

## Section 7: The Legal and Legislative Response

### Use Slide #1: Legislative Responses to Juvenile Sex Offenders

#### Introduction

As we have already discussed in earlier sections of this training, there has been a sea change in recent decades in how the juvenile justice system is responding to youthful offenders overall, and to juvenile sex offenders specifically. Generally speaking, as you've heard already during this training, the juvenile justice system – originally designed as an institution that was supposed to rehabilitate young offenders – has become increasingly punitive in some ways and has moved toward a “treat juveniles like adults” philosophy. The system's reaction to juvenile sex offenders is no exception, particularly with respect to legislative responses.

As the issue of sex offending has received increased media and community scrutiny, juvenile sex offenders have become caught up in a web of legislation originally designed for adult sex offenders – including registration, community notification, and civil commitment.

In essence, these laws were developed in the hopes of keeping close tabs on sex offenders, better informing citizens about the presence of these offenders so that they could better protect themselves, and protecting communities from the most dangerous offenders – laudable goals to be sure. However, the federal legislation that created the registration and notification statutes did not provide specific guidance about how to apply these policies to juveniles. Absent such guidance, some states applied these laws uniformly to adults as well as to juveniles, perhaps without a full understanding of some of the factors we have discussed during this training regarding key differences between adult and juvenile sex offenders. So the dangers of a “one size fits all” approach to juvenile sex offender management apply not only to our treatment, assessment, and supervision approaches, but also to our legal responses to juvenile offenders, including around such issues as registration, notification, and civil commitment laws, all of which we will discuss in more detail later in this section.

### Use Slide #2: Goals

#### Goals

This section of the curriculum will help you to understand:

- Changes in legislative responses to juvenile sex offenders in recent decades;
- The application of federal registration and community notification laws to juvenile sex offenders at the state level;

- The presence of sexually violent predator/civil commitment laws that apply to juveniles offenders; and
- Some of the concerns about applying these laws to juvenile offenders without consideration of unintended collateral consequences for these youth.

**Part I: Overall Legal Trends in the Disposition and Management of Juvenile Offenders**

**Use Slide #3: Legal Trends in the Disposition and Management of Juvenile Offenders**

As we have discussed, a surge in juvenile violence in the mid-1990s resulted in a series of “get tough on juvenile crime” legislation. These changes were sweeping. Traditional cornerstones of the juvenile justice system were modified or done away with in a number of states.<sup>1</sup> As we mentioned in the treatment section, those changes included things like reductions in the lower age by which youth could be tried as adults, elimination of the strict confidentiality guidelines for some juvenile court records and proceedings, the establishment of mandatory minimum sentence structures for juvenile crimes, and the reduction of judicial discretion in the juvenile and family courts.<sup>2</sup>

Some examples of how these changes have played out around the country include the following:

**Use Slide #4: Confidential Information**

- With regard to record confidentiality, nine states (Arizona, Idaho, Iowa, Kansas, Michigan, Montana, New York, Oregon, and Washington) now permit the public release of juvenile court records without qualifying restrictions.<sup>3</sup>

**Use Slide #5: Confidentiality Waivers**

- Maine, Mississippi, Missouri, Nebraska, New Jersey, Oklahoma, Rhode Island, South Carolina, and Wyoming) allow public access to juvenile court records if the youth has committed a specified offense.<sup>4</sup>

**Use Slide #6: Record Sealing**

- Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nevada, North Carolina, Ohio, Oregon, South Carolina, Texas, Virginia, Washington, West Virginia, and Wyoming) require that certain records never be sealed, expunged, or destroyed, including those in juvenile sex offender cases.<sup>5</sup>

#### Use Slide #7: Open Hearings

- 13 states (Arizona, Colorado, Florida, Iowa, Michigan, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oregon, Texas, and Washington) permit or require juvenile delinquency hearings to be open to the general public.<sup>6</sup>

#### Use Slide #8: No Minimum Age

- From 1992 through 1999, all states except Nebraska enacted or expanded their laws related to transfer of juveniles to the criminal courts.<sup>7</sup> As of the end of the 2002 legislative sessions, 23 states (Alaska, Arizona, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Maryland, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin) eliminated altogether the minimum age that youthful offenders could be considered – in some form or fashion – for adult proceedings or for adult sanctions.

#### Use Slide #9: Cases Excluded From Juvenile Court

- Georgia, Illinois, Indiana, Kentucky, Louisiana, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Virginia, and West Virginia) have mandatory waivers for cases that meet certain offense, age, and other criteria, and 28 states (Alabama, Alaska, Arizona, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin) designate a category of cases that are automatically ineligible to be heard in juvenile court.<sup>8</sup>

#### Use Slide #10–11: Cases Waived to Adult Court

Partly as a result of this type of legislation, the number of delinquency cases waived to the adult criminal courts increased by 71 percent between 1985 and 1994<sup>9</sup> and waivers were common for juveniles who committed sex offenses. And when they were transferred into the adult criminal justice system, those juveniles received fairly significant and punitive consequences. In fact, the majority (73 percent) of sexually abusive youth who were convicted of sexual assault and transferred from juvenile to criminal court in 1996 were sentenced to prison and received an average maximum sentence of 105 months.<sup>10</sup> As we mentioned in the treatment section, this can result in unintended consequences, because when juveniles receive the more punitive types of dispositions and sanctions typically reserved for adults, they actually recidivate twice as often and commit more serious crimes.<sup>11</sup> That shift in approach certainly seems to be pretty different from a rehabilitative model for youth and their families, doesn't it? And based on the outcome data, does it seem to be having the desired effect?

Obviously, these changes in law represent a very important shift in our response to juvenile offenders and suggest a belief that juveniles and adults should be treated the

same in our justice systems. Ironically, the fundamental differences between juvenile and adult offenders – and in particular, juveniles’ amenability to treatment – were among the reasons juvenile offenders have traditionally been afforded legal protections that adult offenders have not: a right to confidentiality, sealed records, closed hearings, and a guarantee that up to a certain age, their cases would be tried in juvenile court.

Based on what we have learned over the course of this training, we know – for at least some number of juvenile sex offenders – that delivering appropriate support, interventions, and resources can make a significant positive impact. Indeed, as you have seen, data suggests that juvenile sex offenders are more amenable to changing their behavior, or desisting from criminal activity, before becoming adults.<sup>12</sup> As a result, some experts have argued that the changes in our system’s responses to youthful offenders, including the blanket application of laws that were geared toward adult sex offenders, may be worthy of a second look. More specifically, it has been suggested that some of our legal responses, though well-intended, have been implemented without the full awareness of the important differences between adult and juvenile sex offenders.<sup>13</sup>

To be fair, it was not all that long ago when the field overall – including treatment and supervision strategies – were developed on a similar lack of understanding of the differences between adult and juvenile sex offenders. But because we are learning more and more about these youth as the field evolves, we are perhaps better equipped now to consider our management approaches and strategies, including legal responses, through a developmentally responsive lens. In so doing, we can design more informed responses that will be maximally effective and in a way that reduces the potential for unintended consequences. Perhaps the best place to begin to consider these implications is through the application of registration and community notification laws to youth. First, let me give you a brief overview of how these laws came into play.

## ***Part II: The History of Sex Offender Registration and Notification Statutes***

### **Use Slide #12: History of Sex Offender Registration and Notification Statutes**

This may come as a surprise to many of you, but sex offender registration laws, a seemingly new phenomenon, were actually introduced in the 1940s in an effort to label and track sexual deviants, including sexual psychopaths. The movement to enforce these laws again gained steam during the late 1980s and early 1990s, after a wave of highly publicized sex crime cases. These high-profile cases caused lawmakers to re-examine sex crime policies and lent support to the wave of “get-tough” legislation. Among the most notable of these incidents:

- In 1989, a Police Chief in Washington State became aware of the pending release of a sex offender who, while in prison, had documented plans to sexually molest school children. The Police Chief weighed the potential for harm against the offender’s right to privacy and decided to notify the community. This was the first instance of community notification in the United States and was widely

publicized throughout the country. As a result of the public outcry from these crimes, the Governor of Washington State appointed a task force to recommend changes to the state laws. The task force's recommendations became an omnibus bill enacted by the 1990 Legislature, outlining sweeping changes in the penalties for sex offenses, including civil commitment, registration, and community notification.

- Also in 1989, a masked man abducted 11-year-old Jacob Wetterling at gunpoint near his home in Minnesota. Jacob remains missing to this day. In 1991, a law named in honor of Jacob resulted in the passage of Minnesota's sex offender registration act. Prior to this act, law enforcement agencies lacked resources to identify known sex offenders residing in the state, which could assist in the investigation of these types of crimes.
- Seven-year-old Megan Kanka was raped and murdered in 1994 by a twice convicted child molester who lived on her block in New Jersey. Megan's parents believe that if they had known that a pedophile lived nearby, this crime would never have happened. Megan's death gave new momentum to the concept of community notification—that residents should be warned when a sex offender moves into their neighborhood. In 1995, a widespread community campaign led to the enactment of community notification legislation in New Jersey, known as "Megan's Law."


 **Use Slide #13: History of Sex Offender Registration and Notification Statutes (Continued)**

These tragic events sparked a movement on the national level to provide a swift and strong response to the problem of sexual offending in our communities. For example, in 1994, Congress passed the Jacob Wetterling Act, which required all states to create registries of offenders convicted of sexually violent offenses or crimes against children and to establish more rigorous registration requirements for highly dangerous sex offenders. In May 1996, President Clinton signed the Megan's Law amendment, requiring all states to conduct community notification on sex offenders. In 1998, another law was passed by Congress, which called for the creation of a National Sex Offender Registry (NSOR). The purpose of the NSOR is to assist in tracking sex offenders as they move between states.

 **Use Slide #14: Goals of Community Notification and Registration Laws**

Generally speaking, these federal acts required all 50 states to adopt sex offender registration and community notification laws. States that failed to pass and enact such legislation would have been faced with a 10 percent reduction of their Byrne formula grant funding (with their funding being reallocated to other states that were in compliance with these requirements). The primary goals and objectives of these laws were to:<sup>14</sup>

- Serve as a deterrent to potential sex offenders;
- Reduce additional instances of offending by known sex offenders;
- Provide law enforcement with an easily accessible source of information about known sex offenders that did not previously exist; and
- Share information with the public about sex offenders residing in their communities in an effort to equip them to better protect their children.

 **Use Slide #15: National Chronology of Sex Offender Registration and Megan's Law Legislation**

States moved quickly to implement this legislation, with a majority passing notification and registration statutes for adult sex offenders rapidly between 1994 and 1996. However, as I mentioned, these federal laws did not specify how these statutes were to be applied to juveniles, but rather left it up to the states to decide how juveniles would be affected by these laws. We'll discuss in the next few sections how this played out around the country.

**Part III: How Registration and Community Notification Laws Apply to Juvenile Offenders**

**Note to Trainers:** *In August 2006, the Adam Walsh Child Protection and Safety Act of 2006 (HR 4472) was signed into law. The Act establishes a comprehensive national system for the registration of sex offenders, including juvenile offenders 14 years of age or older whose offense (or attempted offense) was comparable to or more severe than aggravated sexual abuse. The Act contains several provisions related to the type of information that can be disclosed about the offender, the duration of registration requirements, the extent of community notification, and other issues. States have three years from the passage of the Act to comply with its requirements. Trainers are strongly encouraged to educate themselves about the specifics of the Act and how their state is responding to the mandates it has set forth. Additional information about the Act can be found at <http://www.govtrack.us/congress/billtext.xpd?bill=h109-4472>*

Although every state enacted or modified legislation about registration and notification for adults, not all of the states spoke to the applicability of these laws to juveniles. Some were completely silent on the issue. Others implied an adult-only scope of these laws by the specific language used in the statutes, and of course, some states very clearly referenced juveniles under the umbrella of these laws.

Some have theorized that these laws were applied to juveniles because of a belief that youth who offend sexually will go on to become adult sex offenders; this belief may be driven in part because a percentage of adult sex offenders report that they began offending as youth.<sup>15</sup> However, current research indicates that most youth do not continue perpetrating sexual abuse as adults.<sup>16</sup> Indeed, in some states, this data was among the reasons that juveniles were not included in their legislation. And in other states, this data has led to reconsideration about whether *all* juveniles should be subjected to the stigmatization of long-term or lifetime registration and community

notification. Given what they have learned about these youth, some state legislatures have already modified their states' approaches to juvenile sex offender registration and notification in an effort to balance the interests of public safety and the rehabilitation of the youthful offender.

On the whole, however, there remains a tremendous amount of variation in how states have implemented registration and notification policies for juveniles. The following section provides an overview of current practice in a number of states and notes a number of concerns associated with the broad application of these practices to juvenile sex offenders.

### *Concerns About the Broad Application of Registration and Community Notification Laws to Juvenile Sex Offenders*

As I mentioned a moment ago, a number of concerns have been raised about automatically applying registration and notification practices to youth in the same manner that these laws have been applied to adult sex offenders.<sup>17</sup> Earlier in this training, we discussed the unique developmental and other considerations that set youthful sex offenders apart from their adult counterparts, including their amenability to treatment and their already low rates of recidivism. Because of these specific differences, the rationale for these laws for these youth and the likelihood that they will have the desired effect are less evident.

Some of the additional concerns that have been raised by experts include:

#### **Use Slides #16–17: Concerns About Applying Registration and Notification Laws to Juvenile Offenders**

- **Some states do not differentiate which offenses trigger registration and notification requirements for juvenile offenders.** In other words, even offenses that would not be considered “serious” could trigger registration and notification for a juvenile offender. In some states, this can mean that a juvenile was required to register for life for any sexual offense. For example, a youthful offender’s behavior – such as intercourse between a 16 year old male and his 14 year old girlfriend – may be statutorily illegal, even if both parties agree. This scenario, of course, is not typical of adults with a similar age difference, but may be enough in some states to trigger registration and notification for juveniles. This can also be problematic in light of the fact that the age of the victim is a common element on risk assessment instruments that determine the extent of community notification that will be conducted.<sup>18</sup> As a result, the offense described above could trigger lengthy registration and/or widespread notification for the 16 year old offender.
- **Juveniles may be subject to the same notification and registration requirements as adults, but are not always afforded the same procedural safeguards as their adult counterparts.** While some states treat juvenile sex

offenders in the same way as adults when it comes to registration and notification, they do not always have the same legal protections (including the right to a jury trial, bail rights, and protection from pre-indictment detention) as their adult counterparts.<sup>19</sup> These procedural safeguards are essential; especially as the consequences of a juvenile's behavior can mean that they may have to register or be subject to community notification for the rest of their lives.

- **Juvenile sex offenses may be underreported or not adjudicated as sex crimes in order to avoid triggering registration and notification requirements.** Some have theorized that sexual offenses perpetrated by youth may be diverted out of the juvenile courts or that juvenile sex offenders might be charged with lesser, non-sexual offenses in an effort to avoid the imposition of notification and registration requirements on youthful offenders.<sup>20</sup> This practice is problematic, in that when a youth pleads to a lesser offense, it may preclude him from accessing specialized sex offender treatment. If technically there is no “sex crime” then there may be no compelling reason to order sex offender specific treatment.<sup>21</sup> On the other hand, juveniles who go to trial and are convicted of a more serious offense – even if it is their first offense – may end up in a correctional setting when a community-based or less restrictive and more treatment oriented setting would have been more appropriate.<sup>22</sup> We have already heard how placing juveniles in a more punitive or correctional setting can negatively impact them when it is not warranted.
- **Registration and notification processes are resource intensive and are sometimes applied without consideration for offenders' risk levels.** An assessment of an offender's risk may not always play a role in the length and extent to which juveniles are subject to registration and notification. For low risk youthful offenders, or for juveniles overall, long-term or lifetime registration and notification may not be necessary or the best use of scarce law enforcement resources.
- **There is an absence of research on the efficacy of registration and notification laws as they relate to juvenile sex offenders.** Very little research has been conducted to explore the relationship between recidivism rates and registration and/or community notification; and what little has been done has focused on adult sex offenders and has not demonstrated a causal link between these laws and a decrease in recidivism.<sup>23</sup> Further, no controlled research at all has been carried out to assess the effectiveness of juvenile sex offender registration and notification practices. In the absence of research that shows that the potential costs are outweighed by the benefits, some have suggested that these laws should be used cautiously and sparingly with juveniles.<sup>24</sup>
- **The “labeling” effect these laws can have on a youthful offender can be detrimental.** Because of the public attention that is drawn to offenders subject to registration and notification, juvenile sex offenders may become unduly stigmatized as a result. Such stigmatization may lead to isolation and rejection from peers, family, and other community members; effectively reducing some of the very support systems that could be helpful to the youth in his efforts to

reintegrate successfully back into the community.<sup>25</sup> Several experts have noted that the potential exists for community notification practices in particular to have more risks and detrimental effects on juvenile offenders, their families, victims, and victims' families than potential benefits for the public.<sup>26</sup> The negative consequences of notification and registration can include vigilantism and harassment that can compromise a juvenile's ability to secure employment,<sup>27</sup> remain in school,<sup>28</sup> or for their families to secure or maintain housing,<sup>29</sup> all of which can contribute to the offender's likelihood to reoffend.<sup>30</sup> Indeed, as you heard earlier, these are among the very kinds of issues that are targeted in treatment because they are related to outcomes. Additionally, if juvenile offenders are unable to return home for any reason (e.g., prior or potential victims live in the home), public registration and notification could hamper their efforts to secure independent housing.

One study about the implications of registration laws on juvenile sex offenders supports these concerns; noting that "registration statutes...harm youth more than they provide safety to the community."<sup>31</sup> Again, concerns about the potential for collateral consequences – as well as a growing appreciation for the contemporary literature about youthful sex offenders – have prompted some states to develop specialized approaches to registration and notification for juvenile offenders. We will discuss some of those approaches later in this section.

#### ***Part IV: How do Registration Laws Apply to Juvenile Offenders in Different States?***

Until the passage of the Adam Walsh Child Protection and Safety Act of 2006 described earlier in this section, only juveniles prosecuted and convicted as *adults* were required to register under the federal Wetterling Act. As we mentioned earlier, the Act now requires that all states register juvenile sex offenders 14 years or older whose offense (or attempted offense) was comparable to or more severe than aggravated sexual abuse.

 **Use Slide #18: Juveniles Required to Register**

Prior to the passage of the Act, 32 states required youth adjudicated in juvenile court to register:

- |             |               |                |
|-------------|---------------|----------------|
| Alabama     | Illinois      | Montana        |
| Arizona     | Indiana       | Nevada         |
| Arkansas    | Iowa          | New Jersey     |
| California  | Kansas        | North Carolina |
| Colorado    | Massachusetts | North Dakota   |
| Connecticut | Michigan      | Ohio           |
| Delaware    | Minnesota     | Oklahoma       |
| Hawaii      | Mississippi   | Oregon         |
| Idaho       | Missouri      | Rhode Island   |

South Carolina  
South Dakota

Texas  
Washington

Wisconsin

However, in some of these states, information about their conviction cannot be released to the public, even though they are considered registered sex offenders. For example, in some states, this information is solely for use within the juvenile courts, versus being contained on a statewide registry that allows for more widespread access to juveniles' personal information.

 **Use Slide #19: Separate Registration Laws for Juveniles**

Only six states currently have separate registration laws for juvenile and adult sex offenders: Arkansas, Missouri, Montana, North Carolina, Oklahoma, and Wisconsin.

*What is the Youngest Age at Which Juveniles are Required to Register?*

 **Use Slide #20: Minimum Age for Registration**

When it comes to the age at which juvenile sex offenders are required to register, only six states actually define the youngest age at which an offender must comply with this requirement, which leaves open the possibility that even very young children who evidence sexual behavior problems may be subject to registration. And among those states that do specify the age, there is wide variation. Here are some examples:

 **Use Slide #21: Youngest Age at Which Juveniles Must Register**

- North Carolina law only applies to juveniles who were at least 11 years of age when they committed the offense, but such juveniles must also be found by the court to be a danger to the community.
- Indiana law only applies to juveniles who were at least 14 years of age and were found by a court by "clear and convincing evidence" to be likely to be repeat offenders.
- In South Dakota, the juvenile must be 15 or older at the time their offense was committed. Ohio, Idaho, and Oklahoma registration laws apply to juveniles 14 and older.

*Once a Juvenile Sex Offender, Always a Juvenile Sex Offender?*

A number of states have adopted legislation that differentiates between adults and juvenile sex offenders by allowing for some flexibility in how long juveniles must remain on the sex offender registry, and whether they can petition the court to be removed from the registry. This approach allows for some discretion in these cases that takes into account factors such as the juvenile's offense history, their risk to reoffend, and their progress in treatment and under supervision.

 **Use Slide #22: Termination of Registration**

For example, 20 states have instituted special juvenile procedures and/or age limits that can terminate a juvenile’s duty to register after a certain point in time following their conviction. These laws provide the opportunity for relief from registration requirements in certain circumstances after juveniles reach adulthood (i.e., ranging from 18-21 years of age).<sup>32</sup>

Alabama  
Arkansas  
Arizona  
Colorado  
Idaho  
Illinois  
Indiana  
Minnesota  
Mississippi  
Ohio

Oklahoma  
Oregon  
Nevada  
New Jersey  
North Carolina  
Rhode Island  
South Carolina  
South Dakota  
Texas  
Washington

Other states have policies that allow juvenile offenders the chance to petition the courts for relief from registration requirements after they have had an appropriate period of crime-free community adjustment and stability. This approach allows for juveniles to “prove” themselves while receiving targeted interventions, and affords them the chance to use the skills they have acquired during this period of supervision to reintegrate themselves successfully back into the community without having to register throughout their adulthood.

*Examples of Specialized Approaches to Juvenile Registration: Texas and Oregon*


 **Use Slide #23: Specialized Approaches to Juvenile Registration: Texas Law**

In one of the states in which juvenile sex offenders can petition the courts for termination of registration requirements – Texas – juvenile courts may allow adjudicated sex offenders to be released from registration requirements through a process known as “un-registration.”<sup>33</sup> The law authorizes judges to terminate registration requirements for some juveniles who are already registered through a process known as “de-registration.” In cases of un-registration, the juvenile court must hold a hearing to weigh the protection of the public versus harm to the juvenile and the juvenile’s family. If, through the hearing, the courts determine that there is compelling evidence that protection of the public would be increased by registration, the offender is required to register. Texas courts also have the ability to adopt a middle ground approach and order a non-public registration. This means that the registration information is not disclosed over the Internet and can only be used by law enforcement personnel in the course of conducting a criminal investigation.

 **Use Slide #24: Specialized Approaches to Juvenile Registration: Oregon Law**

A similar process is in place in Oregon.<sup>34</sup> Juvenile offenders adjudicated for a sex crime in juvenile court can petition the court and apply for relief from registration two years after the expiration of their supervision period. Youths can apply for relief from their registration requirements through the district attorney's office or from the juvenile court in the county in which they live. A court hearing is then scheduled to hear evidence in each individual case.

*Nature and Maintenance of Juvenile Sex Offender Registry Information*

 **Use Slide #25: Nature and Maintenance of Juvenile Sex Offender Registry Information**

In order to protect the interests of juvenile offenders while balancing the interests of community safety, some states have established separate registries for juvenile and adult sex offenders. For example, Idaho's approach allows the state to maintain a separate registry for juvenile sex offenders that is accessible to the public only after they have requested information from the police or through the state's Web site. In Michigan, juveniles have been included on the registry that is available to law enforcement, but until they turn 18 their names are not included on the public registry, which is available on the Internet. However, any juvenile convicted of the most serious sexual offenses – criminal sexual conduct in the 1<sup>st</sup> or 2<sup>nd</sup> degree – is listed on the public sex offender registry after their 18<sup>th</sup> birthday.

Additionally, some jurisdictions maintain juvenile sex offender registries within the juvenile court or juvenile supervision agency, rather than with the local law enforcement agency. This allows for the collection and maintenance of registry data, while also allowing for increased protections over juvenile registrants' information.<sup>35</sup> For example, in Missouri, the names of adjudicated sex offenders are maintained on registries within the juvenile courts, which provides for some confidentiality protections. Rather than being maintained on the statewide registry used for adults, information is provided about these youth only to a limited range of parties on a "need to know" basis.

Obviously, states that require juvenile sex offenders to register have to consider not only which agency will assume responsibility for maintaining the juvenile registry, but also what kinds of information should be included as part of the registry. The types of information that are included on juvenile sex offender registries vary from state to state. Some of the issues that must be sorted out, however, include:

 **Use Slide #26: Issues with Registering Juveniles**

- *The nature and type of information that will be collected.* States must decide precisely what information will be shared with law enforcement agencies – and the public – if they are afforded access to the registry. This includes

determinations of whether to release information about the specific nature of the registerable offense, as well as information such as the offender's photograph, address, and other personal data.

- *Providing public access to traditionally confidential juvenile records.* Traditionally, access to information about juveniles' criminal histories, court proceedings, and personal information has been limited. States that require juveniles to register are forced to consider how much of this traditionally confidential information will be shared as part of the registry information.
- *Potential to inadvertently expose the identified victims.* Given the fact that many juvenile sex offense cases involve intrafamilial victims,<sup>36</sup> states must grapple with how to provide information about the offender's crime without simultaneously exposing the identity of their victim. This is of particular concern when the victim is a family member and as a result is more easily identifiable.

States are considering these and likely other issues as they decide how to balance the public's right to know with the potential effects on victims, offenders, and families.

### ***Part V: How Do States Apply Community Notification Laws to Juvenile Sex Offenders?***

Much like federal registration requirements, federal community notification laws also do not prescribe how these laws should be applied to juveniles at the state level. However, several states have community notification laws that include provisions for juvenile sex offenders.<sup>37</sup>


#### **Use Slide #27: Juveniles Subject to Community Notification**

In 22 states, juvenile sex offenders may be subjected to community notification. Those states are:<sup>38</sup>

- |               |                |
|---------------|----------------|
| Alabama       | New Jersey     |
| Arkansas      | North Carolina |
| Colorado      | Ohio           |
| Delaware      | Oregon         |
| Hawaii        | Rhode Island   |
| Indiana       | South Carolina |
| Iowa          | South Dakota   |
| Kentucky      | Vermont        |
| Massachusetts | Virginia       |
| Mississippi   | Washington     |
| Nevada        | Wisconsin      |

Much like the objections to registration requirements for juvenile sex offenders, a number of researchers have suggested that notification cannot be reasonably applied to

juveniles in the same way it is to adult sex offenders because of a number of developmental and other factors we have already mentioned.<sup>39</sup>

 **Use Slide #28: Additional Concerns With Applying Notification Laws to Juveniles**

We talked in the treatment section about some of the common goals of our work with juvenile sex offenders, including helping them to explore and use effective coping strategies, encouraging them to develop prosocial skills and competencies, establishing positive peer relationships, and promoting family functioning. Can you see why it might be difficult for these kids to meet such goals when faced with the community being notified about their status as a sex offender? We already know that a lot of these youth don't have the best coping strategies or interpersonal skills. For many of them, notification can exacerbate their inability to make connections with prosocial people, to maintain friendships, to get jobs, or to strike out and find healthy leisure activities in which to take part. Additionally, for some, the stress of notification can "take over" their lives – some treatment providers have noted that discussions about the negative effects of notification (and registration) on these youths and their families can dominate treatment sessions that should be focused on other more substantive goals of treatment.<sup>40</sup>

In sum, notification can pose a significant barrier to the juvenile's ability to successfully reintegrate back into his community and can have other unintended negative consequences for the victims of these crimes and the families of offenders and victims. As a result of these and other considerations, a number of states either completely exempt juveniles from community notification practices (e.g., Louisiana and New Hampshire<sup>41</sup>) or have developed restrictions or limitations on how it can be carried out (e.g., Idaho and Texas<sup>42</sup>). These restrictions and limitations can include which offenses trigger notification (e.g., only more serious cases prompt widespread notification) as well as who is notified (e.g., law enforcement or school personnel only in appropriate cases).

*One Example of a Specialized Approach to Juvenile Community Notification: Alabama*

The Alabama legislature took into consideration the ways in which juvenile offenders are different from adult offenders when they developed the state's community notification legislation for juveniles.<sup>43</sup> They explained their desire to have a differentiated approach in this way:

*Juvenile sex offenders, like their adult counterparts, pose a danger to the public. Research has shown, however, that there are significant differences between adult and juvenile criminal sexual offenders. Juveniles are much more likely to respond favorably to sexual offender treatment. Juvenile offenders have a shorter history of committing sexual offenses. They are less likely to have deviant sexual arousal patterns and are not as practiced in avoiding responsibility for their abusive behavior. Juveniles are dependent upon adults for food and shelter, as well as the*

*emotional and practical support vital to treatment efforts. Earlier intervention increases the opportunity for success in teaching juveniles how to reduce their risk of sexually re-offending. The Legislature finds that juvenile criminal sex offenders should be subject to the Community Notification Act, but that certain precautions should be taken to target the juveniles that pose the more serious threats to the public.*

 **Use Slide #29: Specialized Approaches to Juvenile Notification: Alabama Law**

The Legislature ultimately revised the state's notification law to create different provisions for juvenile sex offenders. Juvenile sex offenders are no longer subject to automatic community notification, but are required to receive sex offender treatment and must register with the local authorities upon release from the juvenile court's supervision. Prior to the release of a juvenile sex offender, treatment providers supply a risk assessment of the juvenile to the sentencing court and the juvenile probation officer. Unless otherwise ordered by the sentencing court, the juvenile sex offender is not subject to notification upon release unless the court determines there is a need for notification. If this is the case, cases are assessed on an individual basis to determine the most effective and judicious use of notification. This is, of course, what we have covered throughout this curriculum – that treatment, supervision, and other practices in juvenile sex offender management should be developed based on a comprehensive assessment of each individual offender.

Considering whether or how to implement registration and community notification laws with sexually abusive youth is no easy task. As you have probably surmised, there is no one "right" approach. At the very least, however, it is important to take into account what we know about these youth and how they differ from adult sex offenders, so that any legislative responses are, to some degree, informed by the available research as well as an appreciation for the potential for collateral consequences. And a thorough cost-benefits analysis can be a very helpful exercise for those who are considering or reconsidering their statutes in this area.

**Part VI: Sexually Violent Predator/Civil Commitment Laws**

Several times throughout this training we have referenced concerns about the tendency to apply to juveniles the same legislation, policies, and practices that were designed for adult sex offender management. As we have just discussed in detail in this section, there is some controversy about the manner by which sex offender registration and community notification laws have been applied to juveniles. Similarly, the application of civil commitment statutes to juvenile sex offenders is also controversial.

 **Use Slide #30: Civil Commitment Laws**

Broadly speaking, civil commitment is a longstanding mechanism designed for individuals who suffer from such significant mental health difficulties that they pose a

danger to themselves or others. The indeterminate commitment to a mental health facility provides for treatment and other rehabilitative services until such time that the person is “safe” to return to the community. Keep in mind that this is not a criminal procedure that involves a sentence to a correctional institution; rather it is a civil procedure that allows for commitment to a secure mental health facility.

More recently, several states have expanded their civil commitment laws to include sexually violent predators, a subset of the sex offender population that represents – at least in theory – the most dangerous offenders, and those who pose the greatest threat to communities. Commonly, these specific statutes are known as sexually violent predator (SVP) laws and apply to sex offenders who have some type of “mental defect or abnormality” that predisposes them to commit sexually violent offenses and that affects their ability to control their behavior, and who are deemed “more likely than not” to commit additional sexually violent offenses if they are not placed in a secure facility for treatment.

Sex offenders are typically considered for commitment under SVP statutes as they near the expiration of a prison sentence and prior to their presumptive release date. And by definition, many SVP laws technically allow for the indefinite commitment of some sex offenders. These factors alone have led some to question civil commitment of sex offenders from a constitutionality perspective. I’m not here to review any of the constitutional issues. Rather, for the purposes of this training, I raise the issue of civil commitment because of the concerns about its application to juveniles, given what we know about these youth.

 **Use Slide #31–32: Concerns With Applying Civil Commitment Laws to Juveniles**

To reiterate, for example, the observed sexual recidivism rates of juvenile sex offenders overall are quite low, particularly for youth who have received treatment. Moreover, remember what we discussed about the impact that adult-oriented dispositions have had on outcomes with juveniles, including the increased potential for these youth being victimized within adult institutions. And the concerns that exist about aggregating groups of antisocial individuals – especially placing youth with highly sophisticated and predatory adults. In light of those issues, you can probably understand why civil commitment for juvenile sex offenders is quite controversial.

And there is also the issue about how to determine which individuals are the most dangerous and should be civilly committed. For example, some have argued that the type of diagnosis that could “qualify” an offender is too broad and does not limit the scope to the most dangerous. And given what we know about the high prevalence of co-occurring mental health needs among youthful populations, there may be concerns about the increased likelihood that some of these diagnoses could be used to “qualify” youth.

Still another related controversy surrounds the ability – or inability – of mental health experts to predict with accuracy the likelihood that any specific individual is “more likely

than not” to commit additional sex offenses. You’ll recall that we briefly discussed this issue in the section of this training that focused on risk assessment. This issue is controversial in the field of adult sex offender management even with the availability of several empirically-validated actuarial risk assessment tools. So you can imagine, then, why this is an area of concern with juvenile sex offenders, given that the state of risk assessment for sexually abusive youth remains in its infancy, and that there are no true actuarial tools for these youth.

### Use Slide #33: SVP Civil Commitment Laws

Some of you may be wondering if civil commitment is truly an issue for youth – and whether or not states would actually consider committing youth for a potentially indefinite period under SVP statutes. The answer is “yes.” SVP statutes exist in 17 states (Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin). Some of these states already allow for juveniles to be committed under their SVP statutes (Florida, Illinois, Pennsylvania, South Carolina, and Wisconsin), and other states have considered or are currently considering expanding their existing SVP/civil commitment statutes to include juveniles. And in general, youth convicted of a sexual offense in the criminal courts *could be* subject to state civil commitment laws, as they have technically become “adults” in the eyes of the courts.

Much like registration and notification, currently there is variation across states in how and whether juveniles are subject to civil commitment proceedings. For example:

Use Slide 33

- Arizona and Florida stipulate that offenders must be at least 18 years of age before they are eligible for consideration for civil commitment.
- Illinois, Washington and Wisconsin explicitly state that juveniles may be subject to commitment at any age.<sup>44</sup>
- One state (Pennsylvania) authorizes civil commitment for adjudicated youth “aging out” of the juvenile justice system whose mental abnormality influences their risk to reoffend sexually.
- Washington’s Sexually Violent Predator statute permits the civil commitment of juvenile sex offenders found to be a high risk to the public. Since the law’s enactment in 1990, to the end of 2003, 31 juvenile sex offenders were identified as possibly meeting the statutory criteria for civil commitment. These individuals represent approximately 1 percent of the total juvenile sex offenders paroled in this 13-year period.<sup>45</sup>

## Conclusion

In this section, we've covered a lot of pretty technical – and potentially confusing – information in a relatively short amount of time. So let's take a step back for a moment and review the key points.

### Use Slide #34: A Sample of State Civil Commitment Laws

- We've seen that there has been a push in recent years to impose “get tough” legislative measures which have typically been reserved for adult sex offenders on juvenile sex offenders;
- We know that as part of that push, the majority of states now register juvenile sex offenders and many also notify communities of their presence;
- And additionally, we know that a few states are allowing for indefinite periods of confinement for some sex offenders – including juveniles – through civil commitment laws.

Unfortunately, some of these well intended strategies – either in terms of the policy itself or the manner in which it is carried out – may not have been fully informed by contemporary knowledge in the field about sexually abusive youth, and stakeholders may not be aware of the potential for unintended consequences for juveniles, their families, and victims of juvenile-perpetrated sexual violence.

Juvenile sex offenders, just like adult offenders, must be held accountable for their sexually abusive behavior. And we also want to make sure that we do all that we can to see that they receive the necessary interventions, services, and system responses that will allow them to continue in life as law-abiding, healthy, and positive contributors in our communities. This means that we must take great care in how we craft and implement our intervention and management strategies – whether treatment, supervision, or legislation – so that we maximize the likelihood that they will be successful and minimize the likelihood of harm to these youth and their families. As we've said previously, the success of these youth translates into safety in our communities.

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<sup>1</sup> Heinz & Ryan, 1997; Hunter, 2000; Hunter & Lexier, 1998; Mendel, 2000, 2001; Snyder & Sickmund, 1999

<sup>2</sup> See, e.g., Fagan, Kupchick, & Liberman, 2003; Fagan & Zimring, 2000; Mendel, 2000; Torbet & Szymanski, 1998

<sup>3</sup> Szymanski, 2000

<sup>4</sup> Szymanski, 2000

<sup>5</sup> Szymanski, 2000

<sup>6</sup> Szymanski, 2000

<sup>7</sup> Sickmund, 2003

<sup>8</sup> Griffin, Torbet, & Szymanski, 1998

<sup>9</sup> Szymanski, 1998

<sup>10</sup> Sickmund, 2003

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- <sup>11</sup> Aos, Phipps, Barnoski, & Lieb, 2001); Cullen & Gendreau, 2000; Lipsey & Wilson, 1998; Smith, Goggin, & Gendreau, 2002
- <sup>12</sup> Association for the Treatment of Sexual Abusers (ATSA), 2000; Becker & Hunter, 1997; Chaffin & Bonner, 1998; Center for Sex Offender Management (CSOM), 1999; Hunter, 2000; Hunter & Lexier, 1998; Weinrott, 1996
- <sup>13</sup> Letourneau, 2006; Letourneau & Miner, 2005; Trivits & Reppucci, 2002; Zimring, 2004
- <sup>14</sup> Letourneau, 2006
- <sup>15</sup> Trivits and Reppucci, 2002
- <sup>16</sup> ATSA, 2000; CSOM, 1999; Hunter, 2000; Hunter & Lexier, 1998; Weinrott, 1996
- <sup>17</sup> ATSA, 2000; Chaffin & Bonner, 1998; Chaffin, Letourneau, & Silovsky, 2002; CSOM, 1999; Hunter, 2000; Hunter & Lexier, 1998, Letorneau and Miner, 2005; Zimring, 2004
- <sup>18</sup> Garfinkle, 2003
- <sup>19</sup> Trivits & Reppucci, 2002
- <sup>20</sup> Bremer, 2003; Letourneau, 2006
- <sup>21</sup> Bremer, 2003
- <sup>22</sup> Bremer, 2003
- <sup>23</sup> Barnoski, 2005
- <sup>24</sup> ATSA, 2000; Letourneau, 2006
- <sup>25</sup> ATSA, 2000; Chaffin & Bonner, 1998; Trivits & Reppucci, 2002
- <sup>26</sup> ATSA, 2000; Bremer, 2003; Chaffin & Bonner, 1998; Freeman-Longo, 1996; Freeman Longo & Blanchard, 1998
- <sup>27</sup> Bremer, 2003
- <sup>28</sup> Trivits & Reppucci, 2002
- <sup>29</sup> Bremer, 2003
- <sup>30</sup> Freeman-Longo and Blanchard, 1998
- <sup>31</sup> Bremer, 2003
- <sup>32</sup> Matson & Lieb, 1997; Szymanski, 2003a, 2003b
- <sup>33</sup> Texas Code of Criminal Procedure, Article 62.13
- <sup>34</sup> Oregon Revised Statute 181.607
- <sup>35</sup> Matson & Lieb, 1997; Szymanski, 2003a, 2003b
- <sup>36</sup> Hunter & Figueredo, 2000; Snyder & Sickmund, 2006
- <sup>37</sup> CSOM, 2001; Heinz & Ryan, 1997; Matson & Lieb, 1997; Szymanski, 2003
- <sup>38</sup> Garfinkle, 2003
- <sup>39</sup> ATSA, 2000; Chaffin & Bonner, 1998; Freeman-Longo, 1996; Freeman-Longo & Blanchard, 1998; Heinz & Ryan, 1997; Hunter & Lexier, 1998; Weinrott, 1996
- <sup>40</sup> Bremer, 2003
- <sup>41</sup> Garfinkle, 2003
- <sup>42</sup> Garfinkle, 2003
- <sup>43</sup> Alabama Law, Section 15-20-20.1
- <sup>44</sup> Scottish Executive, 1999
- <sup>45</sup> Milloy, 2006