

11-5-2014

Oregon's Sex Offender Registry: How to Handle Juvenile Offenders

City Club of Portland (Portland, Or.)

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Oregon's Sex Offender Registry: How to Handle Juvenile Offenders

Published in the City Club of Portland Bulletin, Vol. 97, No. 8, November 5, 2014



As a society, we have chosen to treat sex offenders differently from other types of offenders in an effort to protect the vulnerable. No other crimes carry the possibility of lifetime registration with law enforcement. Twenty years ago, when Congress passed the first national sex offender legislation, our country was just beginning to talk about sexual assault and abuse, a difficult conversation that continues today. Policymakers did not have the benefit of today's extensive research on sex crimes and offenders, especially sex offenders who offend before the age 18 ("juvenile offenders"). With few facts available, policymakers legislated out of fear and based policy on false assumptions about juvenile sex offenders.

Oregon is one of thirty-eight states that include juvenile offenders in the sex offender registry (Oregon includes juvenile offenders who commit "felony sex offenses"), and one of only six that automatically includes juvenile offenders for life, or until they apply for relief.¹ Approximately 3,000 of the more than 25,000 offenders on Oregon's registry committed their offense when they were juveniles.

In 2013, the Oregon Legislature established a new system for registering and monitoring adult sex offenders. The legislation does not affect the registration of juvenile offenders. Your committee was charged with answering the question, "Should the Oregon Legislature modify the process or requirements for including in the state's sex offender registry people who committed sex offenses while juveniles?"

Your committee came to this volatile issue with the hope of broadening the discussion beyond the criminal justice community. We studied the growing body of research on juvenile offenders, as well as literature on adolescent brain development. We interviewed witnesses from every part of the juvenile justice system, as well as treatment providers, legislators and advocates for both youth offenders and victims' rights. We engaged in passionate debates, which we believe enrich our conclusions and recommendations.

Unequivocally, we find that Oregon's registration of young sex offenders adjudicated in juvenile court is deeply flawed. Perhaps the greatest flaws are that (1) the law currently subjects juvenile offenders to lifetime registration and (2) does so before offenders receive, and hopefully respond to treatment. As we discuss in the Report, these flaws harm juvenile offenders and the public.

Majority Summary

Our research led us to nine conclusions regarding juvenile offenders and the current system:

1) Sexual abuse and assault are serious crimes that can have a lifetime impact on the victim. Sex offenders should be held accountable for their actions. And, if possible, steps should be taken to reduce the risk of re-offense. Though your committee's charge focused on offenders, victims were never far from our minds.

2) Under current law, a juvenile adjudicated of a felony sex crime is required to register regardless of the opinion of the adjudicating juvenile court judge. Much more is learned about the offender during the treatment and supervision period. During that period, the whereabouts of a juvenile sex offender are well-known and their activities strictly controlled. Registration as a sex offender does not increase the information available to law enforcement during that time.

3) Offenses committed as a juvenile do not necessarily indicate a lifetime propensity for victimizing others. Brain development research demonstrates that impulse control, reasoning and the ability to exercise judgment are developing during adolescence. And treatment during that time can effectively change behavior.

4) Recidivism rates for juvenile sex offenders, as a group, are incredibly low. While some offenders pose a high risk for re-offense, the vast majority of juvenile offenders do not. Risk assessment tools for juveniles are imperfect, but evolving, and can offer sufficient guidance for a court to determine the risk a particular youth poses to the community.

5) Sex offender registration often results in juvenile offenders facing barriers to education, housing and employment, as well as community institutions that help them reintegrate into the community. The purpose of registration is to protect public safety, and not to punish offenders. And yet, your committee believes that the current policy of registering all juveniles adjudicated of felony sex crimes may actually work against the public safety by alienating rather than rehabilitating youth fully capable of rehabilitation.

6) In most cases, juvenile offenders are eligible to obtain relief from registration after a period of time, and most registered juvenile offenders could obtain relief if they effectively requested it.^{2,3} However, the complexity of the legal process and financial costs pose significant barriers. Relatively few registered juvenile offenders apply for relief. This result is inconsistent with the purpose of the registration system.

7) Available research does not directly evaluate whether registration of sex offenders reduces the likelihood that they will re-offend. Available research has only found that registration of sex offenders does not reduce the likelihood that they will be *convicted* of another sex offense. Witnesses in favor of registration, however, note that it reduces the ability of offenders to access vulnerable populations, such as children in day care and older persons in nursing homes. The witnesses pointed out that these limitations imposed by sex offender registration can prevent the recidivist from harming multiple

victims. The committee notes that this claimed social benefit -- limiting the number of victims per recidivist -- would accrue even if the registration did not reduce the number of high-risk offenders who later re-offended.

8) Sex offenders should be held accountable for their crimes. However, the inflexible nature of the current registration system sometimes leads to underreporting, and sometimes discourages prosecutors from bringing charges they otherwise would bring.

9) Regulations governing release of information are confusing and rely on the discretion and judgment of the person responding to the request, thus creating opportunities for inconsistent application of the rules.

Your committee recommends modifications to the sex offender registration system for juveniles. Our recommendations call for an end to the blanket registration of all juveniles adjudicated for felony sex offenses, and makes relief from registration simpler and less costly for those who can show they have been successfully rehabilitated. We expect that adoption of our recommendations will result in complete registry relief for the vast majority of juvenile offenders, who are in fact at low risk for re-offense. We note that the majority cannot accept the minority recommendation for the elimination of registration for the relatively small minority of juveniles found to be at high risk to re-offend because of the continuing need to protect vulnerable populations, such as those served by day care centers, nursing homes and hospitals.

Your committee acknowledges that our proposal will still result in the inclusion of some juveniles on the registry who nevertheless will not commit a new sex crime. In accepting the fact that at least some offenders will be designated as "high risk" but will not commit a new sex offense, we must weigh this harm to the offender against the further harm that the recidivists are capable of inflicting. That potential harm will be to new victims who have previously offended against no one. And by increasing access to relief from registration, juvenile offenders who were initially considered high-risk will have opportunities to demonstrate they are not recidivists and be removed from the registry.

We discuss our concerns more fully in our discussions below relating to our recommendations. Additionally, we recommend changes in how information about juvenile sex offenders is released to the public.

Recommendation #1: The Oregon Legislature should amend state law to require that a court's decision to subject a juvenile sex offender to registration occurs when the offender's supervision and treatment ends.

Recommendation #2: The Oregon Legislature should amend state law to require that (a) the court that subjects a juvenile sex offender to registration also determine when the offender may seek relief, which must be no more than five years after registration is imposed, and (b) if the offender is denied relief, the offender has the right to periodically request relief.

Recommendation #3: The Oregon Legislature should amend state law to make the process for obtaining relief from registration more accessible to juvenile sex offenders.

Recommendation #4: The Oregon State Police should establish clear guidelines for the release of information about juvenile sex offenders to the public and should keep records of these requests to better evaluate the effectiveness of the registry.

Minority Summary

Based on the evidence provided in the Minority Discussion, the minority recommends that

- 1) The Oregon Legislature should abolish juvenile sex offender registration.
- 2) If this is not possible, the Legislature should amend existing law to prevent dissemination of juvenile sex offender registry information to the public at large. JSO registry information will be available only to persons identified by statute as having a reasonable need for the information and prohibited from disclosure of the information except to those authorized to have access.
- 3) Failing this, the Oregon Legislature should follow the recommendations outlined in the Majority Report.

About the City Club

City Club of Portland brings together civic-minded people to make Portland and Oregon better places to live, work and play for everyone. For more information about City Club of Portland or for additional copies of this report, visit www.pdxcityclub.org, email info@pdxcityclub.org or call 503-228-7231.

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Special Note on Juveniles Charged as Adults

This report deals only with youth adjudicated in juvenile court for sex offenses and under supervision by the Oregon Youth Authority or county. Approximately 2,000 – 2,500 of the roughly 3,000 persons registered for juvenile sex offenses were adjudicated in juvenile court. The remainder were tried as adults. Your committee debated including conclusions and recommendations for youth charged with Measure 11 crimes or otherwise transferred to the adult system. We chose not to do so for two reasons. First, the adult criminal justice system is very different from the juvenile court system. Recommendations for adjudicated youth under supervision by juvenile court with its focus on rehabilitation might not be valid for youth who serve out their sentences in adult prisons. Second, your committee believes a broader examination of the impact of Measure 11 on juveniles is needed. We strongly encourage City Club to consider a research project focused on the inclusion of juveniles in Measure 11 and the practice of trying youth as adults.

Special Note on Oregon’s Tribes

Your committee’s research and recommendations extend only to communities governed by Oregon state law. However, during our enquiries, we discovered that Oregon tribal governments are wrestling with sex offender registration, too. The passage of the Adam Walsh Child Protection and Safety Act of 2006 created jurisdictional and sovereignty issues for the tribes, in addition to implementation issues.⁴ Though far too complex to summarize here, for readers interested in a more comprehensive look at registration in Oregon, your committee recommends reviewing M. Brent Leonhard’s article “The Adam Walsh Act and Tribes: One Lawyer’s Perspective” (May 1, 2011). Sex Offender Law Report, Vol. 12, No. 3, 2011. Available at SSRN: <http://ssrn.com/abstract=1838650> or <http://dx.doi.org/10.2139/ssrn.1838650>

Introduction

The creepy guy outside the schoolyard. The strange face peering through a bedroom window. The gang of young men roaming a dark parking lot at night.

For many of us, these are the images that the words “sex offender” call to mind. And no wonder – these are the media stories, the front page news, the crime drama episode, the late night movie.

These incidents make the news precisely because they are so rare. In reality, most sex crimes are committed by someone the victim knows and trusts. This is true for young victims, too: 93% of juveniles know their attacker. And sometimes that attacker is another juvenile.

This isn't the creepy guy outside the schoolyard. This is the kid in math class. The sibling. The boyfriend. The cousin. The older sister's friend.

These are sex offenders, too. And the damage they can do to a victim is no less severe than the stranger. But are juvenile offenders irredeemable? Do their actions as tweens and teens indicate a lifetime of repeat sex offenses ahead or even a single future sex offense? What threat do they pose to our community and how can we mitigate it?

The term “sex crime” includes a wide range of harmful behavior. From unwanted touching to nude photos to forcible rape, it encompasses a spectrum of violation. The situations can be complicated and issues of consent can be thorny. And when dealing with adolescents, adults must try to tease out what may be sexual exploration between young people and what may be more harmful and dangerous behavior.

But when a possible sex crime against a child or young person comes to light, it deserves a close look. Sexual abuse can impact victims for the rest of their lives. These are crimes that leave real and lasting scars.

As a society, we have chosen to treat sex offenders differently from other types of offenders in an effort to protect vulnerable populations from sex abuse. No other crimes carry the possibility of lifetime registration with law enforcement. As the names of sex offender laws attest – Adam Walsh, Jacob Wetterling, Megan Kanka – many of them were passed in response to attacks on children.

Twenty years ago when Congress passed the first national legislation, our country was still just beginning to talk about sexual assault and abuse, a difficult conversation that continues today. Policymakers did not have the benefit of the extensive research that has since been done on sex crimes and offenders, especially those who offend as juveniles. With few facts available, policymakers legislated out of fear and made assumptions that time now allows us to test.

Your City Club Committee was charged with examining one piece of the policies addressing sex offenders in our state. Specifically:

Should the Oregon Legislature modify the process or requirements for including in the state's sex offender registry people who committed sex offenses while juveniles?

As a group of Oregon citizens and volunteers, your committee set out to study the research, interview the experts, examine the system, challenge our assumptions, and present a report that presents the facts and not simply the fears.

Finally, though our charge focuses on the offenders, their victims were never far from our minds. We want to acknowledge the damage sexual abuse can do and state our unwavering support for those who must rebuild their lives after experiencing sexual violence. We hope that this report leads to public safety policies that help our state better prevent sex crimes and hold offenders accountable in a way that stops future offenses.

Background

A Brief History of Sex Offender Registration and Community Notification Laws

Sex offender registration laws require individuals convicted of certain sex crimes to provide law enforcement agencies with information regarding their identity, whereabouts, and activities. California enacted the first sex offender registration law in 1947.⁵ Originally intended to serve as a tool for law enforcement to track offenders who moved into their communities from elsewhere, these laws proliferated in the 70s and 80s. In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, named for an 11-year-old boy abducted by a masked gunman in Minnesota and still missing. The Wetterling Act required states to track sex offenders and established guidelines for doing so. A national sex offender registry was established in 1996.

In the wake of high profile and horrific sex crimes involving children around the country, the public began to demand access to information about sex offenders living in their communities. In 1990, the first community notification law went into effect in Washington State.⁶ Community notification laws were based on the belief that by knowing where convicted sex offenders were living, communities would be better able to protect themselves.⁷ Public dissemination of sex offender registration information was required by federal law in 1996, when Congress followed the lead of many states in passing a Megan's Law – also named for a child victim, this time a 7-year-old raped and murdered by her neighbor, a convicted pedophile.

At the federal level, none of these laws specifically addressed the inclusion or exclusion of juveniles from the registration process. State statutes regarding juvenile offenders ranged across a continuum, with states at one extreme imposing the same registration requirements as adult offenders, and at the other extreme excluding them from registration entirely.

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, which made major changes to existing legislation on sex offenders. Chief among the new provisions was the Sex Offender

Registration and Notification Act (SORNA), an effort to standardize state sex offender registration systems. SORNA created a three-tier system for classifying sex offenders based on the crime[s] for which they were convicted. This tier system did not take into account individual risk assessment and also broadened the offenses for which someone must register. And for the first time in federal legislation, SORNA mandated the registration of juveniles convicted as adults or adjudicated of certain sex offenses and over 14 years old at the time of the offense. SORNA gave states a deadline of 2011 to comply with the new provisions or lose a portion of their federal anti-crime funding. The federal government extended the deadline after most states failed to meet it.

SORNA remains controversial and continues to face legal challenges on constitutional grounds. The Supreme Court has not yet ruled on many of the significant issues raised in these challenges. However, a number of states, including Oregon, have chosen not to implement SORNA. Oregon's reasons for noncompliance with the law are addressed later in this report.

Registration and Community Notification in Oregon

According to data from the National Center for Missing and Exploited Children, Oregon has more registered sex offenders per capita than any other state. Currently 1 out of every 100 adult males is on the sex offender registry.⁸ Though some argue that Oregon is considered a safe haven for sex offenders from other states, others point out the high number of offenses for which one may have to register in Oregon and, until recent legislative changes applicable to adult offenders become effective in 2017, the lifetime nature of registration.⁹ Based on witness testimony and research, your committee believes it is unlikely any single factor drives this high number, but it does create challenges for law enforcement officials who are expected to monitor these offenders.

Oregon established a sex offender registry in 1989. Its stated purpose "...is to assist law enforcement agencies in preventing future sex offenses."¹⁰ In 1993, the state created a "predatory" designation for offenders deemed to be a continued danger to the community. Information on predatory sex offenders could be accessed online beginning in 2006, although many offenders are omitted from the website for a variety of reasons.¹¹ Non-predatory sex offender information can be accessed only through an inquiry to the Oregon State Police.

Oregon is one of 38 states that include juvenile offenders in their sex offender registries, and one of only six that include juvenile offenders in the registry potentially for life.¹² Approximately 3,000 people appear in the Oregon registry for offenses committed while they were juveniles and youth as young as eight have been included.¹³ Juvenile offenders have been included in the predatory designation since 1995, although witness testimony suggests that less than five juvenile offenders carried that designation as of 2013.¹⁴

During the 2013 session, the Oregon Legislature significantly modified the sex offender registration system for adults by passing House Bill 2549. These reforms arose out of a workgroup convened by Rep. Wayne Krieger (R- Gold Beach), a former law enforcement officer, after hearing testimony that made legislators question whether justice was truly being served by the existing system of sex offender

registration.¹⁵ Bringing together parties involved with sex offender prosecution, defense, treatment, registration and supervision, this workgroup met for two years to develop a system based on best practices of sex offender management.¹⁶

In evaluating requirements under SORNA, Oregon concluded that the cost of implementing the federal law would exceed the amount of federal dollars lost as a result of noncompliance.¹⁷ This decision is not unique to Oregon; many other states have come to the same conclusion and either have maintained or reformed their registries without taking SORNA into account.

In addition to cost, the other chief concern with SORNA for Oregon and other states is its tier system for sex offenders, which mandates different registration requirements based on the offense for which the individual was convicted, rather than on any assessment of the risk he poses. As one witness noted, someone convicted of a lower-level offense may actually be a much greater danger to the community than someone convicted of a more serious crime.¹⁸

The goals of House Bill 2549 are to require ongoing registration of the sex offenders most at risk of reoffending, while allowing those who have proven their ability to live safely in the community for a number of years to earn their way off the list.^{19,20} The new system of adult sex offender registration places offenders into tiers based on risk as determined by an established assessment tool, a practice used in 20 other states.²¹ Individuals classified as Level 1 offenders – lowest risk - are allowed to be removed from the registry five years after their community supervision ends. Levels 2 and 3 offenders may petition to be reclassified as low risk ten years after their supervision ends. However, level 3 offenders may never be fully relieved of registration requirements.²² Full implementation of the new law will not take place until 2017, as all existing sex offenders must be reviewed.

Neither the workgroup nor the Oregon Legislature addressed registration requirements for juvenile sex offenders. Part of the reason for this was that adult sex offender risk assessment tools have been found not to be valid for assessing juveniles. Juvenile sex offenders continue to register for life unless they actively seek and are granted relief from registration by the court.

Explanation of Juvenile Court System

In the early U.S. legal system based on English common law, juveniles accused of crimes entered the same courts as adults and were subject to the same punishments for their crimes, including death. Though children under seven were generally considered unable to consciously commit crimes, those between seven and fourteen could face adult punishment if deemed able to tell the difference between right and wrong. At age fourteen, an adolescent was generally considered to have the same judgment as an adult and therefore be held equally accountable for his actions.

This changed as part of the 19th century social reform movements. Homes and work camps for children judged “delinquent” appeared throughout America including Oregon in 1889. These institutions focused on rehabilitation over punishment, as people believed that these young people could grow up to be productive members of society with proper guidance from the state acting in the role of parent.

Therefore, juvenile cases were civil matters with informal proceedings – not criminal cases – though consequences could be quite severe, with children being removed from their homes and sent to state institutions for lengthy periods. Children and adolescents in the juvenile system did not face the same punishments as adults, but they also did not have access to the same due process protections as adults.

Not surprisingly, the informality of the system, combined with limited funding for juvenile institutions, led to charges of abuse, neglect, and inequity. After a flurry of lawsuits in the 1960s, the US Supreme Court established limited due process protections for young people in the juvenile system, including “notice of the charges against them, a right to legal counsel, the right against self-incrimination and the right to confront and cross-examine witnesses.”²³ However, the Court has ruled that juveniles do not have a right to trial by jury, maintaining that juvenile courts serve a different function than criminal proceedings. In juvenile court, a person is *adjudicated* for a crime rather than *convicted* to denote the difference in how the justice system operates.

The Oregon Juvenile Code, ORS 419C.101 states:

...the purposes of the Oregon juvenile justice system, from apprehension forward are to protect the public and reduce juvenile delinquency....The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety....The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior.

Oregon counties have juvenile departments that fulfill these roles in local communities, though their resources vary. In 2012, about half of the juveniles adjudicated on sex offenses remained within the county systems for supervision and treatment.²⁴

The Oregon Youth Authority (OYA) handles the juvenile offenders that do not remain in the county systems. The OYA is the state agency responsible for youth offenders, including “the supervision, management and administration of youth correctional facilities, state parole and probation services, community out-of-home placements for youth offenders, and other functions related to state programs for youth corrections.”²⁵ OYA also contracts with providers across the state to offer treatment and other services to youth.

Oregon Juvenile Sex Offenses

Under Oregon law, certain crimes are designated by statute as “sex crimes.”²⁶ Although the number of designated crimes has increased since the first enactment of adult sex offender registration in 1989, and the applicability of sex offender registration requirements to juveniles in 1995, the increase has not been large. Currently, there are 29 crimes listed as sex crimes in ORS 181.805²⁷ including any criminal offense involving what is commonly understood to be sexual conduct. It also includes trafficking in pornography, facilitating prostitution, child pornography, Kidnapping in the First or Second Degree if the victim is under 18 (with a few exceptions), Online Sexual Corruption of a Child, Luring a Minor (in some circumstances), bestiality, a second adjudication for public or private indecency, burglary if it is done

with the intent to commit a sex crime, and a few others. Any *attempt* to commit a sex crime is also a sex crime.

In Oregon, any time a person under the age of 12 engages in sexual conduct (other than alone), someone has committed a crime. If both individuals are under 12, both have. Voluntary (or consensual) sexual contact between minors who are over 12 is **not** criminal unless one minor is more than three years older than the other. If so, the older child has committed a sex crime. This means that if a 17-year-old girl has sex with her 14-year-old boyfriend and she is *one day* more than three years older than he is, then, even if the sex is completely voluntary on his part, she has committed the Class C Felony of Rape in the Third Degree and, if the case were pursued and adjudicated, must register as a sex offender, potentially for the rest of her life.²⁸

Some sex crimes can be committed by minors even if they are of the same age and acting voluntarily. For example, if two 17-year-olds voluntarily made a videotape of the two of them engaging in sexually explicit contact and then allowed anyone else to see the videotape, *both* would be guilty of Using a Child in a Display of Sexually Explicit Conduct, a felony sex crime. If the case were pursued and adjudicated in juvenile court, both of them would have to register as sex offenders. The Oregon Criminal Code involving sex offenses is sufficiently complex that lawyers who practice criminal law have to refer to their statutes when reviewing age-based sex offenses. It is probably true to say that *no child* in Oregon understands them.

Not all sex crimes committed by a child require that the child register as a sex offender if adjudicated. Juveniles are *only* required to register if they have been adjudicated or convicted of a *felony* sex crime. Most sex offenses are, in fact, felonies and require registration. But many of them are Class C felonies. An *attempt* to commit a Class C Felony is a Class A Misdemeanor (attempted crimes are one class lower than the completed crime), and would not require registration.

Moving Through the System

A juvenile sex offender's journey through the justice system begins with a report of a suspected sex crime to the police or the Department of Human Services. Reports may come from the victim or someone connected with the victim or perpetrator. Reports may also come from someone in one of the many professions Oregon has designated as mandatory reporters, meaning they are legally required to report suspected child abuse regardless of whether they learned of the abuse in their professional capacity or not. Health care providers, teachers, therapists, attorneys, clergy and many other professions have mandatory reporting responsibility.²⁹

Investigation procedures vary depending on the resources of the county. For example, in Multnomah County, if the victim is under 14 or if the perpetrator is a family member, the Child Abuse Team of the Portland Police Bureau investigates along with the Department of Human Services. If the victim is over 14 and the perpetrator isn't a family member, the Sex Crimes Unit investigates.

In smaller counties there are fewer resources and often no specially designated juvenile sex offense investigation unit. Offenses may be investigated by city police agencies, the county sheriff's office, the Oregon State Police, the Department of Human Services or any combination of these. If specialized help is necessary (as in interviewing small children, for example), investigating personnel will usually seek assistance from outside the county.

Though law enforcement can arrest and investigate based on probable cause – that is, they need only a belief that a crime more likely than not has been committed – it is the county's District Attorney's Office that determines whether to pursue a case in court and what charges will be filed. Every District Attorney's Office differs in resources and criteria for taking a case to court, but witnesses testified that even in small counties, District Attorneys generally work with the Department of Human Services and other local child protective organizations to evaluate cases.³⁰

For a juvenile charged with a sex crime, one of the most critical moments in his case comes with the decision whether to try him as an adult. Juveniles who are alleged to have committed certain serious sex offenses after their fifteenth birthdays are treated differently. Under Measure 11, a proposition passed by voters in 1994, such cases are automatically transferred into adult court.

The District Attorney may also file a motion to waive the juvenile into adult court. In these cases, a judge will determine at a hearing if the crime is severe enough and if juvenile court will not serve the interests of society and the juvenile ("waiver" is often referred to as "remand." They are different terms for the same statutory mechanism.)

If a juvenile is transferred to adult court, he is treated no differently than any adult tried for a similar crime (with the sole exception of a possible reduction in prison time for some crimes with mandatory minimum sentences). The juvenile may be offered a plea bargain, may face a jury trial and may enter the adult prison system at age 25 (until that birthday, he will remain in the custody of the Oregon Youth Authority).

Youth who are charged in juvenile court enter a system designed to be more flexible and focused on rehabilitation in addition to accountability. Juvenile court judges have a great deal of autonomy, including the ability to dismiss a case at any time as long as the dismissal "is in furtherance of justice."³¹ The District Attorney may also recommend or the judge may grant alternative disposition of the case. Alternative disposition allows the juvenile to enter treatment, usually through a formal accountability agreement, but the juvenile never enters a plea in court. Upon completion of the formal accountability agreement requirements, the petition is dismissed. A juvenile granted alternative disposition in a sex crime case and who completes the formal accountability agreement never has to register as a sex offender because he has never been formally adjudicated.

If the case proceeds and the juvenile is adjudicated on a sex crime, he will usually enter a more structured system for treatment and monitoring. Depending on the severity of the crime and completion of a pre-disposition report, the judge will enter an order of disposition (the juvenile court term for "sentence"). The juvenile will then be remanded to the county juvenile department (if the

disposition is for probation) or to the Oregon Youth Authority. In 2012, about half of youth adjudicated on a sex crime in juvenile court were put under county jurisdiction and half were put under OYA supervision.³² Either way, virtually all juveniles adjudicated for sex offenses enter treatment and undergo monitoring.³³

Generally, OYA handles the most high-risk youth.³⁴ These youth may go into a foster care program or residential treatment program. The most severe cases go into close custody at an OYA correctional facility.³⁵ Youth who receive a county disposition will be assigned a probation officer to monitor his compliance with treatment, activities, and whereabouts.³⁶

While a juvenile undergoes treatment either through the county or OYA, the juvenile court judge receives regular reports on his progress, treatment notes, and polygraph results.³⁷ Though treatment models vary, all juvenile sex offenders are evaluated throughout their treatment and supervision period. At the end of treatment, a juvenile must take a full disclosure polygraph, which requires them to identify any other sex offenses they have previously committed.³⁸

Registration Requirements

Under Oregon criminal statutes, a juvenile sex offender must initially report in person to the Oregon State Police, a city police department or a county sheriff's office within ten days of adjudication. If custody was imposed, the juvenile offender must report within ten days of release from a correctional facility. The juvenile offender must provide his name, address, and any aliases. Additionally, he must allow a photograph of any scars, marks or tattoos; allow fingerprinting if no prints are on file, and "any other information required to complete the sex offender form." The offender must also sign the registration form.³⁹

Subsequent reports are required to be made in person within ten days of any change of residence, the person's birthday, taking a job, carrying on a vocation or attending an institute or higher education, or a change in work, vocation or attendance status at an institute of higher education. If no longer under state supervision, the offender must pay an annual fee of \$70.00 to the Oregon State Police.

Juvenile sex offenders who fail to update their registration appropriately can be charged with the crime of Failure to Register as a Sex Offender. Indeed, this is the most common offense for which a juvenile sex offender is re-arrested.⁴⁰ Conviction on a failure to register as a sex offender charge, even for minor non-compliance such as failing to re-register when changing from part-time to full-time status at a university, results in a permanent and lifelong record. Even if the court later relieves the offender of the duty to register as a sex offender, background checks will find a conviction for failure to register as a sex offender.

Relief from Registration

Under current law, juveniles adjudicated on a Class A or B felony sex offense may request relief from registration as a sex offender two years after completion of juvenile court jurisdiction. Class C offenders

are eligible to apply no more than 30 days prior to completion of jurisdiction.⁴¹ Petition for relief must be filed in person in the county of adjudication either by the offender or by an attorney, and a court filing fee of approximately \$200 must be paid.⁴² The petitioner must also serve the local district attorney with a Motion for Relief and Affidavit of Eligibility by certified mail and file additional documents with the court attesting that the district attorney has been notified.

At the hearing to determine if the offender should be relieved of the duty to report as a sex offender, the burden is on the person petitioning for relief to prove by clear and convincing evidence that he is rehabilitated and not a threat to the public. The offender may be required by the judge to submit to a psychosexual evaluation, which also must be paid for by the petitioner. In most cases, relief is granted.⁴³

A juvenile court judge may dismiss any juvenile case, including sex offenses, at any time, even after adjudication, as long as the dismissal is “in furtherance of justice.” If a judge dismisses a juvenile’s case, the requirement to register ends.⁴⁴

Majority Discussion and Analysis

Sexual Violence

Far too many Americans (mostly women and youth) experience sexual violence and far too few report. Rape is just one form of sexual violence, which occurs anytime “someone is forced or manipulated into unwanted sexual activity without their consent.”⁴⁵ According to the Centers for Disease Control, 1 in 5 American women report being raped in their life, and other studies put the numbers even higher.⁴⁶

Children and youth are especially vulnerable to unwanted sexual contact. The rate of sexual victimization is 2.3 times higher for juveniles between ages 12 – 17 than for adults.⁴⁷ The vast majority of juvenile sexual assault victims – 93% – know their offender, and in 34% of cases, the offender is a family member of the victim.⁴⁸

Despite the prevalence of sexual violence in the U.S., only an estimated 40% of sexual assaults are reported. One reason for underreporting is that sex crimes stand apart from other crimes in the stigma and shame that can impact a victim beyond the original offense. Even child victims can find themselves accused of “leading on” their assailants.⁴⁹ And since only 1 out of every 5 reported rapes will be prosecuted reporting a sexual assault can sometimes bring more negative consequences for the victim than the perpetrator.⁵⁰

Behind all these statistics are survivors – women, men and young people – who must cope with the consequences of their assault, sometimes for the rest of their lives. Witnesses described seeing promising young lives derailed by sexual abuse,⁵¹ and indeed, survivors of sexual assault are three times more likely than the general population to suffer from depression, thirteen times more likely to abuse alcohol, and four times more likely to contemplate suicide.⁵²

Your committee recognizes that sexual violence is a pervasive problem in our community and takes many different forms, all of which can be deeply harmful to victims. Sexual behavior by a juvenile that violates the physical integrity of another young person should never be dismissed casually. Early intervention can yield positive results for the offender and society by resolving inappropriate behaviors before others can be harmed.⁵³

Agencies who work with juvenile offenders emphasize the importance of holding perpetrators accountable for their actions and preventing them from reoffending.^{54,55,56,57} Your committee strongly agrees.

Conclusion: Sexual abuse and assault are serious crimes that can have a lifetime impact on the victim. Sex offenders should be held accountable for their actions. And, if possible, steps should be taken to reduce the risk of re-offense

Registration of Juveniles as Sex Offenders

Getting On The Registry

In Oregon, juvenile court judges have little discretion about whether a juvenile adjudicated on a sex offense must register. Except for misdemeanors and a few consensual sex offenses, a juvenile sex offender must register, and must continue to register until, if ever, affirmatively granted relief from the reporting requirement. This is significant because juvenile court judges have great discretion in many other areas in line with the court's focus on rehabilitation.

When a juvenile goes before a judge for adjudication on a sex crime, almost nothing may be known about the level of risk that young person poses, other than the crime with which he is charged.^{58,59} Yet it is impossible to determine the likelihood of a person re-offending based solely upon the crime that he has committed.⁶⁰ As one juvenile court judge noted, there are many variables involved with each juvenile – age, maturity, past offenses, history of abuse, developmental delays.⁶¹ Much of the information needed to assess the juvenile does not come until after treatment is underway.⁶² OYA does not begin working with juveniles until after adjudication.

Not all juveniles are good candidates for deferred adjudication; some need more structured treatment and monitoring. Often the only way for these youth to enter these OYA or county programs is to be adjudicated by the court on a sex offense. Because adjudication comes with a registration requirement, this level of treatment currently cannot be imposed without requiring the juvenile to register as a sex offender.

Juveniles adjudicated of registrable sex crimes enter either an Oregon Youth Authority program or a county juvenile program. If they are living with an OYA foster family or in residential treatment facility for their disposition period (what would be the sentence in adult court), they are heavily monitored by their care providers and undergo regular evaluations.^{63,64,65,66} Youth in OYA close custody are the most restricted – they do not leave their correctional facility.

Registration initially was developed as a tool for law enforcement to monitor sex offenders in their community. The public safety benefit is predicated on the idea that supervision of offenders will prevent them from reoffending, as well as provide law enforcement with a list of likely suspects if a crime does occur.

A youth who is placed on probation for a sex offense has regular contact with a probation officer, who monitors the offender's activities and whereabouts. Generally, the offender must tell the probation officer if he misses school, applies for a job, changes therapists, wants to participate in extracurricular activities or anything else the probation officer wants to know. Significant changes in routine must be approved in advance by the probation officer. The terms of probation may also limit persons with whom a juvenile offender can associate and when he can be out of the house.

The committee did not find that sex offender registration by an offender under supervision provided any useful additional information not otherwise readily obtainable by law enforcement during that time. In addition, there was no evidence that registration in and of itself caused increased monitoring of offenders on probation or parole.

Conclusion: Under current law, a juvenile adjudicated of a felony sex crime is required to register regardless of the opinion of the adjudicating juvenile court judge. Much more is learned about the offender during the treatment and supervision period. During that period, the whereabouts of a juvenile sex offender are well-known and their activities strictly controlled. Registration as a sex offender does not increase the information available to law enforcement during that time.

Special Characteristics of Juveniles

The juvenile justice system developed from an implicit understanding that youths differ from adults in their ability to exercise judgment, as well as in their ability to be rehabilitated. Recent research on brain development bears out these conclusions.

Put quite simply, development of reasoning, decision-making and impulse inhibition is incomplete in adolescents. Mid-adolescence, between 14-18 years, 'represents a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature.'⁶⁷ Patterns of offending during adolescence do not necessarily reflect enduring behavioral tendencies, but may rather be indicative of more transient developmental processes.⁶⁸ Male teens have a tendency to engage in a range of risk-taking behaviors, with sensation-seeking as the underpinning psychological mechanism.^{69,70}

As the volume of research grows, we are beginning to see the courts cite these studies when making decisions related to adolescents in the criminal justice system. The Supreme Court has issued three decisions in the last decade that cite scientific studies on brain development as a rationale for exempting juveniles from punishments, including the death penalty and life without parole.⁷¹

Looking specifically at juvenile sex offenders, researchers have found important differences from adult sex offenders. Adolescents do not have established, well-developed patterns of sexual interest and

sexual arousal.⁷² As compared to adults, adolescents' offense types are less likely to reflect their sexual preference.⁷³ Adolescence is a time of experimentation and rapid change, and researchers posit that sexual offending is likely less indicative of long-term ingrained tendencies.⁷⁴

Greater brain plasticity in adolescence makes young people highly vulnerable to the effects of experience, both positive and negative, leading to greater optimism for treatment of juvenile sex offenders than adults.⁷⁵ Additionally, over the course of adolescence, executive function improves, including response inhibition, planning ahead, weighing risks and rewards, and the simultaneous consideration of multiple sources of information.⁷⁶

Thus, science backs up what witnesses report about the responsiveness of juvenile offenders to treatment. As a juvenile court judge said, "We send kids to treatment because we think it is going to work."⁷⁷ Programs that work with juvenile sex offenders report high levels of success with youth, including one long-running program in Portland that reports a 0% recidivism rate for those who complete treatment.⁷⁸

Conclusion: Offenses committed as a juvenile do not necessarily indicate a lifetime propensity for victimizing others. Brain development research demonstrates that impulse control, reasoning and the ability to exercise judgment are developing during adolescence. Treatment during that time can effectively change behavior.

Recidivism and Risk Assessment

In undertaking this project, your committee encountered many myths about sex offenders and sex crimes. We learned that our perceptions did not always align with the empirical evidence, and noted the marked difference between the data and media coverage of sex offenses.

Perhaps the most common – and incorrect – belief about sex offenders is that most will reoffend. Studies show that the public consistently overestimates the likelihood that a sex offender will commit another sex crime. One research project in Florida found that respondents believed that 80% of sex offenders will reoffend.⁷⁹ In fact, recidivism rates are extremely low.

More than 30 published studies on juvenile sex offenders indicate recidivism rates in the range of 2.5% to 15%.⁸⁰ Looking at numbers specific to Oregon, OYA reports a recidivism rate of 5% for juvenile sex offenders following probation and 11% for youth on parole after close custody.⁸¹ These numbers are considerably lower than recidivism rates for youth adjudicated on other criminal charges.

Despite the low recidivism rates, we also know that some juvenile sex offenders do and will reoffend and thus pose a clear danger to the community.^{82,83} A 2008 study of juvenile sex offenders, registration and recidivism that was generally highly critical of current registration laws noted, "That is not to say that high risk juvenile offenders do not exist. For example, in a small sample of 14 youth subject to the highest degree of notification in Washington State, most (79%) were rearrested within 4.5 years for a new offense of any kind and 43% were rearrested for new sex crimes."⁸⁴

Importantly, 50% of adults who are caught for sexual offenses acknowledge that they began offending sexually as teens.^{85,86} Witnesses, including experienced treatment providers, consistently spoke of juvenile offenders who they feared would go on to harm others.

Risk assessment of juvenile sex offenders presents some challenges. Tools used to evaluate adult sex offenders are not valid for youth due to differences in development and maturation. Two instruments currently in use for juveniles – the Juvenile Sexual Offender Assessment Protocol (J-SOAP) and the Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR) – combine empirically guided clinical judgment with empirically identified risk factors, which is thought to be a superior approach.⁸⁷ These are both in use in Oregon.

There is disagreement among researchers regarding the effectiveness of these tools in evaluating risk. Existing studies vary in significant ways – including location, source of participants, level of supervision and treatment, age of population, definition of recidivism and the source of recidivism information – thus limiting the ability of researchers to compare studies or generalize findings.⁸⁸

However, while some studies have found existing tools to be problematic, researchers have not determined that it is impossible to assess risk.^{89,90,91} Testing and methodology of risk assessment tools are becoming more advanced and in recent years, several studies have shown promising results. Risk assessment of juvenile sex offenders is a science in its infancy and advancing rapidly in response to increasingly strict legal repercussions for youth. In addition, certain behaviors of offenders under supervision are strongly correlated with the risk of post-supervision recidivism. Such behaviors include non-cooperation with or non-completion of treatment and the commitment of further sex offenses during the supervisory period.

The committee concludes that enough guidance exists to evaluate a juvenile sex offender at the end of his treatment and supervision period. This information includes, among other things, whether the offender avoided further sex crimes during the supervision period, whether the offender successfully completed treatment, and the offender's attitude toward his crime and victims. While our ability to predict future offenses is likely to improve in the future, even today we can distinguish lower and higher risk groups of prior offenders. All relevant witnesses that appeared before the committee agreed that we can make such reasonable distinctions today.

Your committee believes an end-of-supervision evaluation is far superior to the current system, in which juveniles are subject to registration before much is known about them and their circumstances. The majority also believes the ongoing development of risk assessment tools should not mean that all juvenile sex offenders be treated as unlikely to reoffend and the possibility of registration eliminated.

Conclusion: Recidivism rates for juvenile sex offenders as a group, are incredibly low. While some offenders pose a high risk for re-offense, the vast majority of juvenile offenders do not. Risk assessment tools for juveniles are imperfect, but evolving, and can offer sufficient guidance for a court to determine the risk a particular youth poses to the community

Impact of Registration

Lifetime registration as a sex offender has lifetime consequences for someone adjudicated for a sex crime as a juvenile. It will impact almost every aspect of his future, from education to employment to housing to family life.⁹² Witnesses noted that it is very difficult for an adolescent, especially a young one, to fully understand what registration will mean for his life.⁹³

Numerous laws and regulations govern the movements of registered sex offenders, and they do not make a distinction between someone adjudicated in juvenile court at age twelve and someone convicted in adult court at age fifty. For example, schools bar persons on the sex offender registry from entering school grounds, which keeps convicted pedophiles away from campuses. But a person on the registry because of a juvenile adjudication cannot attend a parent – teacher conference or watch his child play sports, even if he has gone 20 years without a re-offense.

A particular challenge for juvenile sex offenders in low-income families is the fact that federal law prohibits sex offenders from living in federally assisted housing.⁹⁴ This can have immediate consequences for the family of a youth adjudicated of a registrable offense if they reside in subsidized housing. The juvenile must either leave the family home or the family must move.

Registered juveniles' options for education, professions, and employment narrow. They may not be eligible for scholarships or financial aid, if they plan to attend college. A career in the military is usually not possible. Witnesses who work with adjudicated youth reported that many have difficulty finding even entry-level positions; employers are simply not willing to hire someone on the registry.⁹⁵

A person who is required to register as a sex offender must be perpetually vigilant to be sure he remains in compliance with registration requirements. Because re-registration is required within ten days of a change in attendance status at an institute of higher education, a college student must be sure to re-register with local law enforcement if his hours for one semester drop him to part-time status or conversely, if he resumes full-time study. Re-registration is required even for study at an online university, though the student will never be in the physical presence of his classmates and teachers.⁹⁶

One juvenile offender who had completed treatment, had gone years without re-offense and had become the first in his family to enroll in college was arrested when he failed to notify law enforcement that he had changed rooms within the same dorm.⁹⁷

The most common re-offense for a juvenile sex offender is a charge for Failure to Register as a Sex Offender.⁹⁸ Such charge may be imposed for even relatively minor non-compliance with follow-on reporting requirements. This is significant because this criminal charge will remain a part of the individual's record even if he is later granted relief from registration and that juvenile record is sealed. Thus, a background check will not find the individual on the registry, but will find a criminal conviction for Failure to Register as a Sex Offender.

Finally, being a registered sex offender carries significant stigma. The general public knows little about the range of crimes that can result in registration, and media coverage tends to focus on brutal and rare cases of assaults on children by complete strangers, who are almost always adults.⁹⁹ When lurid media reporting is combined with widespread and mistaken beliefs of high recidivism rates for sex offenders, it is no wonder that juveniles on the registry encounter fear and loathing when their status is known. Juvenile offenders can face violence both within and outside of the justice system, as well as every day isolation such as not being allowed to sit in the waiting room at a health clinic with other patients.¹⁰⁰

The consequences of these barriers go beyond simply making life harder for someone who has been adjudicated of a sex offense as a juvenile. Rather, they can actively interfere with the rehabilitation that is a key goal of the juvenile justice system. Witnesses who work with offending youth emphasized the importance of stability and relationships within the community as positively impacting treatment outcomes.^{101,102} Disruption in housing, limits on educational opportunities, and social isolation all work against reintegrating youth into the community.

Research on juvenile sex offenders also points to the risks of marginalizing youth at a time when they are forming their identities. If juveniles must publicly identify themselves as sex offenders over and over again as registration requires, they may come to view themselves in this way.¹⁰³ Some studies have found an increase in delinquency by youths following registration as a sex offender, which researchers posit comes from juveniles feeling pushed outside the mainstream.¹⁰⁴ Given that sex offender registration is not intended to be a punishment for juveniles, but rather a public safety tool, your committee found evidence that it may actually work against this goal by alienating rather than rehabilitating youth.

Conclusion: Sex offender registration often results in juvenile offenders facing barriers to education, housing and employment, as well as community institutions that help them reintegrate into the community. The purpose of registration is to protect public safety, and not to punish offenders. And yet, your committee believes the current policy of registering all juveniles adjudicated of felony sex crimes may actually work against the public safety by alienating rather than rehabilitating youth fully capable of rehabilitation.

Relief from Registration

Except in limited cases (usually when permanent registration has been imposed as part of a plea agreement), juvenile sex offenders have the right to seek relief from registration. Though the timeframe in which they can seek relief varies, these petitions are granted in the vast majority of cases.¹⁰⁵

Despite this, relatively few youth on the registry in Oregon apply for relief. Witnesses acknowledged that the registry includes many people who would likely be granted relief from registration were they to seek it.^{106,107} Your committee found that persons who seek relief from having to register face serious obstacles in seeking that relief. These impediments both block the legislative intent to offer relief to juveniles and contribute to an overburdened registration system by keeping people on the registry who don't really need to be there.

There is no mechanism in place for the government to notify a juvenile offender that he is eligible for relief from registration.^{108,109} Treatment providers educate youth about relief options, but their supervision of the juvenile may end before he is eligible to apply for relief.^{110,111} The Multnomah County Sex Offender Registration Detail (SORD) makes a special effort to educate some adjudicated juveniles who come to their office for registration and even provides the forms.¹¹² Yet many eligible individuals are still not accessing relief.

Beyond simply knowing about eligibility for relief, a juvenile offender must either seek out legal counsel or have the wherewithal to navigate a complex legal system on his own. Many witnesses identified these issues as significant challenges for individuals who are eligible for relief.^{113,114,115,116} For developmentally delayed or intellectually impaired offenders, understanding the system well enough to correctly file the petition, serve the prosecutor, gather the evidence that will be needed to demonstrate rehabilitation, appear at a hearing, and complete all the other legalities for relief is all but impossible.

For those without financial resources, the cost of the relief process presents a barrier to accessing it. The offender first must pay the court filing fee, which varies from county to county, but is around \$200.¹¹⁷ To be effective in the process, many offenders also will need to incur the much greater cost of retaining an attorney.

At a hearing, the burden is on the person petitioning for relief to prove by clear and convincing evidence that he is rehabilitated and not a threat to the public. Juvenile offenders with financial resources often present a psychosexual evaluation regardless of whether it is court-ordered, as well as polygraphs and references from the community.¹¹⁸ Juveniles unable to afford these assessments of their rehabilitation may drop their petition for relief or find it denied because they have not provided the court with sufficient evidence.¹¹⁹

Without a doubt, juvenile offenders who are able to afford an attorney or to obtain pro bono assistance have a significant advantage over those who cannot. The relief process is expensive and complex for those who do not have an understanding of how the legal system works. Though some attorneys offer pro bono legal representation for juvenile offenders seeking relief, that resource is limited, and more important, not known to all who could use their services.

Conclusion: The complexity of the legal system and financial costs pose significant barriers to juvenile sex offenders receiving relief from registration despite their eligibility.

How Is The Current Sex Offender Registration System For Juveniles Working?

Impact on Public Safety

The statutorily mandated purpose of sex offender registration is to “prevent future sex crimes.” How well does registration achieve that end?

Your committee invested significant time seeking evidence that showed any connection between the existing system of registering juvenile offenders and the prevention of crime. A key challenge, as many

witnesses pointed out, is that it is difficult to measure something that did not occur.^{120,121} Witnesses noted that someone who appears on the sex offender registry might be deterred from applying for jobs that would bring them in contact with potential victims.¹²² Additionally, child care providers, nursing homes and other employers that serve vulnerable populations check to be sure job applicants are not registered sex offenders.

In other words, we found no reason to expect that inclusion on the registry will reduce recidivism -- that is, prevent an individual who wants to commit a future sex crime from finding a new victim. However, the registry may have the effect of limiting a recidivist from access to many vulnerable individuals, and thus reduce the number of new victims created prior to the re-arrest of the recidivist.

Though no efforts have yet been made to study data specific to Oregon, researchers have tried to address this question using data from other states. These studies evaluating the impact of broadly registering juveniles have shown no change in either first-time sex offenses by juveniles or on sexual offense recidivism.¹²³ These studies, and the data available to the researchers, however, cannot evaluate the arguments that registration can reduce the number of potential victims of those who choose to reoffend, by limiting the access of high-risk offenders to vulnerable populations.

Your committee also sought anecdotal evidence of juvenile suspects who had been apprehended based on the existing sex offender registry. None of our witnesses were able to provide such testimony. While that certainly does not mean that this has never happened, it does imply that it is a rare enough occurrence that even people who have been in their fields for a long time are not regularly seeing this benefit from the registry.

Currently, juvenile offenders are more likely to be on the registry because they do not know how to get off or because they cannot navigate the judicial process than because they can be shown to have a substantial risk to re-offend. The existing registry is cluttered with low-risk juvenile offenders.

Conclusion: Available research does not directly evaluate whether registration of sex offenders reduces the likelihood that they will re-offend. Available research has only found that registration of sex offenders does not reduce the likelihood that they will be convicted of another sex offense. Witnesses supporting registration, however, note that registration will reduce the ability of offenders to access vulnerable populations, such as children in day care, or older persons in nursing homes. The witnesses pointed out that limiting access by high-risk offenders to vulnerable populations likely will reduce the number of future victims by limiting the ability of recidivists to assault multiple victims. The committee notes that this social benefit –limiting the number of victims per recidivist – would accrue even if the registration did not reduce the number of high-risk offenders who later re-offended.

Unintended Consequences

Review of the research literature and interviews with witnesses brought up the troubling possibility that the registration of juveniles as sex offenders may have unintended consequences that impact victims and prevent the offender from receiving needed treatment.

Witness testimony noted cases where families were reluctant to report intra-familial abuse out of fear that the offending child would be labeled a sex offender.¹²⁴ This disincentive silences the victim and shows the perpetrator that there are no real consequences for his actions.

The registration requirement also changes the behavior of those working within the juvenile justice system. One study, using a large sample size over a long time period, found a surprising impact of registration on the prosecution of juveniles for sex offenses that would result in lifetime registration as a sex offender. The enactment of registration resulted in a 41% drop in the likelihood that prosecutors would move forward with a sex crime case against a juvenile.¹²⁵

When prosecutors do move forward, defense attorneys are more likely to press for a plea bargain to a lesser offense or to a different type of offense.¹²⁶ For example, charges of assault and robbery go up. Witnesses noted that many defense attorneys consider avoiding registration to be their highest priority in juvenile sex crime cases.¹²⁷

Your committee believes it is in the best interests of the victim, the offender and the community to eliminate disincentives for reporting and charging juveniles with sex crimes.

Conclusion: The inflexible nature of the current registration system sometimes leads to underreporting, and sometimes discourages prosecutors from bringing charges they otherwise would bring.

Access to Information about Juvenile Sex Offenders

Your committee had difficulty determining how much information about juveniles on the sex offender registry is released to the public. Juveniles are not included in zip code lists of offenders, which are common requests.¹²⁸ As of Fall 2013, only two juvenile offenders could be found in the online database that lists “predatory” offenders.

However, if a caller to the Oregon State Police enquires about a juvenile offender by exact name, the administrator provides information about that person. Regulations direct the agency to “release, upon request, any information that may be necessary to protect the public concerning sex offenders who reside in a specific area or concerning a specific sex offender.”¹²⁹ Your committee heard testimony that the administrator taking the phone call uses his or her judgment as to what information to release.¹³⁰ This may result in a caller simply being told that a juvenile is on the registry, or it may result in a more detailed description including type of crime, age at adjudication and other information. A paucity of information can lead to speculation by the enquirer with regard to the nature and seriousness of the threat the registrant may pose.

Because the Oregon State Police do not track enquiries on juvenile sex offenders, there is no way to know how often this information is being accessed and by whom. Inconsistent and indiscriminate dissemination of registrant information can contribute to the stigmatization of young offenders.

Conclusion: Regulations governing release of information are confusing and rely on the discretion and judgment of the person responding to the request, thus creating opportunities for inconsistent application of the rules.

Majority Recommendations

The current system for registering juveniles as sex offenders is flawed. Lifetime sex offender registration for juveniles at the time of adjudication for certain crimes has negative consequences for more than just the offender.

First, it results in a bloated registry that includes too many youth who are at low risk for committing additional sex crimes. The current process does not make an effort to distinguish between youth who are at high-risk for re-offense and those who are not likely to commit another sex crime, despite having considerable knowledge about these juveniles by the end of the supervision and treatment period. This system overburdens law enforcement with monitoring a huge number of juvenile offenders. Your committee believes that resources spent on the registration and re-registration of juveniles unlikely to reoffend are wasted resources.

Second, the impacts of sex offender registration on young people can interfere with their rehabilitation. The sex offender label marginalizes youth and has ongoing effects on their ability to access housing, educational opportunities, and employment. All of this makes healthy re-integration with society difficult, and can make juvenile sex offenders more likely to commit property crime and other non-sex offenses in the future.

Third, reluctance to subject a juvenile offender to the burden of registration presents an impediment to holding the juvenile accountable for his actions and to ensuring he receives effective treatment. A prosecutor who believes the offender and offense do not warrant lifetime registration may choose not to pursue a case. A defense attorney may strike a plea deal to a lesser charge to avoid the risk of registration. Offenders who are not reported and adjudicated are not held accountable and may not receive treatment. Your committee believes decisions made out of fear or discomfort with registration are not in the best interests of victims, offenders or society.

Recommendation #1: The Oregon Legislature should amend state law to require that court's decision to subject a juvenile sex offender to registration occurs when the offender's supervision and treatment ends.

Supervision of a juvenile sex offender during the disposition period imposed by the court can be conducted in a manner that is an adequate substitute for registration, and despite varying resources from county to county, it usually is. Throughout this period, almost any action of a juvenile offender – from missing school to applying for a job to who one's friends are – must be reported to the authority responsible for the offender's supervision. The supervising authority places major restrictions on permissible activities for the offender. Failure to comply with these requirements can have serious

consequences for the youth, including transfer to a close custody facility. Your committee finds no added threat to public safety by not requiring registration immediately upon adjudication of a sex crime when the offender will be subject to supervision.

Witnesses testified that they learn a great deal more about offenders during the treatment process. The offenders undergo constant evaluation. The family circumstances of the offender become clearer. The attitude of the offender toward treatment is noted, as well as the attitude of the offender with respect to any prior offense and victim. Trained professionals observe the offender's empathy skills. For the significant number of developmentally disabled offenders, appropriate boundaries are taught and practiced. This process provides better information than the criminal charge, and by the end of the treatment and supervisory period can reasonably distinguish between low-risk and high-risk youth.

As the decision regarding registration would be a part of the adjudication and supervision process, indigent juvenile offenders should continue to have access to their public defenders. Should a youth wish to challenge a finding that he is high-risk, legal counsel is available to assist with making that case to the court.

Your committee believes postponing the decision about registration provides the court with better information about the risk each juvenile poses and makes rehabilitation more likely.

Recommendation #2: The Oregon Legislature should amend state law to require that (a) the court that subjects a juvenile sex offender to registration also determines when the offender may seek relief, which must be no more than five years after registration is imposed, and (b) if the offender is denied relief, the offender has the right to periodically request relief.

Some juveniles will fail in treatment or otherwise demonstrate high-risk behaviors that result in an order to register. Because brain development in young people is incomplete, actions taken as a juvenile do not necessarily indicate lifelong negative behaviors. Registered juvenile offenders who do not reoffend and meet court standards for proving rehabilitation should have the opportunity to seek relief after no more than five years on the registry and periodically thereafter.

Additionally, juvenile sex offenders are at the highest risk for re-offense in the time period immediately following the initial offense. Every month or year that goes by without a new offense makes it less and less likely that the person will ever re-offend.

The juvenile justice system is founded on the principles of accountability and rehabilitation. Juvenile offenders required by the court to register should have the opportunity to show that they are successfully rehabilitated. Putting the significant disadvantages of registration behind them while they are still young will hopefully allow for a full re-integration into society.

Recommendation #3: The Oregon Legislature should amend state law to make the process for obtaining relief from registration more accessible to juvenile sex offenders.

No one benefits from a relief process that is too complex or expensive for juvenile offenders to access. When such factors frustrate access, they thwart the legislative intent to offer successfully rehabilitated individuals the opportunity to fully re-integrate into society, and they continue to burden the system with low-risk registrants. The result will be rehabilitated juvenile offenders nevertheless locked into a lifetime of challenges.

Your committee recommends that the state be responsible for initiating the relief process and that the offender who desires to follow through in seeking that relief obtains the information and assistance needed throughout the process.

If registration is imposed as recommended above, the relief process might begin with a letter to the offender notifying him of the approaching eligibility for relief. This notification might also include a packet of information regarding how to access counsel, what proof of rehabilitation the offender will need to present, and other pertinent assistance. A public defender might also be tasked with contacting the offender to make sure that the notice is understood. We strongly encourage the use of simplified terms and layperson language in documents given to the offender.

Finally, any reasonable costs incurred by an indigent defendant and necessary to demonstrate eligibility for relief should be borne by the state. For example, if the courts wish to require a polygraph or a psychosexual evaluation from an indigent offender, then the state should pay for this.

Recommendation #4: The Oregon State Police should establish clear guidelines for the release of information about juvenile sex offenders to the public and should keep records of these requests to better evaluate the effectiveness of the registry.

Currently the administrators charged with responding to requests for information from the sex offender registry have only vague guidance about what should be released for juvenile offenders. As a result, some administrators may provide more or different information than others. That information may do little to inform the enquirer of the nature of the offense or the age at the time of offense, and it may further stigmatize juveniles.

Your committee recommends that clear and specific administrative rules be developed and published that specify the kinds of information that will be released in response to name inquiries. This may include pertinent information such as the offender's age at the time of offense or the year of the offense. These rules should also establish the criteria for releasing registrant information to the public and should restrict the use of public announcements or inclusion on Internet lists. Law enforcement and the Department of Human Services should continue to have unrestricted access to information on all registered juveniles.

Additionally, your committee recommends that the Oregon State Police keep records on public inquiries about juvenile offenders and make this information available to law enforcement. If a high-risk juvenile offender is repeatedly applying for jobs in child care or is demonstrating behavior that makes members

of the public concerned enough to check the registry, authorities may be able to intervene before someone is harmed.

Retaining Registration

Though many of our witnesses urged changes to the treatment of juvenile offenders on the registry, not a single one urged us to advocate for its total elimination, as the minority recommends. Your committee makes recommendations that we think will result in exclusion or removal from the registry of the vast majority of juvenile sex offenders – those found to be successfully rehabilitated and of low risk for future offense. We would retain registration only for those juvenile offenders who continue to be considered at relatively high risk to commit new sex crimes.

We believe that sex offenses are fundamentally different from other violent crimes such as robbery or assault. They are a violation of the most personal and devastating kind and can carry lifelong consequences for the victim. Thus, avoiding future sex crimes justifies stricter measures. While there is insufficient evidence that the current system of registering all juveniles adjudicated of felony sex crimes has a public safety benefit, your committee believes that a narrower registry focused on individuals deemed high-risk may prove to be a more effective tool for society, including law enforcement, as well as a greater protection for vulnerable populations. Because the list will consist of high-risk offenders, the fact that a person is on the list will be meaningful.

We also believe that information regarding a juvenile sex offender judged high-risk should be accessible to individuals and organizations who determine whether that juvenile will come into contact with vulnerable populations. In this regard, we emphasize what multiple witnesses emphasized - that even if listing on the registry does not reduce the percentage of juvenile offenders who re-offend, limiting access of recidivists to vulnerable populations can reduce the opportunities for the recidivist to create new victims. A parent hiring a babysitter has a right to know if that person committed a sex crime and caused enough concern during the supervision period to be deemed “high-risk.” So, too, do child care providers, institutions that care for the disabled, and other employers hiring for positions that could provide easy access to particularly vulnerable victims. If a juvenile offender has been identified as being high-risk and has not been granted relief from registration despite its being made more accessible, we believe we should err on the side of protecting the vulnerable.

Notwithstanding the low re-offense risk posed by the vast majority of adjudicated juvenile sex offenders, the bad behaviors of some during the supervision period will raise serious concerns. Among such behaviors, we include the commission of new sex offenses after adjudication or the failure to cooperate with and successfully complete the treatment process. We anticipate the registration decision authority will make a registration risk decision based on recommendations of treatment supervisors and in consideration of behaviors that to some extent will be unique to each juvenile. While we expect only a small minority of offenders will be classified as “high risk” at the end of their supervision, we would leave the establishment of a more precise “risk” threshold to the decision maker,

who must weigh both factors applicable to the individual offender and the potential for harm to one or many future victims.

Despite our expectation that only those who have done poorly during the supervisory period would be required to register if recommendations are adopted, your committee acknowledges that our proposal will still result in the inclusion of some juveniles on the registry who nevertheless will not commit a new sex crime. In accepting the fact that at least some offenders will be designated as “high risk” but will not commit a new sex offense, we must weigh this harm to the offender against the further harm that the recidivists are capable of inflicting. That potential harm will be to new victims who have previously offended against no one.

We also note that our Recommendation 2 affords those identified initially as “high risk,” but who do not re-offend, the opportunity to get removed from the registry after a reasonable period. The great majority of re-arrests for new sex crimes occurs within 5 years after release from supervision. Accordingly, our Recommendation 2 is that those who continue to be listed be afforded an opportunity after no more than 5 years to demonstrate they are rehabilitated and should be removed from the registry.

Therefore, the majority of your committee recommends modifications to the sex offender registration system for juveniles rather than elimination of the registry. Our recommendations call for an end to the blanket registration of all juveniles adjudicated for sex offenses, and makes relief from registration more accessible for those who can show they have been successfully rehabilitated.

Concluding Statement

Your committee greatly appreciates the generosity of our witnesses in sharing their time and expertise with us. Through our research, we had the good fortune to meet many individuals who have chosen to spend their professional lives working with victims and perpetrators of sex crimes. This is an extraordinarily challenging and emotional area, and we are especially grateful for their dedication to our youth, families, and community.

Signatures

Respectfully submitted,

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Minority Discussion and Analysis

The minority accepts the vast preponderance of the facts adduced in the majority report and many of its conclusions. It is not our intention here to discuss each and every point upon which we disagree, but only those that are crucial to the discussion.

The substantive difference between the minority and majority views can be summed up simply: the majority believes that Oregon juvenile sex offender (JSO) registration laws can be reformed in a way that will make the public safer, and the minority does not.

The minority offers two arguments in support of its recommendation that the juvenile sex offender registration be abolished: a rational argument and a psychological argument.

The Rational Argument

Enhancing public safety must be the purpose of sex offender registration laws, or they would fail to pass constitutional muster, since registration for the purpose of punishment is unconstitutional.ⁱ In the current system, the public overwhelmingly believes that sex offender registration is a good idea, and that it makes them safer.¹³¹

The majority argues that the current JSO registration scheme is a broken mandate that does nothing to protect the public, and makes the public less safe. We agree. However, the minority believes that the registry cannot be amended to make the public safer and should, therefore, be abolished. The reasoning for this follows.

As noted by the majority,¹³² several risk assessment tools have been developed to attempt to predict the likelihood that a JSO will commit a new sex crime.ⁱⁱ But there is no evidence from which to conclude that those tools (or any other method) can be used to identify “high-risk” offenders with sufficient accuracy to warrant their use as a basis for determining if a JSO should be required to register as a sex offender.¹³³ At least 19 studies have been done about the ability of risk assessment tools to predict JSO sexual recidivism, and none of them have concluded that any of the tools should be used to make a JSO registration determination. In fact, the developers of the tools have themselves universally cautioned against using their tools for that purpose. Here, for example, is the warning by Douglas Epperson, the creator of the J-SORRAT-II:

ⁱThe effects of registration may be punitive if rationally related to the purpose of making the public saferⁱ

ⁱⁱ Whether the risk of recidivism is determined by using a tool or by a judge or by a psychologist, the principle is the same: identifying factors that make recidivism more likely and determining how great is the risk that an individual offender will reoffend.

...[D]ecisions about imposing registration and community notification requirements on juveniles must carry with it a high degree of confidence, so as to minimize the number of false positives and the detrimental effects to those JSOs who are least likely to reoffend sexually. At this time, neither the JSORRAT-II nor any other juvenile risk assessment tool has demonstrated the level of longer term accuracy required to inform such decisions.¹³⁴

James Worling, the developer of the ERASOR tool, tried to see if he could use it to predict low, moderate and high risk offenders. He found that the tool did have some predictive value.¹³⁵ ERASOR's prediction of "high-risk" offenders was about 25% accurate. That is, of every 100 offenders in the high-risk category, 25 would commit a new sex crime and 75 would not. However, in numerical terms, there were more than three times as many repeat offenders in the low and moderate categories as in the high-risk category.^{136, iii} In addition (and this is true of other tools as well), an assessment of risk with ERASOR was valid for at most 6 months, after which its predictive value declined markedly.¹³⁷

As a result, there are three problems with risk assessment tools.

The first problem is the more offenders on the registry, the less useful the information will be. This is the problem with the current registry, as the majority has pointed out.¹³⁸ But the fewer persons on the registry, the more likely it is that a repeat offender will be someone who is not required to register. Either way, the public is no safer with a registry.

The second problem is that, to the extent risk assessment tools are accurate they are accurate because of their ability to predict low-risk offenders, not high-risk ones.¹³⁹ Essentially, they are no good at predicting who is more likely than not to reoffend.

And the third problem is that JSO risk assessment tools are valid for only a brief period. To be meaningful, a registrant would have to be in a nearly continuous process of reassessment, and information on the registry would quickly become outdated.

These problems are compounded by the fact that, as the majority demonstrates, children and adolescents are not "miniature adults."¹⁴⁰ Young people, including those who commit sex offenses, are fundamentally less developed neurologically than adults, and changing so fast and unpredictably that it is impossible to make accurate predictions about who among them will commit a sex offense.

The changes they are undergoing are huge. Noted child psychologist Laurence Steinberg pointed out: "[I]t appears that the brain changes characteristic of adolescence are among the most dramatic and important to occur during the human lifespan."¹⁴¹ The Young Adult Development Project, an exhaustive

ⁱⁱⁱ This is because there were many more low and moderate risk offenders, so that even though they offended at a much lower rate, 8% of 100 is more than 25% of 10; (i.e., 8 is greater than 2.5).

accumulation of information and research concerning adolescent and young adult development done at the Massachusetts Institute of Technology, includes this summary:

A large and relatively new body of research is revealing that young adulthood is a time of dramatic change in basic thinking structures, as well as in the brain. Consensus is emerging that an 18-year-old is not the same person she or he will be a 25, just as an 11-year-old is not the same as he or she will be at 18. They don't look the same, feel the same, think the same, or act the same.¹⁴²

This is valid for youth who commit sex offenses and has important consequences for how adolescents should be treated when they commit sex offenses. Neurological immaturity makes them less morally culpable for their conduct than adults.¹⁴³ In a fact sheet prepared for juvenile justice advocates, the Juvenile Justice Network confirms the descriptions of adolescent development described above and makes this recommendation:

The best investment is to offer youth who make mistakes guidance and rehabilitation. All adolescents make mistakes, and the vast majority of them learn from these mistakes and grow into responsible adults.¹⁴⁴

The majority has correctly found that the JSO sexual recidivism rate is low.¹⁴⁵ In fact, the largest analysis of JSO sexual recidivism ever conducted (more than 11,000 JSOs) concluded that the five-year recidivism rate for JSOs was just a little over 7%.¹⁴⁶

Perhaps more importantly, the likelihood that a youth adjudicated for a *non*-sex offense will go on to commit a first sex offense is essentially the same as the recidivism rate for juvenile sex offenders – and there are more than seven times as many non-sex offenders as there are JSOs.¹⁴⁷

Additionally, children who have serious non-sexual disruptive behavior problems (such as ADHD or adjustment disorders) are just as likely to commit a first sex offense as children with sexual behavior problems who receive appropriate treatment are to commit a subsequent sex offense.¹⁴⁸

The lower the rate of recidivism, the more difficult it is to accurately predict who will reoffend. When that rate is essentially the same as for other, much larger groups of non-sex offending youth, it is impossible to differentiate the risk posed by juvenile sex offenders from that of youth in other at-risk categories.

The majority concluded that Oregon's current juvenile sex offender registration laws are not making the public safer. Based on the evidence above, the minority believes restricting registration to "high-risk" offenders will not make the public safer either.

The Psychological Argument

The majority points out that, when sex offender registry laws were first enacted, "policymakers legislated out of fear and made assumptions that time now allows us to test."¹⁴⁹ Sadly, we are still doing

just that. After analyzing the current state of our knowledge about juvenile sex offenders in a fairly positive and hopeful light, Mark Chaffin makes this telling point:

[G]ood news is not always welcome news. Vested political or financial interests and highly emotional advocacy agendas will complicate healthy skepticism about the facts or their dispassionate consideration. Moral panic, righteous indignation, and truthiness have their own allure and satisfaction. The sound bite that we should put our kids' safety before the rights of sexual offenders, adult or juvenile, sounds so intuitively correct that it is a guaranteed political winner, even if the policy it promotes is ultimately destructive and fails to deliver the child protection goods.¹⁵⁰

In fact, the fear that motivated the enactment of sex offender registration laws is the fear that drives us still. There is a direct correlation between the level of peoples' fear and their support of sex offender registration laws.¹⁵¹ People fear pedophiles the most, and 97% think that pedophiles should be required to register as sex offenders. People fear age-based consensual offenses (i.e. consensual sex between a 20-year-old and a 16-year-old) the least, and only 65% feel those offenders should be required to register.¹⁵² In a survey of 733 people, virtually all respondents were afraid of having a sex offender living in their neighborhood, and were most fearful of those who offended against children.¹⁵³

It doesn't really matter that the facts do not substantiate the fears. For example, comparisons have been done between neighborhoods where the names and addresses of registered sex offenders are publicly available with neighborhoods where that information is not available. When relevant variables are accounted for, the rate of sex crime is essentially the same whether or not sex offender information is available.¹⁵⁴ Some states have residency requirements for sex offenders, which mandate that offenders not live close to schools or day care centers. Those restrictions have had no effect on whether those offenders commit a subsequent sex offense or on the overall rate of sex crimes.¹⁵⁵

No credible research has demonstrated that sex offender registration/community notification laws have had any effect on the incidence of sex crimes committed either by first-time or repeat juvenile offenders.¹⁵⁶ Nevertheless, some people believe that if the public has knowledge of offenders and their whereabouts, potential victims can be protected from victimization by known offenders, and that this will make the public safer. However, if the public were actually made safer by registration or community notification in any meaningful way, the rate of sex crimes would necessarily go down (fewer victims = fewer crimes = lower crime rate). And, as noted above and pointed out by the majority,¹⁵⁷ this has not happened.^{iv}

^{iv} Sex offender registration and community notification laws have been around in various forms for more than 30 years, providing sufficient time for the effects of those laws to appear were they to exist.

When asked, 74% of community members in one survey agreed with this statement: “I would support these policies [sex offender registration laws] even if there is no scientific evidence showing that they reduce sexual assault.”¹⁵⁸ What is going on? As part of our orientation, City Club provided our research committee with an article entitled, “The 12 Cognitive Biases That Prevent You From Being Rational.”¹⁵⁹ The very first bias listed was cognitive dissonance: “...the often unconscious act of referencing only those perspectives that fuel our pre-existing views, while at the same time ignoring or dismissing opinions—no matter how valid—that threaten our world view.”¹⁶⁰

Many people, when they think about sex offenders and registration/community notification laws, feel their world view threatened. The minority believes the process goes something like this: 1) I am afraid of sex offenders; 2) I am afraid my (or “a”) child will be victimized by a sex offender; 3) if I knew who the offenders were who lived close to me, I could protect my child by preventing her from coming into contact with a sex offender; 4) this will reduce the risk that my child (and, by inference, “any” child) will be a victim of a sex crime.

People may feel they can do something to protect their children and that the schools can keep offenders away from their children; they want to feel this way so badly that they ignore or cannot see evidence or arguments to the contrary. It doesn’t matter that: 94% of child sex abuse victims are abused by someone they know; 1/3 of child victims are abused by a family member; juvenile sex offenders are no more likely to commit a subsequent sex crime than juvenile delinquents as a whole, or children with behavior disorders. It doesn’t matter that research has consistently shown that registration and community notification laws have no effect on the conduct of either first-time offenders or repeat offenders. Understandably, people want to feel safe and they want their legislatures to pass laws that will make them feel safe, even if those laws make them no safer (and possibly less safe).

If we try to understand and account for the feelings that often are the real motivation for our actions, we may reduce the risk that our emotions will direct our actions.

Minority Recommendation

Based on the evidence provided above, the minority recommends that

- 1) The Oregon Legislature should abolish juvenile sex offender registration.
- 2) If this is not possible, the Legislature should amend existing law to prevent dissemination of juvenile sex offender registry information to the public at large. JSO registry information will be available only to persons identified by statute as “having a reasonable need for the information and prohibited from disclosure of the information except to those authorized to have access.” (citation)
- 3) Failing this, the Oregon Legislature should follow the recommendations outlined in the Majority Report.

Signatures

Respectfully submitted,

David Lahna
Claudia Long

Acknowledgements

The committee wishes to express its appreciation to the following City Club members for their help and support:

Caroline Harris Crowne, research adviser

Kristina Holm, research adviser

Alex Macfarlan, research associate

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Release of information concerning sex offender adjudicated in juvenile court. O.R.S. 181.837.

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Reporting by sex offenders adjudicated in juvenile court. O.R.S. 181.809.

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Appendix 1: Glossary

Adjudication: see “Found To Be Within the Jurisdiction of the Court” below.

Affirmative Defense: the burden is on the defendant to prove the fact or circumstance is true.

Bestiality: Intentionally causing a person under 18 to touch or contact the mouth, anus or sex organs of an animal for the purpose of anyone’s sexual gratification. ORS 163.427(1)(b)

Child Abuse: Criminal conduct in which the victim is a child. ORS 163.665(2).

Child Pornography: Any visual media depicting a child engaged in sexually explicit conduct.

Clear and Convincing Evidence: an evidentiary standard of proof. It is between a “preponderance of the evidence” and “beyond a reasonable doubt.” If you think of a “preponderance of evidence” as 51% and “beyond a reasonable doubt” as upwards of 95%, then “clear and convincing evidence” is more or less half way between the two. In practice, the standard is whatever the judge who is hearing the case decides that it is.

Dangerous Substance: blood, urine, semen or feces

Deviate Sexual Intercourse: Oral or anal sex. ORS 163.305(1). DOC: Department of Corrections

Et seq.: Latin for “and following.”

Felony: a crime for which the maximum punishment is incarceration for more than one year. All felonies are more serious crimes than all misdemeanors (from a statutory perspective).

Forcible Compulsion: to compel either by force or by threat of death or injury or kidnapping. ORS 163.305(2).

Found To Be Within the Jurisdiction of the Court: this means “convicted” in juvenile court. Also often called “adjudicated.” For an adult who is “convicted of Rape in the first degree,” the equivalent phrase for juveniles would be “the child was found to be within the jurisdiction of the Court on a charge of Rape in the First Degree,” or “the child was adjudicated on a charge of Rape in the First Degree.”

Incapacitation: incapable of consent because of mental defect, mental incapacitation, or physical helplessness. ORS 163.375(1)(d) for example.

Incest (for purposes of Rape I only): conduct with a victim under 16 who is the actor’s whole or half-sibling, child, or spouse’s child. ORS 163.375(1)(c). Contrast with ORS 163.525.

LEDS: Law Enforcement Data System; massive state database of information related to criminal justice

Measure 11: refers to an ballot initiative that required mandatory prison terms for the commission of various serious felonies. See ORS 137.700 and 137.707 for the list.

Misdemeanor: a crime for which the maximum punishment is incarceration for one year or less. All misdemeanors are less serious than all felonies (from a statutory perspective.)

NCIC: The National Crime Information Center. Similar to LEDS, only at the national level.

OYA: The Oregon Youth Authority

Preponderance of the Evidence: more likely than not, more than 50%. A much lower standard than “beyond a reasonable doubt.”

Rape: Criminally culpable sexual intercourse.

Risk Assessment Tool: a tool adopted by the Department of Corrections based on the statistical likelihood that an individual sex offender will commit another sex crime. The tool must classify each offender as a Level One risk (lowest), Level Two risk or Level Three risk (highest). ORS 181.800.

Sex Offender Information: Information that the State Police determine by rule is appropriate for release to the public. ORS 181.835(5)(b).

Sexual Contact: Touching or causing to touch the sexual or intimate parts of a person for the purpose of sexual gratification. ORS 163.305(6). “Intimate parts” includes any part of the body reasonably considered to be private by the victim.

Sexual Conduct: sexual intercourse, oral sex, anal sex. ORS 167.002.

Sexual Intercourse: Usual meaning; can only be committed by a man (but there are equivalent crimes for women); orgasm not required.

Sexual Penetration: Penetration of the vagina, anus or penis with any object OTHER than the penis or mouth of the actor, ORS 163.411 for example. Exceptions: (1) penetration done as part of a medical procedure; (2) cavity search by police officer or corrections employee. ORS 163.412.

Sexually Explicit Conduct: Actual or simulated sex, oral sex, anal sex, intimate contact (with persons of same or different sex, or with an animal), sexual penetration, masturbation, sadistic or masochistic abuse, or lewd exhibition of sexual or intimate parts. ORS 163.665(3).

Sodomy: engaging in or causing another to engage in “deviate sexual intercourse.” (See above.)

Supervisory Authority: Generally, a county probation department. Counties can contract with the state to perform corrections functions, in which case the Supervisory Authority is the Department of Corrections branch responsible for the county.

Trier of Fact: The entity who decides the facts of the case or question. In adult court, it will be the judge or jury (the defendant decides). In juvenile court, it is always the judge. This is contrasted with “questions of law,” which are always decided by the judge.

Appendix 2: Endnotes

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