Juvenile Recommendations

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Executive Summary

Through the passage of Senate Bill 384 on October 6, 2017, the California Legislature took a momentous step toward improving the safety of California citizens and expanding the role of the California Sexual Offender Management Board (hereafter "the Board") to include sexual offending perpetrated by juveniles. For purposes of this report, the Board is proposing implementing a statewide response focused on the supervision and treatment of persons under the age of 18 who have been adjudicated or convicted for a sexual offense. Properly resourced, the Board will accomplish this through the provision of expertise, direction, and quality assurances for professionals who provide interventions to juveniles who offend sexually.

Heretofore, the Board's purview was adults with sexual offenses. Expanding the Board's purview to include juveniles under its umbrella of treatment standards and guidelines prioritizes the healthy development of children. State of the art interventions delivered by skilled professionals will divert juveniles with sexual offenses from adult sexual offending thereby preventing countless victimizations, while also reducing the overall costs associated with adult sexual offending.

The purpose of this paper is to provide best practice informed education and advice on key areas of effective interventions with juveniles who commit sexual offenses: supervision and treatment, and the limited role of the polygraph. The Board will provide advice on two legal consequences: registration and civil commitment. If the legislature allocates two new Board positions with expertise in the area of juvenile sexual offending, the Board will draft guidelines based on the following recommendations:

1. Implementation of an evidence-based statewide system of treatment, supervision, and assessment standards that applies to all juveniles adjudicated or convicted of sexual offenses. This system will be anchored in a Collaborative Model that is supported by the body of research on the Risks-Needs-Responsivity (RNR) principle. Supervision and treatment staff will be trained in this model.

2. Development of treatment provider and program certification requirements, policies and procedures for the assessment, treatment, and implementation of the Collaborative Model, that are juvenile specific and developmentally sensitive.

3. Implementation of the Collaborative Model and certification standards for treatment providers working with juveniles adjudicated of sexual offenses.

4. A limitation on the use of polygraph with juveniles. This bans use of polygraph for juveniles under the age of 16, and allows some exceptions with older juveniles.

5. Elimination of a registration requirement for juveniles whose only sexual offense was committed prior to the age of 18.

6. Recommendation for legislative change eliminating eligibility for civil commitment as a Sexually Violent Predator for those whose sexual offending occurred solely during the juvenile years.

In order to accomplish the development of guidelines aimed at the above goals, the Board asks the Legislature to authorize, via amendment of Penal Code section 9001, the addition of two new Board members positions with expertise in the area of juveniles who have offended sexually.

In conclusion, thank you for supporting the mission of the Board by expanding its purview to address the needs of juveniles.

Sincerely,

The California Sex Offender Management Board
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Introduction

In 2018, the Board became responsible for the development of policies for managing juveniles who have sexually offended.[1]

The Board's task is not limited to juveniles who are required to register as sex offenders, because that is a tiny sliver of the population of juveniles who have offended sexually. Only juveniles who are sent to the highest level of state placement, the Division of Juvenile Justice (DJJ) at the California Department of Corrections and Rehabilitation (CDCR), are required to register. The Board's Juvenile Committee has developed a broad outline for a statewide response to juvenile sexual offending that pertains to all juveniles in the state who have been adjudicated or convicted for a sexual offense.

The Legislature took a momentous step by enabling the Board to consider policies specific to the management of juveniles who have offended sexually. Enactment of policies specific to this population will enable California to more fully achieve the Board's ultimate mission, the prevention of sexual abuse. The aim is to use state-of-the-art interventions delivered by skilled and certified treatment providers to prevent juveniles from continuing to offend as adults. This will not only protect citizens from future sexual victimization, but will help reduce overall costs to California associated with adult sexual offending.

The purpose of these recommendations is to provide the Legislature with guidance about best practices in key areas of effective interventions. The Board, if the Legislature allocates needed Board positions for juvenile experts, will develop statewide standards for managing juveniles who have sexually offended in the community. The policies that should be implemented by the state pertaining to supervision, treatment, and assessment of this population are outlined below. The recommendations also consider whether there is an appropriate role for methods commonly used in the supervision of adults who have sexually offended, such as polygraph, registration, community notification, and civil commitment.

First, if given the necessary resources, the Board will develop evidence-based standards and guidelines for a collaborative model of treatment and supervision of juveniles, augmented by the principles of RNR. These standards will form the basis for specialized training standards for supervising officers and treatment providers working with the vulnerable juvenile population. The intensity of services will be defined by individualized assessments of risk and treatment needs and managed by a case management team. Agencies, organizations and individuals who provide services to this population need standards based on what research shows to be the best approach to assure quality and consistency of services during intake, treatment, residential changes, treatment completion, and family reunification.

Second, the Board will develop certification requirements that are juvenile-specific and developmentally sensitive. The proposed certification requirements for juvenile treatment providers must be distinct and separate from the Board's existing certification requirements for treatment professionals who work with adults.

Third, the Board also proposes, given necessary resources, to monitor certified programs and treatment providers to assure delivery of services that are sensitive to gender, gender identity, cognitive, developmental, familial, socio-economic and mental health characteristics.

Common methods of supervision and treatment used with adult sexual offenders are, for the most part, inappropriate and potentially harmful with juveniles. Specifically, registration, polygraph, and civil commitment need to be reconsidered with those who offended sexually only as juveniles.

An Evidenced-Based Model of Supervision
For California Juveniles Who Have Offended Sexually

In the legal realm, most juveniles are managed separately from adults. Most juveniles' crimes are adjudicated within the juvenile court system. These juveniles are then supervised within the 58 county juvenile probation departments. A small percentage of juveniles are adjudicated in the juvenile court system and then committed to DJJ prior to community release. The juveniles committed to DJJ institutions tend to have higher risks and needs, and are often, but not always, older in age. The juveniles released from DJJ are supervised by county probation departments. Only those who were committed to DJJ for specified offenses are currently required to register, under Penal Code section 290.008, as sexual offenders.

There is no statewide uniformity in the assessment, management and treatment of juveniles who have offended sexually. With 58 counties there are broadly different policies implemented on a county-by-county basis. For example, some counties assign all these juveniles to one caseload while other counties have them distributed across several probation officers' caseloads. Some larger counties have a highly experienced, highly trained specialized unit while smaller counties may have no specialization at all. The Board recommends the use of the Collaborative Model for all juveniles who have sexually offended. The focus should be on modifying maladaptive behavior and developing healthy habits, not stigmatization of this group.

Collaborative Model of Juvenile Supervision

Research shows that the rate of juvenile sexual re-offending is low. The current juvenile sexual recidivism rate of 2.75% is 73% lower than the juvenile recidivism rate of 10.30% reported by studies conducted between 1980 and 1995.[2] While there are different factors that contributed to this decline, it means that the standards governing appropriate supervision for a group that is predominantly at low risk for reoffending must be re-examined. Further complicating the understanding of juvenile risk is that a significant proportion of chronic adult sexual offenders started their offending during the juvenile years. Nuances pertaining to individual risk must be considered by supervision teams. The low recidivism rates of this group, combined with the increased recognition given to the dramatic differences between the developing brains of adolescents and adults, underpin the Board's recommendation that the supervision of juveniles who have offended sexually must be fundamentally different from the supervision of adult sexual offenders.

The Collaborative Model of juvenile supervision "is used in several ways and mirrors characteristics of many of the systems with which the juvenile interacts. It is intended to create an optimal relationship between the juvenile, his or her family, probation, and

treatment providers."[3] The Collaborative Model emphasizes a team approach, rather than an adversarial system, and promotes the prosocial behavior of the juvenile while also protecting public safety. This method goes beyond managing potential inappropriate behavior in the community.[4] Supplementing the Collaborative Model with the RNR principles helps clinicians and supervising officers enhance outcomes by delivering case specific levels of therapeutic intervention and supervision.[5]

Risk Level Determines Scope and Type of Supervision

Because juvenile re-offense rates, both sexual and violent, have declined, restrictive policies targeting adjudicated juveniles who offend sexually may have little potential for producing a significant impact on sexual violence in society—or even be counterproductive. Some jurisdictions have attempted to address this issue by including some form of risk assessment in an effort to target a subgroup of higher risk juveniles.[6] Currently, California law requires the use of risk assessment instruments only for juveniles recommended for placement or after placement at the highest level of state supervision at DJJ.

Risk assessments should be conducted frequently because juvenile brain development changes rapidly during adolescence. Treatment providers and supervision officers must evaluate changing needs and risks using evidence-based tools. In California, juveniles for whom DJJ placement is recommended, or who are placed at DJJ, must have their risk of sexual re-offense assessed by a state-mandated risk assessment instrument prior to adjudication and before release.[7] The vast majority of juveniles who offend sexually in California, however, are not required to be risk assessed because they receive some form of community placement. This includes high risk offenders who have committed violent offenses. Risk assessment may be even more important, however, for juveniles who are living in the community immediately after adjudication for their offenses, and before treatment is completed.

Most juveniles who have offended sexually never go to DJJ. Requiring risk assessment of juveniles in the community would be the optimum way to inform the Case Management Teams of the risk level of the person they are treating or supervising. Only if empirical risk assessment, informed by clinical judgment, is used to assess risk can the case management team fully understand the risk presented by juveniles they are managing in the community.

Supervision Decisions Guided by Evidence-Based Standards

Currently there is no consistent model in California to which treatment providers, supervising officers, and polygraph examiners must adhere when managing juveniles in the community who have offended sexually. The Board recommends a Collaborative Model that

relies on communication by a case management team. Regular meetings allow the treatment and supervision team to share information in a comprehensive, coordinated, collaborative approach to identify, manage, support and supervise juveniles adjudicated for sexual offending behaviors. Individualized evaluations are important. These include the use of developmentally appropriate methods to review information from all caregivers, victim input and ongoing assessments of risks, needs, strengths, multi-system treatment, and support systems.

Frequency and type of treatment, supervision methods, Internet usage, contact with families, use of GPS (global positioning systems) and whether to use polygraph exams are all examples of the types of decisions that should be made by collaborative case management teams that supervise juveniles who offended sexually. Methods of supervision must be appropriate and consistent with public safety and offender accountability. Information gathered should form the basis for team decisions related to treatment, behavioral monitoring and the scope and focus of supervision.

Although it may not be feasible in all counties, the Board recommends probation officers supervise this population on specialized sex offender caseloads. Probation officers with caseloads of juveniles who have offended sexually should receive specialized training to enhance their ability to effectively supervise juveniles in order to protect the community, reduce recidivism, and assist with rehabilitation. Training should be specifically tailored to juvenile issues and involve discussion of the best practices for the case management team working within the juvenile Collaborative Model. The Board currently underwrites and provides yearly training about the Containment Model for probation officers in California. The Board would like to be able to offer similar training addressing the supervision of juveniles who have offended sexually.

Supervising officers need training about juvenile brain development as it relates to effective supervision practices for juveniles. Supervision and support for juveniles should differ from management of adults who have offended sexually. Supervising officers must also learn effective methods for communicating with the treatment provider agencies and how to use the Collaborative Model effectively. This includes understanding how to interpret risk assessment scores and clinical recommendations. Supervising officers handling these caseloads should receive sex offender-specific training during their first year of assignment to this type of caseload.

Recommendations

- Use of the Collaborative Model for all juveniles who have offended sexually, whether the juvenile is in home based family care or out of home placement.

- Creation of two new Board positions to enable the Board to develop evidence-based standards to guide the use of the Collaborative Model in the community, based on a case management approach.

- Regular meetings of the case management team to make supervision and treatment decisions.

- Use of the RNR principle in the assessment, supervision, and treatment of juvenile who offend sexually. The level of supervision should be guided by the use of evidence-based risk assessments that are informed by clinical judgment.

- Specialized caseloads for probation officers who supervise this population and Board development of uniform state standards to encourage appropriate training of supervising officers about issues unique to juveniles who have offended sexually.

- Guidelines developed by the Board to provide guidance about issues that will be decided by the case management teams on a case-by-case basis, such as methods of supervision, GPS or polygraph use, recommended modalities of treatment, and ways to encourage healthy reintegration in the community.

Assessment and Treatment of Juveniles Who Offended Sexually

Juveniles are significantly different from adults in virtually all aspects of life. For this reason, society restricts their right to drive a car, vote, purchase tobacco, alcohol or marijuana, consent to medical treatment, and serve in the military. Juveniles are in a developmental stage of life in which changes and maturation processes are affected by many forces, including biological, familial, educational and social. Further, there is strong indication from available research that adolescent and adult sexual offenders are more distinct than similar in their risk for re-offense and treatment needs. For these and other reasons, the Board strongly recommends that juveniles who have offended sexually be managed and treated distinctly from adults who have offended sexually.

Need for a Statewide Standard of Care for Juveniles

Resources and access to treatment services vary by county. For example, access to specialized treatment services vary by community, with some communities or counties, especially smaller counties, having no local specialized treatment resources. Some of these smaller counties may seek out-of-home, and often out-of-county, placements within the group home system in order to access specialized treatment. Out-of-home placement is pursuant to the Welfare and Institutions Code[8], which states that all youth in placement are to have a child-centered service plan including parental participation on the Child and Family Team. There is currently no centralized repository of information regarding juveniles who offend sexually, making it difficult to get a clear picture of statewide care and practices.

Even when treatment is available, there is no statewide standard of care for juveniles who have offended sexually. For example, therapists who work with these juveniles may have divergent perspectives about what services are needed. Some simplify their adult program requirements but expect the juveniles to meet those adult standards. Some therapists focus on developmental distinctions without any organized approach to address the sexual offending behaviors. Many therapists mix and match their methods and materials without consistency. There is no way of knowing precisely how many therapists working with this population address any particular issue, such as trauma-informed care or positive youth development approaches. Although evidence-based, there is no requirement that these be implemented, and no way to know whether the juveniles under supervision receive such care. Assessment methods vary from provider to provider, and from program to program. Some assessment methods are evidence-based, while others are not.

This variance among treatment providers' therapeutic approaches affects supervision officers' efforts. Probation officers interface with the therapists and obtain professional

opinions based on these divergent approaches. Therefore, some supervising officers obtain risk-relevant input from the therapists. Other supervising officers may obtain information focusing on self-esteem, anger management or family background, but not risk-relevant information. Some therapists opine that the therapy is confidential, and despite a court order for therapy, they refuse to share information with the supervising officers. These variances affect how well informed many supervising officers may be, in turn affecting the success of the overall supervision process.

The juveniles managed through DJJ receive somewhat better consistency in treatment because they are sent to custodial settings. Within the DJJ facilities serving juveniles who offended sexually, those youth are assigned to a structured and systematic treatment program. The DJJ program has matured over recent years and focuses on several critical issues necessary for adolescent development. Examples of these include understanding brain, and therefore cognitive development, trauma-informed care and the role of negative peers in rehabilitation efforts. DJJ is also able to better monitor consistency in treatment because the therapists are employed by DJJ. (See appendix A for more information on DJJ's treatment program.) Nevertheless, even in these settings there are no state-required methods, materials or assessment tools universally implemented. The Board believes this lack of consistency undermines public safety.

Another significant issue regarding juveniles who offended sexually is their later exposure to civil commitment as adults. Some juveniles whose only sexual offense was before age 18 have been drawn into this aspect of the adult system. The Board's position is that civil commitment is an extraordinary response to severe, persistent, predatory sexual behavior that should be limited to adults who offend sexually. Thus, no juvenile whose only sexual offense occurred before age 18 should be eligible for review for indeterminate civil commitment pursuant to the Sexually Violent Predator Act.

There are also a number of children and adolescents who are placed in foster and group home care and the developmental disability system who are not adjudicated but who have offended sexually. Again, it is unknown how many of these youths there are because there is no systematic management system. We may know how many of these juveniles were abused, but those who have in turn sexually offended against others are not consistently identified. For a variety of reasons, these youth are not directed to the juvenile justice system by the child welfare system or the courts. These non-adjudicated youths are outside the purview of the present review and recommendations, but should be given consideration in the future.

Evidence-Based Practices Implemented Across Residence or Placement Settings

Juveniles who have offended sexually are often removed from their family homes. Sometimes this is because their victim(s) live in the family home. Other times it is because the juvenile is beyond the parents' capacity to control, or the juvenile's offense(s) are particularly egregious. Some juveniles are simply thought to be too high risk for community placement.

Congregate care is an important component to the continuum of care for this population. It is an appropriate option for juveniles with treatment needs that cannot be met through outpatient treatment, yet a referral to the DJJ is not warranted. It is a valuable intermediary for juveniles who need the strict supervision that residential treatment can provide, while providing them with a chance to address their sexual problems and offending behaviors without the potential consequences that come with registration requirements. With the requirements on Short Term Residential Treatment Programs (STRTPs), there are expectations that residential programs include trauma-informed care and utilize certain assessments. The Board believes that juveniles who have offended sexually who are placed in STRTPs should receive additional support and services (specific to this population) that would translate needs and treatment outcomes across placement settings.

The Board believes that regardless of where the juvenile lives, he or she should receive the best possible support and services, and that family reunification should be the goal in all feasible cases. The Board believes that statewide, systemically and similarly organized services should be accessible across the continuum of care for juveniles who have offended sexually. Juveniles who are placed in the community may at a later time need a higher or lower level of placement. Likewise, juveniles who are placed in an institutional setting will eventually be released to a community placement or their families. With juvenile-specific certified treatment programs and providers adhering to these Board requirements, regardless of placement setting, juveniles will be able to receive similar care with evidence-based methods and methodologies.

Such consistency does not exist at this time. If a juvenile is moved from one placement to another, he or she is likely to have to start a new treatment program. Prior treatment efforts are often set aside as each independent treatment program or provider has their own strategies and methods. Some individuals transferring from one program to another have been required to rewrite prior documents solely to include the new program's jargon. Other individuals are not credited for treatment efforts done elsewhere if a copy of those materials is not available to the new program.

For these reasons, the Board believes it is in the interest of public safety and juvenile offender rehabilitation that these Board recommendations apply to all treatment service providers regardless of the juvenile's residence or placement setting.

Recommendations

- The Board should develop juvenile-specific treatment program and provider certification requirements. The Board should implement and update the requirements based on empirical research and identified best practices within the field. Such an effort depends on the creation, however, of two new Board positions.

- The Board requirements should address the treatment and supervision of all juveniles adjudicated or convicted for offending sexually, and govern services provided by certified programs and providers.

- The Board's program and provider certification requirements, once created should govern the practices of all programs serving this population regardless of placement location, i.e., whether in a familial, community resource family or short-term residential therapeutic program setting or in a mental health or correctional institution setting.

- Certification requirements shall be juvenile-specific, developmentally sensitive, distinct and separate from the CASOMB certification requirements for professionals who work with adults who offended sexually. Programs and providers who are certified for work with adult sex offenders are not automatically qualified to work with juveniles and must establish a distinct scope of practice for these juvenile services.

- The Board should include in its juvenile certification guidelines a requirement that certified programs and providers obtain and document minimum continuing education training and experience for all assessment tools used. This should include training updates and re-certifications for the SARATSO selected risk and criminogenic need assessment tools for juveniles who offend sexually.

- The Board should require certified programs and providers to document individualized assessment-based treatment planning and case management in collaboration with other stakeholders. This requirement should be imposed regardless of placement setting, whether familial, community resource family, short-term residential therapeutic program settings or in mental health or custodial institutions.

- The Board should be authorized to establish minimum parameters for agencies, organizations and individuals who intend to provide services to juveniles adjudicated and supervised for offending sexually. To become a certified program, each agency, organization or individual shall be required to develop its own written program manual to include procedural and policy contents and materials identified by the Board.

- CASOMB certified programs shall implement treatment processes on an individualized basis, including but not limited to assessment-based, risk and need differentiated treatment plans and content. These individualized treatment processes must be implemented regardless of treatment setting, e.g. whether as outpatient, congregate care or a custodial institution.

- CASOMB certified programs and providers shall implement all assessment and treatment processes with adaptive methods and modalities sensitive to gender, gender identity, cognitive, developmental, familial and mental health characteristics.

- CASOMB certified programs shall adhere to CASOMB guidelines for after-care, transitioning between programs, family reunifications and treatment completion.

- The Board program and provider collaboration requirements should be authorized and mandated for all programs serving this population regardless of placement location, e.g. whether in a familial, community resource family, short term residential therapeutic program placements or in a mental health or correctional institution setting.

- The Board should be authorized to obtain, store and use otherwise confidential program and client-specific data for research purposes, including but not limited to monitoring the accuracy of selected risk and need assessment tools, identified treatment processes, and juvenile-specific sex offender laws and CASOMB policies. Confidentiality must be accorded for data collected for research purposes in accordance with existing statutes.

- Board members and certified programs and providers should be afforded reasonable legal protections for good faith efforts when implementing CASOMB mandates regarding juvenile treatment and assessment, similar to the limited immunity provided in Penal Code section 9003 for certified programs and providers working with adult offenders.

- Civil commitment should be an extraordinary response to severe, persistent, predatory sexual behavior and should be limited to adults who offended sexually. Thus, existing law should be amended to provide that no juvenile whose only sexual offense adjudication or

conviction that occurred before age 18 should be eligible for review for indeterminate civil commitment pursuant to the Sexually Violent Predator Act.

- The Board should be funded to develop, implement, manage and audit these requirements.

Use of Polygraph with Juveniles Who Have Offended Sexually

The issue of use of polygraph in supervising juveniles who have offended sexually must be considered separately from the use of polygraph with adult offenders. Juveniles must not be regarded as mini-adults — the developmental and cognitive differences between the groups require a different analysis for juveniles. Polygraph exams in supervising juveniles in this population should not be the norm but used only when justified on a case-by-case basis. Best practices indicate that its use should be limited to juveniles over the age of 15. Any use of polygraph in California with juveniles should be governed by new juvenile-centered certification standards created by the Board. The standards should govern both treatment and polygraph and be developmentally suitable and empirically based. Recommendations for those standards are outlined below and include a ban on use of polygraph with juveniles under the age of 16.

Research Supports Limiting Use of the Polygraph with Juveniles Who Have Offended Sexually

In 2018, the Board conducted a survey of probation departments in California regarding the use of polygraph examinations for juveniles who have offended sexually. Out of 58 California counties, 32 responded.[9] Of those responding, eight (8) reported using polygraph examinations with these juveniles as a component of probation supervision. Nationally, about 50% of probation departments report using polygraph examinations with juveniles.[10] In a 2012 survey of California treatment providers working with this population, 19% were using polygraphs in practice.[11] However, there are no guidelines for use of polygraph with juveniles in California, nor are there juvenile-specific certification standards for California polygraph examiners. This report examines the research about use of polygraph in this context and makes recommendations about future policy and law.

There are two schools of thought when it comes to using polygraph with juveniles who have offended sexually. One points to studies showing youth disclose more child victimization and hands-on assaults, as well as additional victims, with polygraph use.[12] "This suggests that with the polygraph forthcoming, youth may feel driven to accurately disclose unreported offenses."[13] It is possible, in this view, that more complete accounts of past sexual offending will result in better protection and treatment services for victims as well as enhance risk management. In other words, juveniles who disclose more sexual offending than that revealed on their criminal histories will be more closely monitored and have enhanced supervision terms. This may make it possible to offer services to previously undisclosed victims.

Those who suggest polygraph may be helpful in juvenile rehabilitation note that juveniles who complete polygraph exams with no significant reactions were found in one study to be more likely to successfully complete treatment.[14] That study found juveniles who "passed" polygraph exams were five times more likely to successfully complete treatment.[15] This might be because full honest disclosures are seen as a vehicle to assure that treatment targets relevant risk factors.

Another plus, in this view, is that polygraph is a useful tool in initially helping overcome denial and aid honest admissions.[16] This means juveniles who would otherwise keep offense-related behaviors a secret would be motivated to confess them if a polygraph exam was forthcoming. One researcher noted that "[u]sed as a treatment tool [with adults], the polygraph is a method of increasing the accountability of an offender living in the community[17]. Periodic monitoring increases accountability, particular when combined with other methods of monitoring the client's behavior in the community."[18]

Some proponents of juvenile polygraph rely in part on public safety concerns. In one study, the authors found participants deliberately attempted to misrepresent both the degree, seriousness and amount of offending. This had serious implications for the mental health community and juvenile justice system which are charged with providing rehabilitation for these juveniles while assuring the community of safety from their risk to reoffend: "Clinically, the results imply a significant number of youthful offenders may participate in treatment without ever being accountable for prior bad acts or honestly confronting their deviant sexual interests. For the justice system, this fact implies a significant number of dangerous youthful sex offenders may be judged appropriate for minimal supervision, thereby compromising the safety of a community. Common sense of both lay people and professionals would judge these outcomes to be highly undesirable."[19]

The other school of thought, which opposes the use of polygraph with juveniles, cites ethical considerations and the belief that polygraph is disproportionately coercive with youth, who are more subject to intimidation and likely to comply with authority, and have less ability to foresee the consequences of choices. Opponents worry that polygraph may disrupt the normative developmental process of adolescence. ATSA (Association for the Treatment of Sexual Abusers) endorses this view and does not believe the use of polygraph enhances public safety.[20] This group considers polygraph of juveniles to be punitive, not rehabilitative.[21] Another negative is that use of polygraph may interfere with the therapist-patient bond, and/or engender fear and anxiety, and undermine the self-confidence of juveniles.[22] Interventions such as polygraph must be carefully considered when used with youth, for several reasons:

- Juveniles who have committed sexual offenses appear more likely to have been sexually victimized themselves

- Juveniles who have engaged in sexually abusive behaviors may be more likely to report higher levels of social isolation, anxiety, and low self-esteem

- This group may be less likely to have significant criminal histories, associate with anti-social peers, or have substance abuse problems than juveniles who have committed nonsexual crimes[23]

- Because revocation is a possible consequence of failing a polygraph, there is the potential for disruption of prosocial adjustment, positive peer and family networks and other protective factors

As opponents to the use of polygraph with juveniles observe, so far there is little empirical evidence on whether polygraph-induced disclosure is tied to observable recidivism rates.[24] They note that an increased rate of disclosure is not the same as saying that use of polygraph contributes to reduced sexual re-offense or increased predictive accuracy, and that meaningful research on its use with juveniles is lacking.[25]

However, "[i]t may not matter whether disclosures are ultimately tied by research to recidivism." [26] In order to be recorded as recidivism, subsequent unlawful sexual activity must be reported to law enforcement. Whether or not recidivism rates are higher without polygraph, its use may sometimes be a helpful tool in supervision: "The majority of adults surveyed about polygraph use have reported it was helpful in avoiding re-offense, avoiding risk behaviors, attaining treatment goals, and strengthening personal relationships through greater tendencies to be honest."[27] It is possible that juveniles may report similar experiences and benefits. Polygraph can help clinicians improve risk assessments, enhance treatment strategies, and report improvements in treatment with clients.[28]

The California Coalition on Sexual Offending (CCOSO), the organization representing professionals working in the field of sexual offender treatment and management, takes an interim position between these two divergent schools of thought. CCOSO supports the use of polygraph with juveniles provisionally, only when "used with a full understanding of the issues surrounding its use with this population."[29] The provisos include the need for more research on the use of polygraph with juveniles, including more information on treatment outcomes, consideration of the impact of additional child abuse reports upon a given juvenile's ongoing court process, and consultation with applicable professional standards prior to use of polygraph with this population.

Most experts who support use of polygraph with juveniles do so provisionally. "Polygraph results alone are not sufficient evidence to determine facts or to be the basis for termination from treatment. The treatment team should not rely solely on polygraph findings in case management or legal decisions. Treatment team members should refrain from threats or legal sanctions on the basis of polygraph results. Treatment team members should work in conjunction with polygraph examiners in developing protocols for pre-examination interviewing, question formulation, interpretation, reporting, and use of results."[30]

Those supporting polygraph use with juveniles note there should never be over-reliance on any of the technological or psychological tools used in offender treatment until empirical data consistently supports their validity and reliability.[31] Any polygraph results should be corroborated before an assumption of deception is made.

For example, Utah's guidelines for juvenile polygraphs state: "Polygraph results alone are not sufficient evidence to determine facts or to be the basis of termination from treatment. All self-reported information obtained during the clinical polygraph examination will be reviewed and incorporated into any recommendations. There should be recognition of the risk of false positives (approximately 10%) that could incriminate innocent persons. The risks of false negative (approximately 8%) are also a concern, as deceptive persons may not be detected and thus may be granted privileges that escalate risk factors."[32]

Utah and Colorado standards emphasize that multidisciplinary case management (MDT) teams should not rely solely on polygraph findings in case management or legal decisions.[33] "Therapists should recognize the validity and reliability of the polygraph without ascribing excessive authority to its results. There should not be any threats or legal sanctions on the basis of polygraph results. The focus is on helping the sexually offending adjudicated youth in their treatment, providing services for all of their victims and keeping the community safe. The use of such threats may exacerbate a stress reaction and increase the risk of false-positive result."[34]

Many experts recommend placing age limitations on use of polygraphs with juveniles: "[T]there should be clear age limits. It should not be a condition of treatment, nor should participation be allowed to impact family reunification."[35] Colorado and Utah use an age cut-off of 14 and 15, respectively.[36] In light of more recent research indicating that juvenile brain development does not reach adult maturation until the mid-twenties, a more cautious approach seems indicated if polygraph is to be considered for use with juveniles. International expert Dr. Don Grubin suggests that the cut-off should be age 16.[37]

Opinions differ on whether, if polygraph is used at all with juveniles, sexual history exams and/or maintenance exams should be used. Some practitioners find no need for the complete

and total disclosure of all details of a juvenile's sexual history. "Instead, it could be that having a broad understanding of a youth's patterns and offenses may be sufficient for assisting the youth with making progress in treatment and developing effective plans to manage his or her behavior. Further, we may reach a point of diminishing returns when it comes to trying to uncover every single detail pertaining to a youth's sexual history. Other treatment providers, however, believe that the polygraph can be a helpful—if not vital—tool for treatment. This is because the polygraph may lead to additional disclosures about sexual deviance issues or sex offenses that had not been previously detected. Some believe that 'complete' disclosure must occur if treatment is to be most meaningful and effective."[38]

Colorado advises that if the case management team considers use of a sexual history polygraph, "[t]here must be agreement that polygraph is the superlative method for gaining a history and framing service delivery. It should not be used as a punitive scare tactic or to get youth to comply with treatment."[39] There appears to be more consensus about the use of a maintenance polygraph (to check on compliance with terms and conditions of the juvenile's supervision) than about use of sexual history polygraphs with juveniles. In other words, an exact victim count may not be needed for safety planning.[40]

Recommendations

- Any use of polygraph in California with juveniles should be governed by juvenile-centered standards developed by the Board for both treatment and polygraph that are developmentally suitable and empirically based. The decision whether to use polygraph with juveniles, and what type of exam is indicated and in what circumstances, should be guided by standards to be promulgated by the Board.

- Polygraphs should not be used with any juveniles under the age of 16.

- Polygraph exams should be used only if recommended by the juvenile's case management team, with use of polygraph being declared in the Board's Juvenile Guidelines to be outside the norm rather than the default choice.

- Standards to be developed by the Board should set out considerations such as age, trauma background, treatment issues (e.g., denial), and specify factors pertaining to cognitive development to be considered by the Case Management Team prior to determining if use of polygraph would be appropriate in a particular case.

- Board standards should state that polygraph examinations cannot be the sole basis for determining whether family reunification, or incarceration, is appropriate.

- Any use of polygraph with juveniles requires appropriate use immunity, such as offered in Oregon.[41] California law provides similar immunity protection, as explained in *People v. Garcia* (2017) 2 Cal.5th 792. California law conferring legal protection from disclosures should be explained in the standards, and the parameters of the polygraph examination should be defined (pre-polygraph interview, polygraph exam, post-polygraph interview).

- Appropriate waivers of confidentiality, such as the Board's model forms recommended for use with adult offenders,[42] must be part of any juvenile model.

- The Board should recommend appropriate certification standards for polygraph examiners working with juveniles that require a specified amount of training hours in juvenile cognitive development as well as experience conducting juvenile polygraph exams.

Registration May Be Counterproductive for Juveniles Who Have Offended Sexually

The Board recommends that California stop requiring registration for juveniles whose only sexual offending was under the age of 18.[43] Juveniles are not mini-adults and should be treated differently than adults due to their low re-offense rates and their amenability to treatment and rehabilitation. Creating barriers to obtaining jobs and housing by requiring registration may prolong rather than help rehabilitate juveniles. It may also preclude home or appropriate residential placement.

Research Supports Eliminating Registration for Individuals Whose Only Offenses Were Committed as Children

The new law to tier the sex offender registry[44] that goes into effect in 2021 is a first step toward bringing California in line with current research and recommendations about best practices for juveniles. The previous lifetime registration requirement for juveniles in California was contrary to evidence-based research. Still, the new law is not completely congruent with evidence-based research about managing juveniles who have offended sexually. In 2018 the Board was tasked by the Legislature with making policy recommendations about management of juveniles who have offended sexually for the first time.[45] The expanded legislative mandate sparked an in-depth study of this issue by the Board.

California has registered juveniles who have offended sexually for over 30 years.[46] Until that mandate changes in 2021, the registration term has always been for life.[47] This means that individuals who were adjudicated for committing a registrable sexual offense at ages 11-17, some over 30 years ago, are still registering today for these old offenses, even though statistics indicate the vast majority have never reoffended. Currently, all juveniles who go to state level placement at DJJ are required to register after release.[48] Most juveniles receive home or county level placement and do not have a duty to register. Placement is not necessarily based on risk level.

Beginning January 1, 2021, juveniles discharged from DJJ will be required to register for five or ten years after release from custody, depending on their offenses.[49] Those who are currently required to register for life can petition the courts for removal of the duty to register after either five (5) or 10 years from release from DJJ.[50]

With community safety as the primary focus, we now recommend ending registration entirely for juveniles. The Board considered the alternative of requiring registration only for high risk juveniles released from state custody, but there are implementation problems

described below which make this approach impractical. Research supports entirely eliminating juvenile registration due to the low re-offense rates of juveniles and their amenability to treatment and rehabilitation. Overbroad registration requirements may exacerbate rather than mitigate risk of re-offense.[51]

California has never displayed information about juveniles[52] on the Megan's Law public Internet web site, due to the potential lifelong negative consequences of Internet posting. Local registering law enforcement agencies can provide community notification about an individual registrant, including a juvenile, if it is warranted by the current level of risk posed by that person.[53] The Board believes that juveniles should remain subject to individual determinations regarding local community notification, and opposes any requirement for statewide online posting.

Research Supports Abolishing Juvenile Registration

Registration has not been found to deter sexual reoffending by juveniles.[54] Studies have measured the effectiveness of juvenile sex offender registration, asking whether registration prevents recidivism or deters first-time offenders. Research over the past 10 years demonstrates that very few juvenile offenders reoffend sexually: a recent survey of several studies showed juvenile recidivism rates to be very low when measured at five years after release from custody—only 2.75%.[55] In other words, more than 97% of children adjudicated for a sexual offense do not reoffend sexually within 5 years.[56] In fact, "the vast majority of juvenile sexual crimes committed in any given time period are perpetrated by juveniles with no prior sexual offense adjudications."[57] Moreover, studies have failed to discover how juvenile registration benefits public safety.[58]

An unintended consequence of juvenile registration is that it may deter prosecutors from moving forward on charges that require juvenile registration.[59] Another unintended consequence in California may be that counties are reluctant to send juvenile offenders to DJJ because registration will be mandatory after release. This is unfortunate because DJJ has an excellent sex offender-specific treatment program[60] that may be better than many county placement alternatives. A survey of juvenile and family court judges found that most judges had significant reservations regarding the placement of juvenile offenders on public registries.[61]

Additionally, requiring juveniles to register as sex offenders has been shown to dramatically increase problems associated with mental health, peer relationships, and victimization.[62] The most significant mental health impact for juveniles is an increased risk of attempted suicide.[63] Juvenile registrants in one study were four times as likely to report an attempted suicide in the prior 30 days.[64]

Registration may also place juveniles at risk of victimization themselves. Studies have found that juvenile registrants are five times more likely to have been approached by an adult for sex in the past year.[65] Research has demonstrated that placing juveniles on the sex offender registry results in bullying and social isolation.[66]

Registration carries grave consequences, which can eliminate educational and employment opportunities or restrict housing options.[67] Detective Bob Shilling, who spent his life helping apprehend child predators and educate law enforcement about registration, recently wrote "*An Open Letter to My Colleagues in Law Enforcement: Ending the Abusive Policy of Putting Children on Sex Offender Registries."*[68] In it, Detective Shilling notes that eliminating options for school, jobs and housing does not make our communities safer. Alienating children from family and support, increasing the likelihood of depression, anxiety and suicide does not make communities safer. Research shows that registration is mostly effective as a tool for law enforcement to identify offenders whose second offense is against a stranger victim who cannot identify the person who assaulted them—and juveniles rarely reoffend with a subsequent sex offense.[69]

Juveniles who have offended sexually, regardless of the requirement to register, should be required to complete mandatory sex offender-specific treatment that is specifically designed for juveniles.

The Board considered whether to recommend restricting juvenile registration to those assessed as high risk (or well above average risk) at the time of release from DJJ. The ultimate conclusion after extensive review of relevant studies is that eliminating juvenile registration entirely is the evidence-based course of action. Studies have found that juvenile registration requirements usually fail to identify those who are at greater risk for sexual recidivism.[70] Further, the research on the deterrent value of sex offender registration applied to juveniles has consistently shown no general or specific deterrent effect.[71]

In order to utilize a risk-based approach, more research is needed to validate use of the state's designated static risk assessment instrument (the JSORRAT-II) with juveniles in California.[72] If registration decisions were based on risk assessment of juveniles being released from DJJ prior to age 18, a combined approach utilizing clinical judgment as well as an empirical static risk assessment might be most appropriate: "Sound risk assessment requires well-trained risk evaluators who do not simply rely on risk scores when making decisions about a juvenile offender, particularly decisions with potentially lifelong consequences."[73] This would require additional state resources to pay for individual assessments by clinicians.

Accurate assessment of the risk of re-offense is more difficult with juveniles than adults because of the low base rates of recidivism and because of the lack of a coherent theory about what makes juvenile sexual offenders persist in sexual offending.[74] Several risk factors that have proven to be robust predictors of continued offending in adult sexual offenders have not demonstrated a similar value with juveniles.[75]

Juveniles who engaged in serious (adult-like) sexual offending at age 17, and who are age 18 or older upon release from DJJ, can be assessed using the adult risk assessment instrument, the Static-99R.[76] For these juveniles, the Static-99R score could be used to determine whether the individual should register for at least five years. Juveniles whose offenses were committed prior to age 17, however, are not eligible to be scored on the adult static risk assessment instrument, the Static-99R. For younger juveniles, who committed their offenses prior to age 17, the only risk assessment score available would be the JSORRAT-II (juvenile static risk) score. The JSORRAT-II is scored *prior* to entry into the treatment program at DJJ. Thus, combining an earlier JSORRAT-II score with a later clinical assessment by DJJ would be necessary to determine risk level at the time of release from DJJ.

Development of methods that reliably identify juveniles who are at high risk for persistent sexual offending, however, is apt to be "extraordinarily difficult".[77] Because the base rate for reoffending by California juveniles has not yet been determined by research, and the yet-to-be-determined base rate is likely very low, reliability of a risk-based system for juveniles would be problematic from an evidence-based perspective, however politically palatable such an alternative might be. Accordingly, the Board cannot recommend a risk-based registration system for juveniles.[78]

Recommendations

- The Board recommends that California eliminate the requirement of registration for individuals whose only sexual offenses were committed as children. The combination of the negative impact of the unintended consequences of juvenile registration (such as unemployment or homelessness) on public safety,[79] low likelihood of sexual reoffending by juveniles and difficulty in accurately identifying high risk juveniles make any form of juvenile registration problematic.

- If some form of juvenile registration is deemed necessary by the Legislature, the Board recommends registration only for high risk[80] juveniles who committed their crimes at ages 16 or 17, after release from state level placement, or for juveniles tried in adult court for committing serious or violent adult-like sexual offenses.[81]

- Any registration period for juveniles should be for no more than five (5) years, giving these individuals the chance to petition a court for removal from the registry if they are successful in completing mandatory sex-offender treatment and demonstrating rehabilitation.

- The Board recommends that there continue to be no online posting of juveniles, but that all persons convicted or adjudicated for an offense committed prior to age 18 remain subject to local community notification if determined to be posing a current risk of sexual or violent re-offense, as determined by the registering law enforcement agency which should be required to consult with the case management team.

Appendix A

Division of Juvenile Justice

The Division of Juvenile Justice's (DJJ) Sex Behavior Treatment Programs (SBTP) treat youth with identified sexually abusive behavior. DJJ's SBTP units reside in the Stockton complex with a total bed capacity of 108. As a part of the Farrell lawsuit, the DJJ implemented a SBTP curriculum based on evidence-based practices and emerging practices to treat adolescence with sexually abusive behavior. On October 7, 2013, the order dismissing this part of the case was filed. It was noted that DJJ had achieved a state-of-the-art program for youth with sexually problematic behavior, which can serve as a model for the whole country. The Expert noted in her final report to the court that "the implementation of the new curriculum should make the [sexual behavior treatment program] one of the best, if not the best program of its kind in the country."

Components of the program include, individualized treatment plans, group therapy, individual therapy, psycho educational resource groups, experiential stage group therapeutic exercises, biblio-therapy, video-therapy, family/support counseling, family/support forums, plant/pet care, and therapeutic recreation and leisure activities.
Youth also participate in Healthy Living Treatment. Healthy Living is a short-term psycho-education program designed to be the foundation for the SBTP, as well as provide treatment to those youth identified in the lowest risk category as well as youth who have no previous sexual behavior history, but have received documentation related to sexual behaviors. The Healthy Living Program provides didactic information/education and dynamic role-play opportunities, along with written and verbal exercises, to assist youth in reducing their risk of future sexual offenses.

The SBTP Treatment Stage work is developmentally designed with each stage building upon the one before. Throughout the stage work, youth and facilitators will be prompted to return to earlier assignments for either review or additional work. It is in this manner that the continuity of stage work is emphasized throughout the treatment process. In addition, the treatment stage work serves as the anchor for all other aspects of the Sexual Behavior Treatment Program reinforcing or referencing other aspects of treatment, used in decision making regarding adjunctive or specialized treatment needs, as well as, used to monitor overall treatment progress. Each treatment stage was developed based upon concrete pre-defined learning objectives as well as clearly articulated evaluation criteria that will indicate

progress or lack thereof within each stage. The evaluation criteria are based on objective criteria (i.e., measurable, observable).

In order to ensure that each youth's individual needs are addressed, the evaluation criteria for each stage will not constitute an all-or-nothing approach, but rather will take into account that whereas some youth may demonstrate a particular type of progress in an area, another youth may demonstrate progress in a different manner. In addition, lack of specific progress in one area of a treatment stage may not prohibit youth from progressing to the next level. Because of this, the evaluation criteria will have some degree of flexibility to account for youth that may reach their highest potential despite not having demonstrated the same level of progress as other youth.

The juveniles committed to DJJ for sexually abusive behavior tend to have higher risks and needs. Only juveniles committed to DJJ are required to register under PC 290 as sexual offenders. The DJJ has seen an increased concern by juvenile courts regarding registration requirements for these youth. In some circumstances, courts have explored ways to send a youth to DJJ for treatment without having to sentence them with an offense that requires a PC 290 requirement.

Youth released from DJJ are supervised by Probation. Upon discharge from DJJ, youth are transported back to their county of commitment for a hearing with the juvenile court judge to determine supervision. DJJ staff begin working on re-entry plans upon a youth's arrival and finalize that plan throughout the youth's stay. The largest concern for youth with sexual abusive behavior discharging from DJJ is securing a placement, employment, and at times, education. During FY 17-18, DJJ has released 29 of youth with sexually abusive behavior to 14 different counties.

Appendix B

Terminology

Age group – For the purposes of this report supervision and treatment of persons, who have been adjudicated or convicted, under the age of 18 for sexual offenses, should be governed by the Board's recommendations and proposed Board guidelines. References to youth, adolescents and juveniles herein all refer to this group.

Case Management Team – A Case Management Team is a group of stakeholders whose goal is prevention of future sexual or abusive behavior of the identified juvenile. Members may include, but are not limited to, the juvenile, supervision officer, treatment providers, victim advocates, family members/guardians, school personnel, medical personnel, and various other positive support systems the juvenile and team have identified. Various systems may refer to this team differently, such as a Child and Family Team (CFT) or when not placed in residential they may be referred to as a Multidisciplinary Team (MDT).

Dual Status Youth –Youth who have dual wardship in the delinquency and dependency courts. Both systems retain jurisdiction over the youth.

Individualized Assessment – Treatment providers conduct and incorporate evidence-based assessments that match a juvenile's individualized needs in treatment planning and service delivery.

Juveniles tried as adults - Juveniles between the ages of 14-17, who have committed serious offenses may have their case transferred to the adult court system, thereby having their rights as a juvenile waived. Legislation[82] passed in 2018 changes the age of juveniles who can be referred to the adult court system to age 16.

Juveniles versus adults – Juveniles and adults are biologically and developmentally different, particularly related to the onset of puberty and the developing prefrontal cortex. Puberty is a period of several years in which, there is rapid physical growth and psychological changes occur with the culmination of sexual maturity. The prefrontal cortex is the region of the brain that is responsible for complex cognitive behavior or executive functioning (personality expression, decision making and regulating social behavior). Specifically, developments in the prefrontal cortex are important for controlling impulses and planning ahead. Between the ages of 10 and 25, the brain undergoes changes that have significant implications for behavior and judgment. Penal Code section 3051 regarding parole hearings takes into consideration "diminished culpability of juveniles as compared

to that of adult" when referring to those persons who committed a crime under the age of 23.

Juveniles who have offended sexually – Given the biological and developmental milestones that impact judgment and behavior, it is more appropriate to refer to adolescents as juveniles who have sexually offended as opposed to labeling the juveniles as sex offenders, which may result in lifelong stigma.

Neurodevelopment – Neurodevelopment refers to the development of brain structure and function. It affects emotion, learning ability, self-control and memory. It changes and develops as a person grows.

Prosocial skills – Prosocial skills are social behaviors that are intended to benefit another person or society as a whole. Obeying rules and laws is prosocial, indicating conformation to social norms and behaviors.

Recidivism – Recidivism is the recurrence of an undesirable behavior, typically criminal, after having had a formal consequence for the behavior. The consequence can include being arrested and convicted of criminal behavior, or as is the case with adolescents, it can include out of home placement and involvement in the Department of Child and Families. The consequence is meant to deter the maladaptive behavior. Recidivism in this population can be specific to sexual behavior (sexual recidivism) or other problem behavior (general or violent criminal recidivism).

Risk, Needs and Responsivity - The Risk-Need-Responsivity (RNR) Model is considered best practice for treatment and supervision for persons who have engaged in criminal behavior, specifically sexual offending behavior. RNR was developed in the 1990s by Andrews, Bonta, and Hoge and applied to a wide range of criminal populations. The model is based on three principles:

- The **Risk** Principle asserts that criminal behavior may be anticipated and treatment should focus on the highest risk offenders. In addition, the level or intensity of services should match the risk level;
- The **Need** Principle highlights the importance of criminogenic needs, such as deviant sexual interest or impulsivity, in the design and delivery of treatment; and,
- The **Responsivity** Principle emphasizes the importance of constructing treatment plans and interventions that match the offender's learning style and abilities.

Sex offender – The term sex offender is typically reserved for adults who have been convicted of a sexual crime and is often a negative label that can follow someone for a lifetime.

Transitional age youth – Transitional age youth are young people between the ages of 16 and 24, who are aging out of the foster care or dependency and delinquency systems. When they transition back into the community, they have limited access to assistance, resources, and limited experience.

Trauma informed care – Trauma-informed care is a strength-based framework grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for both providers and survivors, and that creates opportunities for survivors to rebuild a sense of control and empowerment.

[1] Stats. 2017, ch. 541 (S.B. 384), codified in Penal Code sections 290,290.45, 290.46, 290.5, 9002.
[2] Caldwell, M.F., *Quantifying the Decline in Juvenile Sexual Recidivism Rates,* Psychology, Public Policy and Law (Jul. 2016) advance online publication at <http://dx.doi.org/10.1037/law0000094>, at p. 2.
[3] Land, R. et al*., CCOSO Adolescent Guidelines* (2013), at p. 7. online at <https://ccoso.org/sites/default/files/Adol%20Guidelines.pdf>; see also Russell, A., *Multidisciplinary Response to Youth with Sexual Behavior Problems* 40 William Mitchell L. Rev., no. 3, article 9 (2014); McGrath, R., et al., *Collaboration Among Sex Offender Treatment Providers and Probation and Parole Officers: The Beliefs and Behaviors of Treatment Providers,* 14 Sexual Abuse: A Journal of Research and Treatment, no. (2002).
[4] CCOSO *Adolescent Guidelines*, *supra* fn. ii.
[5] CCOSO *Adolescent Guidelines, supra* fn. ii, at p. 9.
[6] Caldwell, *supra* fn. 2, citing Batastini, Hunt, Present-Koller, & DeMatteo (2011); Caldwell, Ziemke, & Vitacco (2008).
[7] See a description of the juvenile and adult risk assessment instruments mandated by the SARATSO Committee (State Authorized Risk Assessment Tools for Sex Offenders Committee) for use in California, online at <www.saratso.org>.
[8] Welf. & Inst. Code, §§ 727(a)(4)(A), 727.1(a), 727.2, 16501(a)(4).

[9] Report (verbal) by Chief Probation Officer Fernando Giraldo (Santa Cruz) at CASOMB public meeting (February 2018).
[10] Yoder, Jamie R., et al., *A Framework for the Judicious Use of the Polygraph for Youth Who Have Committed a Sexual Crime, Victims and Offenders, An International Journal of Evidence-based Research, Policy and Practice*, at p. 2 http://dx.doi.org/10.1080/15564886.2017.1289994 (pub. online Feb. 26, 2017).
[11] CCOSO, *Guidelines for the Assessment and Treatment of Sexually Abusive Juveniles*, at p. 22 (2015), online at <https://ccoso.org/sites/default/files/Adol%20Guidelines_1.pdf>.
[12] *Yoder, supra* fn. 2, at p. 4.
[13] Stovering, J., Nelson, W. M., & Hart, K. J. (2013). Timeline of victim disclosures by juvenile sex offenders. *The Journal of Forensic Psychiatry & Psychology, 24*, 728-739.
[14] *Yoder, supra* fn. 2, at p .9.
[15] *Yoder, supra* fn. 2, at p. 9.
[16] *Yoder, supra* fn. 2, citing Emerick, R. and Dutton, W., *The Effect of Polygraphy on the Self Report of Adolescent Sex Offenders: The Implication for Risk Assessment*, 6 Annals of Sex Research at pp. 83-103 (1993), online at http://sax.sagepub.com/cgi/content/abstract/6/2/83.
[17] (ATSA, 1993)
[18] Blasingame, G., *Suggested Clinical Uses of Polygraphy in Community-Based Sexual Offender Treatment Programs 10 Sexual Abuse: A Journal of Research and Treatment*, no. 1, at p. 38 (1998).
[19] Emerick & Dutton, *supra* fn. 7, at p. 20; see also Mervis, R., *Polygraph Examination Protocol,* Utah Network on Juveniles Offending Sexually (Aug. 2002), online at< https://antipolygraph.org/documents/nojos-polygraphy-policy.pdf>., at pp. 9-10: "[I]it is common for each offender to have a series of non-disclosed victims in their home community. These victims may be younger siblings, relatives and neighbors, who need treatment and protection. In addition to this, treatment providers are aware that many offenders have also been sexually and physically abused in the past. These sexually offending adjudicated youth sometimes accuse innocent parents or conversely try to protect their abusers from legal consequences by not admitting to the abuse. These issues guide the treatment plan, help in the selection of the most appropriate interventions and will maximize treatment."
[20] *ATSA Practice Guidelines for Assessment, Treatment and Intervention with Adolescents Who Have Engaged in Sexually Abusive Behavior* (2017), online at <http://www.atsa.com/Public/Adolescent/ATSA_2017_Adolescent_Guidelines_TOC.pdf>.
[21] *Yoder, supra* fn. 2, at p. 4; see ATSA, *Practice Guidelines, supra* fn. 10, at p. 34.
[22] Prescott, D., *What Do Young People Learn from Coercion? Polygraph Examinations with Youth Who Have Sexually Abused*, XXIV ATSA, no. 2, at p. 5 (Spring 2012), online at <http://www.davidprescott.net/pub_36.pdf>.

[23] *ATSA Practice Guidelines, supra* fn 10.
[24]*Rosky (2012); McGrath (2007.)
[25] *Prescott, supra* fn. 12, at p. 1; ATSA, *supra* fn. 10, at p. 34.
[26] A study by Jensen, et al., showed that juveniles are no more forthright and honest in treatment than adults. (Jensen, T., et al., *Sexual History Disclosure Polygraph Outcomes: Do Juvenile and Adults Sex Offenders Differ?* 15 J. of Interpersonal Violence, vol. 30(6) 928-944 (2014). In this study, juvenile and adult offenders did not appear to differ significantly in their polygraph outcomes (in both groups, about 2/3 passed and 1/3 failed). The proportion who passed did not significantly differ by age group. Juvenile offenders were not any more or less likely to pass their polygraph examinations. This study suggests that clinicians who believe polygraphy is not needed with juveniles because they are more forthright and honest in treatment should reconsider. (*Id*. at p. 938.)
[27] Gannon, T. A., Wood, J. L., Pina, A., Vasquez, E. A., & Fraser, I. (2012). The evaluation of mandatory polygraph pilot (Ministry of Justice Research Series). Online at http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217436/evaluation-of-mandatory-polygraph-pilot.pdf; Grubin, D., & Madsen, L. Lie detection and the polygraph: A historical review. *The Journal of Forensic Psychiatry & Psychology, 16*, 357-369. (2005); Kokish, R., Levenson, J. S., & Blasingame, G. D. Post-conviction sex offender polygraph examination: Client-reported perceptions of utility and accuracy. *Sexual Abuse: A Journal of Research and Treatment, 17*, 211-221. (2005).
[28] *Jensen, supra* fn. 14, at p. 939.
[29] CCOSO, *supra* fn. 3, at pp. 20-22.
[30] Blasingame, *supra* fn. 8, at p. 42.
[31] *Mervis, supra* fn. 9, at p. 10.
[32] Mervis, *supra* fn. 9, at p. 10.
[33] Mervis, *supra* fn. 9, at pp. 10-11; Colorado Standards, *Polygraph Examination of Juveniles Who Have Committee Sexual Offenses*, Section 7.000, online at <http://www.pcsot.info/7.0_Colorado_Juvenile_Polygraph_Standards.pdf>.
[34] Mervis, *supra* fn. 9, at pp. 10-11; Colorado Standards, *supra* fn. 20, at p. 102.
[35] Prescott, *supra* fn. 11, at p. 6.
[36] Mervis, *supra* fn. 9, at p. 11; Colorado Standards, *supra* fn. 20, at p. 99.
[37] E-mail February 14, 2018, to CASOMB Polygraph Committee chair Janet Neeley; Dr. Grubin is the author of numerous articles about the use of polygraph with who have sexually offended, including *Polygraph Testing of Sex Offenders* (March 2016), available online at <https://link.springer.com/chapter/10.1007/978-3-319-25868-3_6>.
[38] Center for Sex Offender Management, training on Juveniles—online at http://www.csom.org/train/juvenile/4/4_8.htm>. CASOMB earlier made a preliminary recommendation to use only maintenance polygraphs with juveniles (FAQs, *The Law on the Use of Polygraph in the Containment Model in California*, online at < http://casomb.org/pdf/Polygraph_law_after_Garcia_3_2018.pdf>, at p. 4.
[39] Colorado Standards, *supra* fn. 20.
[40] Prescott, *supra* fn. 11, at pp. 3-4.
[41] Hindman, J. & Peters, J., *Polygraph Testing Leads to Better Understanding Adult and Juvenile Offenders*, 65 Federal Probation, no. 3, pp. 8-15 (Dec. 2001).
[42] See http://www.casomb.org/index.cfm?pid=1231#pForms.
[43] If some form of juvenile registration is deemed necessary by the Legislature, despite research to the contrary, registration should be limited to high risk juveniles who committed their crimes at ages 16 or 17 after release from state level placement, or for juveniles tried in adult court for committing serious or violent adult-like sexual offenses. See Recommendations section for details.
[44] Stats. 2017, ch. 541 (S.B. 384).
[45] See the 2017 amendment to Penal Code section 9000, which expanded the California Sex Offender Management Board's purview to include juveniles by eliminating the word "adult."
[46] Pen. Code, § 290.008, and as amended in 2021.
[47] The only exception to the lifetime registration requirement currently available is obtaining a court order to seal the juvenile record. (Welf. & Inst. Code, § 781.) Proposition 21, effective March 8, 2000, foreclosed the option of sealing the record for any juvenile adjudicated of committing an offense listed in section 707(b) of the Welfare & Institutions Code. (*In re G.Y.* (2015) 234 Cal.App.4th 1196.)
[48] Pen. Code, § 290.008

[49] See *supra* fn. 1, at Penal Code section 290.5.
[50] See *supra* fn. 1, at Penal Code section 290.5.
[51] Harris, A.J., et al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, 28 Sexual Abuse: A Journal of Research and Treatment no. 8, pp. 770–790 (2016), at p. 783 [results from several studies failed to support the hypothesis that juvenile registration and notification policies reduce youth recidivism risk, and treatment providers believe registration and notification in particular may increase risk of juvenile re-offense].
[52] Juveniles convicted as adults, however, are displayed on the public Megan's Law web site; this can include juveniles as young as 14.
[53] Pen. Code, § 290.45, subd. (a); *supra fn. 1,* at Penal Code section 290.45(a).
[54] Caldwell, M.F., *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, Psychology, Public Policy and Law (Jul. 2016) advance online publication <http://dx.doi.org/10.1037/law0000094> , at p. 7.
[55] Sandler, J.C., et al., *Juvenile Sexual Crime Reporting Rates Are Not Influenced by Juvenile Sex Offender Registration Policies*, 23 Psychology, Public Policy, and Law, no. 2, at p. 133 (2017) [explaining the weighted mean recidivism rate was 2.75% after 5 years]; see also Harris, *supra* fn. 8, at p. 771: research has documented that juvenile sex offenders rarely reoffend sexually; Carpentier, M., et al., *Randomized Trial for Treatment of Children with Sexual Behavior Problems: 10-Year Followup,* 74 J. of Consulting & Clinical Psychology, no. 3, 482-488 (2006).
[56] Letourneau, E. J., et al., *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination,* Psychology, Public Policy, and Law, at p. 12, online at http://dx.doi.org/10.1037/law0000155, (Nov. 2017).
[57] Sandler, *supra* fn. 11, at p. 133.
[58] Letourneau, *supra* fn. 12, at p. 12.
[59] Letourneau, *supra* fn. 12, at p. 161.
[60] See program description online at https://www.cdcr.ca.gov/Juvenile_Justice/docs/Linked/Integrated_Behavior_Treatment_Model_IBTM_Brochure_English_5-2016.pdf.
[61] Bumby, K. M., Talbot, T. B., & West, R., *System challenges and substantive needs regarding juvenile sex offenders: A summary of perspectives from the bench.* Presentation at the 25th Annual Conference of the Association for Treatment of Sexual Abusers. Chicago, IL. (2006).
[62] Letourneau, *supra* fn. 12, at p. 10.
[63] Letourneau, *supra* fn. 12, at p. 2.
[64] Letourneau, *supra* fn. 12, at p. 9.
[65] Letourneau *supra* fn. 12, at p. 10.
[66] Letourneau, E.J., et al., *Effects of Sex Offender Registration Policies on Juvenile Justice Decision Making*, 21 Sexual Abuse: A Journal of Research and Treatment, no. 2, at 149-165 (June 2009) citing Jones, 2007; Oliver, 2007; Trivits & Reppucci, 2002).
[67] *People v. Hofsheier* (2006) 37 Cal.4th 1185, rev'd on other grounds, *People v. Johnson* (2015) 60 Cal.4th 871; see *In re Taylor* (2015) 60 Cal.4th 1019*; People v. Nguyen* (2014) 222 Cal.App.4th 1168, rw. den.
[68] Online at https://www.linkedin.com, published March 2018.
[69] Registration does not decrease sexual re-offense, but may help law enforcement apprehend a repeat perpetrator more quickly. (California Sex Offender Management Board, *A Better Path to Community Safety* (2014), p. 2, online at <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>.
[70]Caldwell, *supra* fn. 15, at p. 9, citing Batastini, Hunt, Present-Koller, & DeMatteo, 2011; Caldwell & Dickinson, 2009; Caldwell, Ziemke, & Vitacco, 2008, advance online publication <http://dx.doi.org/10.1037/law0000094>. If there was an effective way to identify high risk youth, tying juvenile registration to risk level would make it less likely that serious cases would be pled down to avoid registration, or that juveniles would be given local placement when state level placement is most appropriate. Unfortunately, low base rates make identifying the truly high risk individuals difficult.
[71] Caldwell, *supra* fn. 15, at p. 9, citing Craun & Kernsmith, 2006; Batastini, Hunt, Present-Koller, & DeMatteo, 2011; Caldwell & Dickinson, 2009; Caldwell, Ziemke, & Vitacco, 2008; Letourneau & Armstrong, 2008; Letourneau, Bandyopadhyay, Sinha, & Armstrong, 2009.
[72] Rich, P., *The Assessment of Risk for Sexual Reoffense in Juveniles Who Commit Sexual Offenses, Sex Offender Management Assessment and Planning Initiative* (Jul. 2015) at pp. 3-4, online at

<https://smart.gov/pdfs/JuvenileRisk.pdf>. California's state risk assessment committee for sex offenders (SARATSO Committee) is in the process of conducting a validation and recidivism study of the JSORRAT-II on a California population, which should be a better indicator of whether the JSORRAT-II score alone is a sufficiently valid indicator of risk to permit its use in registration decisions concerning high risk youth.

[73] See Rich, *supra* fn. 29, at p. 4.

[74] See Caldwell, *supra* fn. 15 at p. 2.

[75] See Caldwell, *supra* fn. 15, at p. 2.

[76] See Coding Rules for the Static-99R, online at <www.static99.org>.

[77] See Caldwell, *supra* fn. 12, at p. 9.

[78] Such a system would also require evaluation of prior out-of-state state level placement in other states' facilities for every juvenile who comes to California from out of state, in order to determine whether that placement is the equivalent of placement at DJJ.

[79] Harris, *supra* fn. 2, at p. 783; van Den Berg, C., et al., *The Juvenile Sex Offender: Criminal Careers and Life Events*, 29 Sexual Abuse 81-101 (2017), finding employment reduced the likelihood of reoffending by about 34%: "Thus, expanding meaningful employment options for juvenile sex offenders may help many juvenile sex offenders to desist from offending…." citing Calhoun, S., From the Literature review, 19 Sex Offender Law Report, no. 1 (Dec./Jan. 2018), at p. 5.

[80] The state's current static risk assessment instrument for juveniles is the JSORRAT-II. (See www.saratso.org.) A score of 8 or above on the JSORRAT-II would mean a juvenile offender is considered high risk. If the juvenile is not scored until age 18, the Static-99R is the appropriate risk assessment instrument even if the offense was committed when the person was under age 18. A score of 6 or above on the Static-99R would be considered "high risk" (i.e., well above average risk) for offenders who were not scored until age 18 or older.

[81] See, e.g., Welf. & Inst. Code, § 707, subd. (b).

[82] Stats. 2018, ch. 1012 (S.B. 1391).