



A MODEL STATE SEX-OFFENDER POLICY

2003

We're here because **they're** out there

INTRODUCTION: THE NEED FOR ACTION

The total federal, state, and local adult correctional population has reached an all-time high of more than 6.5 million.¹ It is estimated that more than 3 percent of the adult population in the United States, or 1 in every 32 adults, is incarcerated or living in the community while on probation or parole.² In state prisons alone, 49 percent of prisoners are serving time for violent offenses³ including rape and other forms of sexual assault.

The National Center for Missing & Exploited Children® (NCMEC) is particularly concerned with the incidence of sex offenses committed against children. In 67 percent of all reported incidents of sexual assault,⁴ the victims are younger than 18, and 34 percent of all victims are younger than 12.⁵ One in seven victims of sexual assault reported to law-enforcement agencies nationwide is a child younger than 6.⁶ For victims younger than 12, 4-year-olds are at the greatest risk of sexual assault.⁷ Of those offenders actually convicted of rape or sexual assault, two-thirds have a victim who is younger than 18, with the vast majority of these victims being 12 or younger.⁸

Even more disconcerting, perhaps, is that juvenile victimizations are likely to include more than one victim. In 19 percent of juvenile sexual assault victimizations, the juvenile is victimized along with another individual.⁹ Thirteen percent of juvenile victimizations involve a second victim, and the remaining 6 percent involve three or more victims, although not necessarily victims of sexual assault.¹⁰

Of further concern to NCMEC is that 40 percent of offenders who victimize children younger than 6 are, themselves, juveniles younger than 18.¹¹ Yet few prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile transfers to criminal court, and even fewer have written guidelines about such transfers.¹²

As policymakers address the issue of sex offenders, they are confronted with several basic, and unfortunate, realities as noted below.

- Sex offenders who are in prison tend to serve limited sentences.¹³
- Most sex offenders are not in prison, but rather live in our own cities, towns, and neighborhoods;¹⁴ however, their presence is largely unknown.¹⁵
- Some sex offenders, particularly those who go without treatment, are at a high risk to reoffend;¹⁶ yet, state-sponsored treatment programs are under attack and disappearing around the country.¹⁷
- While community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.¹⁸

Nationwide there are more than 400,000 registered sex offenders.¹⁹ This particular criminal group poses an enormous challenge for policymakers. Sex offenders can evoke unparalleled fear, and their offenses can result in lifelong and damaging consequences for victims.

The most frequent victims of sexual attacks are often the most vulnerable segment of our society, with more than one-third of all sexual assaults involving a child victim younger than 12.²⁰ **There is an urgent need for action.**

TRIAGE: THE STRATEGY

NCMEC believes that each state must adopt a triage approach to sex offenders. We must develop a range of responses, depending on the severity of the crime, with maximum sentences for those offenders who represent the greatest risk to the community. The criteria for seriousness, however, should not be limited to “violent” offenders. NCMEC believes that many of the most predatory offenders are not violent in the traditional sense. Thus we encourage legislative language that addresses both **violent** and **predatory** sex offenders.

In order to implement this triage concept, we must develop mechanisms for performing effective evaluation of sex offenders at the earliest possible stage. Since juveniles are perpetrators as well as victims of sexual assault, the strategy must expressly address this group of offenders. We must also create a variety of options and alternatives for early, effective intervention with all sex offenders.

Although the public at-large generally expresses a desire for harsher penalties for sex offenders, in many cases the actual victims often desire that one result of prosecution be supervised treatment either in a prison or community setting. This is particularly true when the offender is related to or an acquaintance of the victim or the victim’s family. A criminal-justice response that does not include treatment opportunities for at least some sex offenders may undermine victim cooperation with the prosecution.²¹ In this time of controversy regarding the efficacy of treatment, a general consensus has been reached on several basic points.

- Treatment is effective for some sex offenders.²²
- Treatment is generally more effective for those who participate voluntarily and have the motivation to change.²³
- Treatment may result in a reduction of additional offenses.²⁴
- Treatment goes beyond counseling in a therapist’s office.²⁵

On the other hand, however, there are some offenders for whom there is no effective treatment at the current time.²⁶ Consequently our overall standard must be to **reduce harm**, and we caution against community-based studies with random assignment to treatment and non-treatment control groups, as such studies cannot seem to be conducted without introducing unacceptable risks into the community.²⁷

Finally we must make post-release supervision and follow-up a priority. It is not enough to merely ensure that an offender completes his or her particular program or sentence. Since most sex offenders will eventually return to the community, the community is interested in policies and practices that will ensure the greatest level of safety over the long term.²⁸ This makes it imperative that there be continuing contact, supervision, and resources directed to the largest segment of the sex-offender population – those who are in the community.

COMPREHENSIVE POLICY: THE RESPONSE

A comprehensive criminal-justice response is key to effectively addressing the issue of sex offenders, particularly those living within our communities and not within the confines of a prison cell. The concepts, policies, and laws noted below need not be accomplished strictly through legislation and state statute, but can also be carried out in regulations, administrative practices, codes, policies, and/or prosecutor charging and filing standards. State officials should evaluate their own current approaches to identify possible areas for change.

The eight goals of our recommended sex-offender policy are listed below.

- States should develop a comprehensive policy regarding sex offenders.
- Sex offenders should be correctly identified and charged within the criminal-justice system.
- A systematic decision-making process regarding disposition of cases should be implemented.
- A sentencing structure permitting a range of degrees of confinement and levels of supervision should be available.
- Treatment programs should be part of the criminal-justice-system response.
- Convicted sex offenders should receive community supervision.
- Sex-offender-registration and community-notification programs should be implemented.
- States should involve victims and community members and use individual interest and knowledge to improve laws, education, and prevention mechanisms.

Each element is discussed in greater detail below.

I. STATES SHOULD DEVELOP A COMPREHENSIVE POLICY REGARDING SEX OFFENDERS

A. Evaluate and Assess Available Options

States should start by evaluating and assessing the broad spectrum of laws and policies in place in other jurisdictions as well as their own. Key areas to look at are definitions of various sex offenses, punishment and sentencing requirements, treatment and supervision programs, and successful strategies that have been implemented to address the growing public concern of what to do with sex offenders.

Calculate the cost of sanctions versus the cost of services. Within this framework, decisions can be made about the essential steps needed to create a comprehensive system that responds differently to high-, medium- and low-risk situations and offenders.

B. Prosecute Vigorously

Cases for which there is legal sufficiency should be vigorously prosecuted to the fullest extent of the law. Persons who commit sex offenses, whether adults or juveniles being tried as adults, should, whenever possible, be convicted of crimes that accurately reflect the serious nature of their conduct. Such individuals should also be properly labeled as “sex offenders” so that future protective steps can be taken.

C. Encourage Victim Cooperation

Victims should be encouraged to cooperate with and participate in the criminal-justice system. Unnecessary system-induced trauma should be minimized through the implementation of a thorough crime victims' rights policy including victim-witness support programs, specialized units, and appropriately trained personnel within prosecutor offices and other law-enforcement agencies; "secondary-victim" treatment provisions for victim family members; prosecutions sensitive to child victims; and legislation adopting a comprehensive Victim Bill of Rights.

D. Focus Sentencing on Public Safety

Sentencing practices should be primarily focused on community safety. Victim wishes should be heard and considered, including requests for treatment of the offender; however, where victim requests conflict with community interests, such wishes should not be determinative.

Maximum sentences should be imposed for those offenders who represent the greatest risk to the community.

Probation should not be allowed for the majority of sex offenses committed against children or those deemed particularly violent or predatory.

Among standard probation and parole requirements for sex offenders should be to refrain from contact with the victim(s) and all immediate family members. Those convicted of crimes against children should be ordered to refrain from contact with all children.

States should create child-safety zones around the areas where children normally play. Offenders should be prohibited from entering these zones. This measure will also rule out the possibility that sex offenders will participate in activities or professions involving children such as coaching or working at daycare centers.

E. Treatment Is an Opportunity

Treatment for offenders should be viewed as an opportunity and not a right. States should support offender treatment within realistic means. Treatment programs for offenders should not receive funding disproportionate to that given to treatment programs for crime victims.

F. Make Research a Priority

Research must be a priority focusing on what does and does not work in terms of sentencing practices, treatment programs, and the like. To reiterate, however, we caution against community-based studies with random assignment to treatment and non-treatment control groups as such studies cannot seem to be conducted without introducing unacceptable risks into the community.

II. SEX OFFENDERS SHOULD BE CORRECTLY IDENTIFIED AND CHARGED WITHIN THE CRIMINAL-JUSTICE SYSTEM

A. Identify Sex Offenders Early

Sex offenders should be identified early on in their criminal careers and properly charged with any offenses they commit. Even when incarceration is not possible, prosecutors should, at a minimum, obtain a conviction that conveys the essence and egregious nature of the act(s) committed. Prosecutors should rarely agree to pleas to a nonsexual offense. It is imperative that prosecutors “build a record” from the first moment possible.

B. Disallow *Alford*²⁹ Pleas

The *Alford* Doctrine allows a defendant to plead guilty to a crime while not admitting that he or she actually committed it. Prosecutors should not allow sex offenders to plead guilty under the *Alford* Doctrine, especially if they are going to seek treatment or registration as conditions of probation.

C. Sex-Offender Registration Is Imperative

Sex offenders should not be allowed to plea bargain out of sex-offender registration.

D. Allow for Special Findings

A special finding of “sexual motivation” should be established for use with sex offenders who are charged with or convicted of a nonsexual offense that was, however, sexually motivated such as burglary or murder.

E. Address Juvenile Offenders

Juvenile offenders who victimize their peers should be identified and addressed at the first offense. When possible, prosecutor offices handling juvenile cases should have a specialized unit dealing with juvenile cases transferred to criminal court. At a minimum all offices should have written guidelines addressing such transfers.

F. Investigate Child Pornography

States should aggressively pursue investigations that involve or uncover child pornography as these materials represent evidence of actual sexual abuse of a child and may signal a proclivity for active sexual exploitation of children.

G. Adopt Child-Enticement Laws

Child-enticement laws should be enacted to help identify would-be sex offenders.

H. Address New Areas of Sexual Exploitation

States should develop the capacity, technology, and expertise for attacking new areas of sexual exploitation including illegal uses of cyberspace. States should establish specialized “cyber” units within law enforcement to combat child sexual exploitation, child pornography, and child enticement.

III. A SYSTEMATIC DECISION-MAKING PROCESS REGARDING DISPOSITION OF CASES SHOULD BE IMPLEMENTED

A. Require Pre-Sentence Reports

Pre-sentence reports (PSR) should be required for all sex offenders. A PSR should be prepared to assist the court in determining the defendant’s sentence after conviction. The PSR should include any relevant sentencing guidelines, information on prior arrests or convictions, employment and family background, and an analysis of the impact of the crime on the victim(s). The person preparing the PSR should make a reasonable effort to consult with the victim. If the victim is not available or declines to speak with the individual preparing the report, the report should reflect such information.

B. Develop Uniform Sentencing Standards

Standards identifying which offenders are eligible for different sentencing alternatives should be developed and uniformly followed. Level of risk of the offender and the offense(s) committed should be taken into consideration when developing such standards.

C. Dispositions Should Be Systematic

Dispositions should be systematic and implemented uniformly statewide. An efficient method of statewide communication, such as the Internet, should be developed to keep all prosecutors aware of developments and setbacks in the prosecution and sentencing of sex offenders.

D. Make Training Available

Training on a variety of topics should be made available to law enforcement, prosecutors, judges, and community-corrections officers who handle sex-offender cases. Possible topics include developments in state and federal law and working with child victims and witnesses.

IV. A SENTENCING STRUCTURE PERMITTING A RANGE OF DEGREES OF CONFINEMENT AND LEVELS OF SUPERVISION SHOULD BE AVAILABLE

A. Consider Certain Factors in Sentencing Decisions

Seriousness of the crime, number of victims involved, age of the victim(s), relationship of the victim(s) to the offender, injury to the victim(s), extensiveness and seriousness of the offender’s criminal record, and risk to the community should all be considered in making a sentencing decision.

B. Develop Innovative Approaches to Community Supervision

Innovative approaches to community supervision, such as day-reporting and electronic monitoring, should be evaluated and encouraged.

C. Restrict Eligibility for Community-Based Treatment

Eligibility for community-based treatment programs should be restricted to less dangerous offenders. Violent rapists and repeat sex offenders should be excluded.

Eligibility for community-based treatment programs should be denied to those who plead *nolo contendere* or use *Alford* pleas.

Treatment should be available only to those who genuinely accept responsibility for their acts and remorsefully admit their guilt.

D. Back Treatment Alternatives with Suspended Prison Time

Treatment alternatives should be backed by suspended prison time so that the system maintains leverage and offenders are given the strongest possible incentive to participate in a meaningful and serious way.

E. Enact Truth-in-Sentencing Laws and Policies

States should enact truth-in-sentencing laws and policies and study them for efficacy. In addition to reducing “good time” accumulation for violent criminals, truth-in-sentencing laws should require inmates to earn sentence reductions through active participation in work, education, vocational, substance-abuse-prevention, and mental-health programs.

F. Eliminate Flat-Time Release Without Supervision

States should eliminate flat-time release without supervision for sex offenders.

G. Enact Civil-Commitment Laws

Laws should be enacted that would allow the limited and carefully constructed use of civil commitment for sex offenders displaying a mental abnormality of such severity that the offender represents a clear danger to public health and safety.³⁰

H. Construct Provisions for Repeat and Extremely Dangerous Offenders

Special provisions for repeat and/or extremely dangerous sex offenders should be considered, debated, implemented, and evaluated. Such provisions include habitual criminal statutes, civil commitment, and lifetime parole.

V. TREATMENT PROGRAMS SHOULD BE PART OF THE CRIMINAL-JUSTICE RESPONSE

A. Reduce Recidivism

To the extent possible, treatment approaches within prisons and the community should be based on current research and programs with demonstrated effectiveness in reducing recidivism. The primary concern should always be public safety and reducing potential harm to the community.

B. Offenders Should Not Select the Treatment Program

The selection of community-based treatment as a condition of probation or parole should be approved by corrections' officials. Offenders should not be allowed to select their own treatment program or provider.

C. Demand Minimum Standards of Mental-Health Practitioners

Mental-health practitioners who provide treatment services to sex offenders as a result of probation or parole requirements must meet minimum standards for competence and accountability including training in and experience with sex offenders, willingness to report infractions, and limited confidentiality. It is essential that practitioners have specialized knowledge and skill in order to effectively monitor public-safety risks.

D. "One-Size-Fits-All" Treatment Programs Are Not Effective

Treatment programs should be offender-specific and tailored to offender typology and paraphilia. States should further implement programs geared toward the treatment of juvenile sex offenders.

E. Take Culture and Language into Consideration

Culturally relevant and acceptable treatment programs and providers should be made available including ethnically diverse providers and providers with foreign-language abilities.

F. Offenders Should Be Expected to Pay for Community-Based Treatment

A revolving loan fund should be created for otherwise eligible offenders who are truly indigent.

Offenders should also be expected to contribute to a victim-restitution fund.

VI. CONVICTED SEX OFFENDERS SHOULD RECEIVE COMMUNITY SUPERVISION

A. Supervise Release of Sex Offenders

Sex offenders who remain in or are released into the community should be supervised. The level, degree, and intensity of follow-up and supervision should be based on the level of risk assigned to the offender.

States should create long periods of supervision, such as life, for the most serious sex offenders.

In developing a supervised release policy, consider the points listed below.

- Supervision should be meaningful such as face-to-face contact and unannounced visits.
- Supervision should incorporate “relapse prevention,” a model for identifying precursors to offending. The supervising officer should have knowledge of and closely monitor individual precursors.
- Those who are supervising sex offenders should have specialized training.
- Polygraphs should be used by probation and parole officers at regular intervals.

B. Include Individual Restrictions

Parole and probation restrictions should be limited to a plausible few, as failure to do so sets offenders up for violation.³¹

Community supervision should include individualized restrictions on high-risk activities such as unsupervised contact with minors and alcohol or drug use. If an individual completes a prison sentence and the probation or parole supervisor feels he or she constitutes a risk to a potential victim, then that individual should not be allowed to live within a certain proximity to that particular victim.

C. Develop “Failure-to-Comply” Guidelines

Guidelines for failure-to-comply with conditions of release should be developed and strictly followed. Options to consider are an increase in the level of supervision and revocation of community-release privileges.

Parole and probation officers should also be given special authority to intervene if they determine that a registered sex offender is improperly interacting with children.

D. Limit Caseloads

Due to the need for more intensive supervision, states should seek to limit probation- and parole-officer caseloads and develop sex-offender specialists.

VII. SEX-OFFENDER REGISTRATION AND COMMUNITY-NOTIFICATION PROGRAMS SHOULD BE IMPLEMENTED

A. Require Sex-Offender Registration

Sex-offender registration with law enforcement should be required for released offenders or those who remain in the community. Convicted child molesters and other sexually violent offenders should be forced to register and provide the appropriate law-enforcement agency with a current address for a minimum of 10 years.³²

States should identify and counter attempts by sex offenders to avoid the registration obligation such as through a legal name change.

Systems must be developed for ensuring the transfer, use, and exchange of registration information between states, addressing the problem of offenders moving and traveling from state-to-state.

B. Verify Addresses

States must ensure they maintain accurate registries. Addresses of registered sex offenders should be verified annually for most offenders and every 90 days for sexually violent predators.³³

C. Obtain Key Scientific Materials

As a part of the sex-offender registration process, key scientific material should be obtained from the offender including Deoxyribonucleic Acid (DNA), Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) status; fingerprints; and handwriting samples. This material can be of value in either identifying or exonerating these individuals in connection with subsequent criminal acts.

Optimally the court should order these tests at sentencing.

D. Build and Maintain Files

Law enforcement should build and maintain files on registered sex offenders including, but not limited to, information on *modus operandi*, patterns, and rituals.

E. Flag Driver-License and Vehicle-Registration Files

States should adopt policies that flag driver-license and vehicle-registration files of registered sex offenders as a means of keeping law-enforcement authorities informed of address changes, vehicle information, and personal data. Reference to an individual's status as a registered sex offender, however, must not appear anywhere on the actual driver's license or vehicle-registration documents. Such information should only be available to law-enforcement authorities so that when, for example, a law-enforcement officer makes a stop and checks an individual's license-plate or driver's license number, the officer will also know whether or not he or she is dealing with a registered sex offender.

F. Develop Risk Assessment Procedures

States should establish an Advisory Board to help create tier designations and determine the level of risk represented by each offender. Those appointed to the Advisory Board should include individuals with knowledge and specialization in the field.

Factors to be considered in assessing an individual offender's risk include prior felony convictions for a sex crime, whether the current offense caused injury or death to the victim, whether the offender's criminal history indicates a high probability of recidivism, whether the offender has been receiving or will receive counseling or therapy, conditions of release or post-release supervision,

physical conditions that may minimize the risk of reoffense such as age or physical incapacitation, psychological or psychiatric profiles, response to treatment, and behavior such as if the offender has made recent threats that he or she will commit another sexual or violent crime, and if the offender has accepted responsibility for the crime(s) committed.

G. Create Victim-Notification Programs

Victim-notification programs should exist to inform victims of relevant release or parole hearings.

H. Enact Community-Notification Laws

Laws permitting law enforcement to notify the community of the release of dangerous offenders into the community should be enacted.

Community notification should be based on levels of risk, with offenders deemed to represent the greatest threat to the community subject to active notification.³⁴ These classifications should be informed by science as well as a multidisciplinary perspective, defined in clinical terms, and determined as a result of objective criteria.

Only a small percentage of juveniles should be subject to community notification. In many states only juveniles who are prosecuted as adults and convicted of very serious offenses are included. When a juvenile sex offender is required to register, the law-enforcement agency responsible for notification should inform school superintendents, who, in turn, should notify school principals. All other community notification of juvenile sex offenders should be limited and discretionary.

The community-notification process should be coordinated with those responsible for supervising the offender in the community.

Case studies on community notification should be developed to help communities implement effective guidelines and decrease vigilantism.

I. Educate Offenders

Offenders who are about to be released and will be subject to community notification should receive education regarding the increased vigilance that will accompany their release. Offenders should also be informed of their rights once they enter the community such as the right to not be harassed.

J. Educate the Community

The community should be educated and prepared for the release of sex offenders through the use of community programs and public-education forums. The community should also be informed of the rights of the offender.

K. Adopt a Zero-Tolerance Policy

States should adopt a zero-tolerance policy regarding acts of harassment or vigilante violence directed at offenders. It must be each state's commitment to ensure that community notification regarding released offenders is handled responsibly and properly by each individual member of the community.

States should enact legislation that prohibits the sale or exchange of sex-offender-registry information for profit, makes the misuse of sex-offender-registry information a misdemeanor, and subjects to criminal prosecution any use of sex-offender-registry information to commit a crime against another person.

Any response by the appropriate law-enforcement agency to an individual's request for a sex-offender-registry list should also include a cautionary statement pertaining to the misuse of information.

VIII. STATES SHOULD INVOLVE VICTIMS AND COMMUNITY MEMBERS AND USE INDIVIDUAL INTEREST AND KNOWLEDGE TO IMPROVE LAWS, EDUCATION, AND PREVENTION MECHANISMS

A. Appoint Task Forces

State officials should appoint Task Forces and Blue Ribbon Panels to evaluate state law and policy. Recommendations should be made on an annual basis.

B. Use the Media

Public-awareness campaigns and media coverage that encourage realistic, rational, and safe responses to sex offenders should be undertaken.

The media must play a key role in educating the community about the problem of sex offenses and offenders. The media should promote public awareness regarding the complexity of the problem and the fact that there is a wide range of offenders representing varying degrees of risk.

C. Mandate Child-Safety Curricula

States should mandate child-safety and protection curricula in schools. Research has demonstrated that positive, comprehensive, and empowering content will not frighten children, but rather better enable them to successfully deal with challenges they may encounter. States have a key role in ensuring that basic messages on safety and self-protection are taught to children.

CONCLUSION

In a time of tight budgets, limited prison space,³⁵ increased awareness of incidents and reporting, and growing public demand to address the sex-offender problem more effectively, policymakers and public officials must develop a comprehensive strategy and response.

A coordinated, interagency approach is key to establishing a comprehensive sex-offender policy. By joining forces across departmental, geographic, and political boundaries, resources can be targeted toward the common goals³⁶ of holding offenders accountable and keeping the public safe from future violent crime.

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The Task Force examined the issues and research; listened to a cross-section of experts and practitioners; and helped NCMEC shape an initial comprehensive, research-based policy outline for decision makers. That policy has been further developed in this updated edition.

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This publication represents the response of the National Center for Missing & Exploited Children to the enormous challenge sex offenders pose for policymakers. NCMEC's recommended strategy for policymakers embodies a common-sense approach that is tough; aggressive; balanced; sensitive to victims; and, most importantly, effective.

END NOTES

¹ Lauren E. Glaze, *Probation and Parole in the United States, 2001*, U.S. Department of Justice, Bureau of Justice Statistics, August 2002, at 1. Available (NCJ 195669) from the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420.

² *Id.*

³ Paige M. Harrison and Allen J. Beck, *Prisoners in 2001*, U.S. Department of Justice, Bureau of Justice Statistics, July 2002, at 12. [Hereinafter “*Prisoners in 2001*.”] Available (NCJ 195189) from NCJRS at 1-800-851-3420.

⁴ The term “sexual assault” is generally used to refer to forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. For the purposes of this publication, we will be using the definitions provided by the National Incident-Based Reporting System. These definitions can be found in the publication titled *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* by Howard N. Snyder, sponsored by the U.S. Department of Justice, Bureau of Justice Statistics, July 2000, at 13. [Hereinafter “*Sexual Assault of Young Children*.”] Available (NCJ 182990) from NCJRS at 1-800-851-3420.

A **forcible sex offense** is any sex act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

Forcible rape is the carnal knowledge of a person, forcibly and/or against that person’s will; or not forcibly or against the person’s will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. If force was used or threatened, the crime should be classified as forcible rape, regardless of the victim’s age. If no force was used or threatened and the victim was under the statutory age of consent, the crime should be classified as statutory rape.

Forcible sodomy is oral or anal sexual intercourse with another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

Sexual assault with an object is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia such as finger, bottle, handgun, and/or stick.

Forcible fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will; or not forcibly or against the person’s will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

⁵ *Sexual Assault of Young Children, supra* note 4, at 2, 12.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ Sheila J. Barton, *National Conference on Sex Offender Registries: Proceedings of a BJS/Search Conference*, U.S. Department of Justice, Bureau of Justice Statistics, April 1998, at 9. Available (NCJ 168965) from NCJRS at 1-800-851-3420.

⁹ *Sexual Assault of Young Children, supra* note 4, at 5.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² Carol J. DeFrances and Kevin J. Strom, *Juveniles Prosecuted in State Criminal Courts*, U.S. Department of Justice, Bureau of Justice Statistics, March 1997, at 3. Available (NCJ 164265) from NCJRS at 1-800-851-3420. Nineteen percent of prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile cases transferred to criminal court, and 16 percent of prosecutor offices handling juvenile cases have written guidelines about the transfer of juveniles to criminal court.

¹³ Lawrence A. Greenfeld, *Sex Offenses and Offenders: Analysis of Data on Rape and Sexual Assault*, U.S. Department of Justice, Bureau of Justice Statistics, February 1997, at 20. [Hereinafter “*Sex Offenses and Offenders*.”] Available (NCJ 163392) from NCJRS at 1-800-851-3420. In 1993 the average time served for convicted rapists was approximately five years, which is about 50 percent of their full sentences, and the average time served for convictions of sexual assault was just under three years, which is just over 41 percent of their sentences.

¹⁴ Lita Furby et al., *Sex Offender Recidivism: A Review*, 105 PSYCHOLOGICAL BULLETIN 3-4 (1989). [Hereinafter “*Sex Offender Recidivism*.”] “[T]he overwhelming majority of apprehended sex offenders are not incarcerated or institutionalized at all. For those who are convicted, probation with mandatory treatment (and perhaps some jail time) is the most common disposition.” *Sex Offenses and Offenders*, *supra* note 13, at 15. Approximately 234,000 convicted sex offenders are currently under correctional supervision. Nearly 60 percent of these offenders are on parole or probation. These figures do not account for the sex offenders who have not entered the criminal-justice system such as offenders who have avoided detection.

¹⁵ Roxanne Lieb and Scott Matson, *Community Notification in Washington State: 1996 Survey of Law Enforcement*, Washington State Institute for Public Policy, November 1996, at 7. Only a small percent of offenders are subject to active community notification. In Washington State, for example, from 1990 to 1996, it is estimated that only 1,105 out of the 9,912 (11 percent) registered offenders were subject to Level II and III notification. In addition many offenders were able to escape detection. *See also* Gene Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 JOURNAL OF INTERPERSONAL VIOLENCE 3 (1987) (results from a self-report study).

¹⁶ W.L. Marshall and H.E. Barbaree, *Outcome of Comprehensive Cognitive-Behavioral Treatment Programs*, HANDBOOK OF SEXUAL ASSAULT 371 (1990). Baseline recidivism rates for untreated sex offenders are difficult to calculate, but several studies indicate that recidivism based on law-enforcement records only, for exhibitionists is between 41-71 percent; for rapists 7-35 percent; for opposite-sex child molesters 10-29 percent; and same-sex child molesters 13-40 percent. *See also* Lucy Berliner and Diana Elliot, *Sexual Abuse of Children*, THE APSAC HANDBOOK ON CHILD MALTREATMENT 53 (John Briere et al. eds., 1996) (discussing family, race, and gender rates of sexual abuse among children). *See generally* *Sex Offender Recidivism*, *supra* note 14, at 105 (reviewing different empirical studies of sexual offense recidivism rates).

¹⁷ R.F. Longo et al., *1994 Nationwide Survey of Treatment Programs and Models*, The Safer Society Program and Press (1995). Although private treatment programs have been increasing in recent years, there has been a decrease in sex-offender treatment programs in prison.

¹⁸ Carol Poole and Roxanne Lieb, *Community Notification in Washington State: Decision-Making and Costs*, Washington State Institute for Public Policy, July 1995, at 10. The level of community supervision of sex offenders varies. In Clarke County, Washington, for example, offenders deemed highly dangerous are visited monthly by law-enforcement personnel. In King County, Washington, which has a significantly larger population, home visits are replaced by telephone calls and certified mail.

¹⁹ Personal interviews with representatives of sex-offender registries in the 50 states and the District of Columbia conducted by the Legal Resource Division of the National Center for Missing & Exploited Children, December 2002 - April 2003. Total figure is 456,935.

²⁰ *Sexual Assault of Young Children*, *supra* note 4, at 12.

²¹ Lucy Berliner et al., *A Sentencing Alternative for Sex Offenders: A Study of Decision Making and Recidivism*, 10 JOURNAL OF INTERPERSONAL VIOLENCE 487-488 (1995). Especially in cases where the offender is related or known to the victim, the victim may not want to report the incident(s) if there is no other alternative to incarceration. For example the victim may not wish that a father or sibling be incarcerated. This may also hold true if the offender provides financial support. Additionally the victim may be concerned about potential harm to the society caused by the future release of a sex offender who remains untreated. *See also* William D. Murphy and Timothy A. Smith, *Sex Offenders Against the Children*, THE APSAC HANDBOOK ON CHILD MALTREATMENT 176 (John Briere et al. eds., 1996) (considering whether treatment instead of incarceration for sex offenders would encourage victims to step forward).

²² W.L. Marshall and W.D. Pithers, *Reconsideration of Treatment Outcome with Sex Offenders*, 21 CRIMINAL JUSTICE AND BEHAVIOR 10-27 (1994).

²³ Judith Becker, *Offender Characteristics and Treatment*, 4 THE FUTURE OF CHILDREN 176, 187 (1994) (citing R. McGrath, *Sex Offender Risk Assessment and Disposition Planning: A Review of Empirical and Clinical Findings*, 35 INTERPERSONAL JOURNAL OF OFFENDER TREATMENT AND COMPARATIVE CRIMINOLOGY 328 (1991)). [Hereinafter “*Offender Characteristics and Treatment*.”] A sex offender can be amenable to treatment if he or she acknowledges his or her sexual offense, wants to stop, and is willing to participate fully in treatment.

²⁴ *See, for example*, W.L. Marshall and H.E. Barbaree, *The Long-Term Evaluation of a Behavioral Treatment Program for Child Molesters*, 26 BEHAVIOR RESEARCH THERAPY 499 (1988). One treatment study for child molesters, comparing a control group (n=58) and an experimental group (n=68), found that recidivism rates between the two groups was statistically significant. The sex reoffense rate, using unofficial statistics, was 13 percent for the treatment group and 35 percent for the nontreatment group. The follow-up period was one to eleven years. *See also* W.L. Marshall et al.,

Treatment Outcome With Sex Offenders, 11 CLINICAL PSYCHOLOGY REVIEW 465 (1991) (concluding that comprehensive cognitive behavioral programs are the most likely effective treatment for child molesters).

²⁵ *The Sex Offender: Corrections, Treatment and Legal Practice Part IV*, Barbara K. Schwartz and Henry R. Cellini eds., Civic Research Institute, 1995. Aside from treatment, other elements in relapse prevention include behavioral management, aftercare treatment programs, external supervision, and community management of the sex offender.

²⁶ M.E. Rice et al., *Sexual Recidivism Among Child Molesters Released from a Maximum Security Psychiatric Institution*, 59 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 381 (1991). Experts suggest that for a small number of dangerous offenders, treatment is not effective. One treatment study for child molesters, comparing a control group (n=86) to an experimental group (n=50), found no statistically significant difference in recidivism rates. For the offenders who matched on criminal history and sexual preference, the reconviction rate was 38 percent for the treatment group and 31 percent for the nontreatment group. The average follow-up time was 6.3 years.

²⁷ *Offender Characteristics and Treatment*, *supra* note 23, at 184. Community-based controlled studies with random assignment are ethically questionable.

²⁸ Marie A. Bochnewich, *Predictions of Dangerousness and Washington's Sexually Violent Predator Statute*, 29 CAL. W. L. REV. 227 (1992). There is evidence that very few sex offenders are permanently incarcerated. *See generally* Lin Song and Roxanne Lieb, *Adult Sex Offender Recidivism: A Review of Studies*, Washington State Institute for Public Policy, January 1994, at 2 (observing that most convicted sex offenders eventually return to the community).

²⁹ In *North Carolina v. Alford*, 400 U.S. 25 (1970), the U.S. Supreme Court held that an individual may voluntarily and knowingly consent to the imposition of a prison sentence even if he is unwilling or unable to permit his participation in the acts constituting the crime.

³⁰ The Supreme Court decision of *Kansas v. Hendrick*, 521 U.S. 346 (1997), examines one such statute and provides a framework and context for the creation of such provisions.

³¹ Walter J. Dickey and Michael E. Smith, *Rethinking Probation: Community Supervision, Community Safety*, U.S. Department of Justice, Office of Justice Programs, December 1998, at 10. [Hereinafter "*Rethinking Probation*."] Available (NCJ 178236) from NCJRS at 1-800-851-3420.

³² These requirements are suggested pursuant to the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (42 U.S.C. § 14071).

³³ *Id.*

³⁴ Leading community notification models include those in Minnesota, New Jersey, and the state of Washington.

³⁵ *Prisoners in 2001*, *supra* note 3, at 10. On December 31, 2001, state prisons were operating between 1 and 16 percent above capacity, while federal prisons were operating at 31 percent above capacity.

³⁶ *Rethinking Probation*, *supra* note 31, at 5.

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