

HARMING CHILDREN IN THE NAME OF  
“CHILD PROTECTION”: HOW MINORS WHO HAVE SEX  
WITH OTHER MINORS ARE ABUSED BY THE LAW AND  
THERAPY

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Although the current heightened concern about sexual abuse is undoubtedly motivated in part by concern for the well-being of minors, there are numerous indications that other motives lie behind current policies. In a special issue of the journal *Feminist Review* on the topic of child sexual abuse, appearing during the early years of heightened scholarly and popular concern about the topic, Jenny Kitzinger speculated that parental anxiety about sexual abuse might have more to do with a desire to control minors' own expressions of sexuality rather than to protect them from harm per se (Kitzinger, 1988). More than twenty years later, we are now in a position to document that the reactions in the 1980s to the perceived crisis of child sexual abuse have resulted in laws and treatment methods that can be as or more harmful to the minors involved than actual sexual abuse when the sexual events under examination involve minors having sex with other minors. That is, although the laws and treatments have been offered up as means of protecting minors, they have too often been seriously harming minors in the process.

Each year, approximately 20,000 juveniles are arrested for sex offenses other than forcible rape and prostitution. About half of these juveniles are under age 15, more than for any other crime except arson (Office of Juvenile Justice and Delinquency Prevention, 2004). Although some of these offenses are violent and very harmful to their victims, others are illegal not because they are coercive or harmful, but because the participants are under the age of consent. Unfortunately, the proportion of sex offenses that are in fact non-abusive is unknown, because laws and police records do not make a distinction between coercive and mutually desired sexual behavior when it is illegal.

The fact that minors frequently engage in non-abusive but illegal sexual behavior may surprise those who are not aware of the empirical research on child and adolescent sexual behavior. For example, in the

United States, in the late 1940s and early 1950s, Kinsey found that 40 percent of prepubescent boys had engaged in heterosexual play and 60 percent had engaged in homosexual play, with such behavior beginning at age 9 on average. A study by the University of California at Los Angeles found that 46 percent of children had engaged in interactive sex play by age six. One study of eighth graders in rural Maryland found that 61 percent of the boys and 47 percent of the girls had had sexual intercourse (Garfinkle, 2003).

Although researchers believe that such childhood sex play is not normally harmful and may even be developmentally valuable, such behavior is illegal in many jurisdictions. In about half of all states, mutual sexual interaction among similarly aged children under the age of consent constitutes a sex offense. In 60 percent of states, all sexual activity under the age of 14 is illegal (Garfinkle, 2003). Thus, the majority of children could be guilty of sexual offenses.

Sex laws define sexual behavior under certain ages as “assault,” “rape,” and “sodomy,” and classify these legal violations as “violent,” simply because of the ages (or age differences) of the participants in the absence of actual violence or coercion. Although the normal but illegal sexual behavior of many minors is often not discovered and therefore not prosecuted, sometimes it is, and the consequences can be disastrous for the accused minors. Kentucky juvenile defense attorney Gail Robinson (2003) writes:

Even children under age 12 are prosecuted for rape first degree and sodomy first degree for sexual conduct with each other. Furthermore, it is not uncommon for a 13 year old who has sexual contact with an 11 year old to be prosecuted for a class A felony. . . . A youthful offender convicted of rape or sodomy in the first degree is a “violent offender” who must serve at least 85% of his sentence before he can be paroled. . . . Youthful offenders are subject to “Megan’s Law” requirements. (p. 62)

Much more common are cases of teenagers arrested for sexual relationships with younger teenagers, and their sex acts are again labeled as “violent,” “assault,” “rape,” “molestation,” or “abuse,” not because any violence, force, unwillingness, or harm was involved, but based only on the age difference. A series of reports on this phenomenon in the *Texas Examiner* resulted in a deluge of letters from parents whose teenage children were prosecuted and imprisoned for consensual sex (*Texas Examiner*, 2005). The ABC-TV news magazine *20/20* aired a series on the increase in prosecution of such cases (ABC News, 2008; Stossel et al., 2008a; Stossel et al., 2008b). In Wisconsin, a 17-year-old was charged with felony sexual assault for having consensual sex with two underage girls, and faced up to fifty years in prison and fines of up to \$200,000 (*Sheboygan Press*, 2007).

Fairly common are cases where teenage boys are arrested for consensual sex with girls who lie about their age. For example, in Iowa, a 16-year-old boy met a 13-year-old girl who said she was 16 (Win, 2008). They began seeing each other and eventually had sex. The boy was convicted of lascivious acts with a child, a class D felony. He was expelled from high school and harassed by neighbors and strangers. He is now on the state public sex offender registry for life, prohibited from living within 2,000 feet of a school, day care center or park and from going to the movies or the mall with friends. In a similar case in Austin, Texas, a teenager was convicted of attempted sexual assault for having consensual sex with a 13-year-old girl when he was 17, and the girl lied to him about her age (KXAN-TV, 2008). He was placed on the state's sex offender registry, which forced him to quit school and made him unemployable. Because his probation required him to be employed, he was rearrested, and the state took action to revoke his probation and send him to prison. Also in Texas is the case of Robert Wyatt Evans, convicted of sexual assault and a charge of indecency with a child for having a sexual relationship with a 14-year-old boy when Evans was 18. Both charges are second-degree felonies and carry penalties of two to twenty years in prison.

There have also been reports of middle and high school students around the country arrested on felony charges of producing and disseminating child pornography as a result of taking and exchanging sexual pictures of themselves and their friends (CNN, 2008; NBC-13, 2008; Runbinkam, 2008; Winslow, 2008).

Although it must be recognized that some juvenile sex offenses are truly abusive and harmful, it must also be recognized that the prosecution of children and teenagers for nonviolent but illegal sexual behavior is just as harmful. It is unknown what proportion of juvenile sex offenses are noncoercive, but a Texas prosecutor recently estimated that at least half of the cases of "child sexual assault" filed with the district attorney involved consensual sex among teenagers (Stancil, 2005). An even more striking statistic was reported in Sheboygan County, Wisconsin, where, in 2006, nearly all of the thirty-one cases of "sexual assault" of a child between the ages of 13 and 15 involved consensual teenage sex (Litke, 2007). There have been several cases reported where both teenagers in a same-age sexual relationship (13 or 14 years old) have been arrested for "sexual assault" of each other (Abdul-Alim, 2003; Twohey, 2004; Manson, 2006). That a significant number of juvenile sex offenses are non-abusive is suggested by large-scale studies finding that most sexual offenses by teenagers involved no force at all, and that only 4 percent to 31 percent of those that did involve force involved some sort of weapon (Garfinkle, 2003). Teenagers who are prosecuted for engaging in consensual sexual activity with other juveniles can be placed on public sex offender registries (Garfinkle, 2003). In twenty-two states, a 17-year-old

who engages in sex with a partner 14 or older, but under the age of consent, is placed on the sex offender registry (Carey, 2005).

Young teenagers are also convicted of “sexual assault,” “battery,” “abuse,” or “child molestation,” for annoying behavior or pranks. In Arkansas, a 13-year-old girl was charged with two counts of “sexual assault” for touching two 13-year-old boys over their clothing on the school bus (Wellner, 2008). In another case, a 13-year-old boy was convicted of “criminal sexual abuse” for grabbing a girl’s breasts and running away as a prank (*Chicago Daily Herald*, 2008). When he reached 17 years of age, state law required that he be considered as having committed the offense on his 17th birthday, and he was placed on the sex offender registry. In Florida, two middle school boys were charged with registrable felonies for pinching and groping girls’ breasts in class on a day that Myspace users had declared “National Grab a Boob Day” (Cormier, 2007). Two middle schoolers in Oregon were charged with multiple counts of felony sex abuse for participating in the practice—popular among both boys and girls—of going through the hallway slapping the behinds of members of the opposite gender (Michels, 2007). The boys faced the prospect of having to register as sex offenders for the rest of their lives.

Particularly egregious is the labeling or charging of preteens and young children for childish behavior or sexual experimentation. Human Rights Watch’s (2007) report on the proliferation of irrational laws and destructive prosecution of juveniles recounts the story of a 12-year-old boy who invited friends aged 8 to 12 to watch pornographic videos he had found in his parents’ bedroom. This led to mutual sex play. When caught, the boy was sent to juvenile jail for seven years and had to register as a sex offender when he reached age 19. In Kentucky, state police charged first and second graders in two different elementary schools with “first degree sodomy” for sex play at school (Sinovic, 2008). In 2007, 255 Virginia elementary students were suspended for “offensive sexual touching,” and in Maryland, 166 elementary school children were suspended for sexual harassment, including three preschoolers, 16 kindergartners, and 22 first-graders (Schulte, 2008). A Denver councilman noted, “It’s just getting to the point of ridiculousness where we’re prosecuting kids for kissing,” citing the cases of 5- and 6-year-olds referred to Human Services for kissing or making comments such as “You have a sexy booty” (Kass, 2008).

The unsurprising result of the redefinition of “sexual abuse” to include mutual sex play and romantic relationships, and the increased prosecution of such legal violations, is responsible for the inflated statistics regarding juvenile sex offenders. US courts have seen the number of juvenile sex offenses rise dramatically in recent years, not because of an increase in truly abusive behavior, but because of the proliferation of these draconian laws (*Taipei Times*, 2007). Both the US Department of Justice (Greenfield, 1997) and the Center for Sex Offender Management (1999)

claim that one-third to one-half of all child molestation is committed by children themselves, and a leader in the sex offender treatment profession claims that one out of every twenty boys is or will become a child molester (Abel & Harlow, 2001). The US Department of Justice claims that of all ages seven to sixty, "the single age with the greatest number of offenders from the perspective of law enforcement was age 14" (Snyder, 2000). The US Office of Juvenile Justice reports that sexual "aggression" appears among children as young as 3 and 4, and that the most common age of onset appears to be between 6 and 9 (Righthand & Welch, 2001). Unsurprisingly, the report notes that "victims" of these deviant children typically are siblings, friends, or acquaintances.

The logical consequences of such alarmist statistics are refusals to back off from draconian measures as well as attempts to establish laws that are even more extreme. The governor of Illinois vetoed a bill that would have allowed a judge to eventually remove juveniles guilty of sex crimes from the sex offender registry if they pose no further danger (Hitzeman, 2007). The bill resulted from the case mentioned earlier where a 13-year-old boy grabbed the breasts of a 13-year-old girl and ran away as part of a prank. The Minnesota Court of Appeals affirmed a decision that requires juveniles convicted of felony sex offenses to register as predatory offenders, although they are not entitled to a jury trial in juvenile court (Behr, 2007). The decision arose from a case involving a 15-year-old boy accused of having uncoerced sex with a 13-year-old. Texas recently considered a bill to redefine "sexually violent offense against a child" to include indecency by contact, so that a 14-year-old could become a first-degree felon by touching the chest, even over clothing, of a 13-year-old. Doing so twice would make him a repeat violent offender, making him technically eligible for the death penalty (Hughes, 2007).

Perhaps most disturbing was the US Congress's passage in 2006 of what is called the Adam Walsh Child Protection and Safety Act. This act requires that all states place certain juveniles on a public sex offender registry and subject them to electronic monitoring. These provisions were included and the bill passed without debate, in spite of opposition from more than forty child health and justice organizations, such as the American Academy of Child and Adolescent Psychiatry, the American Psychiatric Association, the American Psychological Association, the Children's Defense Fund, the National Association for Children's Behavioral Health, and the National Mental Health Association (Letter to James Sensenbrenner, 2005; Letter to Arlen Specter and Patrick Leahy, 2005). The American Psychological Association objected to the "devastating impact these provisions will have on the lives of many children and youth" (American Psychological Association, 2006). The provisions not only apply to juveniles who have committed truly violent sexual acts, but to those age 14 and up who have had uncoerced sexual contact with other juveniles who are under 13 or who are more than 4 years younger.

If the other juvenile is under 12 or an offense is the second one, registration and monitoring will be for life.

The grave harm that such laws cause to children is clear. Of course, prosecuting, imprisoning, and monitoring children and teenagers who are not dangerous divert law enforcement and social services resources from real dangers to children and clogs the courts and corrections system. Imprisoning them steals years from their lives. Placing them on sex offender registries results in ostracism, harassment, violence, and inability to complete their education, find housing, or hold down jobs. One boy who was convicted of sodomy for having uncoerced oral sex with a 15-year-old when he was 17 was forced to move repeatedly because of residency restrictions for sex offenders. He ended up living in a camper in the woods without running water or electricity (Downey, 2007). Jill S. Levenson, southern regional coordinator for the Center for Offender Rehabilitation and Education, notes that housing restrictions are just the beginning of a lifetime of punishment and that the stigma and denied opportunities related to a sex offense will negatively impact juvenile offenders (Pierce, 2007). She asks:

So what's going to happen when we have this whole population of teenage sex offenders on public registries who are not going to be able to live within 2,500 feet of schools, parks and playgrounds? They're not going to be able to live with their parents, who live in residential neighborhoods. Where are they going to go? They're not going to be able to be in a foster home. They're not going to be able to be in shelters. They're not going to be able to be in rehab centers or treatment facilities.

Being placed on a sex offender registry leads some teens to suicide. Michigan teenager Justin Fawcett, well-regarded for his kindness to others, was convicted of "sexual abuse" for consensual sex with a younger girl. When he found out he would be placed on a public sex offender registry, he committed suicide (Dickerson, 2005). In another case, an eighth grader in Delaware was harassed and threatened by other students at his school because he was on the public sex offender registry for an act he committed at age 11. Shortly thereafter, he made several suicide attempts (Jones, 2007).

Objecting to the Adam Walsh Act, also known as the Sex Offender Registration and Notification Act (SORNA), the Coalition for Juvenile Justice wrote,

Research does not support the application of SORNA to children ... SORNA as applied to juveniles flies in the face of some of the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis ... SORNA as applied to children and youth will disrupt families and communities across the nation because SORNA does not just stigmatize

of shaming and castigation. Failure to disclose sufficient aggression or deviance, or to admit sufficient guilt, leads to accusations of denial or minimization (Anonymous, 1997; Kahn, 2001; Kahn, 1999; Shaw, 1999; MacFarlane & Cunningham, 2003; Chaffin & Bonner, 1998).

Treatment essentially requires the child to take on a permanent identity as a sexual deviant. A treatment workbook for 11- to 21-year-olds (Kahn, 2001) tells its young readers, "Completing Pathways will not 'cure' you of your problem—there is no cure—but it will teach you how to recognize and control your problem behaviors" (p. 4). Its final exam contains the following questions:

- What have you learned about your sexual urges, and how have you learned to control your deviant sexual fantasies?
- How do your thinking patterns contribute to your victimizing other people, either in a sexual way or a non-sexual way?
- What is it about you (your personality) that allowed you to commit a sex offense in the first place?
- What are the factors that might eventually lead you to having sexual behavior problems in the future? (p. 289)

Such adversarial methods are never recommended as treatment for juveniles who commit violent nonsexual acts (e.g., those diagnosed with conduct disorder and who commit acts such as aggravated assault, robbery, or arson) (Steiner & Dunne, 1997). The field of psychology provides no scientific evidence of their therapeutic benefits (Zimring, 2004). Some therapists have noted the abusive nature of their profession's own practices:

We have encountered young teenagers (13 to 15) who, as part of their treatment, have been compelled to recite daily lay-outs or creeds including phrases such as "I am a pedophile and am not fit to live in human society ... I can never be trusted ... everything I say is a lie ... I can never be cured." We have encountered residential programs where teenage boys were sanctioned if they looked at girls, were required to look at the floor when they passed females in the hall, and where the message was conveyed that all forms of teenage sexuality were offending. We have listened to teenage boys hesitantly confess that they admitted to offense histories and deviant fantasies they did not have, simply because it was expected and required before they would be eligible for release from residential programs. Our impression is that these incidents cannot be dismissed as isolated examples of overly zealous practice but are directly derived from an uncritical application of prevailing treatment models. (Chaffin & Bonner, 1998, p. 315)

In 1992, the *Arizona Republic* reported that a treatment program at Phoenix Memorial Hospital was using such methods on children as young as 10 years old (Young, 1992). It reported that the mother of a 12-year-old

girl who had been sexually abused herself said that therapists required that the girl admit to being a rapist, and when she refused, therapists persisted until she tried to kill herself.

However, even more disturbing were the reported use on children as young as 10 years old of plethysmographs and ammonia aversion therapy—methods used on gay men fifty years ago, then abandoned as unethical and dangerous:

*The Republic* learned that more than 100 children, more than one-third of them 10 to 12 years old, go through the program each year... Many are tested for deviant sexual responses by a penile plethysmograph, a ring-like device slipped around the penis to measure changes in circumference as a patient views nude photographs. The program includes use of aversion therapy, in which patients inhale ammonia to prevent inappropriate arousal... The hospital had told the girl to record a sexual fantasy. "Then every time she listened to it, she had to use that ammonia," the woman said. "It wasn't really a fantasy, it was just really bizarre. On the tape she was talking about hurting this child (in a violent, sexual manner). My daughter is very passive; she's never been violent." The woman is convinced that the fantasy came from the minds of therapists. "They told her she had to make this tape. She had to rewrite and rewrite until they were sure she'd get sexually aroused to it." (Young, 1992, p. A1)

Although public exposure of this program resulted in its being shut down, soon afterward, a similar treatment program was exposed in New York:

At the clinic, the youth was told he would undergo "sexual behavior testing," and when he resisted, he was told that he would go to jail if he did not participate, the lawsuit states. According to the lawsuit, "his pants were lowered around his ankles and (he) was forced to place a round, mercury-filled plastic device around his penis, and further forced to wear earphones and listen to pornographic tapes including descriptions of sex between adults and children, and between children and children, violent rape, forced sex and other abnormal sexual acts." Afterward the youth was encouraged to masturbate, Paladino states. (Rivera, 1993, p. 6)

Disturbingly, aversion therapy and other forms of "arousal conditioning" are still used. A survey conducted in 2000 (the most recent year for which such figures are available) indicated that 81 percent of juvenile sex offender programs and 62 percent of programs for younger children use some form of arousal conditioning (Burton & Smith-Darden, 2001). The American Academy of Child and Adolescent Psychiatry (Shaw, 1999) describes various authors' recommendations for the use of phallometric testing (measuring of penile erection in response to different stimuli) to determine juveniles' sexual preference, and further details some of the arousal conditioning techniques used on juveniles:



*Olfactory Conditioning.* Sexually stimulating deviant imagery is presented which is followed by the presentation of a noxious odor.

*Satiation Techniques.* This involves either verbal or masturbatory satiation. The offender is first encouraged to masturbate to ejaculation in response to socially appropriate sexual fantasies with the concomitant feelings of affection and tenderness. After this experience the offender is required to masturbate to deviant sexual fantasies. If the offender becomes aroused, he or she is told to switch to an appropriate fantasy or in some instances exposed to an aversive stimulus such as ammonia. Verbal satiation requires the dictation on an audiotape of the most stimulating paraphiliac imagery for at least 30 minutes after masturbation 3 times a week. It is assumed that the paraphiliac fantasy becomes boring and subsequently extinguished. (pp. 66S–67S)

Abel and Harlow (2001), considered experts in sex offender treatment, believe that one out of every twenty boys is or will become a child molester. They urge parents to look for certain danger signs: sexual fantasies involving younger children, sexual victimization, or sexual behavior believed to be excessive or more extensive than normal (although researchers say that normality has yet to be defined; Haroian, 1985). Regarding the first danger sign, they recommend that parents ask their sons, when they reach age 11, about their sexual fantasies. If any of these signs is found, Abel and Harlow instruct parents to have their sons tested using a lie detector, a plethysmograph, or Abel's sexual interest test (which measures visual reaction time when shown photographs of males and females of different ages in swimwear). If test results are positive, parents are instructed to find a sex offender therapist who will use "covert sensitization, aversion, or satiation" on their son.

There appears to be no concern among many professionals of the harmful effects of these methods on children, although it is widely recognized that the use of arousal conditioning on adult gay men in the past could cause severe trauma, depression, nightmares, suicidal thoughts, and self-hatred—the very effects alleged of sexual abuse itself. That is, arousal conditioning can be considered a form of sexual abuse.

It is true that some treatment experts are retreating from the abusive practices just described, blaming such practices on a prior lack of knowledge and a lack of alternatives. However, such an explanation is disingenuous; after all, it has been recognized outside the sex offender treatment profession since the 1960s that such practices are abusive and unethical. In addition, much more humane methods have been available and used for decades on violent nonsexual juvenile offenders who are at least as dangerous as the minority of the sex offenders committing severe abuse and substantially more dangerous than the majority of juvenile sex offenders engaging in milder forms. It should be noted that no professional organization has made any statements rejecting the use of arousal conditioning methods on juveniles, and they continue to be

used. Professionals who have promoted unethical treatment approaches and harsh punishment, such as Robert Emerick, who directed the abusive Phoenix Memorial program, and Toni Cavanaugh Johnson, who promoted the prosecution of young children without an understanding of childhood sexual behavior (see Johnson, 1989), have never been censured for their practices (Schultz, 1993); in fact they continue to publish and present in the field (e.g., Abel et al., 2004; Johnson, 2004), and their old writings are still promoted by the profession (e.g., Office of Juvenile Justice and Delinquency Prevention, 1999).

In summary, there are a number of facts that strongly suggest that legal and therapeutic responses to juvenile sex offenders are based partly or even mostly on other motives than a desire to protect children:

- Current laws and treatment methods used with juvenile sex offenders would be considered unethical and abusive if used on juveniles who commit violent nonsexual crimes.
- These laws and treatment methods harm minors substantially, arguably as much or even more than sexual abuse does.
- Politicians and treatment professionals generally show little or no concern about this harm.
- Professionals generally show far less concern about physical abuse and emotional neglect than about sexual abuse, even though the former two are far more common, in general have much greater frequency and duration when they do occur, and are more harmful on average (Rind, Tromovitch, & Bauserman, 1998; US Department of Health and Human Services Administration on Children, Youth, and Families, 2001)

What might such motives be? An article in a Catholic publication may provide a clue (Lee, 2008). The article features Narda Beas-Nordell, the juvenile sex offender specialist for the Salt Lake County Attorney, who advocates serious prosecution of children who violate sex laws. A former junior high school dance teacher, she justifies her stance as follows:

It should surprise and concern everyone that there are so many children having sex these days.... I was astounded at how sexually engaged students were in the hallways when I was teaching. I'm still shocked by the amount of nudity these young people are exposed to. I tried to uphold some moral standards for my dance students, but I wasn't always backed up by their parents.

Garfinkle (2003) suggests a different but related motive: "By applying Megan's Laws to juvenile adjudications, states throw out a century of juvenile justice jurisprudence and scholarship to protect an even older tradition of fear about childhood sexuality. In so doing, lawmakers perpetrate irreparable damage to the very children they claim to protect" (p. 205).

Such moralistic agendas do not form a sound basis for making public policy or dictating therapeutic regimens. Those who advocate ever higher age-of-consent laws and more draconian penalties justify their position by claiming that children under 18 are too immature to be capable of understanding the consequences of sexual activity and making responsible decisions about it. Nevertheless, the same legislators and therapists believe that children under 18 who do have sex, particularly with a younger child, are so morally culpable that they deserve “therapeutic” treatments so primitive and barbaric as to be rejected for any other class of behavior or crime, no matter how violent. In the growing number of states where it is required that juvenile sex offenders be placed permanently on sex offender registries, the punishment is nothing less than a life sentence.

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