offender Management Board (CASOMB) only includes adjudicated adolescents who were sent to the Department of Juvenile Justice (DJJ). Furthermore, there are few mechanisms for special conditions of supervision, or required training for treatment and supervision staff on the dynamics of sexually abusive behavior. The lack of such mechanisms may well result in a significant impact on community safety, with potentially increased recidivism, and negative impact on victims and families.

II. Recidivism Rates Among Sexually Abusive Youth

The term re-offense is often used interchangeably with recidivism, however not as definitively defined and therefore more difficult to study. Recidivism specifically refers to a convicted criminal who repeats criminal behavior (generally referencing adults). Recidivism is typically studied through officially documented criminal behavior, or an objective measure with a high degree of accuracy (i.e., risk assessment tool). On the other hand, re-offense describes recurrent sexually offensive behaviors (which may or may not be sexually criminal behaviors) and is perhaps a more suitable term when discussing non-adjudicated youth, particularly those under age 12 years.

It is difficult to obtain accurate and consistent data regarding recidivism rates given recidivism (or re-offense) is defined differently in respective studies. Recidivism studies generally follow a youth longitudinally, attempting to determine the length of time before the youth repeats sexually abusive behaviors. Predicting such behaviors is hampered by the multiple developmental phases the youth goes through prior to adulthood. Most recidivism studies of sexually abusive youth are on adjudicated male adolescents; however, some subject samples are composed of non-adjudicated males (Caldwell, 2010).

Current research suggests that differing levels of intensity and duration of treatment and supervision are required by different juveniles to most effectively reduce recidivism while maintaining cost effectiveness (Lipsey, Howell, Kelly, Chapman, & Carver, 2010). Juveniles who have the highest risk and needs have the greatest room for change, while lower risk juveniles are less problematic and may be managed at a lower level of care and/or supervision. Discerning a juvenile's level of risk for sexual and non-sexual recidivism is key to a comprehensive case plan. A responsive and individualized approach to the youth and his and/or her family clearly represents one aspect of implementation of evidence based practices (*CCOSO Guidelines for the Assessment and Treatment of Sexually Abusive Juveniles –* Authors: Land, Ralph, Rasmussen, Miccio-Fonseca, & Blasingame, 2013).

CCOSO's Concerns Regarding Use of Recidivism Data of Adjudicated Sexually Abusive Youth:

1. Researchers, policy makers, and practitioners may inappropriately rely on studies of adult sex offenders to demonstrate that there are varying recidivism rates according to the specific sex crimes committed. Adult child abusers recidivate at different levels than rapists) (Hanson, Morton, & Harris, 2003; Hanson, & Morton-Bourgon, 2004). These kinds of specific data have not been reported regarding sexually abusive youth and applying adult research to juveniles is inappropriate. Miner's (2002) study of juvenile sex offenders found that many adult risk factors "were either unrelated to adolescent reoffending or behaved differently in adolescents than they did in adults" (as cited in: Powers-Sawyer & Miner, 2009, p. 2).

- 2. The current level of accuracy across multiple risk assessment protocols has only modest accuracy. Although limitations exist, the use of objective, robust risk assessment tools is crucial in estimating recidivism. Evidenced based risk assessment measures are important to incorporate in a risk assessment along with other evidenced based methods.
- 3. **Recidivism data are not consistently recorded or centrally collected.** Because of variations between study samples, recidivism data cannot be generalized beyond the specific group of individuals included in any particular study. Currently there is no statewide, central data collection center for adjudicated and non-adjudicated sexually abusive youth in the Child Protective Services system or Juvenile Probation system, limiting the utility of information that is available. Such a data base would be invaluable.

III. Registration of Adjudicated Sexually Abusive Youth

Convicted adult sexual offenders have been required to register per PC 290 in California since 1947. This registration requirement has been further applied to sexually abusive youth who are sentenced to the custody of the California Department of Corrections, Division of Juvenile Justice (DJJ; formerly known as the California Youth Authority). In recent years, some legislators have considered requiring other adjudicated sexually abusive youth (besides those in DJJ) to register. However, the research regarding adult sex offender registration and public notification has not revealed benefits in public safety (i.e., recidivism rates are not lower for registered offenders than for non-registered individuals).

CCOSO's Concerns Regarding the Possible Effects of Expanding Registration Laws to Sexually Abusive Youth Not in the Department of Juvenile Justice System:

- 1. Registration requirements based on the index sexual offense does not inform which adjudicated sexually abusive youth are likely to reoffend.
- 2. Risk assessment procedures for sexually abusive youth are not sufficiently accurate to be the basis for a *lifetime* determination. Assessments based on currently available tools maintain their accuracy of only an approximate one-year period.
- 3. Research has not shown that registration of adjudicated sexually abusive youth has any deterrent effect on recidivism rates. On the contrary, research has shown that registration of juveniles can be quite detrimental.
- 4. Research has shown that registration of adjudicated sexually abusive youth may effect prosecution rates. States that require registration of sexually abusive youth have experienced a reduction in the frequency of prosecutions but have increased rates of plea bargaining to avoid the harsher consequences associated with registration (Letourneau & Caldwell, 2013).

<u>Part Two</u>

Sexually Abusive Youth - Residence, Recidivism, and Registration:

Rationale for CCOSO's Concerns

The remaining text provides an expanded rationale for the above noted concerns. CCOSO strongly believes that State policies regarding sexually abusive youth should follow evidence-based principles that are scientifically sound.

Particularly for adjudicated youth, scientifically sound principles (as stated below) have been identified, and provide a backdrop for CCOSO's concerns. Not all sexually abusive youth need the same levels of supervision or intensity and frequency of treatment. Treatment and supervision needs to be based on the youth's risk level and treatment needs (*CCOSO Adolescent Guidelines* – Authors: Land, Ralph, Rasmussen, Miccio-Fonseca, & Blasingame, 2013).

Sexually abusive juveniles differ from adult sex offenders (e.g., developmental concerns, family, school, peer involvement). Sexually abusive juveniles are not simply "small adults." Treatment success is relative to the collaboration between the systems upon which the sexually abusive adolescent is dependent (Hunter, 2006; Rich, 2003). Collaboration between stakeholders is critical.

The model proposed in CCOSO's Adolescent Guidelines for sexually abusive juveniles, the Collaborative Model, is used to highlight several important factors related to treating this population, beyond the management that the adult Containment Model proposes. The CCOSO Collaborative Model is consistent with the principles of the CCR. Collaboration in this type of treatment is used in several ways and mirrors characteristics of many of the systems with which the juvenile interacts. It is the optimal relationship between the juvenile, their family, probation, and treatment providers. The Collaborative Model emphasizes "working together where possible, rather than in an adversarial way, and emphasizes the rehabilitation of the juvenile while also protecting public safety, which goes beyond managing their potential inappropriate behavior in the community" (*CCOSO Adolescent Guidelines* – Authors: Land, Ralph, Rasmussen, Miccio-Fonseca, & Blasingame, 2013, p.7).

I. Application of Risk, Needs, and Responsivity Principles

The substantial research on the development of antisocial behavior in adolescents would indicate:

...the application of the human service principles of risk, needs, and responsivity with juvenile treatment and supervision is appropriate (Lowenkamp, Makarios, Latessa, Lemke, & Smith, 2010; Lipsey Howell, Kelly, Chapman, & Carver, 2010). The principals [sic] of this approach help clinicians and supervising officers differentiate and deliver varying levels of therapeutic intervention and supervision based on individualized offender characteristics and needs associated with the risk of further delinquency.

(CCOSO Adolescent Guidelines – Authors: Land, Ralph, Rasmussen, Miccio-Fonseca, & Blasingame, 2013, p. 9)

Contemporary research supports that:

...differing levels of intensity and duration of treatment and supervision are required by different juveniles in order to most effectively reduce recidivism while maintaining cost effectiveness (Lipsey, Howell, Kelly, Chapman, & Carver, 2010). Those juveniles who have the highest risk and needs have the greatest room for change, while lower risk juveniles may be managed at a lower level of care. Discerning the juvenile's level of risk for reoffense sexually or otherwise, his particular dynamic needs associated with general delinquency, and a comprehensive case plan that is responsive to the individual and his family clearly represents one aspect of implementation of evidence based practices. (*CCOSO Adolescent Guidelines* – Authors: Land, Ralph, Rasmussen, Miccio-Fonseca, & Blasingame, 2013, p. 9)

II. Estimating Recidivism

Recidivism rates differ, depending on the population of youth examined. Caldwell's (2016) recent meta-analysis of 106 studies (from 98 data sets) involving 33,783 male adjudicated juvenile sexual offenders (carried out between 1938 and 2014) reported, "...the weighted base rate for detected sexual recidivism for juveniles adjudicated for a sexual offense is 4.97% and for general recidivism is 39.4% over a follow-up of 62.06 months." (p. 6). The meta-analysis did not look at specific kinds of sex crimes committed by juveniles, nor did it report on sexually abusive females, or youth with low intellectual functioning or intellectual disabilities (ID).

Although sexually abusive female youth (adjudicated and non-adjudicated) exist, they are recorded in considerably smaller numbers. Data reported from National Incident-Based Reporting System (NIBRS) found that female youth comprised only 7% of a sample of 13,471 juveniles known to police to have committed sex offenses against minors, and these were found more frequently among younger youth than older youth (Finkelhor, Ormbod, & Chaffin, 2009). Underreporting of sex crimes committed by sexually abusive female youth and a dearth of recidivism studies on this population add confusion to the actual occurrence and recidivism of their sexually abusive behaviors.

The study of recidivism, and alternatively re-offense, for youth with low intellectual functioning is equally limited, as noted by Blasingame, Creeden, and Rich (2015):

It is difficult to identify just how many adolescents with ID have committed or been the victim of sexual crimes (Fyson, Eadie, & Cooke, 2003), as juvenile justice records do not consistently include ID as an identifier in case documentation. Further complicating the effort to calculate prevalence data is the fact that many adolescents in such circumstances are not adjudicated, particularly when the victim is another person with a

developmental disability (Fyson et al., 2003). Therefore, it is likely that arrest records do not reflect the true frequency at which these problematic behaviors occur (p.8).

Miccio-Fonseca and Rasmussen (2013) reported that sexually abusive youth with low intellectual functioning (who constituted 22.5% of a large sample of 1,056 male and female youth ages 4 to 19) were of higher risk, however recidivated less.

Recidivism of sexually abusive youth under age 12 is also understudied. The National Incident Based Reporting System (NIBRS) data indicated that children under 12 years constituted only 16% of the sample of youth known to police to have committed sex offenses against minors (Finkelhor et al., 2009) (age 12 to 18) drawn from a primarily non-adjudicated sample. Preadolescents had a higher base rate of sexual recidivism (25 to 28%), than adolescents (14 to 16%) (Prentky et al., 2010). The recidivism rate in this study, particularly for the preadolescents, was considerably higher than the 10% (or lower) recidivism rate typically reported by most recidivism studies of sexually abusive youth. This may relate to how recidivism was defined (i.e., "any new 'hands-on' sexually abusive behavior" [Prentky et al., 2010, p. 28]), as opposed to official records (i.e., a new arrest, charge, or adjudication).

Most studies report that sexually abusive youth are far more likely to re-offend *non-sexually*. Reitzel and Carbonnell's (2006) meta-analysis of nine studies (published and unpublished) of juvenile sex offenders (N = 2986, 2604 known males) reported recidivism rates (average 59-month follow-up) of 12.53% (sexual offense), 24.73% (non-sexual violent), 28.51% (non-sexual nonviolent), and 20.40% (unspecified non-sexual). Caldwell's (2010) study sample of 11,219 juvenile sex offenders was followed for a weighted mean of 59.4 months. The weighted mean rate of recidivism rate was 7.08% (sexual) 43.4% (general). Likewise, recidivism rates for sexual and general recidivism differed in Gerhold, Browne, and Beckett's (2007) review of 12 studies of primarily male juvenile sexual abusers (combined sample = (1315, mean follow-up = 67 months). The mean base rate of recidivism was 14% (sexual) and as high as 44% (general).

III. Registration versus Recidivism

The Sex Offender Registration and Notification Act (SORNA; Title I of the Adam Walsh Child Protection and Safety Act of 2006) directs state government to include minors in their sex offender registration and notification systems. The SORNA Guidelines "mandate that youth register, if prosecuted and convicted as adults or if adjudicated delinquent as juveniles, for a sex offense comparable to or more serious than 'aggravated sexual abuse'" (Pittman & Nguyen, 2011, p. 4). California law currently allows for sexual offender registration for sexually abusive youth involved in the Department of Juvenile Justice system. AB 403 could potentially apply the registration law to other types of sexually abusive youth, raising many concerns.

Juvenile sexual offenses are underreported even if the crimes are extremely coercive, sexually violent, and/or directed against individuals the youth does not know. Some youth who are brought to the attention of law enforcement for the first time *may have already* committed previous, unreported sex crimes. Underreporting prevents professionals from getting an

accurate baseline of the youth's sexual abusive behavior. Furthermore, most non-adjudicated sexually abusive youth are low risk to re-offend; however, *low risk* does not mean *no risk*. Simply identifying the youth's index offense does not by itself inform whether the youth is low, moderate or high risk.

For adjudicated sexually abusive youth, registration laws can produce unintended adverse effects that defeat the purpose of having such laws. To date, the research on juvenile sex offender registration has not found beneficial effects of registration. Research indicates that registration:

- a) lacks accuracy in differentiating youth at high risk to recidivate from other youth (Bastastini, Hunt, Present-Koller, & DeMatteo, 2011; Vitacco, Caldwell, Ryba, Melesky, & Kurus, 2009);
- b) does not have an effect in reducing recidivism (Caldwell & Dickinson, 2009);
- can decrease prosecution of juvenile sex offenders, and/or increase plea bargaining, thus not holding sexually abusive youth accountable for their behavior (Letourneau, Bandyopadhyay, Sinha, and Armstrong, 2009, as cited in Letourneau & Caldwell, 2013); and
- d) can have acute and long-term psychological consequences to the youths and their families (Comartin, Kernsmith, & Miles, 2010; Denniston, 2016; Human Rights Watch, 2013).

There are profound negative implications of holding juvenile sex offenders to the same registration requirements as adult sex offenders. Interviews of 300 people affected by the requirements of juvenile registration and notification requirements revealed invaluable information related to a wide spectrum of negative psychological consequences for juvenile sex offenders (i.e., social isolation, depression, suicide ideation and attempts, completed suicides, being victims of harassment such as being beaten or shot at), forced to make frequent moves, not able to find housing or find and maintain a job, and/or denied access to educational resources and recreational programs) (Human Rights Watch, 2013).

Is Registration Warranted for Sexually Abusive Youth?

Determining whether registration for adjudicated sexually abusive youth is warranted is a conundrum. Imposing registration and public notification on young people who are continually developing and changing is legitimately questionable, yet there are youth who commit serious sex offenses meriting stringent supervision. Nevertheless, most non-adjudicated sexually abusive youth are low risk and likely will not continue to offend as juveniles. Few studies have provided reliable data regarding how many adjudicated adolescent sex offenders go on to reoffend as adults (Vandiver, 2006).

Sex offender registries were created and are maintained for those deemed to be sexually dangerous. However, the effectiveness of such mechanisms can be disputed. In a report prepared for the Florida Association for Treatment of Sexual Abusers (FATSA), Levinson (2015)

stated "Juvenile offenders should not be placed on registries. In the absence of evidence that registries effect a meaningful drop in recidivism, the stigmatization and impediments to healthy social and psychological development should hold significant weight" (p. 2).

Summary Comments

The California Coalition on Sexual Offending (CCOSO) asserts there are a multitude of issues related to areas of residence (i.e., out-of-home placement), recidivism, and juvenile registration that must be considered as statewide changes are made to the foster care system through the implementation of CCR. This document outlined several concerns and provides information facilitating more informed decisions related to sexually abusive youth, a segment of the population served by multiple public institutions, (i.e., child protective services, juvenile court systems, mental health departments). This includes care for adjudicated and non-adjudicated sexually abusive youth throughout the state.

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